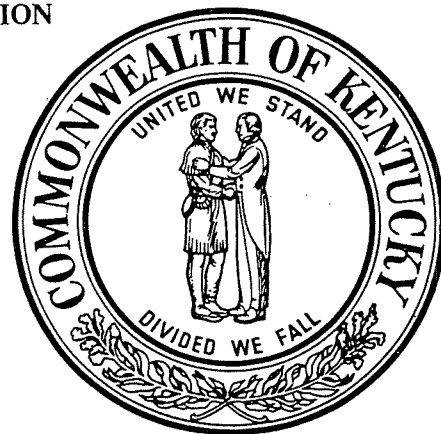


LEGISLATIVE RESEARCH COMMISSION
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This is an official publication of the Commonwealth of Kentucky, Legislative Research Commission, giving public notice of all proposed regulations filed by administrative agencies of the Commonwealth pursuant to the authority of Kentucky Revised Statutes Chapter 13.

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

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Emergency Regulations Now In Effect

JULIAN M. CARROLL, GOVERNOR
Executive Order 79-539
June 25, 1979

EMERGENCY REGULATIONS Department for Natural Resources and Environmental Protection

WHEREAS, the Federal Surface Mining Control and Reclamation Act of 1977 requires the Commonwealth to promulgate regulations relating to mining which are consistent with federal requirements; and

WHEREAS, the Commonwealth has, pursuant to KRS 350.028(5) adopted regulations to administer and enforce the initial regulation procedure of Section 502 of that Act, which Commonwealth regulations are consistent with federal regulations pursuant to the Act as published in the *Federal Register* on December 13, 1977; and

WHEREAS, the federal regulations regarding the disposal of excess spoil from coal strip mining operations and the disposal of excess rock and earth from underground coal mining operations have been revised effective June 25, 1979, as published in the *Federal Register* May 25, 1979; and

WHEREAS, the Commonwealth's regulations must be revised by June 25, 1979, in order to be consistent with and not more stringent than such revised federal regulations; and

WHEREAS, KRS 350.100(1) requires strip mine operators to keep backfilling and grading and other reclamation operations current with mining operations; and

WHEREAS, 350.093(2) and 350.100(1) require the Commonwealth to adopt regulations establishing criteria by which the currency of reclamation operations with mining operations may be determined; and

WHEREAS, in the absence of such adopted regulations establishing specific criteria for determining the currency of reclamation operations with mining operations, many strip mining operators have allowed reclamation operations to lag far behind mining operations; and

WHEREAS, on such operations the excessive discrepancy between reclamation and mining operations may cause significant environmental damage as a result of disturbed areas lying unreclaimed for long periods of time, which may in some cases make reclamation impossible; and

WHEREAS, the Secretary of the Department for Natural Resources and Environmental Protection has determined that an emergency exists and that the enclosed regulations should be effective immediately:

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

JULIAN M. CARROLL, Governor
MARVIN THORNTON, Assistant Secretary of State

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:141E. Disposal of excess spoil.

RELATES TO: KRS 350.440

PURSUANT TO: KRS 13.082, 350.028

EFFECTIVE: June 26, 1979

EXPIRES: October 24, 1979

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the disposal of excess spoil.

Section 1. Definitions. (1) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(2) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

Section 2. General Requirements. (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with this regulation. The spoil shall be placed in a controllable manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the effluent limitations of 405 KAR 1:170, Section 1;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 1:100. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control

Public Hearings Scheduled

KENTUCKY ATHLETIC COMMISSION

A public hearing will be held at 2 p.m. EDT August 16, 1979, at the hearing room of the Frankfort Sports Center, 405 Mero Street, Frankfort, Kentucky on the following fourteen regulations:

201 KAR 27:005 to 201 KAR 27:070. [5 Ky.R. 1102-1109]

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION

A public hearing will be held at 1 p.m. EDT August 2, 1979, in the Basement Auditorium of the Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

815 KAR 7:010. Administration and enforcement. [5 Ky.R. 1113]

815 KAR 7:020. Building code. [5 Ky.R. 1120]

815 KAR 7:030. Energy code. [5 Ky.R. 1121]

BOARD OF ACCOUNTANCY

A public hearing will be held at 10 a.m. EDT September 4, 1979, at the Executive-West, Louisville, Kentucky on the following regulation:

201 KAR 1:061. Standards for certification. [6 Ky.R. 95]

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

A public hearing will be held at 10 a.m. EDT August 14, 1979, in the auditorium of Capital Plaza Tower, Frankfort, Kentucky on the following regulations:

405 KAR 1:141. Disposal of excess spoil. [6 Ky.R. 96]

405 KAR 1:260. Contemporaneous reclamation. [6 Ky.R. 99]

405 KAR 3:111. Disposal of excess rock and earth. [6 Ky.R. 99]

DEPARTMENT OF INSURANCE

A public hearing will be held at 10 a.m. EDT August 31, 1979, in the hearing room of the Department of Insurance, 151 Elkhorn Court, Frankfort, Kentucky on the following regulation:

806 KAR 24:021. Acquisition of controlling stock. [6 Ky.R. 102]

erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 1:190, Section 1. All disturbed areas, including diversion ditches that are not ripped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 1:130, Section 3(3).

(9) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The registered engineer or other qualified professional specialist shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

(a) Demonstrated to be nontoxic and nonacid forming; and

(b) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or man-made water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to

determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the Mine Safety and Health Administration.

Section 3. Valley Fills. Disposal of excess spoil in valley fills shall meet all requirements of Section 2 and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;

2. Extend from the toe to the head of the fill; and

3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A.

(d) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet or less if required by the department in order to:

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrains; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 4. Head-of-Hollow Fills. Disposal of excess spoil in head-of-hollow fills shall meet all requirements of

Sections 2 and 3 and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 3, with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards, may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 3(2)(d).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Instead of the requirements of Section 2(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, twenty-four (24) hour precipitation event, or larger event specified by the department.

Section 5. Durable Rock Fills. (1) In lieu of the requirements of Sections 3 and 4, the department may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 2 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controll-

ed manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 6. 405 KAR 1:140 is hereby repealed.

(Continued on next page)

Appendix A of 405 KAR 1:141E

Minimum Size of Underdrain

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ³ Do.	Sandstone	10	4
	Shale	16	8
More than 1,000,000 yd ³ Do.	Sandstone	16	8
	Shale	16	16

Appendix B of 405 KAR 1:141E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: June 25, 1979

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:260E. Contemporaneous reclamation.

RELATES TO: KRS 350.093, 350.100

PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100

EFFECTIVE: June 26, 1979

EXPIRES: October 24, 1979

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for keeping reclamation operations current with mining operations.

Section 1. Applicability. This regulation shall apply to all strip mining operations conducted on or after May 3, 1978.

Section 2. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible, in accordance with the approved plan for backfilling and grading, and in accordance with the requirements of this section.

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(2) Auger mining. Coal removal in a given location shall be completed within thirty (30) calendar days after the initial surface disturbance by removal of topsoil or overburden at that location. Except when specifically authorized in writing by the department, each auger hole which discharges water shall be sealed within seventy-two (72) hours of completion of the auger hole by backfilling and compacting noncombustible and impervious material into the auger hole to form a watertight seal. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(3) Contour mining. Coal removal in a given location shall be completed within thirty (30) calendar days after the initial surface disturbance at that location. Completed backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(4) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within thirty (30) calendar days after the initial surface disturbance at that location. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as described in subsection (2) of this section.

(5) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area.

(6) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching of that area shall be completed within thirty (30) calendar days in a manner consistent with the approved plans for topsoil handling and revegetation.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days when specifically authorized in the approved plans for topsoil handling and revegetation.

Section 4. Time Extensions Due to Adverse Natural Conditions. In individual cases the department may grant additional time for backfilling and grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching, when adverse weather conditions or other natural conditions beyond the operator's control make it impossible to conduct such reclamation operations in a timely manner, and such conditions are appropriately documented and are successfully demonstrated to the department. However, no claim for lost time in reclamation operations will be accepted if operations related to mining were conducted at the time in question.

Section 5. Exceptions and Variances. The department may authorize in writing such exceptions and variances to the requirements of this regulation as the department may deem necessary to reasonably and properly address site-specific conditions.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: June 25, 1979

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:111E. Disposal of excess rock and earth.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

EFFECTIVE: June 26, 1979

EXPIRES: October 24, 1979

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground mining. This regulation sets forth requirements for the disposal of excess rock and earth.

Section 1. Definitions. (1) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In fills with less than 250,000 cubic yards of material, the top surface of the fill may be at the elevation of the bench of the face-up area. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(2) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

Section 2. General Requirements. (1) Excess rock and earth materials produced from an underground mine and not disposed of in underground workings or not used in backfilling and grading operations to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with this regulation. The excess rock and earth materials shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the effluent limitations of 405 KAR 3:140, Section 1;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 3:080, Section 1. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface-erosion at the site. Diversion design shall conform with the requirements of 405 KAR 3:160, Section 1. All disturbed areas, including diversion ditches that are not rippedraped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The excess rock and earth materials shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) No depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 3:100, Section 4(2).

(9) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The registered engineer or other qualified professional specialist shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

(a) Demonstrated to be nontoxic and nonacid forming; and

(b) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or man-made water-courses, or wet-weather seeps, an under-

drain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess rock and earth materials may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the Mine Safety and Health Administration.

Section 3. Valley Fills. Disposal of excess rock and earth materials in valley fills shall meet all requirements of Section 2 and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A.

(d) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Excess rock and earth material shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet or less if required by the department in order to:

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrains; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 4. Head-of-Hollow Fills. Disposal of excess rock and earth materials in head-of-hollow fills shall meet all requirements of Sections 2 and 3 and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 3, with diversion of runoff around the fill.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 3(2)(d).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Instead of the requirements of Section 2(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, twenty-four (24) hour precipitation event, or larger event specified by the department.

Section 5. Durable Rock Fills. (1) In lieu of the requirements of Sections 3 and 4, the department may approve alternate methods for disposal of hard rock material, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 2 are met. For this section, hard rock material shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock material to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Excess rock and earth materials are to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay in the fill shall be mixed with hard rock material in a controlled manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads. Terraces shall meet the following requirements.

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 6. Where the volume of the excess rock and earth materials is small and its chemical and physical

characteristics do not pose a threat to either public safety or the environment, the department may modify the requirements of this regulation in accordance with 405 KAR 3:100, Section 2(1), regarding backfilling and grading.

Section 7. 405 KAR 3:110 is hereby repealed.

Appendix A of 405 KAR 3:111E

Minimum Size of Underdrain

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ³ Do.	Sandstone	10	4
	Shale	16	8
More than 1,000,000 yd ³ Do.	Sandstone	16	8
	Shale	16	16

Appendix B of 405 KAR 3:111E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

LOWELL E. BRANDENBURG, Commissioner
ADOPTED: June 25, 1979
APPROVED: EUGENE F. MOONEY, Secretary
RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

Amended Regulations Now In Effect

SECRETARY OF THE CABINET Department for Local Government As Amended

109 KAR 5:010. District boards; directors, terms.

RELATES TO: KRS Chapter 147A

PURSUANT TO: KRS 147A.060

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: KRS 147A.060 requires that the composition of the Board of Directors and the terms of its members in each district shall be specified by administrative regulation issued by the [Executive] Department for Local Government [of [for] Finance] [and Administration].

Section 1. Definitions: (1) "Area Development Districts" means the fifteen (15) Area Development Districts as set out in KRS 147A.050.

(2) "Board of Directors" means the boards of directors established in each area development district as set out in KRS 147A.060 to 147A.090.

Section 2. Composition: The board of directors of each area development district shall consist of the categories and memberships as hereinafter enumerated, and the composition characteristics hereinafter specified, including geography and interest groups. *A majority of the board of directors of each area development district shall be composed of elected officials.*

Section 3. Board Membership [Ex-Officio Members. A simple majority of the board of directors of each area development district shall be composed of elected officials.] (1) The county judge/executive of each county located within the area development district shall be a member of the board of directors.

(2) A mayor of at least one (1) incorporated city in each county located within the area development district shall be a member of the board of directors.

(a) The mayor of each city of the first, second or third class located in the area development district shall be a member of the board of directors.

(b) *If any county within the area development district has an incorporated city below the third class, the mayor of such city shall be a member of the board of directors; and if more than one (1) incorporated city below the third class is located within a county of the area development district, the board of directors shall establish the procedure in which a mayor will be selected.*

[(3) The board of directors may make provision for ex-officio membership of additional elected officials. In this regard membership for state legislators should be encouraged.]

(3) [(4)] Elected officials, *provided for in subsections (1) and (2) of this section*, [as noted above] may authorize by letter [written proxy] alternates to represent their interests on the board of directors. A person so designated shall serve at the pleasure of the elected official who designated him or her, and any action taken or vote cast by a designated alternate shall be considered the action or vote

of the designating elected official. Designated alternates who are not elected officials must meet the requirements of citizen members as set out hereinafter.

(4) [Section 4. Citizen Members. (1) A citizen member must reside within the area development district.] *The elected officials provided for in subsections (1) and (2) of this section shall select citizen members in accordance with the procedure set forth in this regulation:*

(a) *A citizen member must reside within the area development district and shall have demonstrated an interest in regional development and/or public service.*

(b) *The distribution should be fair among the counties of the area development district.*

(c) *Provision shall be made for reasonable representation of the major minority group, females, low-income citizens and the principal economic interests of the district. Such representation may be provided by appropriate persons who are either elected officials or citizen members of the board.*

[(2) The elected public officials serving on the board of directors shall select citizen members in accordance with the procedure hereinafter set out:]

[(a) Each board of directors shall make provision for the inclusion of reasonable representation relative to population in the district of major minority groups. Provision should also be made for adequate representation of women on the board.]

[(b) Each board of directors shall make provisions for representation of low-income groups.]

(5) *The board of directors may make provision for additional elected officials to serve on the board. At least one (1) resident member of the House of Representatives and/or one (1) resident member of the Senate shall be offered such board membership under conditions established by the board of directors. Such members shall not be considered in determination of a quorum.*

Section 4. [5.] Advisory Committee Chairman: The chairmen of functional advisory committees of the board of directors may serve as members of the board of directors.

Section 5. [6.] Elections; Tenure: (1) Elected public officials shall serve on the board of directors of each area development district during the tenure of their public office.

(2) Citizen members shall be individually selected to the board of directors for terms not to exceed three (3) years; *provided, such citizen members shall be eligible for election to additional terms as directors.*

[(3) The board of directors of each area development district shall provide for staggered terms to assure continuity of involvement by citizen members.]

[(4) Each board of directors shall provide for rotation of citizen members to insure broad participation of the citizens of the district.]

(3) [Section 7. Termination of Membership: (1)] Citizen board membership shall terminate on expiration of a term, board acceptance of a resignation, or change of residence to locality outside the area development district.

(4) [(2)] The board of directors may declare a membership vacant when a member has failed, without reason, to

attend three (3) successive regular or special meetings of the board.

Section 6. [8.] Officers: (1) The board of directors of each area development district shall elect the following officers: a chairman, a vice-chairman, a secretary, a treasurer, and such other officers as the board may deem necessary. The office of secretary and treasurer may be combined. Each officer shall be elected for a term of one (1) year. No member shall be eligible to hold more than one (1) office at a time, and no officer shall be eligible to serve more than two (2) full terms consecutively in the same office. Officers shall perform such duties as may be prescribed by the board of directors.

(2) Annual selection of officers shall be held at a designated [regular] meeting in each calendar year.

WILLIAM S. O'DANIEL, Commissioner

ADOPTED: July 17, 1979

RECEIVED BY LRC: July 17, 1979 at 10:30 a.m.

DEPARTMENT OF FINANCE As Amended

200 KAR 5:302. Management and procedures manual.

RELATES TO: KRS Chapter 45A

PURSUANT TO: KRS 45A.035

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: The Secretary of the Department of Finance is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2).

Section 1. The purchasing policies and procedures of the Department of Finance published in the department's "Management and Procedures Manual" is [in effect on January 1, 1979, filed herein by reference and not specifically, or by necessary implication, superseded or repealed by procurement regulations adopted by the Department of Finance pursuant to the provisions of KRS Chapter 45A, together with any revisions as may from time to time hereafter be made in such policies and procedures not inconsistent with the provisions of KRS Chapter 45A and regulations of the department adopted pursuant thereto, are] hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the procurement regulations of the Department of Finance adopted pursuant to KRS Chapter 45A.

DEPARTMENT OF FINANCE As Amended

200 KAR 5:303. Written procurement determinations.

RELATES TO: KRS Chapter 45A

PURSUANT TO: KRS 45A.035

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: The Secretary of the Department of Finance is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.025, relative to making procurement determinations.

Section 1. Every determination by a buyer or other employee, except secretarial, stenographic, or clerical employees, of the bureaus of administrative services, facilities management or public properties engaged in or responsible for the performance of any procurement activity or function [and constituting a final procurement action, or] as [otherwise] provided by KRS Chapter 45A or regulations adopted pursuant thereto, shall be made in writing, based on written findings in support of said decision, and shall be signed by the employee making said determination.

DEPARTMENT OF FINANCE As Amended

200 KAR 5:310. Multiple contracts.

RELATES TO: KRS Chapter 45A

PURSUANT TO: KRS 45A.035, 45A.105

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: The Secretary of the Department of Finance is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(h) [(b)].

Section 1. Multiple contracts may be awarded on the basis of a single invitation for bids as after competitive negotiations when it is determined in writing by the purchasing official in advance of the invitation for bids or the advertisement and solicitation for proposals for competitive negotiations that due to the geographic distribution of the agencies requiring supplies of the kind or kinds to be sought through the procurement, the need for a variety of kinds and quality of supplies of the same general nature, or when it is otherwise determined that the award of multiple contracts may be in the Commonwealth's best interests, and its needs met at a reasonable cost. A determination, and notice to potential bidders and offerors, that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for such procurement where it is determined by the purchasing official to be in the best interest of the Commonwealth, price and other factors considered.

Section 2. When it is determined in writing by the purchasing official after the evaluation of competitive bids, or the closing of competitive negotiations, that bids or offers substantially and materially responsive to terms of the procurement have been received for only a part or parts of the requirements of the procurement, and the bids or offers received for another part or parts of the procurement are not substantially and materially responsive to such terms, a contract or contracts may be awarded as to the part or parts of the procurement for which responsive bids or offers have been received, and the bids or offers determined to be nonresponsive may be rejected in the discretion of the purchasing official and new bids invited, or proposals for competitive negotiations for the procurement advertised and solicited, on the same or revised terms, conditions and specifications.

DEPARTMENT OF FINANCE As Amended

200 KAR 5:315. Disciplinary action for failure to perform.

RELATES TO: KRS Chapter 45A

PURSUANT TO: KRS 45A.035

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: The Secretary of the Department of Finance is authorized by KRS 45A.055 to publish state purchasing regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This regulation implements the provisions of KRS 45A.035(2)(b).

Section 1. Any bidder or contractor to the Commonwealth of Kentucky who, except for good cause shown, shall have committed, or failed to perform, as the context may require, one or more of the following acts or omissions, shall be liable to disciplinary action by the Department of Finance as set forth in Section 2. Specific grounds for disciplinary action include:

(1) Failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in form acceptable to the purchasing agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;

(2) Substitution of commodities without the prior written approval of the purchasing agency;

(3) Failure to comply with the terms and conditions of the invitation for bids or solicitation for proposals, or with the terms, conditions and specifications of a contract, including failure to complete performance of a contract within the time specified in the contract;

(4) Failure to replace inferior or defective materials, supplies or equipment immediately after notification by the purchasing agency or the agency to which such materials, supplies or equipment has been delivered;

(5) Failure by a bidder listed on a bidder's list to respond to three (3) (five (5) for construction service contracts) invitations for bids sent to such bidder;

(6) Refusal to accept a contract awarded pursuant to the terms of an invitation for bids, or following the close of competitive negotiations;

(7) Falsifying invoices, or making false representations to any state agency or state official, or untrue statements about, any payment under a contract, or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(8) Collusion, or collaboration with another bidder or other bidders, in the submission of a bid or bids for the purpose of lessening or reducing competition;

(9) Falsifying information in the submission of an application for listing on a Department of Finance bidders' list.

(10) Failure to report, and to pay over to the Department of Revenue any Kentucky sales and/or use taxes as may be due in connection with a procurement contract as provided by law;

(11) Failure to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public works contract of the Commonwealth or any political subdivision or public authority.

Section 2. (1) Any contractor preliminarily determined to have done any act prohibited, or to have failed to do any act required by Section 1(1) to (6) shall, in the discretion of the commissioner of the bureau having jurisdiction over the particular procurements activity or function, be liable to be placed on probation, or suspended from bidding to the Commonwealth of Kentucky, or a combination of suspension from bidding and probation, for not more than twelve (12) months.

(2) Any contractor preliminarily determined to have done any act prohibited by Section 1(7), (8) and (9) shall be removed from the bidders' lists and shall be ineligible for reinstatement to such lists for a period not to exceed twenty-four (24) months following the date of removal. Any contractor removed from the bidders' lists under this section shall be eligible to apply for reinstatement as provided in 200 KAR 5:304, after the expiration of the removal period.

(3) Any contractor, or any subcontractor to a contractor, determined by the Department of Labor to have violated the prevailing wage requirements of KRS Chapter 337 shall be suspended from bidding to the Commonwealth of Kentucky, or to participate in a public works contract of the Commonwealth of Kentucky, effective on and after the date the Department of Finance receives notice from the Department of Labor that such contractor or subcontractor has been determined to have violated the prevailing wage law, and until such time as the Department of Labor has determined the contractor or subcontractor to be in compliance with the requirements of such law.

Section 3. Except for the grounds mentioned in Section 1 (5), (6) and (11) a preliminary written determination shall be made concerning the facts of any allegation or claim that a bidder or contractor has either committed an act prohibited, or failed to perform an act required, by Section 1 before any disciplinary action is taken against such contractor. Such preliminary determination shall be submitted to the Office of General Counsel, Department of Finance, for review prior to the administration of any disciplinary action as authorized by Section 2. Notice of disciplinary action shall be sent to the bidder or contractor at the address shown in the department's records by certified mail, return receipt requested.

Section 4. Bidders or contractors against whom disciplinary action has been taken under this regulation may appeal the action of the Secretary of the Department

of Finance. The appeal must be filed in the office of the secretary within ten (10) working days after the date of notice of the disciplinary action has been received by the bidder or contractor as shown by the certified mail receipt. The appeal must be filed in writing and must state facts showing cause why the disciplinary action should be set aside. An appeal constituting a general denial of the charges contained in the notice of disciplinary action, unless supported by specific facts rebutting such charges, shall be preemptorily dismissed. The appellant may request either a formal hearing before a hearing officer to be designated by the secretary to take proof and make findings and recommendations to the secretary, or an informal hearing to be conducted by the commissioner of the bureau having jurisdiction over the particular procurement activity or function, or his designee. A written report of the substance of the matters raised in such informal hearing shall be prepared and submitted to the secretary and recommending that the appeal be sustained or denied. The rules of evidence shall not apply in either formal or informal hearings conducted under this section and any matter considered pertinent to the issues of the hearing shall be admissible, subject only to the determination by the presiding officer as to the proper weight to be accorded all matters introduced at the hearing.

Section 5. No purchase of any kind shall be made by any state agency from a bidder or contractor who has been suspended or removed from the bidders' lists, except for those removed for the grounds stated in Section 1(5) [(8)]. All state agencies shall be promptly informed about bidders or contractors suspended or removed from the bidders' lists and shall immediately comply with this prohibition.

Section 6. The administration of disciplinary action against a bidder, potential bidder or contractor under this regulation shall not preclude the taking of other action by the Commonwealth, based on the same facts, as may be otherwise available, either at law or in equity, including, without limitation to the generality thereof, suits for damages or actions for specific performance.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:046. Selected new petroleum refining processes and equipment.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of hydrocarbon emissions from selected new petroleum refining processes and equipment.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:* [.]

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. (1) "Affected facility" means vacuum producing systems and process unit turnarounds associated with a petroleum refinery.

(2) "Vacuum producing systems" means equipment which produces a partial vacuum in a vessel.

(3) "Process unit turnaround" means the shutting down, depressurization and purging of a process unit or vessel.

(4) "Classification date" means the effective date of this regulation.

Section 3. Standard for Hydrocarbons. The owner or operator of an affected facility shall install, operate, and maintain all equipment necessary to accomplish the following:

(1) Vacuum producing systems. All gaseous hydrocarbons emitted from condensers, hot wells, vacuum pumps, and accumulators shall be collected and vented to a firebox, flare or other control device of equivalent efficiency as determined by the department.

(2) Process unit turnaround. The gaseous hydrocarbons purged from a process unit or vessel shall be vented to a firebox, flare, or other control device of equivalent efficiency as determined by the department until the pressure in the process unit is less than five (5) psig.

Section 4. Monitoring and Reporting Requirements. (1) The owner or operator shall:

(a) Keep a record of each process unit turnaround;

(b) Record the approximate hydrocarbon concentration when the hydrocarbons were first discharged to the atmosphere;

(c) Record the approximate total quantity of hydrocarbons emitted to the atmosphere.

(2) The owner or operator shall retain these records for at least two (2) years and submit them to the department upon request.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:050. New storage vessels for petroleum liquids.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental

Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new storage vessels for petroleum liquid.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means each storage vessel for petroleum liquids] commenced on or after the classification date defined below, which is located: [has a storage capacity greater than 500 gallons.]

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) *"Affected facility" means a storage vessel for petroleum liquids which has a storage capacity of greater than 580 gallons.*

(2) [(1)] *"Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:*

(a) Pressure vessels which are designed to operate in excess of fifteen (15) pounds per square inch gauge without emissions to the atmosphere except under emergency conditions;

(b) Subsurface caverns or porous rock reservoirs; or

(c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.

(3) [(2)] *"Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils, gas turbine fuel oil Numbers 2-GT through 4-GT, or diesel fuel oils Numbers 2-D and 4-D as specified by the department.*

(4) [(3)] *"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.*

(5) [(4)] *"Crude petroleum" means a naturally occurring mixture which consists of hydrocarbons and/or sulfur, nitrogen and/or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.*

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

(6) *"Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.*

(7) *"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods specified by the department.*

(8) *"Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover, or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.*

(9) *"Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.*

(10) *"Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile [non-viscous] petroleum liquids, except liquefied petroleum gases, as determined by methods specified by the department.*

(11) *"Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean every fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.*

(12) *"Classification date" means April 9, 1972.*

Section 3. Standard for hydrocarbons. The owner or operator of any storage vessel to which this regulation applies shall store petroleum liquids as follows:

(1) If the storage vessel has a storage capacity greater than 40,000 gallons and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight (78) mm Hg (1.5 psia) but not greater than 570 mm Hg (11.1 psia) the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.

(2) If the storage vessel has a storage capacity greater than 40,000 gallons and if the true vapor pressure of the petroleum liquid as stored is greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

(3) If the storage vessel has a storage capacity greater than 580 [500] gallons, and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than 1.5 psia, as a minimum it shall be equipped with a permanent submerged fill pipe.

Section 4. Operating Requirements. (1) There shall be no visible holes, tears, or other opening in the seal or any seal fabric; and

(2) All openings, except stub drains, shall be equipped with covers, lids, or seals such that:

(a) The cover, lid, or seal is in the closed position at all times except when in actual use; and

(b) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports; and

(c) Rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

Section 5. Monitoring of Operations. (1) The owner or operator of any storage vessel with a capacity of greater than 40,000 gallons to which this regulation applies shall, for each such storage vessel, maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored, and of the dates of storage. Dates on which the storage vessel is empty shall be shown.

(2) The owner or operator of any storage vessel with a capacity of greater than 40,000 gallons to which this regulation applies shall, for each such storage vessel, determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if:

(a) The petroleum liquid has a true vapor pressure, as stored, greater than twenty-six (26) mm Hg (0.5 psia) but less than seventy-eight (78) mm Hg (1.5 psia) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or

(b) The petroleum liquid has a true vapor pressure, as

stored, greater than 470 mm Hg (9.1 psia) and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.

(3) The average monthly storage temperature is an arithmetic average calculated for each calendar month, or portion thereof if storage temperatures are determined at least once every seven (7) days.

(4) The true vapor pressure shall be determined by the procedures specified by the department. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the department requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, the Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available on request to the department when typical Reid vapor pressure is used.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:095. New oil-effluent water separators.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from new oil-effluent water separators.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means each oil-effluent water separator which recovers 200 gallons a day or more of any petroleum product from any equipment which processes, refines, stores, or handles hydrocarbons with a Reid vapor pressure of 0.5 pounds or greater] commenced on or after the classification date defined below.

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

(3) *Oil-effluent water separators used exclusively in conjunction with the production of crude oil shall be exempted from this regulation.*

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) *"Affected facility" means any oil-effluent water separator which recovers 200 gallons a day or more of any*

petroleum products from any equipment which processes, refines, stores, or handles hydrocarbons with a Reid vapor pressure of 0.5 psia or greater.

(2) [(1)] *"Oil-effluent water separator" means any tank, box, sump, or other container in which any petroleum or product thereof, floating on or entrained or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.*

[(2)] *"Enclosed container" means a vessel which entirely encloses the content except for pressure relief vents.]*

(3) *"Floating roof" means a vessel cover consisting of double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and vessel wall.*

(4) *"Classification date" means April 9, 1972.*

(5) *"Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from a vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.*

[(6)] *"Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the vessel; or when applied to a vessel which is loaded from the side, shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the tank.]*

Section 3. Standard for Hydrocarbons. [(1) If the oil-effluent water separator is used exclusively in conjunction with the production of crude oil, as a minimum it shall be an enclosed container equipped with a permanent submerged fill pipe. All gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place.

(2)] An oil-effluent water separator [not subject to subsection (1) of this section] shall be one (1) of the following types of vessels: a vessel equipped with a floating roof, a vessel equipped with a vapor recovery system, or their equivalent. All gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:100. New [petroleum liquids] loading facilities at bulk gasoline terminals.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention,

abatement, and control of air pollution. This regulation provides for the control of emissions from new [petroleum liquids] loading facilities at bulk *gasoline* terminals.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means each loading facility] commenced on or after the classification date defined below, [which loads more than 20,000 gallons per day of petroleum liquids into tank trucks, trailers, railroad tank cars, or barges.] *which is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means the facilities at a bulk *gasoline* terminal for loading *gasoline* into tank trucks, trailers, railroad cars, or other non-marine mobile vessels.

(2) "Bulk *gasoline* terminal" means a facility for the storage and dispensing of *gasoline* where incoming *gasoline* loads are received by pipeline, marine tanker or barge, and where outgoing *gasoline* loads are transferred by tank trucks, trailers, railroad cars or other non-marine mobile vessels.

(3) "Gasoline" means any petroleum distillate used as a fuel for internal combustion engines and having a Reid vapor pressure of 4.0 pounds per square inch or greater.

[(1) "Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 to Number 6 fuel oils, gas turbine fuel oils, or diesel fuel oils.]

[(2) "Petroleum refinery" means any facility engaged in producing *gasoline*, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.]

(4) [(3)] "Classification date" means the effective date of this regulation.

Section 3. Standard for Hydrocarbons. (1) No owner or operator of any loading facility shall load *gasoline* [petroleum liquids] unless such facility is equipped with a vapor control system which is in good working order, and in operation.

(2) Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

(3) No owner or operator shall permit the hydrocarbon emissions from the vapor control device to exceed eighty (80) milligrams per liter of *gasoline* [petroleum liquids] loaded.

(4) No owner or operator shall open tank hatches or allow hatches to be opened at any time during loading operations if bottom-fill is practiced. If top-submerged fill is practiced, the hatch is to be opened the minimum time necessary to install and remove the submerged fill pipe and associated vapor collection equipment.

(5) No owner or operator shall permit there to be any leak in the railroad cars, [barges,] trailers, tank trucks, pressure relief valves, or associated vapor collection systems during loading. A leak is defined as a reading of

ten (10) percent of the lower explosive limit as propane on the portable hydrocarbon detector (explosimeter) with the probe one (1) centimeter from the source.

(6) No owner or operator shall permit *gasoline* [petroleum liquids] to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct such monitoring of operations and submit records as specified by the department.

Section 5. Compliance. (1) The design of the vapor control system is subject to the approval of the department.

(2) Kentucky Method 95, filed by reference in 401 KAR 50:015, shall be used to determine compliance with the standard in Section 3.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Air Pollution

As Amended

401 KAR 59:101. New bulk *gasoline* plants.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of hydrocarbon emissions from new bulk *gasoline* plants.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced on or after the classification date defined below *which is located:* [.]

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a bulk plant.

(2) "Bulk *gasoline* plant" means a facility for the storage and dispensing of *gasoline* that employs tank trucks, trailers, railroad cars, or other mobile non-marine vessels for both incoming and outgoing *gasoline* transfer operations. [petroleum liquids storage and distribution facility with a maximum daily throughput greater than 200 gallons but less than or equal to 20,000 gallons.]

(3) "Gasoline" means any petroleum distillate having a Reid vapor pressure of 4.0 pounds per square inch or greater used as a fuel for internal combustion engines. ["Petroleum liquids" means crude petroleum, condensate,

and any finished or intermediate product manufactured in a petroleum refinery but does not mean Number 2 to Number 6 fuel oils, gas turbine fuel oils, or diesel fuel oils.]

(4) "Bottom fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.

(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.

(7) "Classification date" means the effective date of this regulation.

(8) "Transport vehicle" means tank trucks, trailers, or railroad tank cars[, or barges].

Section 3. Standard for Hydrocarbons. (1) The owner or operator of an affected facility shall install, maintain, and operate:

(a) Stationary storage tank control devices according to the provisions of 401 KAR 59:050 and/or 401 KAR 61:050.

(b) A vapor balance system for:

1. Filling of stationary storage tanks from transport vehicle tanks; and

2. Filling of transport vehicle tanks from stationary storage tanks.

(c) For loading into transport vehicle tanks either:

1. A submerged fill tube system; or

2. A bottom fill system.

(2) The vapor balance system shall be equipped with fittings which are vapor tight and will automatically close upon disconnection so as to prevent the release of organic material.

(3) The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.

(4) The vapor balance system must be equipped with interlocking devices which prevent transfer of *gasoline* [petroleum liquids] until the vapor return hose is connected.

(5) Transport vehicle tank hatches shall be closed at all times during loading operations.

(6) There shall be no leaks from the pressure/vacuum relief valves and hatch covers of the stationary storage tanks or transport vehicle tanks during loading.

(7) The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than 0.7 psig unless a lower setting is required by applicable fire codes.

(8) The owner or operator shall not load *gasoline* [petroleum liquids] into any transport vehicle or receive *gasoline* [petroleum liquids] from any transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive *gasoline* [petroleum liquids] unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (9) of this section the fittings on the transport vehicle tanks must be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(9) The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system must form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert or remove the submerged fill tube system.

(10) No owner or operator shall permit *gasoline* [petroleum liquids] to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the department's satisfaction that the alternate system will achieve equivalent control efficiency.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Air Pollution

As Amended

401 KAR 59:180. New automobile and light duty truck surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new automobile and light-duty truck surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located*:

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for automobile and light-duty truck frames, small parts, wheels, and main body parts at an assembly plant *but does not include the following*:

(a) *Underbottom-sound deadener coatings;*

(b) *Zinc rich anti-rust and weld line anti-rust prime coatings;*

(c) *Adhesive coatings or mastics;*

(d) *Flexible coatings;*

(e) *Plastic body fillers or caulks; or*

(f) *Interior coatings which are applied after upholstery and interior plastic parts are attached to the body.*

(2) "Applicator" means the mechanism or device used to apply the coating, including, but not limited to dipping and spraying.

(3) "Automobile" means all passenger cars or passenger car derivatives capable of seating twelve (12) or fewer passengers.

(4) "Classification date" means the effective date of this regulation.

(5) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or repair coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.

(6) "Final repair coating line" means a coating line for the repainting of any coatings which are damaged during vehicle assembly.

(7) "Flashoff area" means the space between the application area and the oven.

(8) "Light-duty truck" means any motor vehicle rated at 3,864 kilograms (8,500 pounds) gross vehicle weight or less which are designed primarily for purposes of transportation of property or are derivatives of such vehicles (including but not limited to, pickups, vans, and window vans).

(9) "Prime coat coating line" means a coating line for the first coating and surfacer which are [is] responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(10) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(11) "Topcoat coating line" means a coating line for the coating of the surface to obtain desired aesthetic effects.

(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(13) "Surfacer" means the spray application of primer to touch-up areas on the surface not adequately covered during electrodeposition.

(14) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted

to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(15) "*Electrophoretic deposition*" means a process of applying a coating by dipping the component in a coating bath with an electrical potential difference between the component and the bath.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is:

(1) Prime coating line: 0.14 [0.10] kilograms per liter of coating (1.2 [0.8] pounds per gallon), excluding water, which shall be applied by *electrophoretic deposition* [delivered to the first applicators associated with the prime coating line] and 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the surfacer. *An alternative for the surfacer is fifty-five (55) percent solids by volume organic-borne prime coat applied with a minimum of sixty-five (65) percent transfer efficiency.*

(2) Topcoat coating line: 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicator(s) associated with the topcoat coating line, or a *fifty (50) percent solids by volume organic-borne topcoat applied with a minimum of sixty-five (65) percent transfer efficiency.*

(3) Repair coating line: 0.58 kilograms per liter of coating (4.8 pounds per gallon), excluding water, as delivered to the applicator *applied with a minimum of sixty-five (65) percent transfer efficiency.*

(4) *Any owner or operator who elects to qualify for an exemption under this section shall achieve compliance on or before the following dates:*

(a) *Prime coating systems and final repair coating systems; January 1, 1983.*

(b) *Topcoat systems; January 1, 1986.*

(5) *Any affected facility using this section of this regulation may elect to use an arithmetic average of the coatings used in the particular coating line involved. If such average meets the exemption then all coatings will be considered to meet the exemption.*

(6) *The exemptions specified in this section may be achieved by:*

(a) *Use of low solvent coating; and/or*

(b) *Any other emission reduction process or equipment shown to be as effective.*

Section 6. Variances. For coating of non-metal components, variation with the standards, limitations and compliance timetables contained in this regulation, when supported by adequate technical information, will be considered by the department on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:185. New solvent metal cleaning equipment.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions for new solvent metal cleaning equipment.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and as a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means cold cleaners, open top vapor degreasers, and conveyorized degreasers which

utilize volatile organic compounds to remove soluble impurities from metal surfaces.

(2) "Volatile organic compounds" means chemical compounds of carbon excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(3) "Classification date" means the effective date of this regulation.

(4) "Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For a vapor degreaser it is the distance from the solvent vapor level in the tank to the lip of the tank.

(5) "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(6) "Refrigerated chiller" means a second set of freeboard condenser coils located slightly above the primary condenser coils which create a cold air blanket above the vapor zone.

(7) "Cold cleaner" means a batch-loaded degreaser whose solvent is kept below its boiling point.

(8) "Open top vapor degreaser" means a batch loaded degreaser whose solvent is heated to its boiling point creating a solvent vapor zone.

(9) "Conveyorized degreasers" means a degreaser which is continuously loaded by means of a conveyor system. Its solvent may be boiling or non-boiling.

(10) "Solvent" means, in this regulation, volatile organic compounds.

Section 3. Standard for Volatile Organic Compounds. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the operating requirements which apply to this type of degreaser as specified in Sections 4, 5, and 6.

Section 4. Cold Cleaners. (1) Control equipment:

(a) The cleaner shall be equipped with a cover. If the solvent volatility is greater than fifteen (15) mm of Hg measured at 100°F or if the solvent is agitated or heated, then the cover shall be designed so that it can be easily operated with one (1) hand.

(b) The cleaner shall be equipped with a drainage facility such that solvent that drains off parts removed from the cleaner will return to the cleaner. If the solvent volatility is greater than thirty-two (32) mm of Hg measured at 100°F then the drainage facility shall be internal so that parts are enclosed under the cover while draining. *The drainage facility may be external if the department determines that an internal type cannot fit into the cleaning system.*

(c) A permanent, conspicuous label, summarizing the operating requirements specified in Section 4(2) shall be installed on or near the cleaner.

(d) If used, the solvent spray shall be a fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

(e) If the solvent volatility is greater than thirty-two (32) mm of Hg measured at 100°F or if the solvent is heated above 120°F, then one (1) of the following control devices shall be used:

1. Freeboard that gives a freeboard ratio greater than or equal to 0.7.

2. Water cover (solvent must be insoluble in and heavier than water).

3. Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(2) Operating requirements:

(a) Do not dispose of waste solvent or transfer it to another party, such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in covered containers.

(b) Close degreaser cover whenever not handling parts in the cleaner.

(c) Drain cleaned parts until dripping ceases (fifteen (15) seconds is usually necessary).

Section 5. Open Top Vapor Degreasers. (1) Control equipment:

(a) The degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(b) The degreaser shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat to shut off sump heat if condenser coolant either is not circulating or is too warm.

2. Spray safety switch to shut off spray pump if the vapor level drops more than four (4) inches *below the bottom condenser coil in order to prevent spraying above the vapor level.*

3. Vapor level control thermostat which shuts off sump heat if the vapor zone rises above the design level.

4. *Equivalent safety systems as approved on a case-by-case basis by the department.*

(c) The degreaser shall be equipped with at least one (1) of the following major control devices:

1. Freeboard ratio greater than or equal to 0.75, and if the degreaser opening is greater than ten (10) square feet, the cover shall be powered *or mechanically assisted.*

2. Refrigerated chiller.

3. Enclosed design such that the cover or door opens only when the dry part is actually entering or exiting the degreaser.

4. Carbon adsorption system, with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (when cover is open), and exhausting less than twenty-five (25) ppm by volume solvent averaged over one (1) complete adsorption cycle.

5. Control system demonstrated to have control efficiency equivalent to or better than any of the above.

(d) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Keep the cover closed at all times except when processing work loads through the degreaser.

(b) Minimize solvent carry-out by the following measures:

1. Rack parts so that entrainment of solvent is avoided and full drainage is accomplished.

2. Move parts in and out of the degreaser at a *vertical speed* less than eleven (11) ft./min.

3. Degrease the work load in the vapor zone until condensation ceases (thirty (30) seconds or more is usually necessary).

4. Tip out any pools of solvent on the cleaned parts before removal.

5. Allow parts to dry within the degreaser above the vapor zone until visually dry (fifteen (15) seconds is usually necessary).

(c) Do not degrease porous or absorbent materials such as cloth, leather, wood, or rope.

(d) Work loads should not occupy more than half of the degreaser's open top area.

(e) The vapor level should not drop more than four (4) inches when the work load enters or leaves the vapor zone.

(f) Never spray above the vapor level.

(g) Repair solvent leaks immediately or shut down the degreaser.

(h) Do not dispose of waste solvent or transfer it to another party such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in closed containers.

(i) Exhaust ventilation should not exceed sixty-five (65) cfm per square foot of degreaser area unless necessary to meet OSHA requirements or control device requirements. Ventilation fans should not be used near the degreaser opening.

(j) Water should not be visually detectable in the solvent exiting the water separator.

Section 6. Conveyorized Degreasers. (1) Control equipment:

(a) A conveyorized degreaser shall be enclosed except for work load entrances and exits.

(b) The degreaser shall be equipped with a drying tunnel or another means such as rotating baskets sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(c) Minimized openings: entrances and exits shall silhouette work loads so that the average clearance between the largest parts and the edge of the degreaser opening is either less than four (4) inches or less than ten (10) percent of the width of the opening.

(d) Down-time covers: The degreaser shall be equipped with covers for closing off the entrance and exit during shutdown hours.

(e) If the degreaser has an air/solvent interface area or an air/vapor interface area equal to or greater than twenty (20) square ft., it shall be equipped with at least one (1) of the following major control devices:

1. Refrigerated chiller.

2. Carbon adsorption system with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (when down-time covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over a complete adsorption cycle.

3. A system demonstrated to have a control efficiency equivalent to or better than either of the above.

(f) If the degreaser is a vapor type, it shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat which will shut off the sump heat if coolant is either not circulating or is too warm.

2. Spray safety switch which will shut off the spray pump or conveyor if the vapor level drops more than four (4) inches *below the bottom condenser coil in order to prevent spraying above the vapor level.*

3. Vapor level control thermostat which will shut off sump heat if the vapor level rises above the design level.

4. *Equivalent safety systems as approved on a case-by-case basis by the department.*

(g) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Exhaust ventilation should not exceed sixty-five (65) cfm per square foot of degreaser opening unless necessary to meet OSHA requirements or control device requirements. Work place fans should not be used near the degreaser opening.

(b) Minimize solvent carry-out by the following measures:

1. Rack parts so that entrainment of solvent is avoided and full drainage is accomplished.

2. Maintain vertical conveyor speed at less than eleven (11) ft/min.

(c) Do not dispose of waste solvent or transfer it to another party such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in closed containers.

(d) Repair solvent leaks immediately or shutdown the degreaser.

(e) Water should not be visually detectable in the solvent exiting the water separator.

(f) Down-time covers shall be placed over entrances and exits of the degreaser immediately after the conveyor and exhaust are shut down and removed just before they are started up.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 59:190. New insulation of magnet wire operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new insulation of magnet wire operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for insulation of magnet wire.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to a coating bath.

(3) "Coating die" means the device, located between the applicator and the drying oven, which scrapes off excess coating and leaves a thin film of desired thickness.

(4) "Magnet wire" means wire used in such equipment as electrical motors, generators, and transformers which carries an electrical current.

(5) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including coating die area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.

(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(7) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(8) "Classification date" means the effective date of this regulation.

(9) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system

capture efficiency and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.20 kilograms per liter of coating (1.7 pounds per gallon), excluding water, delivered to the applicators associated with the coating line.

(2) *An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by July 1, 1981.*

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:195. New metal furniture surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new metal furniture surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to

them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for indoor and/or outdoor metal furniture.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: dipping, spraying, or flowcoating.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.

(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.

(7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;
- (i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.

(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(10) "Metal furniture" means household and business items including but not limited to: tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps and room dividers.

(11) "Classification date" means the effective date of this regulation.

(12) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of

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

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5, the following methods of analyses filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.36 kilograms per liter of coating (3.0 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) *An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by April 1, 1981.*

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:200. New large appliance surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new large appliance surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for large appliances such as, but not limited to: doors, cases, lids, panels and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, and air conditioners.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to dipping or spraying.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Prime coat" means the first film of coating applied in a two (2) coat operation.

(5) "Topcoat" means the final film of coating applied in a two (2) coat operation.

(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.

(7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the

throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.

(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(10) "Classification date" means the effective date of this regulation.

(11) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);

- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) Repair coating operations for the purpose of repairing scratches and nicks that occur during assembly shall be exempt from the provisions of Section 3.

(3) *An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by January 1, 1982.*

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 59:210. New fabric, vinyl and paper surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new fabric, vinyl or paper surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any other county and is a part of a major source volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for fabric, vinyl, or paper.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to: roll, knife, or rotogravure coater.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;

- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;
- (i) If any portion of the series of equipment and/or operations qualifies for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.
- (5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.
- (6) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.
- (7) "Fabric coating" means the coating of a textile substrate to impart properties that are not initially present, such as strength, stability, water or acid repellancy, or appearance.
- (8) "Vinyl coating" means the coating of vinyl coated fabric or vinyl sheets which includes decorative or protective topcoats or printing.
- (9) "Paper coating" means the *application of a uniform layer of material across the entire width of a web* [coating] of paper [(but does not include the printing of paper)], pressure sensitive tapes regardless of substrate, related web coating processes on plastic film such as typewriter ribbons, photographic film, magnetic tape, and decorative coatings on metal foil such as gift wrap and packaging, *but does not include the printing of paper*.
- (10) "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.
- (11) "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.
- (12) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.
- (13) "Classification date" means the effective date of this regulation.
- (14) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining

volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(15) "*Printing*" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication and packaging printing.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. (1) Any affected facility coating fabric or paper shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.35 kilograms per liter of coating (2.9 pounds per gallon), excluding water, delivered to the applicators associated with the coating line.

(2) Any affected facility coating vinyl shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.45 kilograms per liter of coating (3.8 pounds per gallon) excluding water, delivered to the applicators associated with the coating line.

(3) *An owner or operator electing to qualify for an extension under this section must achieve final compliance for that affected facility by December 1, 1981.*

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:215. New can surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 19, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new can surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for cans.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to spray or roller.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "End sealing compound" means a synthetic rubber compound which is coated onto can ends and functions as a gasket when the end is assembled on the can.

(5) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and background for the lithographic or printing operation.

(6) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.

(7) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

(8) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss and to protect the finish against abrasion and corrosion.

(9) "Three (3) piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented or soldered seam to protect the exposed metal.

(10) "Two (2) piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(11) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including but not limited to flashoff area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualifies for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.

(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(13) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(14) "Classification date" means the effective date of this regulation.

(15) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is:

- (1) Less than 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the sheet basecoat (exterior and interior) and overvarnish or, two (2) piece can exterior (basecoat and overvarnish) coating lines;
- (2) Less than 0.51 kilograms per liter of coating (4.2 pounds per gallon), excluding water, delivered to the applicators associated with two (2) and three (3) piece can interior body spray or two (2) piece can exterior end (spray or roll coat) coating lines;
- (3) Less than 0.66 kilograms per liter of coating (5.5 pounds per gallon), excluding water, delivered to the applicators associated with the three (3) piece can side-seam spray coating line;
- (4) Less than 0.44 kilograms per liter of coating (3.7 pounds per gallon), excluding water, delivered to the applicators associated with the end sealing compound coating line.
- (5) *An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by April 1, 1981.*

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 59:220. New coil surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from new coil surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced on or after the classification date defined below *which is located*:

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any other county and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

- (1) "Affected facility" means a coating line for metal sheets or strips that comes in rolls or coils.
- (2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: roller or spray.
- (3) "Quench area" means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.
- (4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.
- (5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.
- (6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.
- (7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat, or single coatings containing volatile organic compounds. This shall include, but is not limited to:
 - (a) Mixing operations;
 - (b) Process storage;
 - (c) Applicators;
 - (d) Drying operations including but not limited to quench area, oven drying, baking, curing, and polymerization;
 - (e) Clean up operations;
 - (f) Leaks, spills and disposal of volatile organic compounds;
 - (g) Processing and handling of recovered volatile organic compounds;
 - (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;
 - (i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 5, then that portion shall be considered to be a separate coating line.
- (8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.
- (9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.
- (10) "Classification date" means the effective date of this regulation.
- (11) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile

organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 5.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 5. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.31 kilograms per liter of coating (2.6 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) *An owner or operator electing to qualify for an exemption under this section must achieve final compliance for that affected facility by April 1, 1981.*

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:005. General provisions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation is to provide for the establishment of monitoring requirements, performance testing requirements, and other general provisions as related to existing sources.

Section 1. Applicability. The provisions of this chapter shall apply to the owner or operator of any existing source for which a standard of performance has been promulgated under this chapter.

Section 2. Performance Test. (1) On or before the completion of a control plan at an affected facility and at such other times as may be required by the department, the owner or operator of an affected facility, except for those affected facilities specified below, shall conduct performance test(s) according to 401 KAR 50:045 and shall furnish the department a written report of the results of such performance test(s).

(a) Process operation with a process weight rate of less than 100 tons per hour;

(b) Indirect heat exchangers of less than 250 million BTU heat input;

(c) Incinerator with a charging rate of forty-five (45) metric tons per day (fifty (50) tons/day) or less;

(d) Affected facilities specified in [401 KAR 61:025, 401 KAR 61:035,] 401 KAR 61:040, 401 KAR 61:045, 401 KAR 61:050, 401 KAR 61:056, 401 KAR 61:060, 401 KAR 61:085, 401 KAR 61:090, 401 KAR 61:095, 401 KAR 61:100, 401 KAR 61:105, 401 KAR 61:110, 401 KAR 61:120, 401 KAR 61:125, 401 KAR 61:130, and 401 KAR 61:135.

(2) The department may require the owner or operator of any affected facility including those specified in subsection (1) of this section to conduct performance test(s) according to 401 KAR 50:045 and furnish a written report of the results of such performance test(s).

Section 3. Emission Monitoring. This section sets forth the minimum requirements for continuous emission monitoring, recording, and reporting for source categories which are set forth. It includes the performance specifications for accuracy, reliability, and durability of acceptable monitoring systems and techniques to convert emission data to units of applicable emission standards.

(1) The owner or operator of a source in a category listed below shall:

(a) Install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in this section for the applicable source category;

(b) Complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months of the effective date of this

regulation, except as provided in paragraph (c) of this subsection; and

(c) For continuous emission monitoring systems for which there are no performance specifications under Appendix B of 40 CFR 60, filed by reference in 401 KAR 50:015, as of the effective date of this regulation, complete the installation and performance tests of such equipment and begin monitoring and recording within eighteen (18) months of promulgation of the applicable performance specifications under Appendix B of 40 CFR 60.

(2) The source categories and the respective monitoring requirements are listed below.

(a) Indirect heat exchangers, as specified in subsection (6)(a) of this section shall be monitored for opacity, sulfur dioxide emissions, and oxygen or carbon dioxide.

(b) Sulfuric acid plants, as specified in subsection (6)(b) of this section shall be monitored for sulfur dioxide emissions.

(c) Nitric acid plants as specified in subsection (6)(c) of this section shall be monitored for nitrogen oxides emissions.

(d) Petroleum refinery affected facilities as specified in subsection (6)(d) of this section shall be monitored as specified in subsection (6)(d) of this section.

(e) Incinerators, as specified in subsection (6)(e) of this section, shall be monitored for opacity.

(f) Control devices, as specified in subsection (6)(f) of this section, shall be monitored for opacity.

(3) Exemption. Sources which are scheduled for retirement within five (5) years after the effective date of this regulation are exempt from the requirements of this section, provided that adequate evidence and guarantees are provided that clearly show that the source will cease operating on or before that date.

(4) Extensions. Reasonable extensions of the time provided for installation of monitors may be allowed for sources unable to meet the time-frame prescribed in subsection (1)(b) of this section, provided the owner or operator of such facility demonstrates that good faith efforts have been made to obtain and install such devices within such prescribed time-frame.

(5) Monitoring systems malfunctions. The department may provide a temporary exemption from the monitoring and reporting requirements of this section during any period of monitoring system malfunction, provided that the source owner or operator shows, to the department's satisfaction, that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Monitoring requirements:

(a) Indirect heat exchangers. Each indirect heat exchanger, except as provided in the following subparagraphs, with an annual average capacity factor of greater than thirty (30) percent as demonstrated to the department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question. (Annual average capacity factor means the ratio of the actual annual heat input to the potential annual heat input based on rated capacity.)

1. A continuous monitoring system for the measurement of capacity which meets the appropriate performance specification as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this subsection by the owner or operator of any such indirect heat exchanger of greater than 250 million BTU per hour heat input except where: gaseous fuel is the only fuel burned, or oil or a mixture of gas and oil are the only fuels burned and the source

is able to comply with the applicable particulate matter and opacity standards without utilization of particulate matter collection equipment, and where the source has never been found, through any administrative or judicial proceedings, to be in violation of any visible emission standard.

2. A continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, maintained, and operated on any indirect heat exchangers (except where natural gas or wood waste is burned) of greater than 250 million BTU per hour heat input.

3. A continuous monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section shall be installed, calibrated, operated, and maintained on indirect heat exchangers where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard.

(b) Sulfuric acid plants. For the purposes of this regulation, "sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds. The owner or operator of each sulfuric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of sulfur dioxide which meets the appropriate performance specifications as specified in subsection (7) of this section for each sulfuric acid producing facility within such plant.

(c) Nitric acid plants. For the purposes of this regulation "nitric acid plant" means any facility producing nitric acid thirty (30) to seventy (70) percent by weight in strength by either the pressure or atmospheric pressure process. The owner or operator of each nitric acid plant of greater than 200 tons per day production capacity, the production capacity being expressed as 100 percent acid, shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of nitrogen oxides which meet the appropriate performance specifications as specified in subsection (7) of this section for each nitric acid producing facility within such plant.

(d) Petroleum refineries. The owner or operator of each affected facility specified in this paragraph shall install, calibrate, maintain and operate continuous monitoring equipment as follows:

1. A continuous monitoring system for the measurement of opacity for catalyst regenerator for fluid bed cracking units of greater than 20,000 barrels per day fresh feed capacity which meets the appropriate performance specifications specified in subsection (7) of this section.

2. An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section. The span of this continuous monitoring system shall be 1,000 ppm.]

3. A continuous monitoring system for the measurement of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases subject to 401 KAR 61:145 which meets the appropriate per-

formance specifications specified in subsection (7) of this section (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under subparagraph 3 [4] of this paragraph). The pollutant gas used to prepare calibration gas mixtures under Performance Specification 2 of 40 CFR 60 paragraph 2.1 and for calibration checks shall be sulfur dioxide. The span shall be set at 100 ppm. For conducting monitoring system performance evaluations, Reference Method 6 shall be used.

3. [4.] An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved by removing hydrogen sulfide from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one (1) location, if monitoring at this location accurately represents the concentration of hydrogen sulfide in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

4. [5.] An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications in subsection (7) of this section, if compliance is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be set at 500 ppm.

5. [6.] An instrument(s) for continuously monitoring and recording the concentration of hydrogen sulfide and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section, if compliance is achieved through the use of a reduction control system not followed by incineration. The span(s) of this continuous monitoring system shall be set at twenty (20) ppm for monitoring and recording the concentration of hydrogen sulfide and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

6. *An instrument for continuously monitoring and recording the concentration of sulfur dioxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators subject to 401 KAR 61:145 which meets the appropriate performance specifications specified in subsection (7) of this section. The span of this continuous monitoring system shall be 1,500 ppm.*

(e) Incinerators. Each incinerator with a charging capacity of more than forty-five (45) metric tons per day (fifty (50) tons/day) shall install, calibrate, maintain and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(f) Each control device with a concentrated discharge associated with the affected facilities subject to 401 KAR 61:070, 401 KAR 61:075, or 401 KAR 61:080 shall install, calibrate, maintain, and operate a continuous monitoring system for the measurement of opacity which meets the appropriate performance specifications as specified in subsection (7) of this section.

(7) Except as provided in subsection (8) of this section, all owners or operators which are required to comply with this section shall demonstrate compliance with the following performance specifications of Appendix B to 40 CFR 60.

(a) Continuous monitoring systems for measuring opacity shall comply with Performance Specification 1.

(b) Continuous monitoring systems for measuring sulfur dioxide shall comply with Performance Specification 2.

(c) Continuous monitoring systems for measuring nitrogen oxides shall comply with Performance Specification 2.

(d) Continuous monitoring systems for measuring oxygen shall comply with Performance Specification 3.

(e) Continuous monitoring systems for measuring carbon dioxide shall comply with Performance Specification 3.

(8) An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components or who installed continuous monitoring equipment prior to October 6, 1975 shall comply with the following requirements:

(a) Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

(b) Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within plus or minus twenty (20) percent with a confidence level of ninety-five (95) percent. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Appendix B to 40 CFR 60 shall be used for demonstrating compliance with this specification;

(c) Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, may be required to conduct tests under paragraphs (a) and/or (b) of this subsection if requested by the department;

(d) All continuous monitoring systems referenced by this subsection shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and the new or improved systems shall be demonstrated to comply with applicable performance specifications within five (5) years of the effective date of this regulation.

(9) Calibration gases. For sulfur dioxide monitoring systems installed on indirect heat exchangers, [or] sulfuric acid plants or petroleum refinery fluid catalyst cracking unit regenerators, the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 CFR 60) shall be sulfur dioxide. For nitrogen oxides monitoring systems, installed on nitric acid plants the pollutant gas used to prepare calibration gas mixtures (Section 2.1, Performance Specification 2, Appendix B to 40 CFR 60) shall be nitrogen dioxide. This gas shall also be used for daily checks under subsection (13) of this section as applicable. Span and zero gases certified by their manufacturer to be traceable to National Bureau of Standards reference gases shall be used whenever these reference gases are available. Every six (6) months from dates of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A to 40 CFR 60 as follows: for sulfur dioxide, use Reference Method 6, for nitrogen dioxide use Reference Method 7, and for carbon dioxide and oxygen use Reference Method 3.

(10) Cycling times. Cycling times include the total time a monitoring system requires to sample, analyze, and record an emission measurement.

(a) Continuous monitoring systems for measuring opacity shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive ten (10) second period.

(b) Continuous monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one (1) cycle of operation (sampling, analyzing, and data recording) for each successive fifteen (15) minute period.

(11) Monitor location. A continuous monitoring device shall be installed such that representative measurements of emissions or process parameters (i.e., oxygen or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous monitoring systems to obtain representative samples are contained in the applicable Performance Specifications of Appendix B of 40 CFR 60.

(12) Combined effluents. When the effluents from two (2) or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere, the department may allow monitoring systems to be installed on the combined effluent. When the affected facilities are not of similar design and operating characteristics, or when the effluent from one (1) affected facility is released to the atmosphere through more than one (1) point, the department shall establish alternate procedures to implement the intent of these requirements.

(13) Zero and span drift. Owners or operators of all continuous monitoring systems installed in accordance with the requirements of this subsection shall record the zero and span drift in accordance with the method prescribed by the manufacturer of such instruments; to subject the instruments to the manufacturer's recommended zero and span check at least once daily unless the manufacturer has recommended adjustments at shorter intervals, in which case the recommendations shall be followed; to adjust the zero and span whenever the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift limits of the applicable performance specifications in Appendix B of 40 CFR 60 are exceeded; and to adjust continuous monitoring systems referenced by subsection (8) of this section whenever the twenty-four (24) hour zero drift or twenty-four (24) hour calibration drift exceeds ten (10) percent of the emission standard.

(14) Span. Instrument span should be approximately 200 percent of the expected instrument data display output corresponding to the emission standard of the source.

(15) Alternate procedures and requirements. The department may allow equivalent procedures and requirements that have been approved by the U.S. EPA for continuous monitoring systems as follows:

(a) Alternate monitoring requirements to accommodate continuous monitoring systems that require corrections for stack moisture conditions (e.g., an instrument measuring sulfur dioxide emissions on a wet basis could be used with an instrument measuring oxygen concentration on a dry basis if acceptable methods of measuring stack moisture conditions are used to allow accurate adjustments of the measured sulfur dioxide concentration to a dry basis).

(b) Alternate locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate to the satisfaction of the department that installation at alternate locations will enable accurate and representative measurements.

(c) Alternative procedures for performing calibration checks (e.g., some instruments may demonstrate superior drift characteristics that require checking at less frequent intervals).

(d) Alternative monitoring requirements when the effluent from two (2) or more identical affected facilities is released to the atmosphere through more than one (1) point (e.g., an extractive, gaseous monitoring system used at several points may be approved if the procedures recommended are suitable for generating accurate emission averages).

(e) Alternate continuous monitoring systems that do not meet the spectral response requirements in Performance Specification 1, Appendix B of 40 CFR 60, but adequately demonstrate a definite and consistent relationship between their measurements and the opacity measurements of a system complying with the requirements in Performance Specification 1. The department may require that such demonstration be performed for each affected facility.

(16) Minimum data requirements. The following paragraphs set forth the minimum data reporting requirements. Both a printed summary and computer tape or cards shall be furnished in the format specified by the division.

(a) Owners or operators of facilities required to install continuous monitoring systems shall submit for every calendar quarter, a written report of excess emissions and the nature and cause of the excess emissions if known. The averaging period used for data reporting should correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question. The required report shall include, as a minimum, the data stipulated in this subsection. All quarterly reports shall be postmarked by the thirtieth (30th) day following the end of each calendar quarter.

(b) For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of six (6) minute averages of opacity greater than the opacity standard in the applicable standard for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four (4) equally spaced, instantaneous opacity measurements per minute. Any time period exempted shall be considered before determining the excess average of opacity (e.g., whenever a regulation allows two (2) minutes of opacity measurements in excess of the standard, the source shall report all opacity averages, in any one (1) hour, in excess of the standard, minus the two (2) minute exemption). If more than one (1) opacity standard applies, excess emissions data must be submitted in relation to all such standards. Opacity data need be reported on computer cards or tape only.

(c) For gaseous measurements the summary shall consist of hourly averages in the units of the applicable standard. The hourly averages shall not appear in the written summary, but shall be made available from the computer tape or cards.

(d) The date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of system repairs or adjustments shall be reported. Proof of continuous monitoring system performance whenever system repairs or adjustments have been made is required.

(e) When no excess emissions have occurred and the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.

(f) Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous monitoring system or as necessary to convert monitoring data to the units of the applicable standard for

a minimum of two (2) years from the date of collection of such data or submission of such summaries.

(17) Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

(a) For indirect heat exchangers the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million BTU) where necessary:

1. When the owner or operator of an indirect heat exchanger elects under subsection (6)(a)3 of this section to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a dry basis and Equation I of the conversion procedures in Appendix A to this regulation shall be used.

2. When the owner or operator elects under subsection (6)(a)3 of this section to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and Equation II of the conversion procedures in Appendix A to this regulation shall be used.

(b) For sulfuric acid plants the owner or operator shall:

1. Establish a conversion factor three (3) times daily according to the procedures in 401 KAR 59:035, Section 5(2);

2. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in kg/metric ton (lb/short ton); and

3. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.

(c) The department may allow data reporting or reduction procedures varying from those set forth in this section if the owner or operator of a source shows to the satisfaction of the department that his procedures are at least as accurate as those in this section. Such procedures may include but are not limited to the following:

1. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

2. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

(18) Special consideration. The department may provide for approval, on a case-by-case basis, of alternative monitoring requirements different from the provisions of this section if the provisions of this section (i.e., the installation of a continuous emission monitoring system) cannot be implemented by a source due to physical plant limitations or extreme economic reasons. In such cases, when the department exempts any source subject to this section by use of this provision from installing continuous emission monitoring systems, the department shall set forth alternative emission monitoring and reporting requirements (e.g., periodic manual stack tests) to satisfy the intent of these regulations. Examples of such special cases include, but are not limited to, the following:

(a) Alternate monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified by this section would not provide accurate determinations of emissions.

(b) Alternate monitoring requirements may be prescribed when the affected facility is infrequently operated.

(c) Alternative monitoring requirements may be prescribed when the department deems that the re-

quirements of this section would impose an extreme economic burden on the source owner or operator. The burden of proof for an alleged "economic burden" is to be borne by the source.

(d) Alternative monitoring requirements may be prescribed when the department deems that monitoring systems prescribed by this section cannot be installed due to physical limitations at the facility.

APPENDIX A TO 401 KAR 61:005 CONVERSION PROCEDURES

Equation I.

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

Equation II.

$$E = \frac{CF_c(100)}{\% CO_2}$$

Where:

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

C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole). M = 64 for sulfur dioxide and 46 for oxides of nitrogen.

%O₂, %CO₂ = oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under Section 3(6)(a)3.

F, Fc = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of the carbon dioxide generated to the calorific value of the fuel combusted (Fc) respectively. Values of F and Fc are given in 401 KAR 59:015 as applicable.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION Bureau of Environmental Protection Division of Air Pollution As Amended

401 KAR 61:045. Existing oil-effluent water separators.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing oil-effluent water separators.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means each oil-effluent water separator] commenced before the classification date defined below which is located: [recovers 200 gallons day or more of any petroleum products from any equipment which processes, refines, stores, or handles hydrocarbons with a Reid vapor pressure of 0.5 pounds or greater.]

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

(3) *Oil-effluent water separators used exclusively in conjunction with the production of crude oil shall be exempted from this regulation.*

Section 2. Definitions. As used in this regulation all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means any oil-effluent water separator which recovers 200 gallons a day or more of any petroleum products from any equipment which processes, refines, stores, or handles hydrocarbons with a Reid vapor pressure of 0.5 psia or greater.

(2) [(1)] "Oil-effluent water separator" means any tank, box, sump, or other container in which any petroleum or product thereof, floating on or entrained or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

[(2)] "Enclosed container" means a vessel which entirely encloses the contents except for pressure relief vents.]

(3) "Floating roof" means a vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and vessel wall.

(4) "Classification date" means the effective date of this regulation.

(5) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from a vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

[(6)] "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the vessel; or when applied to a vessel which is loaded from the side, shall mean any fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the tank.]

Section 3. Standard for Hydrocarbons. [(1) If the oil-effluent water separator is used exclusively in conjunction with the production of crude oil, as a minimum it shall be an enclosed container equipped with a permanent submerged fill pipe. All gauging and sampling devices shall be gas-tight except when gauging and sampling is taking place.

(2) Any oil-effluent water separator [not subject to subsection (1) of this section] shall be a vessel equipped with a floating roof, or a vessel equipped with a vapor recovery system, or their equivalent. All gauging and sampling devices shall be gas tight except when gauging and sampling is taking place.

Section 4. Compliance Timetable. (1) An affected facility located in a Priority I Region for hydrocarbons shall be in compliance on or before the effective date of this regulation.

(2) The owner or operator of an affected facility located in a Priority III Region for hydrocarbons shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than September [May] 1, 1979.

(b) Award the control device contract no later than December [September] 1, 1979.

(c) Initiate on-site construction or installations of emissions control equipment no later than March 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than October 1, 1980.

(e) Final compliance shall be achieved no later than January 1, 1981.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:050. Existing storage vessels for petroleum liquids.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing storage vessels for petroleum liquids.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means each storage vessel for petroleum liquids] commenced before the applicable classification date defined below, which is located: [has a storage capacity greater than 500 gallons.]

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

(3) *This regulation shall not apply to storage vessels located on a farm and used exclusively for storing petroleum liquids used by the farm.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a storage vessel for petroleum liquids which has a storage capacity of greater than 580 gallons.

(2) [(1)] "Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:

(a) Pressure vessels which are designed to operate in excess of fifteen (15) pounds per square inch gauge without emissions to the atmosphere except under emergency conditions;

(b) Subsurface caverns or porous rock reservoirs; or

(c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.

(3) [(2)] "Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils, gas turbine fuel oil Numbers 2-GT through 4-GT, or diesel fuel oils Numbers 2-D and 4-D as specified by the department.

(4) [(3)] "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

(5) [(4)] "Crude petroleum" means a naturally occurring mixture which consists of hydrocarbons and/or sulfur, nitrogen and/or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

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

(7) [(6)] "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.

(8) [(7)] "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods specified by the department.

(9) [(8)] "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(10) [(9)] "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

(11) [(10)] "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile [non-viscous] petroleum liquids, except liquefied petroleum gases, as determined by methods specified by the department.

(12) [(11)] "Submerged fill pipe" means any fill pipe the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the tank; or when applied to a tank which is loaded from the side, shall mean every fill pipe the discharge opening of which is entirely submerged when the liquid level is two (2) times the fill pipe diameter above the bottom of the tank.

(13) [(12)] "Classification date" means April 9, 1972.

Section 3. Standard for Hydrocarbons. The owner or operator of any storage vessel to which this regulation applies shall store petroleum liquids as follows:

(1) If the storage vessel has a storage capacity greater than 40,000 gallons and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight (78) mm Hg (1.5 psia) but not greater than 570 mm Hg (11.1 psia) the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.

(2) If the storage vessel has a storage capacity greater than 40,000 gallons and if the true vapor pressure of the petroleum liquid as stored is greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

(3) If the storage vessel has a storage capacity greater than 580 [500] gallons, and if the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than 1.5 psia, as a minimum it shall be equipped with a permanent submerged fill pipe.

Section 4. Operating Requirements. (1) There shall be no visible holes, tears, or other openings in the seal or any seal fabric; and

(2) All openings, except stub drains, shall be equipped with covers, lids, or seals such that:

(a) The cover, lid, or seal is in the closed position at all times except when in actual use;

(b) Automatic bleeder vents are closed at all times except when the roof is floated off or landed on the roof leg supports; and

(c) Rim vents, if provided, are set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

Section 5. Compliance Timetable. (1) An affected facility located in a Priority I Region for hydrocarbons shall be in compliance on or before the effective date of this regulation.

(2) Except as provided in subsection (3) of this section, the owner or operator of an affected facility located in a Priority III region for hydrocarbons shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.

(b) Award the control device contract no later than *January* [September] 1, 1980 [79].

(c) Initiate on-site construction or installation of emissions control equipment no later than *July* [March] 1, 1980.

(d) On-site construction or installation of emission control equipment shall be completed no later than *February* [October] 1, 1981 [0].

(e) Final compliance shall be achieved no later than *May* [January] 1, 1981.

(3) An owner or operator of a storage vessel with a storage capacity of greater than 580 [500] gallons but less than or equal to 40,000 gallons which is associated with a bulk gasoline plant regulated by 401 KAR 61:056 [5] shall adhere to the compliance schedule provided therein.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:055. Existing [petroleum liquids] loading facilities at bulk *gasoline* terminals.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing [petroleum liquids] loading facilities at bulk *gasoline* terminals.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility [which means loading facilities] commenced before the classification date defined below which [load more than 20,000 gallons per day of petroleum liquids into tank trucks, trailers, railroad tank cars, or barges.] *is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means the facilities at a bulk *gasoline* terminal for loading *gasoline* into tank trucks, trailers, railroad cars, or other non-marine mobile vessels.

(2) "Bulk *gasoline* terminal" means a facility for the storage and dispensing of *gasoline* where incoming *gasoline* loads are received by pipeline, marine tanks or barge, and where outgoing *gasoline* loads are transferred by tank trucks, trailers, railroad cars or other non-marine mobile vessels.

(3) "*Gasoline*" means any petroleum distillate used as a fuel for internal combustion engines and having a Reid vapor pressure of 4.0 pounds per square inch or greater.

(4) [(1)] "Classification date" means the effective date of this regulation.

[(2)] "Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils, gas turbine fuel oils, or diesel fuel oils.]

[(3)] "Petroleum refinery" means any facility engaged in producing *gasoline*, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.]

Section 3. Standard for Hydrocarbons. (1) No owner or operator of any loading facility shall load *gasoline* [petroleum liquids] unless such facility is equipped with a vapor control system which is in good working order and in operation.

(2) Loading shall be accomplished in such a manner that all displaced vapor and air will be vented only to the vapor collection system. Measures shall be taken to prevent liquid

drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected.

(3) No owner or operator shall permit the hydrocarbon emissions from the vapor control device to exceed eighty (80) milligrams per liter of *gasoline* [petroleum liquids] loaded.

(4) No owner or operator shall open tank hatches or allow hatches to be opened at any time during loading operations if bottom-fill is practiced. If top-submerged fill is practiced, the hatch is to be opened the minimum time necessary to install *and remove* the submerged fill pipe and associated vapor collection equipment.

(5) No owner or operator shall permit there to be any leak in the railroad cars, [barges,] trailers, tank trucks, pressure relief valves, or associated vapor collection. A leak is defined as a reading of ten (10) percent of the lower explosive limit as propane on the portable hydrocarbon detector (explosimeter) with the probe one (1) centimeter from the source.

(6) No owner or operator shall permit *gasoline* [petroleum liquids] to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

Section 4. Monitoring and Reporting Requirements. The owner or operator shall conduct such monitoring of operations and submit records as specified by the department.

Section 5. Compliance. (1) The design of the vapor control system is subject to the approval of the department.

(2) Kentucky Method 95, filed by reference in 401 KAR 50:015, shall be used to determine compliance with the standard in Section 3.

Section 6. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.

(2) Award the control system contract no later than *January* [September] 1, 1980 [79].

(3) Initiate on-site construction or installation of emission control equipment no later than *July* [March] 1, 1980.

(4) On-site construction or installation of emission control equipment shall be completed no later than *March* [November] 1, 1981.

(5) Final compliance shall be achieved no later than *May* [January] 1, 1981.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:056. Existing bulk *gasoline* plants.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of hydrocarbon emissions from existing bulk *gasoline* plants.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility which commenced before the classification date defined below, *which is located*:

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a bulk *gasoline* plant.

(2) "Bulk *gasoline* plant" means a *facility for the storage and dispensing of gasoline that employs tank trucks, trailers, or other mobile non-marine vessels for both incoming and outgoing gasoline transfer operations.* [petroleum liquids storage and distribution facility with a maximum daily throughput greater than 200 gallons but less than or equal to 20,000 gallons.]

(3) "*Gasoline*" means any petroleum distillate having a Reid vapor pressure of 4.0 pounds per square inch or greater used as a fuel for internal combustion engines. ["Petroleum liquids" means crude petroleum, condensate, and any finished or intermediate product manufactured in a petroleum refinery but does not mean Number 2 to Number 6 fuel oils, gas turbine fuel oils, or diesel fuel oils.]

(4) "Bottom fill system" means a system of filling transport vehicle tanks through an opening that is flush with the bottom of the transport vehicle tank.

(5) "Vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

(6) "Submerged fill tube system" means a fill tube the discharge of which is entirely submerged when the liquid level is six (6) inches above the bottom of the transport vehicle tank.

(7) "Classification date" means the effective date of this regulation.

(8) "Transport vehicle" means tank trucks, trailers, railroad or tank cars[, or barges].

Section 3. Standard for Hydrocarbons. (1) The owner or operator of an affected facility shall install, maintain, and operate:

(a) Stationary storage tank control devices according to the provisions of 401 KAR 59:050 and/or 401 KAR 61:050.

(b) A vapor balance system for:

1. Filling of stationary storage tanks from transport vehicle tanks; and

2. Filling of transport vehicle tanks from stationary storage tanks.

(c) For loading into transport vehicle tanks either:

1. A submerged fill tube system; or

2. A bottom fill system.

(2) The vapor balance system shall be equipped with fittings which are vapor tight and will automatically close upon disconnection so as to prevent the release of organic material.

(3) The cross-sectional area of the vapor return hose must be at least fifty (50) percent of the cross-sectional area of the liquid fill line and free of flow restrictions.

(4) The vapor balance system must be equipped with interlocking devices which prevent transfer of *gasoline* [petroleum liquids] until the vapor return hose is connected.

(5) Transport vehicle tank hatches shall be closed at all times during loading operations.

(6) There shall be no leaks from the pressure/vacuum relief valves and hatch covers of the stationary storage tanks or transport vehicle tanks during loading.

(7) The pressure relief valves on storage vessels and tank trucks or trailers shall be set to release at no less than 0.7 psig unless a lower setting is required by applicable fire codes.

(8) The owner or operator shall not load *gasoline* [petroleum liquids] into any transport vehicle or receive *gasoline* [petroleum liquids] from any transport vehicle which does not have proper fittings for connection of the vapor balance system, nor shall the owner or operator load or receive *gasoline* [petroleum liquids] unless the vapor balance system is properly connected and in good working order. Except as provided in subsection (9) of this section the fittings on the transport vehicle tanks must be vapor tight and automatically close upon disconnection so as to prevent the release of organic material.

(9) The following shall apply to the loading of a transport vehicle tank by means of a submerged fill tube system:

(a) When inserted into the tank, the submerged fill tube system must form a vapor tight seal with the tank.

(b) Tank hatches are to be opened only for the minimum time necessary to insert *or remove* the submerged fill tube system.

(10) No owner or operator shall permit *gasoline* [petroleum liquids] to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

Section 4. The owner or operator may elect to use an alternate control system if it can be demonstrated to the department's satisfaction that the alternate system will achieve equivalent control efficiency.

Section 5. Compliance Timetable. (1) The owner or operator of an affected facility located in *any county designated non-attainment for ozone under 401 KAR 51:010* [Boone, Boyd, Campbell, Daviess, Fayette, Henderson, Jefferson, Kenton or McCracken County] shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.

(b) Award the control system contract no later than *January* [September] 1, 1980 [79].

(c) Initiate on-site construction or installation of emission control equipment no later than *July* [March] 1, 1980.

(d) On site construction or installation of emission control equipment shall be completed no later than *March* [November] 1, 1981 [0].

(e) Final compliance shall be achieved no later than *May* [January] 1, 1981.

(2) The owner or operator of an affected facility located in a county not specified under subsection (1) of this section shall be required to complete the following:

(a) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1981.

(b) Award the control system contract no later than *January* [September] 1, 1982 [1].

(c) Initiate on-site construction or installation of emission control equipment no later than *July* [March] 1, 1982.

(d) On site construction or installation of emission control equipment shall be completed no later than *March* [November] 1, 1983 [2].

(e) Final compliance shall be achieved no later than *May* [January] 1, 1983.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:060. Existing sources using organic solvents.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of emissions from existing sources using any organic solvents.

Section 1. Applicability. (1) The provisions of this regulation shall apply to any affected facility:

(a) Located in a Priority I Region for photochemical oxidants which commenced before the classification date defined below;

(b) Located in a Priority III Region for photochemical oxidants which commenced before the classification date defined below but on or after April 9, 1972.

(2) The provisions of this regulation shall not apply to:

(a) The manufacture of organic solvents or the transport, loading, or storage of organic solvents or materials containing organic solvents;

(b) The spraying or other employment of insecticides, pesticides, or herbicides;

(c) The employment, application, evaporation or drying of saturated halogenated hydrocarbons or perchlorethylene;

(d) The use of any material in any affected facility described in subsection (1) of this section if the volatile content consists of non-photochemically reactive solvent

comprising not more than thirty (30) percent by volume of the material as applied;

(e) The use of any material in any affected facility described in subsection (1) of this section if the volatile content consists only of water and non-photochemically reactive solvent and the solvent comprises not more than twenty (20) percent of said volatile content by volume as applied;

(f) The use of equipment for which other requirements are specified by regulations of the Division of Air Pollution or which are exempt from air pollution control requirements.

(g) The emergency release of organic material due to overpressurization provided that the vents are equipped with self-closing pressure relief valves or equivalent devices. Rupture discs are not acceptable as pressure relief valves.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means any article, machine, equipment, or other contrivance used for employing or applying:

(a) Any organic solvent which is photochemically reactive or material containing such photochemically reactive solvent, or;

(b) Any organic solvent, regardless of photochemical reactivity, which is baked, heat-cured, or heat polymerized in the presence of oxygen; [any organic solvent, or any material containing organic solvent, which is baked, heat-cured, or heat polymerized in the presence of oxygen regardless of the photochemical reactivity of the organic solvents;]

(2) "Organic materials" means chemical compounds of carbon excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate;

(3) "Organic solvents" means organic materials which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, cleaning agents, diluents, or thinners, except that such materials which exhibit a boiling point higher than 220 degrees Fahrenheit at 0.5 millimeters mercury absolute pressure or having an equivalent vapor pressure shall not be considered to be solvents unless exposed to temperatures exceeding 220 [200] degrees Fahrenheit;

(4) "Photochemically reactive solvent" means any solvent with an aggregate of more than twenty (20) percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent;

(a) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation; five (5) percent;

(b) A combination of aromatic compounds with eight (8) or more carbon atoms to the molecule except ethylbenzene, eight (8) percent;

(c) A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichloroethylene or toluene; twenty (20) percent;

(d) When any organic solvent or any constituent of an organic solvent may be classified by its chemical structure into more than one (1) of the above groups of organic compounds it shall be considered as a member of the most reactive chemical group, that is, that group having the least allowable percent of the total volume of solvents.

(5) "Classification date" means the effective date of this regulation.

Section 3. Standard for Organic Material. No person shall discharge into the open air, from any affected facility using organic solvents more than forty (40) pounds of organic material in any one (1) day, nor eight (8) pounds in any one (1) hour unless said emissions have been reduced by at least eighty-five (85) percent by weight.

(2) Those portions of any series of affected facilities designed for processing a continuous web, strip or wire which emit organic materials shall be taken collectively to determine compliance with this section. Emissions of organic materials resulting from air or heated drying of products for the first twelve (12) hours after their removal from an affected facility shall be included in determining compliance with this section. Further, emissions of organic material to the atmosphere from the clean-up with an organic solvent of any affected facility shall be included with other emissions of organic materials from that affected facility for determining compliance with this regulation.

(3) Emissions of organic materials into the atmosphere required to be controlled by subsections (1) and (2) of this section shall be reduced by:

(a) Incineration, provided that ninety (90) percent or more of the carbon in the organic material discharged from an affected facility is oxidized to carbon dioxide; or

(b) Adsorption; or

(c) Modifying processing procedures, equipment and/or materials in such a manner so as to achieve no less than the degree of control of organic solvents required. The implementation of such modifications in lieu of compliance with subsections (1) and (2) of this section shall require the express prior approval of the department.

(4) A person incinerating, adsorbing, or otherwise processing organic materials pursuant to this section shall provide, properly install and maintain in calibration, in good working order and in operation, devices as specified in the permit to construct or the permit to operate, or as specified by the department, for indicating temperatures, pressures, rates of flow or other operating conditions necessary to determine the degree and effectiveness of air pollution control.

(5) Any person using organic solvents or any material containing organic solvents shall supply the department, upon request and in the manner and form prescribed, written evidence of the chemical composition, physical properties and amount consumed for each organic solvent used.

(6) The owner or operator of an affected facility may apply to the department for approval of an emissions reduction plan as an alternative to the standards set forth in Section 3(1). The department may approve the application if the owner or operator demonstrates:

(a) That compliance with the standards contained in Section 3(1) is technically or economically infeasible; and

(b) That any emissions in excess of those allowed for the affected facility will be compensated by reducing emissions from other facilities at the source below the allowable organic material emission rates or by reducing emissions of organic material from non-regulated facilities within the source.

(7) The plan of emissions reduction approved pursuant to Section 3(6) shall be included as a condition to permit to operate the source and shall be approved by the U. S. EPA.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:090. Existing automobile and light duty truck surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing automobile and light-duty truck surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located:*

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for automobile and light-duty truck frames, small parts, wheels, and main body parts at an assembly plant but does not include the following: [.]

(a) Underbottom-sound deadener coatings;

(b) Zinc rich anti-rust and weld line anti-rust prime coatings;

(c) Adhesive coatings or mastics;

(d) Flexible coatings;

(e) Plastic body fillers or caulks; or

(f) Interior coatings which are applied after upholstery and interior plastic parts are attached to the body.

(2) "Applicator" means the mechanism or device used to apply the coating, including, but not limited to dipping and spraying.

(3) "Automobile" means all passenger cars or passenger car derivatives capable of seating twelve (12) or fewer passengers.

(4) "Classification date" means the effective date of this regulation.

(5) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or repair coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(6) "Final repair coating line" means a coating line for the repainting of any coatings which are damaged during vehicle assembly.

(7) "Flashoff area" means the space between the application area and the oven.

(8) "Light-duty truck" means any motor vehicle rated at 3,864 kilograms (8,500 pounds) gross vehicle weight or less which are designed primarily for purposes of transportation of property or are derivatives of such vehicles (including but not limited to, pickups, vans, and window vans).

(9) "Prime coat coating line" means a coating line for the first coating and surfacer which are [is] responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.

(10) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(11) "Topcoat coating line" means a coating line for the coating of the surface to obtain desired aesthetic effects.

(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(13) "Surfacer" means the spray application of primer to touch-up areas on the surface not adequately covered during electrodeposition.

(14) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile

organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(15) "Electrophoretic deposition" means a process of applying a coating by dipping the component in a coating bath with an electrical potential difference between the component and the bath.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

[(5) To qualify for an exemption under Section 6 the limits shall be determined based upon an annual arithmetic mean.]

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Prime coatings systems and final repair coating systems except as provided for in subsection (3) of this section:

(a) Submit a final control plan for achieving compliance with this regulation no later than March 1, 1980.

(b) Award the control system contract and/or the exempt coatings contracts and purchase orders no later than March 1, 1981.

(c) Initiate on-site construction or installation of emission control equipment and/or process changes for exempt coatings no later than June 1, 1981.

(d) On-site construction or installation of emission control equipment and/or process changes for exempt coatings shall be completed no later than July 31, 1982.

(e) Final compliance shall be achieved no later than January 1, 1983.

(2) Topcoat systems:

(a) Submit a final control plan for achieving compliance with this regulation no later than July 1, 1980.

(b) Award the control system contract and/or the exempt coating contracts and purchase orders no later than March 1, 1983.

(c) Initiate on-site construction or installation of emission control equipment and/or process changes for exempt coatings no later than June 1, 1983.

(d) On-site construction or installation of emission control equipment and/or process changes for exempt coatings shall be completed no later than July 31, 1985.

(e) Final compliance shall be achieved no later than January 1, 1986.

(3) Prime coating lines which are using electrophoretic deposition on or before the effective date of this regulation shall be in compliance on the effective date of this regulation.

[(1) Submit a final control plan for achieving compliance with this regulation no later than January 1, 1980.]

[(2) Award the control system contract for the exempt coatings and any accompanying process change contracts no later than March 1, 1980.]

[(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than June 1, 1980.]

[(4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than October 1, 1981.]

[(5) Final compliance shall be achieved no later than January 1, 1982.]

Section 6. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is:

(a) [(1)] Prime coating line: 0.14 [0.10] kilograms per liter of coating (1.2 pounds per gallon), excluding water, which shall be applied by electrophoretic deposition [delivered to the first applicators associated with the prime coating line] and 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the surfacer. [or,] An alternative for the surfacer is fifty-five (55) percent solids by volume organic-borne prime coat applied with a minimum of sixty-five (65) percent transfer efficiency [electrostatically sprayed]. An alternative for the prime coating line is an organic borne prime coat consisting of a minimum of fifty-five (55) percent solids by volume which is applied with a minimum of fifty (50) percent transfer efficiency.

(b) [(2)] Topcoat coating line: 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicator(s) associated with the topcoat coating line or, a fifty (50) [-five (55)] percent solids by volume organic-borne topcoat applied with a minimum of sixty-five (65) percent transfer efficiency. [electrostatically sprayed.]

(c) [(3)] Repair coating line: 0.58 kilograms per liter of coating (4.8 pounds per gallon), excluding water, as delivered to the applicator applied with a minimum of sixty-five (65) percent transfer efficiency.

(2) Any affected facility using this section of this regulation may elect to use an arithmetic average of the coatings used in the particular coating line involved. If such average

meets the exemption then all the coatings will be considered to meet the exemption.

(3) The exemptions specified in this section may be achieved by:

(a) Use of low solvent coating; and/or

(b) Any other emission reduction process or equipment shown to be as effective.

Section 7. Variances. Variation with the standards and limitations contained in this regulation, when supported by adequate technical information will be considered by the department on a case-by-case basis to allow for technological or economic circumstances which are unique to a source.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Bureau of Environmental Protection

Division of Air Pollution

As Amended

401 KAR 61:095. Existing solvent metal cleaning equipment.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions for existing solvent metal cleaning equipment.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means cold cleaners, open top vapor degreasers, and conveyORIZED degreasers which utilize volatile organic compounds to remove soluble impurities from metal surfaces.

(2) "Volatile organic compounds" means chemical compounds of carbon excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(3) "Classification date" means the effective date of this regulation.

(4) "Freeboard height" means, for a cold cleaner, the distance from the liquid solvent level in the degreaser tank to the lip of the tank. For a vapor degreaser it is the

distance from the solvent vapor level in the tank to the lip of the tank.

(5) "Freeboard ratio" means the freeboard height divided by the width of the degreaser.

(6) "Refrigerated chiller" means a second set of freeboard condenser coils located slightly above the primary condenser coils which create a cold air blanket above the vapor zone.

(7) "Cold cleaner" means a batch-loaded degreaser whose solvent is kept below its boiling point.

(8) "Open top vapor degreaser" means a batch loaded degreaser whose solvent is heated to its boiling point creating a solvent vapor zone.

(9) "Conveyorized degreasers" means a degreaser which is continuously loaded by means of a conveyor system. Its solvent may be boiling or non-boiling.

(10) "Solvent" means, in this regulation, volatile organic compounds.

Section 3. Standard for Volatile Organic Compounds. The owner or operator of an affected facility to which this regulation applies shall install, maintain and operate the control equipment and observe at all times the operating requirements which apply to this type of degreaser as specified in Sections 4, 5, and 6.

Section 4. Cold Cleaners. (1) Control equipment:

(a) The cleaner shall be equipped with a cover. If the solvent volatility is greater than fifteen (15) mm of Hg measured at 100°F or if the solvent is agitated or heated, then the cover shall be designed so that it can be easily operated with one (1) hand.

(b) The cleaner shall be equipped with a drainage facility such that solvent that drains off parts removed from the cleaner will return to the cleaner. If the solvent volatility is greater than thirty-two (32) mm of Hg measured at 100°F then the drainage facility shall be internal so that parts are enclosed under the cover while draining. The drainage facility may be external if the department determines that an internal type cannot fit into the cleaning system.

(c) A permanent, conspicuous label, summarizing the operating requirements specified in subsection (2) of this section shall be installed on or near the cleaner.

(d) If used, the solvent spray shall be a fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

(e) If the solvent volatility is greater than thirty-two (32) mm of Hg measured at 100°F or if the solvent is heated above 120°F, then one (1) of the following control devices shall be used:

1. Freeboard that gives a freeboard ratio greater than or equal to 0.7.

2. Water cover (solvent must be insoluble in and heavier than water).

3. Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(2) Operating requirements:

(a) Do not dispose of waste solvent or transfer it to another party, such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in covered containers.

(b) Close degreaser cover whenever not handling parts in the cleaner.

(c) Drain cleaned parts until dripping ceases (fifteen (15) seconds is usually necessary).

Section 5. Open Top Vapor Degreasers. (1) Control equipment:

(a) The degreaser shall be equipped with a cover that can be opened and closed easily without disturbing the vapor zone.

(b) The degreaser shall be equipped with the following safety switches:

1. Condenser flow switch and thermostat to shut off sump heat if condenser coolant either is not circulating or is too warm.

2. Spray safety switch to shut off spray pump if the vapor level drops more than four (4) inches *below the bottom condenser coil in order to prevent spraying above the vapor level.*

3. Vapor level control thermostat which shuts off sump heat if the vapor zone rises above the design level.

4. *Equivalent safety systems as approved on a case-by-case basis by the department.*

(c) The degreaser shall be equipped with at least one (1) of the following major control devices:

1. Freeboard ratio greater than or equal to 0.75, and if the degreaser opening is greater than ten (10) square feet, the cover shall be powered *or mechanically assisted.*

2. Refrigerated chiller.

3. Enclosed design such that the cover or door opens only when the dry part is actually entering or exiting the degreaser.

4. Carbon adsorption system, with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (when cover is open), and exhausting less than twenty-five (25) ppm by volume solvent averaged over one (1) complete adsorption cycle.

5. Control system demonstrated to have control efficiency equivalent to or better than any of the above.

(d) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Keep the cover closed at all times except when processing work loads through the degreaser.

(b) Minimize solvent carry-out by the following measures:

1. Rack parts so that entrainment of solvent is avoided and full drainage is accomplished.

2. Move parts in and out of the degreaser at *vertical speed less than eleven (11) ft./min.*

3. Degrease the work load in the vapor zone until condensation ceases (thirty (30) seconds or more is usually necessary).

4. Tip out any pools of solvent on the cleaned parts before removal.

5. Allow parts to dry within the degreaser above the vapor zone until visually dry (fifteen (15) seconds is usually necessary).

(c) Do not degrease porous or absorbent materials such as cloth, leather, wood, or rope.

(d) Work loads should not occupy more than half of the degreaser's open top area.

(e) The vapor level should not drop more than four (4) inches when the work load enters or leaves the vapor zone.

(f) Never spray above the vapor level.

(g) Repair solvent leaks immediately or shut down the degreaser.

(h) Do not dispose of waste solvent or transfer it to another party such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in closed containers.

(i) Exhaust ventilation should not exceed sixty-five (65) cfm per square foot of degreaser area unless necessary to meet OSHA requirements or control device requirements.

Ventilation fans should not be used near the degreaser opening.

(j) Water should not be visually detectable in the solvent exiting the water separator.

Section 6. Conveyorized Degreasers. (1) Control equipment:

(a) A conveyorized degreaser shall be enclosed except for work load entrances and exits.

(b) The degreaser shall be equipped with a drying tunnel or another means such as rotating baskets sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(c) Minimized openings: entrances and exits shall silhouette work loads so that the average clearance between the largest parts and the edge of the degreaser opening is either less than four (4) inches or less than ten (10) percent of the width of the opening.

(d) Down-time covers: The degreaser shall be equipped with covers for closing off the entrance and exit during shutdown hours.

(e) If the degreaser has an air/solvent interface area or an air/vapor interface area equal to or greater than twenty (20) square ft. it shall be equipped with at least one (1) of the following major control devices:

1. Refrigerated chiller.

2. Carbon adsorption system with ventilation greater than or equal to fifty (50) cfm/square foot of air/vapor interface area (when down-time covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over a complete adsorption cycle.

3. A system demonstrated to have a control efficiency equivalent to or better than either of the above.

(f) If the degreaser is a vapor type, it shall be equipped with the following safety switches:

1. Condensor flow switch and thermostat which will shut off the sump heat if coolant is either not circulating or is too warm.

2. Spray safety switch which will shut off the spray pump or conveyor if the vapor level drops more than four (4) inches below the bottom condenser coil in order to prevent spraying above the vapor level.

3. Vapor level control thermostat which will shut off sump heat if the vapor level rises above the design level.

4. Equivalent safety systems as approved on a case-by-case basis by the department.

(g) A permanent, conspicuous label, summarizing the operating procedures specified in subsection (2) of this section shall be installed on or near the degreaser.

(2) Operating requirements:

(a) Exhaust ventilation should not exceed sixty-five (65) cfm per square foot of degreaser opening unless necessary to meet OSHA requirements or control device requirements. Work place fans should not be used near the degreaser opening.

(b) Minimize solvent carry-out by the following measures:

1. Rack parts so that entrainment of solvent is avoided and full drainage is accomplished.

2. Maintain vertical conveyor speed at less than eleven (11) ft/min.

(c) Do not dispose of waste solvent or transfer it to another party such that greater than twenty (20) percent by weight of the waste solvent can evaporate into the atmosphere. Store waste solvent only in closed containers.

(d) Repair solvent leaks immediately or shutdown the degreaser.

(e) Water should not be visually detectable in the solvent exiting the water separator.

(f) Down-time covers shall be placed over entrances and exits of the degreaser immediately after the conveyor and exhaust are shut down and removed just before they are started up.

Section 7. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than September [May] 1, 1979.

(2) Award the control system contract no later than November [July] 1, 1979.

(3) Initiate on-site construction or installation of emission control equipment no later than July [March] 1, 1980.

(4) On-site construction or installation of emission control equipment shall be completed no later than May [January] 1, 1981.

(5) Final compliance shall be achieved no later than July [March] 1, 1981.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:100. Existing insulation of magnet wire operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing insulation of magnet wire operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:

(1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or

(2) In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for insulation of magnet wire.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to a coating bath.

(3) "Coating die" means the device, located between the applicator and the drying oven, which scrapes off excess coating and leaves a thin film of desired thickness.

(4) "Magnet wire" means wire used in such equipment as electrical motors, generators, and transformers which carries an electrical current.

(5) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including coating die area evaporation, oven drying, baking, curing, and polymerization;

- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(6) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(7) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(8) "Classification date" means the effective date of this regulation.

(9) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is

not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.

(2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than *April* [December] 1, 1980 [79].

(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than *October* [June] 1, 1980.

(4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than *April* [December] 1, 1981 [0].

(5) Final compliance shall be achieved no later than *July* [March] 1, 1981.

Section 6. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.20 kilograms per liter of coating (1.7 pounds per gallon), excluding water, delivered to the applicators associated with the coating line.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:105. Existing metal furniture surface coating operations.

RELATES TO: KRS Chapter 224
PURSUANT TO: KRS 13.082, 224.033
EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing metal furniture surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located*:

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

- (1) "Affected facility" means a coating line for indoor and/or outdoor metal furniture.
- (2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: dipping, spraying, or flowcoating.
- (3) "Flashoff area" means the space between the applicator and the oven.
- (4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.
- (5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.
- (6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.
- (7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds. This shall include, but is not limited to:
 - (a) Mixing operations;
 - (b) Process storage;
 - (c) Applicators;
 - (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
 - (e) Clean up operations;
 - (f) Leaks, spills and disposal of volatile organic compounds;
 - (g) Processing and handling of recovered volatile organic compounds;
 - (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the

throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(8) "Volatile organic compound" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(10) "Metal furniture" means household and business items including but not limited to: tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps and room dividers.

(11) "Classification date" means the effective date of this regulation.

(12) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coating used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases

where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

- (1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.
- (2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than *January* [September] 1, 1980 [79].
- (3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than *May* [January] 1, 1980.
- (4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than *May* [January] 1, 1981.
- (5) Final compliance shall be achieved no later than *August* [April] 1, 1981.

Section 6. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.36 kilograms per liter of coating (3.0 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:110. Existing large appliance surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing large appliance surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located*:

- (1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*
- (2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for large appliances such as, but not limited to: doors, cases, lids, panels and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, and air conditioners.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to dipping or spraying.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Prime coat" means the first film of coating applied in a two (2) coat operation.

(5) "Topcoat" means the final film of coating applied in a two (2) coat operation.

(6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.

(7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds. This shall include, but is not limited to:

- (a) Mixing operations;
- (b) Process storage;
- (c) Applicators;
- (d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;
- (e) Clean up operations;
- (f) Leaks, spills and disposal of volatile organic compounds;
- (g) Processing and handling of recovered volatile organic compounds;
- (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;
- (i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(10) "Classification date" means the effective date of this regulation.

(11) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining

volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than October 1, 1979.

(2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than January 1, 1980.

(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than March 1, 1980.

(4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than October 1, 1981.

(5) Final compliance shall be achieved no later than January 1, 1982.

Section 6. Exemptions. (1) Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

(2) Repair coating operations for the purpose of repairing scratches and nicks that occur during assembly shall be exempt from the provisions of Section 3.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:120. Existing fabric, vinyl and paper surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing fabric, vinyl or paper surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located*:

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for fabric, vinyl, or paper.

(2) "Applicator" means the mechanism or device used to apply the coating including but not limited to: roll, knife, or rotogravure coater.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including, but not limited to, flashoff area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(5) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor

pressure greater than one-tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(6) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(7) "Fabric coating" means the coating of a textile substrate to impart properties that are not initially present, such as strength, stability, water or acid repellancy, or appearance.

(8) "Vinyl coating" means the coating of vinyl coated fabric or vinyl sheets which includes decorative or protective topcoats or printing.

(9) "Paper coating" means the *application of a uniform layer of material across the entire width of a web* [coating] of paper [(but does not include the printing of paper)], pressure sensitive tapes regardless of substrate, related web coating processes on plastic film such as typewriter ribbons, photographic film, magnetic tape, and decorative coatings on metal foil such as gift wrap and packaging, *but does not include the printing of the paper*.

(10) "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

(11) "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(12) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

(13) "Classification date" means the effective date of this regulation.

(14) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

(15) "Printing" means *the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. It applies to flexographic and rotogravure processes as applied to publication and packaging printing.*

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an

engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.

(2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than *May* [September] 1, 1980 [79].

(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than *November* [January] 1, 1980.

(4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than *August* [January] 1, 1981.

(5) Final compliance shall be achieved no later than *December* [April] 1, 1981.

Section 6. Exemptions. (1) Any affected facility coating fabric or paper shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.35 kilograms per liter of coating (2.9 pounds per gallon), excluding water, delivered to the applicators associated with the coating line.

(2) Any affected facility coating vinyl shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.45 kilograms per liter of coating (3.8 pounds per gallon) excluding water, delivered to the applicators associated with the coating line.

DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 61:125. Existing can surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing can surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located*:

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means a coating line for cans.

(2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to spray or roller.

(3) "Flashoff area" means the space between the applicator and the oven.

(4) "End sealing compound" means a synthetic rubber compound which is coated onto can ends and functions as a gasket when the end is assembled on the can.

(5) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and background for the lithographic or printing operation.

(6) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.

(7) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

(8) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss and to protect the finish against abrasion and corrosion.

(9) "Three (3) piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented or soldered seam to protect the exposed metal.

(10) "Two (2) piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(11) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any coatings containing volatile organic compounds. This shall include, but is not limited to:

(a) Mixing operations;

(b) Process storage;

(c) Applicators;

(d) Drying operations including but not limited to: flashoff area evaporation, oven drying, baking, curing, and polymerization;

(e) Clean up operations;

(f) Leaks, spills and disposal of volatile organic compounds;

(g) Processing and handling of recovered volatile organic compounds;

(h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;

(i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(12) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(13) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(14) "Classification date" means the effective date of this regulation.

(15) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an

affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

- (1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.
- (2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than *January* [September] 1, 1980 [79].
- (3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than *May* [January] 1, 1980.
- (4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than *May* [January] 1, 1981.
- (5) Final compliance shall be achieved no later than *August* [April] 1, 1981.

Section 6. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is:

- (1) Less than 0.34 kilograms per liter of coating (2.8 pounds per gallon), excluding water, delivered to the applicators associated with the sheet base coat (exterior and interior) and overvarnish or, two (2) piece can exterior (basecoat and overvarnish) coating lines;
- (2) Less than 0.51 kilograms per liter of coating (4.2 pounds per gallon), excluding water, delivered to the applicators associated with the two (2) and three (3) piece can interior body spray or two (2) piece can exterior end (spray or roll coat) coating lines;
- (3) Less than 0.66 kilograms per liter of coating (5.5 pounds per gallon), excluding water, delivered to the applicators associated with the three (3) piece can side-seam spray coating line;
- (4) Less than 0.44 kilograms per liter of coating (3.7 pounds per gallon), excluding water, delivered to the applicators associated with the end sealing compound coating line.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:130. Existing coil surface coating operations.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental

Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of volatile organic compound emissions from existing coil surface coating operations.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below which is located:

- (1) In an urban county designated non-attainment for ozone under 401 KAR 51:010; or
- (2) In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given to them in 401 KAR 50:010.

- (1) "Affected facility" means a coating line for metal sheets or strips that comes in rolls or coils.
- (2) "Applicator" means the mechanism or device used to apply the coating, including but not limited to: roller or spray.
- (3) "Quench area" means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.
- (4) "Prime coat" means the first film of coating applied in a two (2) coat operation which is responsible for protecting the surface from corrosion and providing for good adhesion of the topcoat.
- (5) "Topcoat" means the final film of coating applied in a two (2) coat operation to obtain desired aesthetic effects.
- (6) "Single coat" means a single film coating applied directly to the metal substrate omitting the prime coat.
- (7) "Coating line" means a series of equipment and/or operations used to apply, dry, or cure any prime, topcoat or single coatings containing volatile organic compounds. This shall include, but is not limited to:
 - (a) Mixing operations;
 - (b) Process storage;
 - (c) Applicators;
 - (d) Drying operations including but not limited to quench area oven drying, baking, curing, and polymerization;
 - (e) Clean up operations;
 - (f) Leaks, spills and disposal of volatile organic compounds;
 - (g) Processing and handling of recovered volatile organic compounds;
 - (h) For the purposes of determining compliance with this regulation, if any equipment or operation could be considered to be a part of more than one (1) coating line, its volatile organic compound emissions shall be assigned to each coating line of which it is a part proportionally to the throughput of volatile organic compound it receives from or distributes to each coating line;
 - (i) If any portion of the series of equipment and/or operations qualify for an exemption according to Section 6, then that portion shall be considered to be a separate coating line.

(8) "Volatile organic compounds" means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate) which have a vapor pressure greater than one tenth (0.1) mm of Hg at conditions of twenty (20) degrees Celsius and 760 mm of Hg.

(9) "Process storage" means mixing tanks, holding tanks, and other tanks, drums, or other containers which contain surface coatings, volatile organic compounds, or

recovered volatile organic compounds; but does not mean storage tanks which are subject to 401 KAR 59:050 or 401 KAR 61:050.

(10) "Classification date" means the effective date of this regulation.

(11) "Volatile organic compounds net input" means the total amount of volatile organic compounds input to the affected facility minus the amount of volatile organic compounds that are not emitted into the atmosphere. Volatile organic compounds that are prevented from being emitted to the atmosphere by the use of control devices shall not be subtracted from the total for the purposes of determining volatile organic compound net input. When the nature of any operation or design of equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

Section 3. Standard for Volatile Organic Compounds. No person shall cause, allow, or permit an affected facility to discharge into the atmosphere more than fifteen (15) percent by weight of the volatile organic compounds net input into the affected facility.

Section 4. Compliance. (1) In all cases the design of any control system is subject to approval by the department.

(2) Compliance with the standard in Section 3 shall be demonstrated by a material balance except in those cases where the department determines that a material balance is not possible. For those cases where a material balance is not possible, compliance will be determined based upon an engineering analysis by the department of: the control system design, control device efficiency, control system capture efficiency, and any other factors that could influence the performance of the system. If so requested by the department, performance tests as specified by the department shall be conducted in order to determine the efficiency of the control device.

(3) With the prior approval of the department, the owner or operator may elect to effect such changes in the affected facility as are necessary to qualify for an exemption under Section 6.

(4) Whenever deemed necessary by the department, the department shall obtain samples of the coatings used at an affected facility to verify that the coatings meet the requirements in Section 6. The following methods of analyses, filed by reference in 401 KAR 50:015, for coatings shall be used as applicable except in those cases where the department determines that other methods would be more appropriate:

- (a) ASTM D 1644-75 Method A;
- (b) ASTM D 1475-60(74);
- (c) ASTM D 2369-73; or
- (d) Federal Standard 141 a, Method 4082.1.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

(1) Submit a final control plan for achieving compliance with this regulation no later than *January* [May] 1, 1980 [79].

(2) Award the control system contract or the exempt coatings and any accompanying process change contracts no later than *July* [September] 1, 1980 [79].

(3) Initiate on-site construction or installation of emission control equipment or process changes for exempt coatings no later than January 1, 1981 [0].

(4) On-site construction or installation of emission control equipment or process changes for exempt coatings shall be completed no later than January 1, 1982 [1].

(5) Final compliance shall be achieved no later than April 1, 1982 [1].

Section 6. Exemptions. Any affected facility shall be exempt from the provisions of Section 3 if the volatile organic compound content of the coating is less than 0.31 kilograms per liter of coating (2.6 pounds per gallon), excluding water, delivered to the applicators associated with the prime, single or topcoat coating line.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution
As Amended**

401 KAR 61:135. Selected existing petroleum refining processes and equipment.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of hydrocarbon emissions from selected existing petroleum refining processes and equipment.

Section 1. Applicability. The provisions of this regulation shall apply to each affected facility commenced before the classification date defined below *which is located*:

(1) *In an urban county designated non-attainment for ozone under 401 KAR 51:010; or*

(2) *In any county which is designated non-attainment or unclassified under 401 KAR 51:010 and is a part of a major source of volatile organic compounds.*

Section 2. Definitions. (1) "Affected facility" means vacuum producing systems and process unit turnarounds associated with a petroleum refinery.

(2) "Vacuum producing systems" means equipment which produces a partial vacuum in a vessel.

(3) "Process unit turnaround" means the shutting down, depressurization and purging of a process unit or vessel.

(4) "Classification date" means the effective date of this regulation.

Section 3. Standard for Hydrocarbons. The owner or operator of an affected facility shall install, operate, and maintain all equipment necessary to accomplish the following:

(1) Vacuum producing systems. All gaseous hydrocarbons emitted from condensers, hot wells, vacuum pumps, and accumulators be collected and vented to a firebox, flare or other control device of equivalent efficiency as determined by the department.

(2) Process unit turnaround. The gaseous hydrocarbons purged from a process unit or vessel shall be vented to a firebox, flare, or other control device of equivalent efficiency as determined by the department until the pressure in the process unit is less than five (5) psig.

Section 4. Monitoring and Reporting Requirements. (1) The owner or operator shall:

- (a) Keep a record of each process unit turnaround;
- (b) Record the approximate hydrocarbon concentration when the hydrocarbons were first discharged to the atmosphere;
- (c) Record the approximate total quantity of hydrocarbons emitted to the atmosphere.

(2) The owner or operator shall retain these records for at least two (2) years and submit them to the department upon request.

Section 5. Compliance Timetable. The owner or operator of an affected facility shall be required to complete the following:

- (1) Submit a final control plan for achieving compliance with this regulation no later than *September* [May] 1, 1979.
- (2) Award the control device contract no later than *December* [September] 1, 1979.
- (3) Initiate on-site construction or installation of emission control equipment no later than *July* [March] 1, 1980.
- (4) On-site construction or installation of emission control equipment shall be completed no later than *February* [October] 1, 1981 [0].
- (5) Final compliance shall be achieved no later than *May* [January] 1, 1981.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Environmental Protection
Division of Air Pollution
As Amended

401 KAR 63:010. Fugitive emissions.

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

EFFECTIVE: June 29, 1979

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the control of fugitive emissions.

Section 1. Applicability. The provisions of this regulation are applicable to each affected facility as defined in Section 2.

Section 2. Definitions. Terms used in this regulation not defined herein shall have the meaning given to them in 401 KAR 50:010.

(1) "Affected facility" means an apparatus, operation, or road which emits or may emit fugitive emissions provided that the fugitive emissions from such facility are not elsewhere subject to an opacity standard within the regulations of the Division of Air Pollution.

[(2) "Continuous operation" means any operation which operates uninterrupted for any period of time greater than one (1) minute duration.]

(2) [(3)] "Fugitive emissions" means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

[(4) "Intermittent operation" means any operation which operates at intervals equal to or less than one (1) minute duration.]

(3) [(5)] "Open air" means the air outside buildings, structures, and equipment.

(4) [(6)] "Classification date" means the effective date of this regulation.

Section 3. Standards for Fugitive Emissions. (1) No person shall cause, suffer, or allow any material to be handled, processed, transported, or stored; a building or its appurtenances to be constructed, altered, repaired, or demolished, or a road to be used *without taking reasonable precaution to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, when applicable, but not to be limited to the following:* [in such a manner as to allow:]

(a) *Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;*

(b) *Application and maintenance of asphalt, oil, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can create airborne dusts;*

(c) *Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials, or the use of water sprays or other measures to suppress the dust emissions during handling. Adequate containment methods shall be employed during sandblasting or other similar operations;*

(d) *Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;*

(e) *The maintenance of paved roadways in a clean condition;*

(f) *The prompt removal of earth or other material from a paved street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water.*

(2) No person shall cause or permit the discharge of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate.

(3) When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any regulation, the Secretary may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

[(a) Visible emissions from any continuous operation equal to or greater than twenty (20) percent opacity. An average opacity will be determined by recording the opacity from the affected facility every fifteen (15) seconds for three (3) consecutive minutes and dividing the sum of the recordings by the number of observations. Except for the above averaging time and corresponding number of observations, all other procedures of Method 9 of Appendix A to 40 CFR 60, filed by reference in 401 KAR 50:015, shall apply;]

[(b) Visible emissions from intermittent operations equal to or greater than twenty-five (25) percent for one (1) minute. An average opacity will be determined by recording the opacity from the affected facility every fifteen (15) seconds for one (1) minute and dividing the sum of the recordings by the number of observations. Except for the above averaging time and corresponding number of observations, all other procedures of Method 9 of Appendix A to 40 CFR 60 shall apply;]

[(c) Visible fugitive emissions beyond the property line of the property on which the emissions originate.]

[(2) Visible emissions in excess of those specified in any one (1) paragraph of subsection (1) of this section or any combination of those paragraphs shall constitute a violation of the standard.]

[(3) In addition to subsections (1) and (2) of this section, when dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any regulation, the department may order that the building or equipment, in which processing and storage are done, be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air to such degree as to alleviate such nuisance or violation.]

[(4) The provisions of [subsections (1) and (2) of] this regulation [section] shall not apply to agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm.

Section 4. Additional Requirements. In addition to the requirements of Section 3, the following shall apply:

(1) At all times when in motion, open bodied trucks, *operating outside company property*, transporting materials likely to become airborne shall be covered.

(2) Agricultural practices, and such as tilling of land or application of fertilizers, which take place on a farm shall be conducted in such a manner as to not create a nuisance to others residing in the area. *Agricultural practices are not subject to the opacity standard.*

(3) *The provisions of Section 3(1) and (2) shall not be applicable to temporary blasting or construction operations. [Paved roadways shall be maintained in a clean condition.]*

(4) *No one shall allow earth or other material being transported by truck or earthmoving equipment to be deposited onto a paved street or roadway. [Earth or other material on a paved street which has been transported thereto by trucking or earth moving equipment or erosion by water shall be promptly removed.]*

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
As Amended

603 KAR 3:051. Recyclers.

RELATES TO: KRS 177.905 to 177.950

PURSUANT TO: KRS 13.082, 174.050, 177.912, 177.935

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: KRS 177.935 authorizes the Bureau of Highways to exercise general

supervision of the administration and enforcement of KRS 177.905 to 177.950. This regulation is adopted to enable the Department of Transportation to administer and enforce these requirements. Chapter 114, Acts of 1978 necessitate a new regulation.

Section 1. No person shall operate or cause to be operated any recycling establishment or place of business within 1,000 feet of the right-of-way line of any road as hereinafter defined, except for the following:

(1) Those recycling establishments or places of businesses which comply with KRS 177.905 through 177.950 and these regulations; and

(2) A recycling establishment or place of business which is located in an industrially zoned area and is a conforming land use under applicable zoning ordinances and regulations of any county or city[, as determined in the discretion of the Commissioner or Highways].

Section 2. Definitions. (1) "Automobile, vehicle or machinery recyclers" means any place where five (5) or more junked, wrecked or non-operative automobiles, vehicles, machinery or other similar scrap or salvage materials are deposited, parked, placed or otherwise located.

(2) "Bureau" means the Bureau of Highways in the Department of Transportation.

(3) "Commissioner" means the Commissioner of the Bureau of Highways.

(4) "Material recyclers" means any establishment or place of business, including garbage dumps and sanitary landfills, maintained, operated, or used for storing, keeping, buying or selling of old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, or motor vehicle parts, iron, steel, and other old scrap ferrous or nonferrous material *excepting therefrom any containers, such as "dempster dumpsters," which are maintained, operated or used for storing or keeping garbage, trash and other waste material.*

(5) "Operator or operators" means any person, firm or corporation operating an automobile, vehicle, machinery or material recycling establishment or place of business or allowing such automobile, vehicle, machinery or material recycling establishment or place of business to be placed, or deposited, or to remain on the premises owned or controlled by such person, firm or corporation.

(6) "Person" means any individual, firm, agency, company, association, partnership, business trust, joint stock company, body politic or corporation.

(7) "Recycling establishment" or "place of business" means any place operated, maintained or allowed to exist by any automobile, vehicle or machinery recyclers or any material recyclers.

(8) "Road" means any county, state, federal or limited access highway or turnpike, including bridges and bridge approaches.

Section 3. General Provisions. (1) No junked, wrecked or inoperable automobiles, vehicles, machinery or material scrap or parts shall be placed, deposited or otherwise located on the right-of-way of any road.

(2) Any recycling establishment or place of business shall be required to be completely hidden from view of the travelling motorist, for 1,000 feet in each direction from the outer limits of the premises or storage area, and to a depth of 1,000 feet from the right-of-way line, along all roads.

(3) Any recycling establishment or place of business which cannot as a practical matter be screened from view of the travelling motorist on all roads must be removed.

(4) The operation of any automobile, vehicle, machinery, or material recycling establishment or place of business which is located within 1,000 feet of the right-of-way of any road, without a permit from the Bureau of Highways, is declared to be a public nuisance.

(5) In the event an operator begins a recycling establishment or place of business in a new location, such location must be screened to comply with provisions of this regulation and have a current permit prior to the establishment thereof.

Section 4. Measurements. (1) In determining the 1,000 feet control distance from the right-of-way, the measurements shall be taken horizontally along a line at the same elevation and at a right angle to the center line of the highway.

(2) In measuring the 1,000 feet from the outer limits of the premises or storage area, in each direction, on all roads, two (2) lines shall be drawn perpendicular to the center line of the main travelled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of the main travelled way.

Section 5. Standards for Screening. (1) Completed screening must completely hide all junked, wrecked, or inoperable, automobiles, vehicles, machinery, and materials from view of the travelling public on all roads on a year-round basis.

(2) Materials for screening must present an attractive appearance. No wrinkled or bent metal, will be accepted.

(3) The completed screening must present a neat and clean appearance.

(4) Piecing out of metal or wood panels or patchwork type screening will not be accepted.

(5) Unless a continuous overall neat design is created, all metal or wood panels must be erected vertically.

(6) Fencing used for screening must be of uniform height and alignment unless a variation is approved by the Bureau of Highways.

(7) Completed screening must blend with the surrounding area as much as possible.

(8) In the event fencing materials must be painted in order to blend with the surrounding area, the colors and shades of buildings and other structures in the area may be taken into account, in determining the color and shade to be used on such fencing materials.

(9) If a building or other structure is to be used as a portion of the screening, the building or structure may be required to be painted, if it is deemed necessary, in order to blend with the other portions of screening and the surrounding area.

(10) If screening is to be effected by the use of plantings of trees or shrubs, the plantings to be used must be of sufficient height and density to immediately screen the recycling establishment or place of business from view of the travelling motorists on all roads.

(11) If screening by the use of plantings of trees and shrubs are not sufficient in height and density at the time of installation, a temporary screen must be erected and remain until such time as trees and shrubs are of sufficient height and density to screen the premises on a year round basis.

(12) Any operator of a recycling establishment or place of business shall file an application for a permit from the Bureau of Highways. A plot detailing the area to be used

for the storing or keeping of recycling material, automobiles, vehicles or machinery, the location, height, length, kind of material to be used for screening and color of paint if required, shall accompany and be made a part of the application.

(13) Approval of a screening proposal should be obtained from the Bureau of Highways prior to the erection of fencing or the planting of trees or shrubs to effect the screening required to hide the storage area from view of the travelling public. Failure to obtain such approval may result in the necessity of removing and re-erecting part or all screening in order to comply with standards for screening as set forth in this section.

Section 6. Requirements for Permit. (1) A permit is required for the operation of a recycling establishment or place of business.

(2) Permits shall be issued in the following manner:

(a) Permits shall be issued for a two (2) year period, or portion thereof, beginning on July 1 of even numbered years.

(b) Any recycling establishment or place of business existing or in operation on July 1 of even numbered years must remit the full permit fee regardless of the date of compliance with the Kentucky law and regulations.

(c) Any new recycling establishment or place of business which comes into existence after July 1 of even numbered years must remit a permit fee on a prorated basis as of the beginning date of the operation regardless of the date of compliance with the Kentucky law and regulations.

(d) The permit fee shall be fifty dollars (\$50) for the two (2) year period.

(e) The permit fee shall be two dollars and eight cents (\$2.08) per month for each month remaining in the two (2) year period, upon the beginning of a new operation.

(f) Permit fees must be in the form of a check or money order payable to the "Treasurer, Commonwealth of Kentucky."

(g) Cash for permit fees will not be accepted.

(h) Permit fees will not be accepted until the recycling establishment or place of business is in full compliance with the Kentucky law and regulations.

Section 7. Revocation of Permits. (1) Failure to comply with the Kentucky law and regulations shall be cause for the revocation of a permit.

(2) If a recycling establishment or place of business is found to be not in compliance, a reasonable time period shall be allowed for the operator to comply with Kentucky law and regulations.

Section 8. 603 KAR 3:050 is hereby repealed.

CALVIN G. GRAYSON, P.E., Secretary

ADOPTED: June 8, 1978

RECEIVED BY LRC: June 8, 1979 at 3 p.m.

DEPARTMENT OF TRANSPORTATION
Bureau of Highways
As Amended

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337(2)

PURSUANT TO: KRS 13.082, 174.050, 189.337

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: KRS 189.337(2) authorizes the Department of Transportation, Bureau of Highways, to adopt a uniform system of traffic control devices. This regulation [is adopted to] defines the system.

Section 1. The standards and specifications set forth in the federal "Manual on Uniform Traffic Control Devices for Streets and Highways" (1978 Edition, and subsequent amendments thereto) shall apply to all traffic control devices installed on any road or street [after this regulation becomes effective]. Satisfactory operating traffic control devices in use on the effective date of this regulation may continue to be used; however, if such devices are replaced or revised, they must be made to conform with the standards and specifications of the manual.

Section 2. A copy of the federal "Manual on Uniform Traffic Control Devices for Streets and Highways" (1978 Edition) is hereby incorporated by reference as part of this regulation. Subsequent amendments to this manual will be made [filed as any other regulation] by filing a copy of each amendment.] in accordance with KRS Chapter 13.

Section 3. Copies of the Federal "Manual on Uniform Traffic Control Devices for Streets and Highways" may be obtained from the Department of Transportation, Frankfort, Kentucky. A fee may be charged for each copy to help defray costs.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
As Amended

704 KAR 3:305. Minimum unit requirements for high school graduation.

RELATES TO: KRS 156.160

PURSUANT TO: KRS 13.082, 156.030, 156.070, 156.160

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: KRS 156.160(3) requires that upon the recommendation of the Superintendent of Public Instruction, the State Board for Elementary and Secondary Education shall adopt rules and regulations relating to the minimum requirements for graduation from the courses offered in all common schools. This regulation relates to the establishment of requirements necessary for entitlement to a high school diploma.

Section 1. All students in the common schools and all students in the private or parochial schools which are accredited by the State Board for Elementary and Secondary Education shall meet the following minimum credit [unit] requirements for high school graduation.

(1)(a) Language arts—3;

(b) Social studies (including one (1) credit [unit] in U.S. History and one (1) credit [unit] in citizenship. The credit in citizenship as outlined in the Program of Studies for Kentucky Schools, K-12, 1979, shall be required of students graduating in 1984. A local board of education in its discretion may offer in the seventh or eighth grade a full-year course in citizenship and when a student successfully completes such a course the citizenship requirement for graduation will have been met. Successful completion of the citizenship requirement at the seventh or eighth grade level shall not be substituted for either of the two (2) social studies credits required for high school graduation.)—2;

(c) Mathematics—2;

(d) Science—2;

(e) Health—½;

(f) Physical education—½.

(2)(a) Required—10;

(b) Elective—8;

(c) Total—18.

Section 2. Each student who satisfactorily completes the requirements of Section 1 [and any additional requirements established by the local board of education] shall be awarded a graduation diploma.

(1) Local boards of education may grant different diplomas to those students who complete credits above the minimum number of credits as established by the State Board for Elementary and Secondary Education. [The diploma represents the satisfactory completion of a prescribed course of study based on the minimum graduation requirements.]

(2) The local school district board of education shall award the diploma. [The governing board of each school district shall award the diploma.]

Section 3. Nothing in this regulation shall be interpreted as prohibiting any local governing board, superintendent, principal or teacher from awarding special recognition to students. [A local board of education may allow a child whose parents or guardian present a certificate from a licensed physician to the effect that because of the child's physical condition, participation in the one-half (½) unit physical education course is not in the best interest of the child, to substitute a physical education course which is within the capabilities of the child as specified by the child's physician.]

[Section 4. Nothing in this regulation shall be interpreted as prohibiting any local governing board, superintendent, principal or teacher from awarding special recognition to students.]

Section 4. When the severity of an exceptional student's handicap(s) precludes a course of study leading to receipt of a diploma, an alternative program shall be offered. This program is based upon student needs, is specified in the individual educational plan, and is to be reviewed at least annually. The student who completes such a course of study is entitled to recognition for achievement. This may be accomplished by the local school district board of education awarding a certificate.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: January 10, 1979

RECEIVED BY LRC: June 13, 1979 at 1:30 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Energy Regulatory Commission
As Amended

807 KAR 50:075. Fuel adjustment clause.

RELATES TO: KRS Chapter 278

PURSUANT TO: KRS 13.082, 278.030(1)

EFFECTIVE: July 17, 1979

NECESSITY AND FUNCTION: KRS 278.030(1) provides that all rates received by an electrical utility subject to the jurisdiction of the Energy Regulatory Commission shall be fair, just and reasonable. This regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subject to later scrutiny by the Energy Regulatory Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses which are not in conformity with the principles set out below are not in the public interest and may result in suspension of those parts of such rate schedules:

(1) The fuel clause shall provide for periodic adjustment per KWH of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F is the expense of fossil fuel in the base (b) and current (m) periods; and S is sales in the base (b) and current (m) periods, all as defined below:

(2) FB/SB shall be so determined that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment will be equal to zero (0).

(3) Fuel costs (F) shall be the most recent actual monthly cost of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel which would have been used in plants suffering forced generation or transmission outages, but less the [greater of either the] cost of fuel related to substitute generation[, or the cost of fuel related to lost generation]; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (c) below, but excluding the greater of either the cost of fuel related to purchases to substitute the forced outages[, or the cost of fuel related to the lost generation]; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis. Included therein may be such costs as the charges for economy energy purchases and the charges as a result of scheduled outage, all such kinds of energy being purchased by the buyer to substitute for its own higher cost energy; and less

(d) The cost of fossil fuel recovered through inter-system sales including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(e) All fuel costs shall be based on weighted average inventory costing.

(4) Forced outages are all nonscheduled losses of generation or transmission which require substitute power for a

continuous period in excess of six (6) hours. Where forced outages are not as a result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. Until such approval is obtained, in making the calculations of fuel cost (F) in subsection (3)(a) and (b) above the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation.

(5) Sales (S) shall be all KWH's sold, excluding inter-system sales. Where, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of (i) generation, (ii) purchases, (iii) interchange-in, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in subsection (3)(d) above, less (vi) total system losses. Utility used energy shall not be excluded in the determination of sales (S).

(6) The cost of fossil fuel shall include no items other than the invoice price of fuel less any cash or other discounts. The invoice price of fuel includes the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees [Licenses].

(7) At the time the fuel clause is initially filed, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options or similar such documents, and all amendments and modifications thereof related to the procurement of fuel supply and purchased power. Incorporation by reference is permissible. Any changes in the documents, including price escalations, or any new agreements entered into after the initial submission, shall be submitted at the time they are entered into. Where fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted and the utility shall explain and justify them in writing. Fuel charges which are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause. The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this regulation.

(8) Any tariff filing which contains a fuel clause shall conform that clause with this regulation within three (3) months of the effective date of this regulation. The tariff filing shall contain a description of the fuel clause with detailed cost support.

(9) The monthly fuel adjustment shall be filed with the commission ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment which shall include data and information as may be required by the commission.

(10) Copies of all documents required to be filed with the commission under this regulation shall be open and made available for public inspection at the office of the Energy Regulatory Commission pursuant to the provisions of KRS 61.870 to 61.884.

(11) At six (6) month intervals, the commission will conduct public hearings on a utility's past fuel adjustments. The commission will order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments it finds unjustified due to improper calculation or application of the charge or improper fuel procurement practices.

(12) Every two (2) years following the initial effective date of each utility's fuel clause the commission in a public hearing will review and evaluate past operations of the clause, disallow improper expenses and to the extent appropriate re-establish the fuel clause *charge* [change] in accordance with subsection (2).

PERRY WHITE, Chairman

ADOPTED: June 22, 1979

APPROVED: DONALD N. RHODY, Secretary

RECEIVED BY LRC: June 22, 1979 at 12 noon

Proposed Amendments

DEPARTMENT OF TRANSPORTATION Bureau of Highways (Proposed Amendment)

603 KAR 3:020. Advertising devices on federal aid primary system.

RELATES TO: KRS 177.830 to 177.890

PURSUANT TO: KRS 13.082, 174.050, 177.830 to 177.890

NECESSITY AND FUNCTION: KRS 177.830 to 177.890 authorizes the Bureau of Highways to establish regulations for the control of advertising devices on the Federal Aid Primary System.

Section 1. (1) Except as provided in this regulation no person shall erect or maintain any advertising device within any protected area if such device is legible or identifiable from the main traveled way of any federal aid primary highway.

(2) The erection or maintenance of any advertising device located outside of urban areas and beyond 660 feet of the right-of-way which is legible and/or identifiable from the main traveled way of any federal aid primary highway is prohibited with the exception of:

- (a) Directional and official signs and notices;
- (b) Signs advertising the sale or lease of property upon which they are located; or
- (c) Signs advertising activities conducted on the property on which they are located.

Section 2. Definitions. (1) "Advertising device" means any billboard, sign, notice, poster, display, or other device intended to attract the attention of operators of motor vehicles on the highway, and shall include a structure erected or used in connection with the display of any such device and all lighting or other attachments used in connection therewith. However, it does not include directional or other official signs or signals erected by the state or other public agency having jurisdiction.

(2) "Billboard" advertising devices are those devices that contain a message relating to an activity or product that is foreign to the site on which the device and message is located or is an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(3) "On-premise" advertising devices are those devices that contain a message relating to an activity or the sale of a product on the property on which they are located.

(4) "Center line of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the center line of the main traveled ways of a non-divided highway.

(5) "Erect" means to construct, build, raise, assemble, place, affix, create, paint, draw or in any way bring into being or establish.

(6) "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(7) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of a separated roadway for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking area.

(8) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(9) "Protected areas" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet of the edge of the right-of-way of all federal aid primary highways within the Commonwealth. Where these highways terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected areas" means all areas inside the boundaries of the Commonwealth which are within 660 feet of the edge of the right-of-way of a federal aid primary highway in an adjoining state.

(10) "Federal aid primary highway" means any highway, road, street, appurtenant facility, bridge or overpass including a turnpike or limited access highway which is designated a portion of the federal aid primary highway system as may be established by law or as may be so designated by the Bureau of Highways and the United States Department of Transportation.

(11) "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing such relationship.

(12) "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting legs of an interchange.

(13) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(14) "Permitted" as used in this regulation means to exist only by permit from the Department of Transportation, Bureau of Highways.

(15) "Allowed" as used in this regulation means to exist without a permit from the Department of Transportation, Bureau of Highways.

(16) "Commercial or industrial zone" means an area zoned for business, commerce or trade pursuant to state or local law, regulation or ordinance. To be zoned commercial or industrial, the entire city or county must be "comprehensively" zoned.

(17) "Comprehensively zoned" means that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(18) "Unzoned commercial or industrial area" means an area which is not zoned by state or local law, regulation or ordinance and on which a commercial or industrial activity is located, together with an area extending along the highway for a distance of 700 feet on each side of the activity boundary line and on the same side of the road. Each side of the highway where a commercial or industrial activity is located will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or process areas of the activities and not, from the property boundary lines.

(19) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(a) Outdoor advertising structures.

(b) Hospitals, nursing homes, cemeteries, funeral homes, etc; professional office buildings, and roadside markets not open over three (3) months a year.

(c) Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

(d) Activities normally or regularly in operation less than three (3) months a year.

(e) Transient or temporary activities.

(f) Activities not visible from the main traveled way.

(g) Activities more than 300 feet from the nearest edge of the right-of-way.

(h) Activities conducted in a building principally used as a residence.

(i) Railroad tracks and minor sidings.

(j) The sale or leasing of property.

(20) "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one (1) state, that part of the urbanized areas in each such state or an urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of the United States Department of Transportation. Such boundaries shall as a minimum encompass the entire urban place designated by the Bureau of the Census. Such urban areas shall be designated by official order of the Kentucky Secretary of Transportation.

(21) "Routine maintenance" means that maintenance is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting or manipulating to level or plumb the device but not to the extent of adding guys or

struts for the stabilization of the sign or structure or substantially changing the sign. Replacement of new or additional panels or facing shall not constitute routine maintenance. The routine changing of messages is considered to be routine maintenance. Routine maintenance includes laminating or preparing panels in a plant or factory for the changing of messages.

(22) "Activity boundary line" means regularly used buildings, parking lots, storage and process areas which are an integral part of and contiguous to the activity.

(23) "Abandoned or discontinued" means that for a period of one (1) year or more that the sign:

(a) Has not displayed any advertising matter; or

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

(24) "Non-conforming sign" means a sign which was lawfully erected but does not comply with the provisions of state law or regulations passed at a later date or later fails to comply with state law or regulations due to changed conditions such as but not limited to, zoning change, highway relocation or reclassification, size, spacing or distance restrictions. Performance of other than routine maintenance shall cause a non-conforming sign to lose its status and to become an illegal sign.

(25) "Destroyed" means that the sign has sustained damage by any means in excess of sixty (60) percent of the structure and facing or sixty (60) percent of the replacement value of such sign.

(26) "Church and civic club off premise sign" means any nationally, regionally or locally known religious, or non-profit organization advertising device.

(27) "Public service sign" means a sign erected or located on a school bus shelter.

(28) "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation. This definition applies to signs on school bus shelters only.

Section 3. General Provisions. (1) Erection or existence of the following advertising devices may not be permitted or allowed in protected areas:

(a) Advertising devices advertising an activity that is illegal under state or federal law.

(b) Obsolete advertising devices.

(c) Advertising devices that are not clean and in good repair.

(d) Advertising devices that are not securely affixed to a substantial structure.

(e) Advertising devices which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.

(f) Advertising devices which prevent the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(g) Signs which contain, include, or are illuminated by any flashing, intermittent or moving lights, except those giving public service information of time, date, temperature or weather and limited to one (1) cycle of four (4) displays. They may contain no other message. The maximum time limit for the completion of the four (4) display cycle shall be five (5) seconds. *Signs which have a continuous revolving or running message shall be limited to the same restrictions as to message content, limited to one (1) cycle and limited to a maximum of five (5) seconds for the completion of the one (1) cycle.*

(h) Advertising devices which use lighting in any way

unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of such low intensity or brilliance as not to glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(i) Advertising devices which move or have any animated or moving parts, unless they are "on-premise" advertising devices and are located in commercially or industrially zoned areas.

(j) Advertising devices erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(k) Advertising devices erected upon or overhanging the right-of-way.

(2) An advertising device which is not visible from the main travelled way of the highway may be allowed in protected areas.

(3) If the advertising device is legible from more than one (1) highway on which control is exercised, the appropriate criteria applies to all of these highways. (See also: 603 KAR 3:010.)

(4) No advertising device may be erected or maintained within the state right-of-way except directional or other official signs erected by the state or other public agency having jurisdiction.

(5) Directional and other official signs, including signs placed by the bureau, signs denoting the location of underground utilities (limited to two (2) square feet), signs erected by federal, state and local governments to delineate boundaries of reservations, parks or districts (limited to 150 square feet), and signs such as "posted," "no fishing," "no hunting," etc. placed by property owners to discourage trespassing (limited to two (2) square feet) may be permitted or allowed subject to other provisions in these regulations.

(6) No on-premise advertising device, in zoned or unzoned commercial or industrial areas, will affect spacing for billboard advertising devices.

(7) A permit will be required from the Department of Transportation, Bureau of Highways, for any billboard advertising device. On-premise advertising devices will be allowed and controlled by surveillance.

(8) A non-conforming sign may continue to exist until just compensation has been paid to the owner, only so long as it is:

- (a) Not destroyed, abandoned or discontinued; and
- (b) Subjected to only routine maintenance; and

(c) A sign conforming to local zoning or sign or building restrictions.

Section 4. Measurements of Distance. (1) In determining protected areas, distances from the edge of a right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the center line of a highway for a distance of 660 feet.

(2) In measuring distances for determination of spacing for billboard advertising devices, two (2) lines shall be drawn perpendicular to the center line of the main traveled way, so as to cause the two (2) lines to embrace the greatest longitude along the center line of said highway.

(3) V-shaped or back to back type billboard advertising devices shall have no greater distance than fifteen (15) feet apart at the nearest point and must be connected by bracing or maintenance walkway.

(4) The spacing for billboard advertising devices as described in Section 5, subsections (12) and (13), shall be measured from the nearest point between each device.

(5) In measuring distances for the determination of an unzoned commercial or industrial area, two (2) lines shall be drawn perpendicular to the center line of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway. All areas within the confines of these lines shall be considered a part of the unzoned commercial or industrial area. Measurements for these areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet in each direction.

Section 5. "Billboard" advertising device provisions.

(1) "Billboard" advertising devices may be constructed and maintained in protected areas which are zoned or unzoned commercial or industrial as defined in Section 2, subsections (16) and (18), and comply with the provisions of this regulation for this type advertising device and other applicable state, county or city zoning ordinances or regulations and shall be limited to a maximum of 1,250 square feet subject to other provisions of this regulation.

(2) V-shaped or back to back "billboard" advertising devices will be considered as one (1) advertising device structure and must meet specifications as described in Section 4, subsection (3).

(3) "Billboard" advertising devices may contain two (2) messages per facing not to exceed the maximum sized area as set forth in Section 5, subsection (1).

(4) V-shaped or back to back structures will be allowed the maximum 1,250 square feet per facing.

(5) "Billboard" advertising devices that were legally erected may remain in place if they meet all criteria except spacing. Only routine maintenance may be performed on the sign and its structure until such time as proper spacing as described in this regulation is attained.

(6) Spacing rights will be issued on a "first come, first served" basis. Proof of lease of a site must accompany the application. Updating of proof of lease and application will be required annually until a sign has been erected.

(7) Billboard advertising devices may be permitted in zoned or unzoned commercial or industrial areas subject to other provisions of this regulation.

(8) Billboard advertising devices constructed in unzoned commercial and industrial areas will be permitted to exist as long as there is a commercial or industrial operated business. Upon the termination or abandonment of a business or industry for which the unzoned commercial or industrial area was created, the billboard advertising devices may remain in existence for one (1) year.

(9) No billboard advertising device may be illuminated by other than white lights.

(10) Any billboard advertising device which is legible or identifiable from the main traveled way must have an approved permit from the Department of Transportation, Bureau of Highways.

(11) No unzoned commercial or industrial area may be created when a commercial or industrial activity is more than 300 feet from the right-of-way.

(12) Spacing for billboard advertising device structures in unzoned commercial or industrial areas as described in Section 4, subsections (4) and (5), will be 300 feet measured from the nearest point between each advertising device, unless separated by a building, roadway, or natural obstruction, in such a manner that only one (1) sign located within the required spacing is visible from the highway at any time. This spacing will be reduced to 100 feet within incorporated municipalities which do not have comprehensive zoning.

(13) Spacing for billboard advertising device structures

in any comprehensively zoned commercial or industrial area will be 100 feet, unless separated by a building, roadway, or natural obstruction, in such a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

Section 6. "On-premise" advertising devices. (1) "On-premise" advertising devices may have a maximum of 1,250 square feet in area if they qualify as commercial or industrial activities as set forth in Section 2, subsection (19) and are on or within fifty (50) feet of the advertised activity and are within the property boundary lines of such activity.

(2) Only one (1) "on-premise" advertising device advertising a commercial or industrial activity as described in Section 2, subsection (19), may be located at a distance greater than fifty (50) feet from the activity boundary line. This advertising device will be limited in size as set forth in subsection (4) of this section. All other advertising devices must be within fifty (50) feet of the advertised activity.

(3) To qualify as an "on-premise" advertising device, the device must be within the property boundary lines of the advertised activity.

(4) No "on-premise" advertising device may exceed twenty (20) feet in length, width or height or 150 square feet in area including border and trim, but excluding supports, if it is farther than fifty (50) feet from the activity boundary lines (not the property boundary lines).

(5) Only one (1) "on-premise" advertising device which is listed as an exception in Section 2, subsection (19), may be located in such a manner that it is legible or identifiable from the main traveled way.

(6) Only one (1) of the following "on-premise" advertising devices may be located in such a manner that it is legible or identifiable from the main traveled way.

(a) The setting forth or indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located; or

(b) The name or type of business or profession conducted on the property on which the advertising device is located; or

(c) Information required or authorized by law to be posted or displayed on such property; or

(d) The sale or leasing of the property upon which the advertising device is located.

1. Advertising devices which are for the purpose of sale or leasing of property by a real estate company or agency will be limited to a six (6) month permit. After the six (6) months, the real estate company or agency name must be removed and the message advertising the sale or lease of the property along with the telephone number of the real estate company or agency is all that may remain. This will be a condition of the permit.

2. If the property is for sale by the owner and the owner is other than a real estate company, or agency the message stating the leasing or sale of the property may list the name of the owner (letters of owners name may be no larger than one-half (½) the size of the letters in the basic message), and the telephone number and will not be restricted to the six (6) month permit.

(e) Advertising customarily used at similar places of business that are not legible or identifiable from the main traveled way of the highway; or

(f) The advertisement or control of an activity or sale of products on the property where the advertising device is located.

(7) No advertising device referred to in subsections (5) and (6) of this section may exceed twenty (20) feet in

length, width or height or 150 square feet in area including border and trim but excluding supports.

(8) Each business is permitted as many signs, stating only the name of the business, as they desire. In the absence of such signs, the owner may have one (1) sign giving the name of the business and a particular brand name product. The sign may not contain more than two-thirds (⅔) of the size for the brand name.

(9) The fact that a particular product is sold at a business will not be construed to mean that this is an activity.

(10) Brand name. "On-premise" advertising devices may advertise only the activities conducted upon the property on which they are located with exceptions as to type as follows:

(a) "Ford," "Chevrolet," "Pontiac," etc.

(b) "A&P," "Kroger," etc.

(c) "Kentucky Fried Chicken," "Bob Evans Restaurants," "Stuckeys," etc.

(d) Signs noting credit card acceptance or trading stamps may be allowed subject to a maximum size of eight (8) square feet.

(11) Brand names such as the following may not be advertised because they are incidental to the primary activity:

(a) "Auto-Lite," "Delco," etc.

(b) "8 O'Clock Coffee," "Armour meats," "Clabber Girl Baking Powder," etc.

(c) "Coca-cola," "Pepsi," "Winstons," etc.

Section 7. "Grandfather Restrictions," On-premise Advertising Devices in Incorporated Municipalities and Urban Areas. Grandfather restrictions as described in this section shall apply to the following advertising devices only:

(1) Only one (1) "on-premise" advertising device will be "permitted" to overhang the state right-of-way, advertising any one (1) business. This refers to only those advertising devices in existence at the time of the adoption of this regulation and where there is not space off the right-of-way to accommodate an advertising device.

(2) Any new building or structure which comes into being after the adoption of this regulation, which abuts or is upon the state right-of-way, in which a business or activity is to be located, and such business or activity requires an advertising device, such new device must meet the conditions set forth in subsection (4) of this section in addition to other provisions of this section and other sections of this regulation.

(3) Only "routine maintenance" as described in this regulation will be "permitted" on any "on-premise" advertising device under grandfather restrictions in this section.

(4) Any time an existing "permitted" advertising device is replaced, it must comply with the following criteria: No advertising device or portion of an advertising device may be erected that extends more than two (2) feet beyond the face of the building, if the building is abutting or within the state right-of-way. This condition does not apply to advertising devices when the building or structure has a setback of more than two (2) feet from the state right-of-way. Any building with a setback from the right-of-way must reduce the overhang of the advertising device by the number of inches of the setback. No advertising device may be erected which has a base or any part of a base on the state right-of-way.

(5) Any advertising device with a base or any portion of a base which is located on the state right-of-way must be

relocated off the right-of-way where there is sufficient space. If space is not available to relocate the existing advertising device off the right-of-way, relocation of the device must comply with restrictions as contained in subsection (4) of this section.

(a) Where there is space off the right-of-way to relocate an existing advertising device, the owner shall be notified and be allowed a reasonable amount of time to accomplish the relocation.

(b) In no instance shall the time allowed to relocate an advertising device, whose base is on the state right-of-way, exceed a five (5) year period. No permit shall be issued for this type advertising device.

(6) Any "on-premise" advertising device "permitted" under grandfather restrictions, or any new advertising device, which is "permitted" to be erected under the provisions of subsection (4) of this section, must have an approved permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.

(7) No advertising device will be "permitted" under this section which interferes with any official sign, signal, or device.

(8) Any advertising device "permitted" under this section must meet the requirements for an "on-premise" advertising device as set forth in this regulation.

Section 8. "Church and civic club off-premise signs" provisions: (1) Signs which qualify as "church and civic club signs" as described in Section 2, subsection (26) and which do not exceed the maximum size of eight (8) square feet including border and trim but excluding supports and which have spacing of 100 feet from any other church or civic club advertising device structure, which measurement is described in Section 4, subsections (2) and (5) shall be permitted.

(2) Only one (1) structure shall be permitted at any one (1) location.

(3) "Church and civic club signs" may contain the following message only:

(a) Name and address;

(b) Location and time of meetings, and a directional arrow;

(c) Special events such as vacation bible school, revival, etc., may be permitted. These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet.

(4) In the event two (2) organizations desire to erect one (1) structure for their signs, a "Welcome to (City or County)", may be placed at the top of the structure. No slogan, flamboyant design or special message shall be permitted in the "Welcome to" part of the sign.

(5) Maximum size for sign structures as described in subsection (4) of this section will be twenty (20) square feet, including border and trim excluding supports.

(6) Only one (1) advertising device structure which advertises a particular church or civic club, may be erected facing any one (1) direction in advance of the advertised activity on any one (1) road.

(7) No advertising device structure described in this section shall be permitted on the state rights-of-way.

(8) Church and civic club sign structures will not affect spacing for "billboard" advertising structures.

(9) Church and civic club sign structures must have a permit from the Department of Transportation, Bureau of Highways, to be a legal advertising device.

Section 9. "Public Service Signs." "Public service signs" may be "permitted" if they conform to the following provisions:

(1) "Public service signs" may be permitted on school bus shelters only.

(2) Maximum size for a "public service sign" shall be thirty-two (32) square feet including border and trim.

(3) Must contain a public service message which occupies not less than fifty (50) per cent of the area of the sign.

(4) May identify the donor, sponsor or contributor of the shelter.

(5) Contains no other message.

(6) Has obtained an encroachment permit from the Bureau of Highways prior to the existence of the sign if it is to be located on the state right-of-way.

(7) Has been authorized or approved in writing by the city or county having jurisdiction if it is to be located off the state right-of-way.

(8) Does not create a sight distance or safety hazard.

(9) Only one (1) sign on each shelter shall face in any one (1) direction.

Section 10. "Mass transit shelter advertising devices" may be "permitted" if they conform to the following provisions:

(1) Mass transit shelters with advertising may be located only in or adjacent to zoned or unzoned commercial or industrial areas as described in Section 2, subsections (16) and (18).

(2) Permits for mass transit shelters with advertising may only be issued if they meet requirements of sight distances and safety for both pedestrian and vehicle traffic as determined by the Secretary, Department of Transportation.

(3) Permits for mass transit shelters with advertising shall be issued on a site by site basis and may only be issued for such advertising on the right of way in conjunction with an encroachment permit issued by the Department of Transportation for the location of such mass transit shelter. The applicant for a permit shall comply with all laws, regulations or ordinances of federal, state or local governments concerning mass transit shelter design, location and advertising message content.

(4) No mass transit shelter, with advertising, shall be permitted where the access to the right of way is fully or partially controlled.

(5) Mass transit shelters with advertising shall be esthetically compatible with the surrounding area and shall be maintained in a neat, clean and structurally sound condition.

(6) Maximum size of the advertising device shall be thirty-two (32) square feet, including border or frame and trim.

(7) Spacing for mass transit shelters with advertising shall be no less than 100 feet apart within city limits and no less than 300 feet apart outside city limits.

(8) Lighting shall be of such low intensity or brilliance as to not impair the vision of travelling motorists.

(9) Advertising messages must be mounted on or affixed to the shelter.

(10) Except as permitted under spacing requirements, only one (1) advertising message shall be visible or identifiable to motorists travelling in any one (1) direction at any time regardless of the number of transit shelters located in a given area.

(11) Mass transit shelters to be located on sidewalks shall not prevent the safe movement of pedestrians or handicap vehicles such as wheelchairs. A minimum of thirty-four (34) inches clearance between the shelter structure and any other obstruction shall be maintained. Any additional

sidewalk paving necessary to accomplish minimum clearance shall be the responsibility of the permittee and shall conform to Department of Transportation specifications.

(12) Prior to the issuance of the initial or subsequent permits, the following shall be submitted to the Secretary of the Department of Transportation for review:

(a) Proof of public notice or invitations for the purpose of awarding a franchise by the appropriate local authority, to locate mass transit shelters in the area under which such authority has jurisdiction.

(b) Proof by the franchisee of equal access to all qualified advertisers at reasonable rates.

(c) A schedule of rates charged based on size of advertising message and location of advertising. This documentation shall be updated and submitted annually to the Secretary, Department of Transportation.

(13) Violation of any provision in this regulation or the terms and agreements entered into by the franchisee for the purpose of obtaining an encroachment permit shall be cause for the revocation of the permit and removal of the entire installation.

STEPHEN REEDER, Deputy Secretary

ADOPTED: July 12, 1979

RECEIVED BY LRC: July 12, 1979 at 2:15 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Ed W. Hancock, Deputy Secretary for Legal Affairs,
Department of Transportation, Frankfort, Kentucky
40622.

EDUCATION AND ARTS CABINET
Department of Education
(Proposed Amendment)

704 KAR 2:020. Textbook program plan.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190

PURSUANT TO: KRS 13.082, 156.010(3), 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.400 to 156.476 require that the Kentucky Textbook Commission select textbooks for use in the schools of the Commonwealth. KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out the statutory requirements of KRS Chapters 156 and 157 that deal with textbooks.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board for Elementary and Secondary Education, and the Kentucky Textbook Commission under KRS Chapters 156 and 157, there is hereby devised, created, and incorporated by reference a Kentucky State Plan for Administering the Textbook Program which shall include the standards and procedures for the management of the textbook program relating to the selection, listing, adopting, and purchasing of textbooks and related media materials for grades

kindergarten through twelve (12) in the schools of the Commonwealth. The Kentucky State Plan for Administering the Textbook Program shall be published by the Superintendent of Public Instruction and copies furnished to each local school district and upon request to approved private schools [upon request directed to his office].

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: June 12, 1979

RECEIVED BY LRC: July 2, 1979 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board
for Elementary and Secondary Education, 17th Floor,
Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department of Education
Bureau of Instruction
(Proposed Amendment)

704 KAR 10:022. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160

PURSUANT TO: KRS 13.082, 156.070, [156.130,] 156.160

NECESSITY AND FUNCTION: To establish general standards to be used in evaluation of elementary, middle and secondary schools.

Section 1. Pursuant to the authority vested in the Kentucky State Board for Elementary and Secondary Education by KRS 156.070 and 156.160, the Kentucky standards for grading, classifying and accrediting elementary, middle and secondary schools are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

Section 2. "The Merit Rating Procedural Information and General Criteria for Guidance Programs," the "Guidelines for Merit Media Programs," [Merit Rating Procedural Information and General Criteria for Library Media Programs] in elementary, middle and secondary schools and "Merit Rating for Kentucky High Schools" are presented herewith for filing with the Legislative Research Commission and incorporated by reference.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: June 12, 1979

RECEIVED BY LRC: July 2, 1979 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Mr. Fred Schultz, Secretary, Kentucky State Board
for Elementary and Secondary Education, 17th Floor,
Capital Plaza Tower, Frankfort, Kentucky 40601.

EDUCATION AND ARTS CABINET
Department for Occupational Education
Bureau of Vocational Education
(Proposed Amendment)

705 KAR 1:010. Annual program plan.

RELATES TO: KRS 163.020, 163.030

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: The Kentucky Annual Program Plan and Accountability Report for Vocational Education is necessary in order to be eligible to receive federal funds under P.L. 94-482.

Section 1. Pursuant to the authority vested in the Kentucky State Board for Occupational Education, the Kentucky Annual Program Plan and Accountability Report for Vocational Education shall be prepared and approved by the State Board for Occupational Education, in accordance with the appropriate federal guidelines, and submitted annually to the U. S. Commissioner of Education by June 30 for his approval. This document is incorporated by reference and hereinafter shall be referred to as the Kentucky Annual Program Plan and Accountability Report for Vocational Education. Copies of the document may be obtained from the Bureau of Vocational Education, State Department for Occupational Education.

JAMES B. GRAHAM
 Superintendent of Public Instruction

ADOPTED: June 5, 1979

RECEIVED BY LRC: July 12, 1979 at 1:30 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
 TO: Secretary, State Board for Occupational Education,
 17th Floor, Capital Plaza Office Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Labor
(Proposed Amendment)

803 KAR 1:100. Child labor.

RELATES TO: KRS 339.210 to 339.450

PURSUANT TO: KRS 13.082, 339.230

NECESSITY AND FUNCTION: KRS 339.230(3) authorizes the Commissioner of Labor to promulgate regulations to properly protect the life, health, safety or welfare of minors. He may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment and other pertinent factors. The Commissioner may in no event make regulations less restrictive than those promulgated by the U.S. Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments. The function of this regulation is to set standards for the employment of minors. This regulation and KRS Chapter 339 will guide the Department of Labor in carrying out its responsibilities under the law and assist employers who may be concerned with the provisions of the law in understanding their obligations under the law.

Section 1. Definitions. (1) "School in session" means that inclusive time between the beginning and ending of the calendar school year as established by local school district authorities;

(2) "School not in session" means period of time not included in subsection (1) of this section.

Section 2. [1.] Employment of minors between fourteen (14) and sixteen (16) years of age. (1) Minors between fourteen (14) and sixteen (16) years of age may not be employed in any of the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performances of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations in connection with:

1. Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

2. Warehousing and storage;

3. Communications and public utilities;

4. Construction (including demolition and repair); except such office work, or sales work, in connection with subparagraphs 1., 2., 3., and 4. of this paragraph, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

(f) Any occupation which the U.S. Secretary of Labor may find and declare to be hazardous for the employment of minors and set forth in CFR Title 29, Part 570, Subpart E, Section 570.50 through 570.68;

(g) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any of the occupations to which this section is applicable shall be confined to the following periods:

(a) Outside school hours;

(b) Not more than forty (40) hours in any one (1) week when school is not in session;

(c) Not more than eighteen (18) hours in any one (1) week when school is in session;

(d) Not more than eight (8) hours in any one (1) day when school is not in session;

(e) Not more than three (3) hours in any one (1) day when school is in session;

(f) Between 7 a.m. and 7 p.m. in any one (1) day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

(3) In the case of enrollees in work training programs conducted under the provisions of the Comprehensive Employment and Training Act of 1973, there is an exception to the requirement of subsection (2)(a) of this section if the employer has on file an unrevoked written statement of the Regional Administrator for Employment and Training or his representative setting out the periods which the minor will work and certifying that his employment confined to such periods will not interfere with his health and well-being, countersigned by the principal of the school which the minor is attending with his certificate that such employment will not interfere with the minor's schooling.

(4) Minors between fourteen (14) and sixteen (16) years of age may be employed by retail, food service, and gasoline service establishments in the following occupations:

(a) Office and clerical work, including the operation of office machines;

(b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping;

(c) Price marketing and tagging by hand or by machine, assembling orders, packing and shelving;

(d) Bagging and carrying out customer's orders;

(e) Errand and delivery work by foot, bicycle, and public transportation;

(f) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers, or cutters;

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of such work, such as but not limited to: dishwashers, toasters, dumb-waiters, popcorn poppers, milk shake blenders and coffee grinders;

(h) Work in connection with cars and trucks if confined to the following: dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(i) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from freezers and meat coolers.

(5) Subsection (4) of this section shall not be construed to permit the employment of minors between fourteen (14) and sixteen (16) years of age in any of the following in retail, food service, and gasoline service establishments:

(a) All occupations listed in subsection (1) of this section:

(b) Work performed in or about boiler or engine rooms;

(c) Work in connection with maintenance or repair of the establishment, machines or equipment;

(d) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes;

(e) Cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking;

(f) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers;

(g) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in subsection (4)(i) of this section;

(h) Loading and unloading goods to and from trucks, railroad cars, or conveyors;

(i) All occupations in warehouses except office and clerical work.

Section 3. [2.] Employment of minors between sixteen (16) and eighteen (18) years of age.

(1) Minors between sixteen (16) and eighteen (18) years of age may be employed at any occupation except as hereinafter restricted:

(a) Occupations particularly hazardous as declared by the U. S. Secretary of Labor and set forth in CFR Title 29, Part 570, Subpart E, Section 570.50 through 570.68 which is incorporated herein and made a part hereof by reference.

(b) Any occupation prohibited under KRS 339.230(2)(d).

(2) Except as provided in subsection (3) of this section, employment in any occupation, not prohibited by subsection (1) of this section, shall be confined to the following periods:

periods:

[(a) Not more than forty-eight (48) hours in any one (1) week when school is not in session;]

(a) [(b)] Not more than thirty-two (32) hours in any one (1) week when school is in session;

[(c) Not more than eight (8) hours in any one (1) day when school is not in session;]

(b) [(d)] Not more than six (6) [four (4)] hours in any one (1) day when school is in session, *Monday through Friday* [except Friday];

(c) [(e)] Between 6 a.m. and 11:30 p.m. [10 p.m.] Sunday through Thursday, and between 6 a.m. and 1:00 a.m. [Midnight] on Friday and Saturday when school is in session [attending school];

[(f) Between 6 a.m. and midnight during vacation; except if in a federally sponsored program where such program requires, may be employed between midnight and 6 a.m.;]

(3) (a) *There are no restrictions of hours or time of work schedule for the following:* [If minor has graduated from high school or an approved vocational school equivalent to a high school, or is no longer attending a school and has not attended school for the previous sixty (60) days, he may work a maximum of ten (10) hours per day not to exceed sixty (60) hours per week.]

1. *Minors who have graduated from high school or an approved vocational school equivalent to a high school; or*

2. *Minors who are no longer attending a school and have not attended school for the previous sixty (60) days; or*

3. *Minors not required to attend school for that period herein described as "school not in session."*

(b) Enrollees in a work training program established by a local board of education or the federal government and approved by the federal government shall be exempt from subsection (2) of this section, except under no circumstances shall the minor be employed more than eight (8) hours per day or more than forty-eight (48) hours per week.

JAMES R. YOCOM, Commissioner

ADOPTED: July 13, 1979

APPROVED:

MIKE HELTON, Secretary

RECEIVED BY LRC: July 13, 1979 at 1 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Jerry W. Hammond, Director, Division of Labor Standards, Kentucky Department of Labor, U. S. 127 South Building, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET
Ky. Occupational Safety and Health Review Commission
(Proposed Amendment)

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

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS 338.071, 338.081

NECESSITY AND FUNCTION: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule

on appeals from citations, notifications, and variances and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. This regulation is to provide for these hearings and their proper disposition.

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

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

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

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

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

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

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

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

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

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

(11) "Day" means a calendar day.

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

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

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

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

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

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

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

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

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

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, 104 Bridge Street, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice informing of such assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

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

(5) Filing is deemed effected at the time of mailing.

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

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

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa.

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

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

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

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

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

Section 9. Service and Notice. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

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

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

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

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

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

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

(Name of employer)

Your employer has been cited by the Commissioner of Labor for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate should be sent to:

Kentucky Occupational Safety
and Health Review Commission
104 Bridge Street
Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: _____

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

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

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

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

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

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

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

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

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

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

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

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

Section 13. Employer or Employee Contests. (1) Where a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or if no hearing is held, within the time period a motion for dismissal is required to be posted.

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

Section 14. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before

commencement of the hearing, or in the event of a settlement or dismissal before issuance of a recommended order.

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

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

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

Section 15. Representatives of Parties and Intervenors.

(1) Any party or intervenor may appear in person or through a representative.

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

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

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

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

Section 16. Variance Contests. (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of such ruling file a notice of contest with the Commissioner of Labor. The Commissioner of Labor shall transmit such notice, together with the complete record in the matter as compiled before the Commissioner of Labor, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

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

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

Section 17. *Request for Extension or [Petition for] Modification of Abatement.* (1) Any party adversely affected by a ruling of the Commissioner of Labor on any application for *extension or* modification of an abatement period may file an appeal from such notification with the Commissioner of Labor, provided such appeal is filed within *fifteen (15) working* [seven (7)] days from [of] receipt of such notice [in the event the ruling of the Commissioner of Labor is issued after the abatement date, or no later than the close of the next working day following the date on which abatement is required]. *Such appeal shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.*

(2) The Commissioner of Labor shall transmit such appeal [petition] to the commission within *seven (7)* [three (3) working] days after its receipt, together with all pertinent

and relevant records considered by the Commissioner of Labor in making his ruling.

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

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

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

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

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

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

(5) All pleadings shall be filed in duplicate unless otherwise indicated.

(6) Unless otherwise designated in this regulation, any pleading shall be assumed as admitted as correct unless a reply or denial is received within ten (10) days of receipt of such pleading.

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

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

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

(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the commission.

Section 20. Notices of Contest of Citations. (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

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

(3) Complaint:

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

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

1. The basis for jurisdiction;
2. The time, location, place, and circumstances of each such alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

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

(4) Answer:

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

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

Section 21. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

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

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

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

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

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

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

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

Section 27. Discovery Depositions and Interrogatories. (1) Except by special order of the commission or the hear-

ing officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

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

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

Section 29. Issuance of Subpoenas; Petitions to Revoke or Modify Subpoenas; Right to Inspect or Copy Data. (1) Any member of the commission shall, on the application of any party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, may be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

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

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

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

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

(2) Copy of notice of hearing shall be served by the employer on affected employees and/or the affected

employees' representative as provided in Section 9, subsections (9) and (10) of this regulation, if no information has been received by the employer as to employee intervention in the case before the commission. Notice of hearing will be given by the commission to any party-intervenor.

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

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

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

(3) Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One (1) additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. No additional postponement may be granted without commission approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

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

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

(3) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, or will be unavailable to sign the typed deposition and it is so stated by agreement, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and three (3) copies of the transcript, together with his certificate, in person or by registered mail to the executive director, Kentucky Occupational Safety and Health Review Commission, 104 Bridge Street, Frankfort, Kentucky 40601.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right where the hearing officer certifies that:

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

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

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

Section 46. Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Any party shall be entitled, upon request, to a reasonable

period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for such filing, but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenor shall have until the 25th day of the thirty (30) day period in which to file briefs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

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

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

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

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

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

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

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

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

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

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

Section 56. Inspection and Reproduction of Documents. (1) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the commission, inspect and copy any document filed in any proceeding.

(2) Costs shall be borne by such person.

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

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

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

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

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

IRIS R. BARRETT, Executive Director

ADOPTED: July 2, 1979

RECEIVED BY LRC: July 2, 1979 at 4:15 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Executive Director, Kentucky Occupational Safety and Health Review Commission, 104 Bridge Street, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:015. Tripeleppamine hydrochloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Tripeleppamine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Tripeleppamine Hydrochloride Pharmaceutical Products. The following tripeleppamine hydrochloride tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Tripeleppamine Hydrochloride 50 mg. Tablet Form:

(1) Pyribenzamine: Ciba Pharmaceutical Company;

(2) Tripeleppamine Hydrochloride: Bolar Pharmaceuticals, *Generix Drug Corporation*, [Midway Medical Company,] Murray Drug Corporation, Richie Pharmacal, Richlyn Laboratories, Rugby Laboratories, *Steri-Med, Inc.*, United Research Laboratories;

(3) *Triplen: Interstate Drug Exchange.*

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:017. Amoxicillin trihydrate.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the Council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Amoxicillin Trihydrate pharmaceutical products by their generic name and brand names that have been determined by the Council to be therapeutically equivalent.

Section 1. Amoxicillin Trihydrate Capsule Pharmaceutical Products. The following amoxicillin trihydrate

capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Amoxicillin Trihydrate 250 mg. Capsule Form:
 - (a) Amoxcill: H. L. Moore Drug Exchange;
 - (b) Amoxicillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Parmed Pharmaceuticals, Pierrel America, Richie Pharmacal Company, *Three P Products Corporation*;

- (c) Amoxil: Beechum Laboratories;
 - (d) Larotid: Roche Laboratories;
 - (e) Polymox: Bristol Laboratories;
 - (f) Robamox: A. H. Robins Company;
 - (g) Sumox: Reid-Provident;
 - (h) Theda-Mox: Theda Corporation;
 - (i) Trimox: E. R. Squibb and Sons;
 - (j) Van-Mox: Vanguard Laboratories.
- (2) Amoxicillin Trihydrate 500 mg. Capsule Form:
 - (a) Amoxcill: H. L. Moore Drug Exchange;
 - (b) Amoxcillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Parmed Pharmaceuticals, Richie Pharmacal Company, *Three P Products Corporation*;

- (c) Amoxil: Beechum Laboratories;
 - (d) Larotid: Roche Laboratories;
 - (e) Polymox: Bristol Laboratories;
 - (f) Robamox: A. H. Robins Company;
 - (g) Sumox: Reid-Provident;
 - (h) Theda-Mox: Theda Corporation;
 - (i) Trimox: E. R. Squibb and Sons;
 - (j) Van-Mox: Vanguard Laboratories.

Section 2. Amoxicillin Trihydrate Suspension Pharmaceutical Products. The following Amoxicillin Trihydrate suspension pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Amoxicillin Trihydrate 125 mg/5 ml Suspension Form:

- (a) Amoxcill: H. L. Moore Drug Exchange;
 - (b) Amoxicillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Richie Pharmacal Company, *Three P Products Company*;

- (c) Amoxil: Beechum Laboratories;
 - (d) Larotid: Roche Laboratories;
 - (e) Polymox: Bristol Laboratories;
 - (f) Robamox: A. H. Robins Company;
 - (g) Sumox: Reid-Provident;
 - (h) Theda-Mox: Theda Corporation;
 - (i) Trimox: E. R. Squibb and Sons;
 - (j) Van-Mox: Vanguard Laboratories.
- (2) Amoxicillin Trihydrate 250 mg/5 ml Suspension Form:

- (a) Amoxcill: H. L. Moore Drug Exchange;
 - (b) Amoxicillin Trihydrate: Biocraft Laboratories, Murray Drug Corporation, Richie Pharmacal Company, *Three P Products Corporation*;

- (c) Amoxil: Beechum Laboratories;
 - (d) Larotid: Roche Laboratories;
 - (e) Polymox: Bristol Laboratories;
 - (f) Robamox: A. H. Robins Company;
 - (g) Sumox: Reid-Provident;
 - (h) Theda-Mox: Theda Corporation;
 - (i) Trimox: E. R. Squibb and Sons;
 - (j) Van-Mox: Vanguard Laboratories.

Section 3. Amoxicillin Trihydrate Pediatric Drops Pharmaceutical Products. The following amoxicillin trihydrate pediatric drops pharmaceutical products are

determined to be therapeutically equivalent, in each respective dosage: Amoxicillin Trihydrate 50/mg/ml Pediatric Drops:

- (1) Amoxil: Beechum Laboratories;
- (2) Larotid: Roche Laboratories.
- [(3) Polymox: Bristol Laboratories.]

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

902 KAR 1:020. Ampicillin.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Ampicillin pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Ampicillin Capsule Pharmaceutical Products. The following Ampicillin capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Ampicillin 250 mg. Capsule Form:

- (a) Alpen: Lederle Laboratories;
 - (b) Amcill: Parke-Davis and Company;
 - (c) Amperil: Geneva Drugs, Ltd.;

(d) Ampicillin: Basic Drugs, Inc., Bell Pharmacal, Bocan Drug Company, Cooper Drug Company, Generics Drug Corporation, Geneva Generics, H. L. Moore Drug Exchange, International Laboratories, Inc., Interstate Drug Exchange, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Parmecon, Inc., Rexall Drug Company, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products, Trust Pharmaceuticals, Tutag Pharmaceuticals, United Research Laboratories, Walgreens;

(e) Ampicillin Trihydrate: *ICN Pharmaceuticals, Interstate Drug Exchange*, Murray Drug Corporation, Paramount Surgical Supply Corporation, Purepac Pharmaceutical Company, Rondex Laboratories, *Spencer-Mead, Inc., Steri-Med, Inc., Zenith Laboratories*;

- (f) Omnipen: Wyeth Laboratories;
 - (g) Pen A: Pfizer Laboratories;
 - (h) Penbritin: Ayerst Laboratories;

- (i) Pensyn: Upjohn Company;
- (j) Polycillin: Bristol Laboratories;
- (k) Principen: E. R. Squibb and Sons;
- (l) QIDamp: Mallinckrodt Chemical Works;
- (m) SK-Ampicillin: Smith, Kline and French Laboratories;
- (n) Supen: Reid-Provident Laboratories;
- (o) Totacillin: Beecham-Massengill Pharmaceuticals;
- (p) Vampen: Vangard Laboratories.
- (2) Ampicillin 500 mg. Capsule Form:
 - (a) Alpen: Lederle Laboratories;
 - (b) Amcill: Parke-Davis and Company;
 - (c) Amperil: Geneva Drugs, Ltd.;
 - (d) Ampicillin: Bell Pharmacal [Company], Bocan Drug Company, Cooper Drug Company, Generix Drug Company, Geneva Generics, H. L. Moore Drug Exchange, International Laboratories, Interstate Drug Exchange, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Pharnecon, Inc., Rexall Drug Company, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products, Trust Pharmaceuticals, Tutag Pharmaceuticals, United Research Laboratories, Walgreens;
 - (e) Ampicillin Trihydrate: *ICN Pharmaceuticals, Interstate Drug Exchange*, Murray Drug Corporation, Paramount Surgical Supply Corporation, Purepac Pharmaceuticals, Rondex Laboratories, *Spencer-Mead, Inc.*, *Steri-Med, Inc.*, Zenith Laboratories;
 - (f) Omnipen: Wyeth Laboratories;
 - (g) Pen A: Pfizer Laboratories;
 - (h) Penbritin: Ayerst Laboratories;
 - (i) Pensyn: Upjohn Company;
 - (j) Polycillin: Bristol Laboratories;
 - (k) Principen: E. R. Squibb and Sons;
 - (l) QIDamp: Mallinckrodt Chemical Works;
 - (m) SK-Ampicillin: Smith, Kline and French Laboratories;
 - (n) Supen: Reid-Provident Laboratories;
 - (o) Totacillin: Beecham-Massengill Pharmaceuticals;
 - (p) Vampen: Vangard Laboratories.
- (l) [(k)] SK-Ampicillin: Smith, Kline and French Laboratories;
- (m) [(l)] Supen: Reid-Provident Laboratories;
- (n) [(m)] Totacillin: Beecham-Massengill Pharmaceuticals;
- (o) [(n)] Vampen: Vangard Laboratories.
- (2) Ampicillin 250 mg/5 ml Oral Suspension Form:
 - (a) Alpen: Lederle Laboratories;
 - (b) Amcill: Parke-Davis and Company;
 - (c) Ampicillin: Bell Pharmacal [Company], Bocan Drug Company, Generix Drug Company, H. L. Moore Drug Exchange, International Laboratories, Inc., Interstate Drug Exchange, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Purepac Pharmaceuticals, Rexall Drug Company, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Theda Corporation, Three P Products, Trust Pharmaceuticals, Tutag Pharmaceuticals, United Research Laboratories, Walgreens;
 - (d) *Ampicillin Trihydrate: Steri-Med, Inc.*;
 - (e) [(d)] Omnipen: Wyeth Laboratories;
 - (f) [(e)] Pen A: Pfizer Laboratories;
 - (g) [(f)] Penbritin: Ayerst Laboratories;
 - (h) [(g)] Pensyn: Upjohn Company;
 - (i) [(h)] Polycillin: Bristol Laboratories;
 - (j) [(i)] Principen: E. R. Squibb and Sons;
 - (k) [(j)] QIDamp: Mallinckrodt Chemical Works;
 - (l) [(k)] SK-Ampicillin: Smith, Kline and French Laboratories;
 - (m) [(l)] Supen: Reid-Provident Laboratories;
 - (n) [(m)] Totacillin: Beecham-Massengill Pharmaceuticals;
 - (o) [(n)] Vampen: Vangard Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

Section 2. Ampicillin Oral Suspension Pharmaceutical Products. The following Ampicillin oral suspension pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Ampicillin 125 mg/5 ml Oral Suspension Form:
 - (a) Alpen: Lederle Laboratories;
 - (b) Amcill: Parke-Davis and Company;
 - (c) Ampicillin: Bell Pharmacal, Bocan Drug Company, Generix Drug Company, H. L. Moore Drug Exchange, International Laboratories, Inc., Interstate Drug Exchange, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Purepac Pharmaceuticals, Rexall Drug Company, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Theda Corporation, Three P. Products, Trust Pharmaceuticals, Tutag Pharmaceuticals, United Research Laboratories, Walgreens;
 - (d) *Ampicillin Trihydrate: Steri-Med, Inc.*;
 - (e) [(d)] Omnipen: Wyeth Laboratories;
 - (f) [(e)] Pen A: Pfizer Laboratories;
 - (g) [(f)] Penbritin: Ayerst Laboratories;
 - (h) [(g)] Pensyn: Upjohn Company;
 - (i) [(h)] Polycillin: Bristol Laboratories;
 - (j) [(i)] Principen: E. R. Squibb and Sons;
 - (k) [(j)] QIDamp: Mallinckrodt Chemical Works;

DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council (Proposed Amendment)

902 KAR 1:055. Meclizine hydrochloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Meclizine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Meclizine Hydrochloride Pharmaceutical Products. The following meclizine hydrochloride tablet

pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Meclizine Hydrochloride 12.5 mg. Tablet Form:
 - (a) *Antigo: Pharmecon, Inc.;*
 - (b) [(a)] Antivert: Roerig;
 - (c) [(b)] Meclizine Hydrochloride: *Camall Company, Cooper Drug Company, Geneva Generics, H and H Laboratories, H. L. Moore Drug Exchange, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Parmed Pharmaceuticals, Richie Pharmacal Company, Richlyn Laboratories, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, United Research Laboratories, Zenith Laboratories;*
 - (d) [(c)] V-Cline: Vanguard Laboratories.
- (2) Meclizine Hydrochloride 25 mg. Tablet Form:
 - (a) *Antigo: Pharmecon, Inc.;*
 - (b) [(a)] Antivert: Roerig;
 - (c) [(b)] Meclizine Hydrochloride: *Camall Company, Cooper Drug Company, Geneva Generics, H. L. Moore Drug Exchange, Murray Drug Corporation, Parmed Pharmaceuticals, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, United Research Laboratories, Wolins Pharmacal, Zenith Laboratories;*
 - (d) [(c)] V-Cline: Vanguard Laboratories.
- (3) Meclizine Hydrochloride 25 mg. Chewable Tablet Form:
 - (a) Antivert: Roerig;
 - (b) Bonine: Pfizer Laboratories;
 - (c) Meclizine Hydrochloride: *Camall Company, H. L. Moore Drug Exchange, Lederle Laboratories, McKesson Laboratories, Pharmecon, Inc., Rogers Wholesalers, Rugby Laboratories, Spencer-Mead, Inc., Three P Products Corporation, United Research Laboratories.*

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:060. Sodium pentobarbital.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Sodium Pentobarbital pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Sodium Pentobarbital Capsule Pharmaceutical Products. The following sodium pentobarbital capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Sodium Pentobarbital 100 mg. Capsule Form:

- (1) Nembutal Sodium: Abbott Laboratories;
- (2) Penbar: Vanguard Laboratories; [and]
- (3) Sodium Pentobarbital: *ICN Pharmaceuticals, Interstate Drug Exchange, Parke-Davis and Company, Purepac Pharmaceutical Co., Rondex Laboratories, Rugby Laboratories, Spencer-Mead, Inc., Wyeth Laboratories, Zenith Laboratories.*

KENNETH P. CRAWFORD, M.D., Chairperson

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APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:090. Trisulfapyrimidine.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Trisulfapyrimidine pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Trisulfapyrimidine Tablet Pharmaceutical Products. The following Trisulfapyrimidine tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Trisulfapyrimidine 500 mg. Tablet Form:

- (1) Neotrizine: Eli Lilly and Company;
- (2) Sulfase: Wyeth Laboratories, Inc.;
- (3) Terfonyl: E. R. Squibb and Sons, Inc.;
- (4) Tri-A-Tabs: First Texas Pharmaceuticals, Inc. [Incorporated];
- (5) Triple Sulfa # 2: H. L. Moore Drug Exchange, Pharmecon, Inc.; (Therapeutic equivalence is determined for Pharmecon, Inc., [Incorporated] only if manufactured by Zenith Laboratories.), Rugby Laboratories, Spencer-Mead, Inc., [Incorporated,] Vanguard Laboratories, Zenith Laboratories;
- (6) Triple Sulfa Tablets: Generix Drug Corporation;
- (7) Trisem: Beecham-Massengill Pharmaceuticals;
- (8) Trisulfapyrimidine: Geneva Drugs, Ltd., Lederle Laboratories, Murray Drug Corporation, Paramount Surgical Supply Corporation [Corp.], Richie Pharmacal Company; [Zenith Laboratories];
- (9) Trisulfazine: The Central Pharmacal Company.

Section 2. Trisulfapyrimidine Liquid Suspension Pharmaceutical Products. The following trisulfapyrimidine liquid suspension pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Trisulfapyrimidine 500 mg/5 ml Liquid Suspension Form:

- (1) Neotrizine: Eli Lilly and Company;
- (2) Sulfase: Wyeth Laboratories, Inc.;
- (3) Terfonyl: E. R. Squibb and Sons, Inc.;
- (4) Triple Sulfa Liquid: *Barre Drug Company*, Henry Schein, Inc., [National Pharmaceutical Company,] Richie Pharmacal Company;
- (5) Triple Sulfa Suspension: *Pharmecon*, Inc., (Therapeutic equivalence is determined for *Pharmecon*, Inc., [Incorporated] only if manufactured by Zenith Laboratories.), Vanguard Laboratories;
- (6) Trisem: Beecham-Massengill Pharmaceuticals;
- (7) Trisulfapyrimidine: *Lederle Laboratories*, Murray Drug Corporation.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

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DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
 (Proposed Amendment)

902 KAR 1:110. Diphenhydramine hydrochloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Diphenhydramine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Diphenhydramine Hydrochloride Capsule Pharmaceutical Products. The following diphenhydramine hydrochloride capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Diphenhydramine Hydrochloride 25 mg. Capsule Form:
 - (a) Benadryl: Parke-Davis and Company;
 - (b) Di-Amine: Vanguard Laboratories;
 - (c) Diphenhydramine Hydrochloride: Barr Laboratories, Bell Pharmacal Company, Bioline Laboratories, Columbia Medical Company, Cooper Drug Company, Division of Chromalloy Pharmaceuticals, Danbury Pharmacal, Generix Drug Corporation, Geneva Generics, ICN Pharmaceuticals, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Para-

mount Surgical Supply Corp., Parmed Pharmaceuticals, *Pharmecon*, Inc., Purepac Pharmaceuticals, *Richie Pharmacal Company*, Rogers Wholesalers, Rugby Laboratories, Smith, Kline and French Laboratories, Theda Corporation, Three P Products Corporation, Tutag Pharmaceuticals, Zenith Laboratories;

(d) Lensen: Geneva Drugs, Ltd.
 (2) Diphenhydramine Hydrochloride 50 mg. Capsule Form:

- (a) Benadryl: Parke-Davis and Company;
- (b) Di-Amine: Vanguard Laboratories;
- (c) Diphenhydramine Hydrochloride: Barr Laboratories, Bell Pharmacal, Bioline Laboratories, Columbia Medical Company, Cooper Drug Company, Division of Chromalloy Pharmaceuticals, Danbury Pharmacal, Generix Drug Corporation, Geneva Generics, ICN Laboratories, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Paramount Surgical Supply Corporation, Parmed Pharmaceuticals, *Pharmecon*, Inc., Philips-Roxanne Laboratories, Purepac Pharmaceuticals, *Richie Pharmacal Company*, Rogers Wholesalers, Rugby Laboratories, Smith, Kline and French Laboratories, Theda Corporation, Three P Products Corporation, Tutag Pharmaceuticals, Zenith Laboratories;
- (d) Lensen: Geneva Drugs, Ltd.

Section 2. Diphenhydramine Hydrochloride Elixir Pharmaceutical Products. The following Diphenhydramine Hydrochloride elixir pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Diphenhydramine Hydrochloride 12.5 mg/5 ml Elixir Form:

- (1) Benadryl Elixir: Parke-Davis and Company;
- (2) Di-Amine Elixir: Vanguard Laboratories;
- (3) Diphenhydramine Hydrochloride Elixir: Abbott Laboratories, Barre Drug Company, Cooper Drug Company, H. L. Moore Drug Exchange, Henry Schein, Inc., Lederle Laboratories, Murray Drug Corporation, Rugby Laboratories, Theda Corporation, Three P Products, Tutag Pharmaceuticals;
- (4) Hydramine Elixir: *Richie Pharmacal Company*.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
 (Proposed Amendment)

902 KAR 1:180. Tetracycline hydrochloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9), (10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a for-

mulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Tetracycline Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Tetracycline Hydrochloride Tablet Pharmaceutical Products. The following tetracycline hydrochloride tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Tetracycline Hydrochloride 250 mg. Tablet Form:
 - (a) Panmycin: Upjohn Company;
 - (b) Sumycin: E. R. Squibb and Sons;
 - (c) Tetrachel: Rachell Laboratories;
 - (d) Tetracycline Hydrochloride: H. L. Moore Drug Exchange, Mylan Pharmaceuticals, Rugby Laboratories.
- (2) Tetracycline Hydrochloride 500 mg. Tablet Form:
 - (a) Panmycin: Upjohn company;
 - (b) Sumycin: E. R. Squibb and Sons;
 - (c) Tetracycline Hydrochloride: Mylan Pharmaceuticals, Richie Pharmacal Company.

Section 2. Tetracycline Hydrochloride Capsule Pharmaceutical Products. The following Tetracycline Hydrochloride capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Tetracycline Hydrochloride 250 mg. Capsule Form:
 - (a) Achromycin V: Lederle Laboratories;
 - (b) Bristacycline: Bristol Laboratories;
 - (c) Centet: Central Pharmacal;
 - (d) Kesso-Tetra: McKesson Laboratories;
 - (e) Ranmycin: Upjohn Company;
 - (f) QID-Tet: Mallinckrodt Chemical;
 - (g) Retet-250: Reid-Provident;
 - (h) Robitet: A. H. Robins Company;
 - (i) SK-Tetracycline: Smith, Kline and French;
 - (j) Sumycin: E. R. Squibb and Sons;
 - (k) Tetrachel: Rachell Laboratories;
 - (l) Tetracycline Hydrochloride: Basic Drug Company, Bell Pharmacal Company, Bocan Drug Company, Columbia Medical, Cooper Drug Company, Generix Drug Company, Geneva Drugs, Ltd., Geneva Generics, Halsey Drug Company, H. L. Moore Drug Exchange, *ICN Pharmaceuticals*, International Laboratories, Interstate Drug Exchange, Murray Drug Corporation, Mylan Pharmaceuticals, Paramount Surgical Supply Corporation, Parmed Pharmaceuticals, Parke-Davis and Company, Pharnecon, Inc., Philips-Roxane Laboratories, Purepac Pharmaceuticals, Rexall Drug Company, Richie Pharmacal Company, *Richlyn Laboratories*, Rogers Wholesalers, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc., Theda Corporation, Three P Products, Thrift Drug Company, *Tutag Pharmaceuticals*, United Research Laboratories, Walgreens, Wyeth Laboratories, Zenith Laboratories;
 - (m) Tetracyn: Pfizer Laboratories;
 - (n) V-Tet: Vanguard Laboratories.
- (2) Tetracycline Hydrochloride 500 mg. Capsule Form:
 - (a) Achromycin V: Lederle Laboratories, Inc.;
 - (b) Bristacycline: Bristol Laboratories;
 - (c) Kesso-Tetra: McKesson Laboratories;
 - (d) Panmycin: Upjohn Company;
 - (e) QID-Tet: Mallinckrodt Chemical;
 - (f) Retet-500: Reid-Provident;

- (g) Robitet: A. H. Robins Company;
- (h) SK-Tetracycline: Smith, Kline and French;
- (i) Sumycin: E. R. Squibb and Sons;
- (j) Tetrachel: Rachelle Laboratories;
- (k) Tetracycline Hydrochloride: Basic Drug Company, Bell Pharmacal, Bocan Drug Company, Columbia Medical Company, Cooper Drug Company, Generix Drug Company, Geneva Drugs, Ltd., Geneva Generics, Halsey Drug Company, H. L. Moore Drug Exchange, International Laboratories, Interstate Drug Exchange, Murray Drug Corporation, Mylan Pharmaceuticals, Paramount Surgical Supply Corporation, Parke-Davis and Company, Parmed Pharmaceuticals, Pharnecon, Inc., Philips-Roxane Laboratories, Purepac Pharmaceuticals, Rexall Drugs, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc., Theda Corporation, Thrift Drug Company, *Tutag Pharmaceuticals*, United Research Laboratories, Walgreens, *Wyeth Laboratories*, Zenith Laboratories;
- (l) Tetracyn: Pfizer Laboratories;
- (m) V-Tet: Vanguard Laboratories.

Section 3. Tetracycline Hydrochloride Syrups and Pediatric Drops. The following Tetracycline Hydrochloride 125 mg/5 ml and 100 mg/ml pediatric drops are determined to be therapeutically equivalent, in each respective dosage:

- (1) Tetracycline Hydrochloride 125 mg/5 ml Syrups:
 - (a) Achromycin: Lederle Laboratories;
 - (b) Bioclyne: Barre Drug Company;
 - (c) Kesso-Tetra: McKesson Laboratories;
 - (d) Panmycin: Upjohn Company;
 - (e) Retet-S: Reid-Provident;
 - (f) Robitet: A. H. Robins Company;
 - (g) SK-Tetracycline: Smith, Kline and French;
 - (h) Sumycin: E. R. Squibb and Sons;
 - (i) Tetrachel: Rachelle Laboratories;
 - (j) Tetracycline Hydrochloride: Bell Pharmacal, Generix Drug Corporation, H. L. Moore Drug Exchange, Henry Schein, Inc., *Interstate Drug Exchange*, *Parmed Pharmaceuticals*, Purepac Pharmaceuticals, Rexall Drug Company, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc., *Three P Products Corporation*, United Research Laboratories;
 - (k) V-Tet: Vanguard Laboratories.
- (2) Tetracycline Hydrochloride 100 mg/ml Pediatric Drops:
 - (a) Achromycin V: Lederle Laboratories;
 - (b) Panmycin: Upjohn Company;
 - (c) Tetrachel: Rachelle Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary
RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:190. Meprobamate tablet.

RELATES TO: KRS 217.814 to 217.826, 217.990(9),
(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Meprobamate pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Meprobamate Tablet Pharmaceutical Products. The following Meprobamate tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Meprobamate 200 mg. Tablet Form:

(a) *Biobamate*: Bioline Laboratories;

(b) [(a)] Equanil: Wyeth Laboratories;

(c) [(b)] Meprobamate: Bell Pharmacal, *Cooper Drug Company*, *Danbury Pharmacal*, *Generix Drug Corporation*, *Geneva Generics*, *H. L. Moore Drug Exchange*, *ICN Pharmaceuticals*, *International Laboratories, Inc.*, *Interstate Drug Exchange*, *Lederle Laboratories*, *Murray Drug Corporation*, *Pace-Bond Drug Company*, *Paramount Surgical Supply Corporation*, *Philips-Roxane Laboratories*, *Purepac Pharmaceuticals*, *Richie Pharmacal*, *Rondex Laboratories*, *Rugby Laboratories*, *Spencer-Mead, Inc.*, *Steri-Med, Inc.*, *Theda Corporation*, *Trust Pharmaceuticals*, *United Research Laboratories*, *Zenith Laboratories*;

(d) [(c)] Miltown: Wallace Laboratories;

(e) [(d)] SK-Bamate: Smith, Kline and French Laboratories.

(2) Meprobamate 400 mg. Tablet Form:

(a) *Biobamate*: Bioline Laboratories;

(b) [(a)] Equanil: Wyeth Laboratories;

(c) [(b)] Meprobamate: Bell Pharmacal, *Bocan Drug Company*, *Cooper Drug Company*, *Generix Drug Corporation*, *H. L. Moore Drug Exchange*, *ICN Pharmaceuticals*, *International Laboratories, Inc.*, *Interstate Drug Exchange*, *Lederle Laboratories*, *Murray Drug Corporation*, *Pace-Bond Drug Company*, *Paramount Surgical Supply Corporation*, *Philips-Roxane Laboratories*, *Pharmecon, Inc.*, *Purepac Pharmaceuticals*, *Rexall Drug Company*, *Richie Pharmacal*, *Rondex Laboratories*, *Rugby Laboratories*, *Spencer-Mead, Inc.*, *Steri-Med, Inc.*, *Theda Corporation*, *Trust Pharmaceuticals*, *Walgreen Company*, *Zenith Laboratories*;

(d) [(c)] Miltown: Wallace Laboratories;

(e) [(d)] Meuramate: Halsey Drug Company;

(f) [(e)] Parcalm: Parmed Pharmaceuticals;

(g) [(f)] Protran: Vanguard Laboratories; (Therapeutic equivalence is determined for Vanguard Laboratories only if manufactured by Barr Laboratories.)

(h) [(g)] QID-Bamate: Mallinckrodt Chemical Corporation;

(i) [(h)] SK-Bamate: Smith, Kline and French Laboratories;

(j) [(i)] Tranmep: Reid-Provident Laboratories, Inc.
(3) *Meprobamate 600 mg. Tablet Form*: *Meprobamate: Geneva Generics*, *H. L. Moore Drug Exchange*, *Pace-Bond, Inc.*, *Paramount Surgical Supply Corporation*.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:260. Isoniazid tablet.

RELATES TO: KRS 217.814 to 217.826, 217.990(9),
(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Isoniazid pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Isoniazid Tablet Pharmaceutical Products. The following Isoniazid tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Isoniazid 100 mg. Tablet Form:

(a) Isoniazid: *Bioline Laboratories*, *Columbia Medical Company*, *Cooper Drug Company*, *Eli Lilly and Company*, *Generix Drug Sales, Inc.*, *H. L. Moore Drug Exchange*, *Halsey Drug Company*, *Parmed Pharmaceuticals*, *Pharmecon, Inc.*, *Richie Pharmacal*, *United Research Laboratories*, *Vanguard Laboratories*;

(b) Niconyl: Parke Davis and Company;

(c) Nydradid: E. R. Squibb and Sons.

(2) Isoniazid 300 mg. Tablet Form: *Isoniazid*: *Columbia Medical Company*, *Cooper Drug Company*, *Eli Lilly and Company*, *H. L. Moore Drug Exchange*, *Pharmecon, Inc.*, *Vanguard Laboratories*.

KENNETH P. CRAWFORD, M.D., Chairperson

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APPROVED:

PETER D. CONN, Secretary

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TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:280. Chloral hydrate [capsule and syrup].

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the Council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Chloral Hydrate pharmaceutical products by their generic and brand names that have been determined by the Council to be therapeutically equivalent.

Section 1. Chloral Hydrate Capsule Pharmaceutical Products. The following chloral hydrate capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Chloral Hydrate 500 mg. Capsule Form:

(1) Chloral Hydrate: Barre Drug Company, Bell Pharmacal Company, Columbia Medical Company, Cooper Drug Company, Geneva Generics, Generix Drug Company, H. L. Moore Drug Exchange, Lederle Laboratories, [Midway Medical Company,] Murray Drug Corporation, Pace-Bond Drug Company, Paramount Surgical Supply Corporation, Parke-Davis and Company, Parmed Pharmaceuticals, Pharnecon, Inc., Phillips-Roxane Laboratories, Purepac Pharmaceuticals, Rexall Drug Company, Richie Pharmacal Company, Rogers Wholesalers, Rugby Laboratories, Theda Corporation, Three P Products Corporation, *Trust Pharmaceuticals*, United Research Laboratories, Walgreens, Zenith Laboratories;

- (2) Kessodrate: McKesson Laboratories;
- (3) Noctec: E. R. Squibb and Sons;
- (4) Sk-Chloral Hydrate: Smith, Kline and French;
- (5) Somnos: Merck, Sharp and Dohme;
- (6) V-Clor: Vanguard Laboratories.

Section 2. Chloral Hydrate Syrup Pharmaceutical Products. The following chloral hydrate syrup pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage (Cautionary Note: Sugar content not determined): Chloral Hydrate Syrup 500 mg/5ml Form:

- (1) Chloral Hydrate Syrup: Abbott Laboratories, Barre Drug Company, Henry Schein, Inc., Lederle Laboratories, Murray Drug Corporation, Pharnecon, Inc., Richie Pharmacal, Spencer-Mead, Inc., Theda Corporation, *Three P Products Corporation*;
- (2) Kessodrate: McKesson Laboratories;
- (3) Noctec Syrup: E. R. Squibb and Sons;
- (4) V-Clor Syrup: Vanguard Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

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DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:300. Dioctyl sodium sulfosuccinate.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Dioctyl Sodium Sulfosuccinate pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Dioctyl Sodium Sulfosuccinate Capsule Pharmaceutical Products. The following dioctyl sodium sulfosuccinate capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Dioctyl Sodium Sulfosuccinate 50 mg. Capsule Form:

- (a) Colace: Mead Johnson Laboratories.;
- (b) Dioctyl Sodium Sulfosuccinate: Phillips-Roxane Laboratories;
- (c) D-S-S: Parke, Davis and Company.

(2) Dioctyl Sodium Sulfosuccinate 100 mg. Capsule Form:

- (a) Aqua-Lax: Parmed Pharmaceuticals;
- (b) Colace: Mead Johnson Laboratories;
- (c) Comfolax: Searle Laboratories;
- (d) Dioctyl Sodium Sulfosuccinate: Bell Pharmacal, Cooper Drug Company, Geneva Generics, Generix Drug Corporation, H. L. Moore Drug Exchange, Lederle Laboratories, *Murray Drug Corporation*, Pharnecon, Inc., Phillips-Roxane Laboratories, Purepac Pharmaceuticals, Richie Pharmacal Company, Rogers Wholesalers, Theda Corporation, Three P Products, *Westward, Inc.*;

- (e) D.S.S.: Parke, Davis and Company;
- (f) Dynoctol: Tutag Pharmaceuticals;
- (g) Pro-Sof: Vanguard Laboratories;
- (h) Provilax: Reid-Provident Laboratories, Inc.;
- (i) Regul-Aids: Columbia Medical Company.

(3) Dioctyl Sodium Sulfosuccinate 250 mg. Capsule Form:

- (a) Aqua-Lax: Parmed Pharmaceuticals;
- (b) Dioctyl Sodium Sulfosuccinate: Bell Pharmacal, Cooper Drug Company, Generix Drug Corporation, Geneva Generics, *Murray Drug Corporation*, Purepac Pharmaceuticals, *Richie Pharmacal Company*;
- (c) Pro Sof: Vanguard Laboratories.

Section 2. Dioctyl Sodium Sulfosuccinate Liquid Pharmaceutical Products. The following dioctyl sodium sulfosuccinate liquid pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Dioctyl Sodium Sulfosuccinate Liquid 20 mg/5 ml:

- (1) Diocto Syrup: Barre Drug Company;
- (2) Dioctyl Sodium Sulfosuccinate: Bay Laboratories, H. L. Moore Drug Exchange, Henry Schein, Inc., Lederle Laboratories, Mead-Johnson Laboratories, Inc., Murray Drug Corporation, Pharnecon, Inc., Richie Pharmacal

Company, Rugby Laboratories, Spencer-Mead, Inc.,
Three P Products, West-ward, Inc.;

(3) Pro Sof: Vanguard Laboratories;

(4) Regul-Aid: Columbia Medical Company.

KENNETH P. CRAWFORD, M.D., Chairperson
ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:326. Glutethimide [tablet and elixirs].

RELATES TO: KRS 217.814 to 217.826, 217.990(9),
(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Glutethimide pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Glutethimide Tablet Pharmaceutical Products. The following Glutethimide tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Glutethimide 500 mg. Tablet Form:

(1) Doriden: USV Pharmaceuticals;

(2) Glutethimide: *Bioline Laboratories*, Cooper Drug Company, Geneva Generics, *Generix Drug Corporation*, H. L. Moore Drug Exchange, [Midway Medical Company,] Murray Drug Corporation, Pace-Bond Drug Company, Paramount Surgical Supply Corporation, Vanguard Laboratories, Zenith Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson
ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary
RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council
(Proposed Amendment)

902 KAR 1:328. Chlordiazepoxide hydrochloride [capsule].

RELATES TO: KRS 217.814 to 217.826, 217.990(9),
(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Chlordiazepoxide Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Chlordiazepoxide Hydrochloride Capsule Pharmaceutical Products. The following chlordiazepoxide hydrochloride capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Chlordiazepoxide Hydrochloride 5 mg. Capsule Form:

(a) C.D.P.: Generix Drug Corporation;

(b) Chlordiazepoxide Hydrochloride: *Barr Laboratories*, Bell Pharmacal, *Bioline Laboratories*, Geneva Generics, Halsey Drug Company, H. L. Moore Drug Exchange, *Interstate Drug Exchange*, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Philips-Roxane Laboratories, *Pierrel America, Inc.*, *Purepac Pharmaceuticals*, Rachele Laboratories, Rexall Drug Company, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products, *Trust Pharmaceuticals*, United Research Laboratories, Vanguard Laboratories, Western Research Laboratories, *Zenith Laboratories*;

(c) Librium: Roche Laboratories;

(d) Murcil: Tutag Pharmaceuticals;

(e) SK-Lygen: Smith, Kline and French Laboratories.

(2) Chlordiazepoxide Hydrochloride 10 mg. Capsule Form:

(a) C.D.P.: Generix Drug Corporation;

(b) Chlordiazepoxide Hydrochloride: *Barr Laboratories*, Bell Pharmacal, *Bioline Laboratories*, Geneva Generics, Halsey Drug Company, H. L. Moore Drug Exchange, *Interstate Drug Exchange*, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Philips-Roxane Laboratories, *Pierrel America, Inc.*, *Purepac Pharmaceuticals*, Rexall Drug Company, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products, *Trust Pharmaceuticals*, United Research Laboratories, Vanguard Laboratories, Western Research Laboratories, *Zenith Laboratories*;

(c) Librium: Roche Laboratories;

(d) Murcil: Tutag Pharmaceuticals;

(e) SK-Lygen: Smith, Kline and French Laboratories;

(f) Tenax: Reid-Provident Laboratories.

(3) Chlordiazepoxide Hydrochloride 25 mg. Capsule Form:

(a) C.D.P.: Generix Drug Corporation;

(b) Chlordiazepoxide Hydrochloride: *Barr*

Laboratories, Bell Pharmacal, Bioline Laboratories, Generix Drug Corporation, Geneva Generics, Halsey Drug Company, H. L. Moore Drug Exchange, Interstate Drug Exchange, Lederle Laboratories, McKesson Laboratories, Murray Drug Corporation, Mylan Laboratories, Parmed Pharmaceuticals, Philips-Roxane Laboratories, Pierrel America, Inc., Purepac Pharmaceuticals, Rachelle Laboratories, Rexall Drug Company, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products, United Research Laboratories, Vanguard Laboratories, Western Research Laboratories, Zenith Laboratories;

- (c) Librium: Roche Laboratories;
- (d) Murcil: Tutag Pharmaceuticals;
- (e) SK-Lygen: Smith, Kline and French Laboratories;
- (f) Tenax: Reid-Provident Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 19, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES

Bureau for Health Services
(Proposed Amendment)

902 KAR 6:020. Personnel rules of local board.

RELATES TO: KRS 210.120, 210.370, 210.450

PURSUANT TO: KRS 210.450

NECESSITY AND FUNCTION: KRS 210.450 authorizes [gives] the Department for Human Resources [the authority] to set the standards and regulations for the Community Mental Health Center personnel files.

Section 1. Personnel Files. A personnel file shall be initiated and maintained at the center for each employee of the district board. The minimum contents of a personnel file shall be:

(1) Application for employment completed by employee. A center may design its own form or may use state personnel application form which will be supplied upon request.

(2) Professional credentials to reflect training and experience adequate for qualification for the position to which the *employee is employed* [applicant aspires]. *If an employee is employed in a position which requires a license, registration or certificate, a current copy of such shall be included.* [These should include any licensing certificate or other pertinent documents as applicable.]

(3) Advice of appointment or such suitable document or memorandum from the appropriate center official appointing said applicant to the position. This document shall contain conditions or terms of employment with signatures of employer and employee accepting said conditions.

(4) All forms used for participation in Kentucky's Employees' Retirement System or other retirement system.

(5) Personnel action report *form to reflect any* [of all] change in status of employee (salary change, transfer, promotion, leave, leave without pay, reclassification, change in position title, etc.).

(6) Personnel action *form* [report] reflecting termination of employment, e.g., resignation, dismissal, etc., shall appear in each terminated personnel file.

(7) *The employee position description shall include:* [There shall be for each position or class of positions (professional, administrative and clerical) a position description setting forth:]

- (a) The title of the position;
- (b) The duties of the position;
- (c) Requirements of training and experience necessary to qualify for the position; and
- (d) A brief description of additional skills or special knowledge desirable which the applicant should possess.

[(8) There shall be for each position or class of positions (professional, administrative and clerical) an established salary level.]

(8) [(9)] These documents shall be subject to state and federal audit.

Section 2. Personnel Policies. Each district board shall initiate and maintain a set of personnel policies for the governance of all center staff members. A copy of such policies shall be filed with the Department for Human Resources together with subsequent revisions as they [might] occur. Such personnel policies shall *indicate compliance with appropriate federal and state regulations and shall include, but not be limited to, the following areas of personnel administration:* [include the following areas of personnel administration:]

- (1) Leave policies,
 - (2) Salary policy; wage and price administration,
 - (3) Conditions of termination,
 - (4) Outside employment; outside practice for professionals,
 - (5) Staff development and continuing education provisions,
 - (6) Fringe benefits,
 - (7) Reimbursable expenses,
 - (8) Employee grievance procedures,
 - (9) Employee performance evaluations, and
 - (10) Method of salary increments.
- [(11) Indicate compliance with appropriate federal and state regulations.]

Section 3. Additional Statements. (1) Applicants for center positions already working for the Department for Human Resources may not accept additional employment without the express written consent of the Secretary of the Department for Human Resources. This permission must be secured by the applicant (employee) in writing. [District boards must have this written consent in hand before tendering offers of employment.]

(2) Copies of state statutes relevant to mental health-mental retardation boards may be obtained from the Secretary of the Department for Human Resources and kept on file by the mental health-mental retardation board.

(3) Copies of regulations promulgated by the secretary under provisions of the above statutes shall be obtained from the Secretary of the Department for Human Resources and kept on file by the mental health-mental retardation board.

(4) Time and attendance records: adequate records shall be maintained by each center certifying days or hours worked and leave taken for each and all employees of the center. These records will be subject to state and federal audit.

(5) An organization's chart(s) shall be filed by each [district center] indicating administrative authority and clinical authority.

(6) Any employee shall be provided access to any reasonable document pertaining to the corporation or to his rights as an employee.

(7) The center shall comply with all *applicable* current federal and state regulations pertaining thereto [for example, Fair Labor Standards Act, Occupational Safety and Health Act, Workmen's Compensation, etc., except where state regulations supersede these].

[(8) Centers shall take into consideration current Health, Education and Welfare regulations relevant to personnel in community mental health centers.]

Section 4. Classification and Compensation. (1) *Each board shall prepare and maintain a classification plan for all positions. The plan shall be based on the duties and responsibilities assigned to each classification and shall include for each classification an appropriate title, description of duties and responsibilities, required education and experience and other qualifications.*

(2) *Each board shall adopt a compensation plan. The compensation plan shall provide for salary ranges for the various classifications and each classification shall be assigned a salary range in the compensation plan commensurate with the duties and responsibilities of the classification within budgetary limitations. All positions in each specific classification shall be assigned the same salary range in the compensation plan.*

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: July 2, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OF REQUEST FOR HEARING
TO: Secretary, Department for Human Resources, 275
East Main Street, Frankfort, Kentucky 40621,

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

902 KAR 6:030. Board structure and operation;
eligibility for state grants.

RELATES TO: KRS 210.400, 210.410, 210.450

PURSUANT TO: KRS 13.082, 210.450

NECESSITY AND FUNCTION: KRS 210.450 empowers the Secretary of the Department for Human Resources to promulgate rules and regulations governing eligibility of community mental health boards to receive state *funds* [grants]. Consistent with this authority, this regulation establishes the minimum eligibility requirements for receipt of state *funds* [grants] for community mental health programs.

Section 1. Application by recognized mental health-mental retardation boards. Definitions. As used herein, unless the context otherwise requires, the term:

(1) "Board of directors" or "board" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which group is designated *except as provided in Section 8.*

(2) "Director" means a member of the "board of directors."

(3) "Articles of incorporation" means the original or restated articles of incorporation of articles of consolidation and all amendments thereto, including articles of merger.

(4) "Bylaws" means the code or codes or rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

Section 2. Requirements for Recognition. A non-profit corporation requesting recognition from the Secretary of the Department for Human Resources as a district mental health-mental retardation board for the purpose of obtaining state [grant] funds, shall annually submit to the secretary, not later than the first day of April of the year preceding the fiscal year for which applicant requests recognition and application approved by its board of directors, which contains documentation and agreements satisfying the following requirements:

(1) Articles of incorporation as a non-profit corporation in compliance with Kentucky statutes.

(2) Written statement by the applicant that it *shall* [will] provide *those* [at least four (4) of the] service prerequisites set forth in KRS 210.410, and that such services *shall* [will] be *available to* [provided in] each of the geographic catchment areas, as established by the Department for Human Resources plan, in which the board proposed to provide service.

(3) Written agreements to operate in accordance with the regulations of the Department for Human Resources and regulations and statutes of the Commonwealth of Kentucky affecting operations, and to comply with Title VI of the 1964 Federal Civil Rights Law.

(4) Articles of Incorporation or corporate bylaws which meet the requirements of this regulation as set forth in this subsection:

(a) A provision establishing the location of a principal office of business of the organization.

(b) A provision declaring the purposes of organization to include concern for mental illness, mental health, mental retardation, alcoholism, and drug abuse addiction, and the carrying out of all functions set forth in KRS 210.400 (including that the board will act as administrator of the program).

(c) A provision setting forth the organization, duties and powers of the board of directors.

(5) In the interim period between annual requests for recognition from the Department for Human Resources, the board shall submit, within ten (10) days after adoption, any and all additions, deletions and changes in their Articles of Incorporation or corporate bylaws.

(6) Following the election of any officer(s) of the board and/or selection of any new directors the board shall submit to the Secretary of the Department for Human Resources within ten (10) days the names and addresses of the above, whenever it shall occur.

(7) In the event that an applicant is not in conformity with these requirements, the applicant may be authorized to receive state *funds* [grants] for a probationary period upon assurance of the applicant that it will bring its operations, bylaws and Articles of Incorporation into compliance with the required standards. The duration of such probationary period will be set by the Secretary of the Department for Human Resources.

Section 3. Membership Criteria for the Board. [A provision establishing membership criteria for the board of directors of at least the following:]

(1) All non-profit mental health-mental retardation boards shall be appointed in accordance with KRS 210.380 and applicable federal regulations.

[(1) Membership on regional mental health-mental retardation boards shall be representative of the elected chief executives of county government. This requirement shall be implemented by each board soliciting the chief executive of each county that comprises the region for an appointment to the membership of the board.]

(a) The provisions of paragraph (b) of this subsection notwithstanding, an individual board member may represent more than one (1) category provided, however, in no event shall he represent more than three (3) categories as specified in KRS 210.380 for the purpose of certifying board composition.

[(a) In the event that insufficient positions on a board are vacant on the effective date of this regulation, which would preclude the board's membership from being representative of elected chief executives of county government, the board, as vacancies do occur, shall solicit the chief executives for board membership.]

(b) A board shall be deemed representative of each of the categories, organizations or associations specified in KRS 210.380 provided there is on the board one representative of each category.

[(b) No board membership shall be composed of more than ten (10) elected chief executives of county government.]

(2) The board of a non-profit corporation, serving as administrator and not established by a combination of either cities or counties shall number not less than fifteen (15) nor more than forty (40) members (except in the case of multiple catchment area boards). The members shall have demonstrated an interest in mental health, mental illness, mental retardation, developmental disabilities, alcoholism or drug abuse addiction. At least one-fourth (¼) of such members shall have indicated their primary interest as mental retardation or developmental disabilities.

[(2) At least one (1) director per 5,000 residents in the catchment areas, except that the board shall number not less than fifteen (15) nor more than forty (40) members (except in the case of multiple catchment area boards; see subsection (4) below) who shall have demonstrated interest in mental health, mental illness, mental retardation, developmental disabilities, alcoholism and/drug abuse addiction. At least one-fourth (¼) of such members shall have indicated their primary interest as mental retardation and/or developmental disabilities.]

(3) All directors shall reside within the geographic catchment areas; directors shall be so selected as to provide at least one (1) representative from each county encompassed.

(4) When applicant proposes to serve a district containing multiple catchment or grant areas, the membership requirement of the board of directors [set forth above] shall be [modified] as follows:

(a) Not less than fifteen (15) [twenty-five (25)] nor more than forty (40) members.

(b) All directors selected shall reside within and represent the respective geographic catchment areas and the board of directors shall contain at least one (1) director from each county in each catchment area.

(5) One-fourth (¼) of the membership of the board of directors shall be elected annually. A maximum of two (2) consecutive four (4) year terms may be served by any director.

(6) No member of the immediate family of a board member shall be employed in a service funded by the board. Immediate family shall be construed to include a spouse, sons, daughters, mother, father, brothers, sisters, and grandparents. This provision shall not apply retroactively to the effective date of this regulation, nor to any person so employed prior to the board member's appointment.

Section 4. Conduct of the Board. [A provision establishing procedures governing the conduct of] The board of directors [which] shall: [include the following requirements:]

(1) Schedule [of] meetings of the board of directors. The board shall meet at least twelve (12) times per year except that the regional board of a multiple catchment area shall meet at least six (6) times per year. An annual meeting date for election of officers shall be specified in the minutes of the board. [The board shall meet at least twelve (12) times per year. An annual meeting date for election of officers shall be specified.]

(2) Establish quorum requirements for meeting of the board of directors.

(3) Establish restrictions on compensation of members of the board of directors including the prohibition against any member of board contracting with board to perform personal services.

(4) Establish procedures for removal of directors who are excessively absent from board meetings.

(5) Establish procedures for filling of vacancies at times other than annual meetings including the role of the nominating committee [shall be specified].

Section 5. Election and Functioning of Officers. [A provision regarding] The selection and functioning of officers of the applicant shall include the following:

(1) Designation of the officers of the applicant.

(2) Specifications of the duties and terms of officers.

(3) Specifications of the method by which officers shall be selected, including a requirement that all officers be elected from the membership of the board of directors.

(4) Designation of dates for the assumption of duties by officers.

(5) A restriction prohibiting any board member participating in any matter in which he has a potential conflict of interest or serving as chairman of more than one (1) of the standing committees. [Officers from also serving as chairman of the standing committees of the applicant's board of directors; except that the president shall be permitted to serve as chairman of the executive committee.]

Section 6. Standing Committees. *The board shall establish [A provision establishing] the following standing committees (as a minimum), [and] including a description of their functions and responsibilities, meeting schedules, and the procedures for designating their members:*

(1) Executive committee: Composed of at least twenty-five (25) percent of the membership of the board of directors and shall include all officers and chairmen of standing committees of the board.

(2) Finance committee: Composed of at least the treasurer and three (3) other members of the board.

(3) Personnel committees: Composed of at least twenty (20) percent of the membership of the board. When a board operates multiple catchment area programs, the personnel committee membership shall reflect as equal a representation of the catchment areas as is mathematically possible.

(4) *Staff development and training committee: Composed of not less than three (3) nor more than eleven (11) members of the board. The committee shall assure implementation and development of individual and team in-service training in mental health, mental retardation, alcoholism and drug addiction-related disciplinary skills.*

(5) *At the discretion of the board, the personnel committee and the staff development and training committee may be combined into a single committee.*

(6) [(4)] *Nominating committee: Composed of not less than six (6) persons. The function and responsibility of this committee shall include ensuring public advertisement of the eligibility criteria and procedures for nomination for election to the board and the setting of time schedules for such public announcement. The committee shall present nominations for one-fourth (1/4) membership of the board (annually or biennially) and shall present nominations to fill vacancies as they occur. In addition to general nominating procedures and public advertising the nominating committee shall establish procedures providing for nominations by petition. Any person not placed in nomination by the committee but who is qualified, may have his name placed on the list of nominees by presenting a petition for nomination signed by twenty-five (25) registered voters of the region. Applicants shall be allowed sufficient time to prepare and execute such petitions prior to the date of the election and after initial public advertising has been placed. The board must vote on a petitioning nominee as well as on the slate placed nomination by the committee.*

[(5)] *Staff development and training committee: Composed of not less than two (2) nor more than twelve (12) members, not more than one-half (1/2) of whom shall be professionals in the disciplines of psychiatry, psychology, special education, nursing, social work, and other staff disciplines. This committee shall relate to applicant's staff to assure implementation and development of individual and team in-service training in mental health, mental retardation, alcoholism and drug addiction-related disciplinary skills.]*

[(6)] *Program planning and evaluation committee: Composed of the chairmen of the catchment area boards (when multiple catchment areas are served) and at least four (4) other members of the board of directors. This committee shall function as the overall committee concerned with the efficacy of the existing program and the future service needs of the regional programs in mental health, mental retardation, alcoholism and drug abuse education and treatment, as well as the relationship of the regional program to the regional community.]*

(7) *Program planning and evaluation committee: In single catchment areas, the composition shall be at least four (4) members of the board. In multiple catchment areas, the composition shall be the chairmen of the catchment area boards and at least four (4) other members of the board of directors. The committee shall function as the overall committee concerned with the efficacy of the existing program and the future service needs of the regional programs in mental health, mental retardation, alcoholism and drug abuse education and treatment, and the relationship of the regional program to the regional community.*

Section 7. Special and Ad Hoc Committees: From time to time the board may establish such special or ad hoc committees as it deems advisable and shall specify the charge and function of such committees.

[Section 7. Special Committees. A provision establishing the following special committees and including

a description of their functions and responsibilities, meeting schedules and procedures for designation of their members.]

[(1)] *Affiliate liaison committee: When an affiliate agency (or agencies) of the district board operate(s) all or a part of a board of its own, advisory or otherwise, there shall be appointed a special committee called the "Affiliate Liaison Committee" which shall include membership from the district board and from the affiliated agency (agencies). The affiliate liaison committee may serve for more than one (1) affiliate agency. The function of the affiliate liaison committee shall be to provide contact, knowledge, and concern for the merit and progress of the specific program element(s) provided by the affiliate(s); the affiliate liaison committee will report regularly to the board of directors on matters of program need, referral procedures, personnel funding, etc. The appointment of members to the affiliate liaison committee shall be from the district board of directors and from each affiliate agency board, in such numbers and for such terms of membership as shall be determined by the district board of directors.]*

[(2)] *Sheltered workshop special committee: Those district boards directly operating sheltered workshop(s) shall designate a special committee of the board of directors called the "Sheltered Workshop Special Committee." The function of this committee shall be to provide contact, knowledge, and concern for the progress of this specific element of program, and to report regularly to the board on matters of program need, personnel, funding, etc. The appointment of members to the sheltered workshop special committee shall be from the district board in such numbers and for terms of membership as shall be determined by the district board of directors.]*

[(3)] *Professional advisory council: The regional board of directors shall provide for the establishment of a professional advisory council composed of the center's professional staff and representatives of professional groups included in, but not limited to, the fields of health, welfare, and education. The chairman of the professional advisory council, or his designee, shall be invited to be an ex-officio (non-voting) member of all meetings of standing committees of the board of directors. The council will have a two-fold purpose. First, it will provide for the district board of directors a specific background of professional skills and knowledge which can be utilized by the board in arriving at decisions concerning programs, expenditures, and policies relating to professional practices. Secondly, it will afford professionals and their organizations and agencies an opportunity to become knowledgeable about district programs.]*

[(4)] *Governmental advisory council: The regional board shall provide for the establishment of a governmental advisory council composed of county judges or their designees not otherwise represented on the board and executives of municipal governments. This council will provide the regional board with background, opinions and advice concerning the local governments of the regions. This will also enable the local government agencies to become knowledgeable about the district board programs. The chairman of the governmental advisory council (or his designee) shall be invited to be an ex-officio (non-voting member of all meetings or standing committees of the regional board of directors).]*

Section 8. Catchment Area Boards. When more than one (1) catchment area program is to be administered by a single board of directors, this board may provide for one (1) catchment area board for each geographic catchment

area served. *The catchment area board shall meet at least twelve (12) times per year.* Upon provision for catchment area boards, the single board shall designate itself as the regional mental health-mental retardation board and shall appoint an equal number of its members to each separate catchment area board. No more than twenty-five (25) percent of regional board members appointed to a catchment area board may reside outside of the catchment area. Each catchment area board shall, otherwise, be representative of the individuals who reside in the catchment area, and at least fifty (50) percent of the catchment area board members shall not be providers of health care. The catchment area board shall be responsible for establishing general policies for the catchment area program, approving the budget and expenditure of funds and approving the selection of the center director. The regional mental health-mental retardation board shall [in a superordinate position,] be responsible for reviewing and approving the annual plan and budget prepared by a catchment area board and shall be responsible for all personnel policies, contractual obligations and insurance of the quality of direct patient services for the entire region. The catchment area board shall have such authority and responsibility as may be delegated to it by the [superordinate] board. Such authority and responsibility may include, but not necessarily be limited to, the following:

- (1) The general and specific functions and responsibilities of the catchment area board.
- (2) The process by which a representative catchment area board will be selected and maintained.
- (3) The process by which appropriate training will be made available to catchment area board members so as to enhance their effectiveness.
- (4) The organizational and administrative relationships between the catchment area board and the center director, the professional advisory council and any superordinate governing structure.
- (5) The procedures the catchment area board will utilize to review the center program, the quality of its services and the results of center evaluation data.
- (6) The procedures the catchment area board will utilize in reporting and disseminating to the public information on the center's programs and services.
- (7) The procedures the catchment area board will utilize to ensure that the governing body will have adequate administrative support and capacity to carry out its functions.

Section 9. State and Federal Funding. The Department for Human Resources may provide state and federal funding to mental health-mental retardation boards by contract.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 18, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Department for Human Resources, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 210.420, 210.440

PURSUANT TO: KRS 13.082, 210.420, 210.450

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

Section 1. Population. (1) Population figures used by the secretary to determine the formula allocations come from the U.S. Department of Commerce, Bureau of the Census, Current Population Reports. The publication is Federal-State Cooperative Program for Population Estimates, Series P-26, No. 76-17, July, 1977. *The estimates available from the most recent addition of this publication will be used for formula allocations in future years.*

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

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

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

(3) "Local tax" means any funds coming from a mental health-mental retardation tax or an appropriation from a county fiscal court or municipal government, including in-kind contributions, valued according to the assessed fair market value.

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

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

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

Section 3. Per Capita Allocations. Of the general funds allocated to the department for the operation of regional community mental health-mental retardation centers, seventy and two tenths (70.2) percent thereof shall be distributed based on a per capita allocation. The sum available to each region as it is incorporated shall be determined by dividing the total funds available by the total population of the Commonwealth, multiplied by the population of each region.

Section 4. Secretary's Discretionary Funds. The discretionary allocations available to the secretary to maintain essential services pursuant to KRS 210.410 shall be equal to ten (10) percent of the general funds allocated to the department for the operation of regional community mental health-mental retardation programs.

Section 5. Incentive Allocations. (1) Of the general funds allocated to the department for the operation of regional community mental health-mental retardation centers, nineteen and eight-tenths (19.8) percent thereof shall be allocated to the regions based on local matching funds, weighted to reflect the per capita wealth of the region. [These] Local matching fund figures shall be based upon the preceeding fiscal year's local collections as determined by the independent auditors of each board and certified by the department [estimated and revised quarterly causing a concomitant revision in the incentive allocation]. The per capita wealth adjustment alters the local tax and match other by adjusting the credit for matching funds from the state. The adjustment figure is computed by dividing the per capita wealth of the state by the per capita wealth of a region. Therefore, the true local tax and match other figures are figured by multiplying the per capita wealth adjustment by the local tax funds or the match other funds respectively.

(a) The state *shall* [will] match at a rate of thirty-five (35) cents for each dollar of local tax match after per capita adjustment.

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

(c) Therefore, the total of paragraphs (a) and (b) equals the total state funds earned by each center under their incentive section if there are sufficient funds appropriated and allocated to the incentive section of the grant.

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

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

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

(b) First quarter allocations of the incentive funds *shall* [will] be based on estimate of local matching funds

available. [These] Incentive funds *shall* [will] be adjusted based upon the receipt of actual collections for the previous fiscal year. The actual collections shall be a by-product of each annual audit report of each respective board [each quarter based on actual receipt of these local matching funds].

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

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 21, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Department for Human Resources, DHR
Building, 275 East Main Street, Frankfort, Kentucky
40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Health Services
Division for Consumer Health Protection
(Proposed Amendment)

902 KAR 50:030. Farm manufacturing requirements.

RELATES TO: KRS 217C.010 to 217C.990

PURSUANT TO: KRS 13.082, 194.050, 211.090(1)(c)

NECESSITY AND FUNCTION: The Department for Human Resources is directed by KRS Chapter 217C to regulate milk for manufacturing purposes. This regulation sets uniform standards for the production, transportation, handling, sampling, examination, grading and sale of manufacturing milk and milk products and for the inspection of dairy farms and provides for the issuance, revocation and reinstatement of producer permits.

Section 1. Manufacturing Milk Producer Permits and Inspections. (1) Prior to the issuance of any permit to a manufacturing milk producer, the department shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with this regulation, he shall not be issued a permit and violations shall be given him in writing and posted in a conspicuous place at the dairy farm. A reinspection will be made by the department after the time deemed necessary to correct the violation(s), but not before the lapse of three (3) days. Provided that, if the inspector determines during the inspection that corrections on the farm will require some capital investment, a reasonable extension of time shall be granted by the department. Upon reinspection, if the farm does not meet

the requirements for a permit, it shall not be issued and the producer's authorization to sell milk for human food from the farm shall be withheld by the department until such time as the farm qualifies for a permit. Whenever authorization to sell milk from a farm is withheld by the department, a request for reinspection shall be made by the producer in writing, including a statement that the violation(s) previously noted by the last inspection report have been corrected.

(2) All new producers must be inspected by the department prior to beginning shipment.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the department.

Section 2. Quality Requirements and Enforcement Procedures for Raw Milk. (1) **Basis.** The classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor) and quality control test for sediment content and bacterial estimate, abnormal milk and antibiotics. Examinations and tests to detect pesticides or other adulterants may be conducted by the department as deemed necessary.

(2) **Sight and odor.** The flavor and odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable feed and other off-flavors and off-odors that would adversely affect the finished product, and it shall not show an abnormal condition (including, but not limited to curdled, ropy, bloody or mastitic condition), as indicated by sight or odor.

(3) **Frequency of tests:**

(a) Bacterial estimate; monthly.

(b) Sediment content; monthly.

(c) Antibiotics; *four (4) times each six (6) months* [quarterly].

(d) Abnormal milk; *four (4) times each six (6) months* [annually with quarterly follow-up on all tests in excess of 1,500,000 somatic cell/ml].

(e) Adulteration (excessive water) and pesticides; as deemed necessary by the department.

(4) **Methods of testing.** Methods for determining quality test shall be those described in the current edition of *Standard Methods*, unless otherwise approved by the department, and shall be performed in an official laboratory or an officially designated laboratory.

(5) **Quality standards:**

(a) Bacterial [Estimate] classification:

Bacterial Estimate Classification	Direct Microscopic Clump Count, Standard Plate or Plate Loop	[Methylene Blue Test Decolorized in]	Resazurin Reduction to Munsell Color Standards 5 P 7/4	[Resazurin 1 Hour]
No. 1 Satisfactory	Not Over 500,000	[Not Less Than 4½ Hours]	Not Less Than 2½ Hours	[Purple]
No. 2 Satisfactory	Not Over 3,000,000	[Not Less Than 2½ Hours]	Not Less Than 1½ Hours	[Lavender]
No. 3 & 4 Unsatisfactory	Over 3,000,000	[Less Than 2½ Hours]	Less Than 1½ Hours	[Pink and Decolorized]

(b) **Sediment content classification:**

Sediment Content Classification	Milk in Cans (off-the-bottom method, 1 & 1/8 inch diameter disc)*	Milk in Farm Bulk Tanks (mixed sample 0.40 inch diameter disc)*
No. 1 Acceptable	Not to exceed 0.50 mg.	Not to exceed 0.50 mg. equivalent
No. 2 Acceptable	Not to exceed 1.50 mg.	Not to exceed 1.50 mg. equivalent
No. 3 Probational	Not to exceed 2.50 mg.	Not to exceed 2.50 mg. equivalent
No. 4 Reject	Over 2.50 mg	Over 2.50 mg. equivalent

* Sediment content based on comparison with applicable charts of Sediment Standards prepared by the U.S. Department of Agriculture. The four (4), two (2) or one (1) ounce sample and appropriate sediment standards may be used with the approval of the department.

(c) Antibiotic classification. Negative on individual producer test.

(d) Abnormal milk. Not in excess of 1,500,000 somatic cell count/ml.

(6) **Enforcement procedures:**

(a) **Sight and odor.** All bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk which is rejected for sight and odor by a hauler or milk grader shall be identified by coloring if in cans or tagged with a reject tag if in a bulk tank.

(b) **Bacterial estimates.** At least once each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested by the company. Producers shall be notified of the results of all tests performed. A producer shall be given a warning notice by the department or a company representative authorized in writing by the department, whenever two (2) of the last four (4) counts exceed bacterial standards specified herein. An additional sample shall be taken within *twenty-one (21)* [fourteen (14)] days of the sending of such notice, but not before the lapse of three (3) days. A producer shall remain under warning notice so long as two (2) of the last four (4) analyses exceed the standards. A producer's permit shall be suspended by the department whenever three (3) of the *last five (5)* [four (4)] samples exceed the standard. A producer may have his permit reinstated by the department upon written request from the producer whenever the cause of high bacterial count is corrected or is believed to have been corrected as shown by farm inspection and the first shipment of milk meeting the satisfactory bacterial standards. Such producer, upon reinstatement, shall have the status of a new producer. Upon reinstatement, the producer shall have no milk on hand which was produced during the period when his permit was suspended unless otherwise specified by the department.

(c) **Sediment:**

1. Bulk tank producers. If the sediment disc is classified as #1, #2, or #3, the producer's milk may be accepted. If the sediment disc is classified as #4, the milk shall be rejected and the producer shall be notified by the department or a company representative authorized by the department in writing. Provided, that if the shipment of milk is comm-

ingled with other milk in a transport tank prior to the sediment test being run, the producer's milk shall be resampled by the hauler or milk grader and retested by the company on the next pick-up. *However, if it is impractical to collect a sample on the next pick-up, no more milk shall be collected unless a sample for sediment analysis is collected.* If the retest of this sample is classified #4, the milk from this farm shall not be accepted thereafter until a satisfactory sediment test is obtained. If the milk is classified #3, the producer shall be notified and each additional milk pick-up shall be sampled and tested for a period not to exceed ten (10) days. If at the end of this ten (10) day period, the milk does not meet the #1 or #2 sediment test standard, it shall not be accepted thereafter until a satisfactory sediment test is obtained.

2. Can producers. If the sediment disc is classified as #1, #2 or #3, the producer's milk may be accepted. If the sediment disc is classified #4, the milk shall be rejected and the producer shall be notified by the department or a company representative authorized in writing by the department. In the case of milk classified as #3 or #4, all cans of that producer shall be tested and the producer shall be notified. Milk classified as #4 shall be rejected and an approved color added to the milk. This procedure for retesting successive shipments and accepting #3 milk and rejecting #4 milk may continue for a period not to exceed ten (10) days. If at the end of this time all the producer's milk does not meet the #1 or #2 sediment standards, it shall not be accepted thereafter until a satisfactory sediment is obtained.

(d) Antibiotics. *At least four (4) times each six (6) [Once each three (3)] months, each producer's milk shall be tested in a commingled sample (not exceeding fifteen (15) producers). Provided, that where a commingled sample is positive each producer represented in the sample shall be tested immediately and if the producer sample is positive, the milk shall be withheld from the market until a negative sample is obtained by the department or milk grader.*

(e) Abnormal milk. Each company shall have an approved [approval] abnormal milk screening program. Each producer shall be tested at least *four (4) times each six (6) months [once each year]* and those showing a somatic cell count in excess of 1,500,000 per ml. shall be notified in writing by the company and also given a list of the principal causes of excess somatic cell counts. Whenever practicable, the fieldmen shall visit those producers having somatic cell counts in excess of 1,500,00 per ml. to assist the producer in the correction of the problem. [Producers having a somatic cell count in excess of 1,500,000 per ml. shall be tested at least once each three (3) months or until the problem is corrected.] Whenever two (2) of the last four (4) somatic cell counts exceed 1,500,000 per ml, the producer shall be given a warning notice by the department or a company representative authorized in writing by the department. The producer shall remain under "warning notice" so long as two (2) of the last four (4) analyses are unsatisfactory. *After issuance of a notice, an additional sample shall be collected within twenty-one (21) days after issuance of notice to suspend permit, but in no case before the lapse of three (3) days.* A producer's permit shall be suspended by the department when three (3) of the last five (5) [four (4)] somatic cell counts exceed the standard. A producer may have his permit reinstated by the department upon written request from the producer whenever the cause of the high somatic cell count is corrected or is believed to have been corrected, and the first shipment of milk must meet the standards. Such produce, upon reinstatement, shall have the status of new producer.

(f) New producers. An examination for bacterial quality and sediment shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment for ten (10) days. Thereafter, the milk shall meet the requirements for frequency of test and producer compliance outlined in this section.

(g) Transfer producer:

1. All producers desiring to transfer from one (1) company to another shall request, in writing, his quality records for the past ninety (90) days, a copy of his last inspection sheet and permit if one has been issued. These records shall be evaluated and approved by the new company before the milk may be accepted. Each company shall issue the producer's transfer records, upon receipt of a written request, within twenty-four (24) hours of a normal working week using the forms approved by the department. A copy of the producer transfer records shall be forwarded to the department within five (5) days, by the company issuing the transfer records. The existing status of a transfer producer with regard to his farm sanitation and milk quality record shall be in effect with the new company. Producers whose permit has been suspended by the department are not eligible to transfer, until such time as their permit has been reinstated, *unless otherwise approved by the department.* The new buyer shall examine and classify each transfer producer's milk within ten (10) days after receipt of the producer's first shipment, and shall subsequently examine shipments in accordance with the provisions of this section.

2. The status of any Grade A producer whose permit has been suspended shall be cleared by the manufacturing milk company with the department before the milk can be accepted. If this milk is received for a period in excess of ten (10) days, such producer would be subject to all provisions of this regulation.

3. Grade A surplus milk shall be tested or screened by the manufacturing milk company upon arrival to assure themselves and the department that the milk is in compliance with the manufacturing milk standards.

Section 3. Farm Requirements for Milk for Manufacturing. (1) Health of herd.

(a) General health. All animals in the herd shall be maintained in a healthy condition.

(b) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half ($\frac{1}{2}$) of one (1) percent of the cattle have been found to be infected with tuberculosis as determined by the provisions of the "Uniform Methods and Rules" for establishing and maintaining tuberculosis-free herds of cattle, and modified accredited areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the herd is not located in such an area, it shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting these same requirements.

(c) Brucellosis test. The herd shall be located in an area within the state in which the percentage of cattle affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent in accordance with provisions of the "Uniform Methods and Rules" for establishing and maintaining certified brucellosis-free areas which are approved by the Animal Disease Eradication Division, Agricultural Research Service, U. S. Department of Agriculture. If the

area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. All additions to the herd shall be from herds meeting these same requirements.

(2) Milking procedures. Milking shall be done in an approved milking barn, stable, or parlor under relatively dust free conditions.

(a) The udders, flanks and teats of all milking cows shall be free of dirt and dust at time of milking as far as is practicable.

(b) Cows which [with] secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply, and is prohibited from sale under this regulation.

(c) Milking shall be carried out in an approved area.

(3) Milking barn or milking area. An approved milking area of adequate size and arrangement shall be provided to permit normal sanitary milking operations.

(a) Adequate light shall be properly distributed for both day and night milking.

(b) The milking area shall be well ventilated to minimize odors and prevent excessive condensation.

(c) Floors and gutters shall be kept clean, in good repair, graded to drain and be constructed of concrete or other impervious material.

(d) No swine, fowl or other animals shall be permitted in the milking area.

(e) Bedding shall be permitted in the milking area provided it is kept clean and relatively dust free. Manure shall be removed daily.

(f) If feed or other material is stored overhead, the milking area shall be sealed.

(g) Walls and ceilings shall be kept clean and in good repair. It is recommended that the milking area be completely enclosed. However, if clean, orderly, dust free milking operations can be conducted, the requirements of the walls may be waived.

(h) Feed shall be stored in such a manner as will not increase the dust content of the air or attract flies in the milking area.

(i) The milking area floor shall be kept clean, the manure removed daily, and stored to prevent access of cows to accumulation thereof.

(j) Outside surfaces of pipeline systems located in the milking area shall be kept clean.

(k) Milk stools, surcingles and antikickers shall be kept clean.

(4) Cowyard and cattle housing area. The cowyard and cattle housing area shall be constructed to be well drained and relatively free of organic waste.

(a) The cowyard shall be graded to drain as well as local conditions will permit.

(b) Cowyards which are muddy due to recent rains shall not be considered in violation of this section.

(c) The cattle housing area shall be free of excessive manure, soiled bedding, and waste material to prevent the soiling of cows.

(d) All manure removed from the milking area shall be stored so as to prevent access of cows to accumulation thereof and to minimize fly breeding. [during the summer months.]

(5) Milkhouse or milkroom. There shall be provided a conveniently located milkhouse or milkroom in which the cooling, handling and storing of milk, the washing, sanitizing and storing of equipment and utensils shall be done. Provided, that present milking areas with milkhouse, milkroom facilities combined in a non-separated operation given approval prior to the effective date of this regulation

will be acceptable for as long as the combined facility is operated in a sanitary manner.

(a) The floor shall be constructed of concrete and well drained.

(b) The walls and ceilings shall be constructed of relatively smooth, easily cleanable material. A light colored material is recommended.

(c) A drain through the floor or wall shall be provided. The drain shall not be located under a can cooler or bulk tank. The drain may discharge to the surface of the ground provided that waste from one (1) drain does not pool or cause an insect breeding problem.

(d) The milkhouse space shall be large enough to allow ample room as follows: Walkways and working areas shall be a minimum of thirty (30) [-six (36)] inches, and the bulk tank shall be kept a minimum of eighteen (18) inches from the walls on all sides except that tank with a self-contained unit may be closer to the wall. There shall be a minimum of six (6) inches between the lowest point of the bulk tank and the floor.

(e) Artificial light shall be provided with a minimum of 100 watts or more capacity. The light fixture shall not be located over the bulk tank. Flood lights are recommended near the ends but not over bulk tanks.

(f) Ventilation shall be sufficient to prevent odors and condensation.

(g) The milkhouse shall be kept clean and free from unnecessary articles [and toxic substances] and used for no other purposes except as may be permitted by the department. *Only insecticides and rodenticides approved for use in the milkhouse shall be stored in the milkhouse. Such insecticides and rodenticides shall be stored in such a manner as not to contaminate milk, milking equipment, sinks or cleaning supplies.*

(h) All outer openings shall be screened or protected against the entrance of insects. Outer doors shall open outward and be self-closing, *except doors between the milkroom and milking area may open either way or both ways and be self-closing.* Provided, that during the winter months when a screen door may be taken down, the milkhouse door may open inward if it is self-closing. On bulk tank installations, an approved hose port shall be properly constructed through the outer wall for milk pick-up operations.

(i) Running water under pressure shall be provided. Water heating facilities conveniently available to supply ample hot water to the milkhouse shall be provided for all bulk tank installations. An ample supply of water shall be available to the milkroom for all can shippers.

(j) A two (2) compartment wash and rinse vat shall be provided, except when milking equipment is cleaned-in-place, a single compartment wash vat will be acceptable.

(k) A concrete slab at least four (4) feet by four (4) [six (6)] feet shall be located outside the milkhouse under the hose port.

(l) The milkhouse shall be supplied with approved brushes, cleaners, and sanitizers and to properly clean and sanitize equipment and utensils.

(m) The can cooler may be stored in a suitable place away from the milkhouse in order to be easily accessible to the can hauler, provided approval is given by the department.

(6) Utensils and equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed and drained after each milking, stored in

suitable facilities and sanitized immediately before use. All new farm bulk tanks shall meet "3-A Sanitary Standards" for construction and shall be installed in accordance with regulations of the department. Single service articles shall be properly stored and shall not be reused.

(a) Utensils-construction. All multi-use containers, equipment and other utensils used in the handling, storage or transportation of milk or milk products shall be made of smooth, nonabsorbent, noncorrodible, nontoxic material, properly constructed and easily cleaned and be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for straining milk. When milk is strained, single-service strainer pads shall be used and shall not be reused. Single-service articles shall be properly stored, handled, dispensed and used in a manner that prevents contamination of milk or milk contact surfaces.

1. All multi-use containers, utensils, pails and pipes shall be constructed of smooth, heavy-gauge material, with a non readily corrodible surface which is nonabsorbent and nontoxic (the use of cadmium is expressly prohibited), and shall be of such construction as to be easily cleaned. All joints and seams shall be flush, with a solid, welded or soldered, burnished surface.

2. All containers, utensils, and other equipment shall be in good repair, and free of breaks and corroded places.

3. Strainers, if used, shall be so constructed as to utilize single-service strainer pads only, and such strainer pads are not reused. Woven-wire cloth strainers shall not be used.

4. All milking machines, including pails, heads, milk claws, milk tubing, and other milk contact parts shall be so constructed as to be easily cleaned.

5. New or replacement milk cans shall have an umbrella type cover.

6. All cleaned-in-place milk pipelines installed after the effective date of this regulation shall be so installed as to be rigid and self-draining. All connections shall provide a smooth, flush interior surface.

7. Pipelines may be accepted if joined with tygon or other material approved by the department, providing joints are hand cleaned if not sufficiently cleaned by CIP methods. Each joint of this type shall have a tight, rigid hanger next to the joint.

(b) Utensils-cleaning. All multi-use containers, equipment and other utensils used in handling, storage or [of] transportation of milk and milk products shall be thoroughly cleaned after each usage. *All multi-use containers, equipment and other utensils used shall be stored in the milkhouse unless otherwise approved by the department.*

(c) Utensils-bacterical treatment. All multi-use containers, equipment, and other utensils used in handling, storage or transportation of milk or milk products shall, before each usage, be subjected effectively to an approved bactericidal process. Steam, hot-water, or hot-air treatment shall not be accepted unless the equipment or containers are completely immersed or exposed for the required time, or longer, at the required temperature, or higher, throughout the period of exposure. Pouring hot or so-called boiling water from vessel to vessel shall not be acceptable. All milk containers, utensils, and other equipment, with the exception of milking machine pulsators and air hoses, shall be immersed for at least one (1) minute, in, or exposure for at least one (1) minute to a flow of, an approved chemical bactericide containing at least fifty (50) ppm chlorine or other approved sanitizer of proper strength after use. All milk contact surfaces shall be wetted by the bactericidal solutions, and piping so treated shall be

filled. Bactericidal sprays may be used for large equipment. Chemical solutions, once used, shall not be reused for bactericidal treatment on any subsequent day, but may be reused for other purposes.

(d) Utensils-storage. All containers and other utensils used in the handling, storage or transportation of milk or milk products, unless stored in bactericidal solutions, shall be stored so as to drain dry, and so as not to become contaminated before being used. All equipment and utensils shall be accessible for inspection. *All milking equipment containers and other utensils used shall be stored in the milkhouse unless otherwise approved by the department.*

1. All milk utensils and equipment shall be left in the bactericidal solution or stored in the milkhouse on racks, in such a manner as to protect them from the contamination, inverting such articles as can be inverted. Pipeline milkers which are cleaned-in-place may be stored in place. Such storage racks should be constructed of metal protected against rusting, with the lowest shelf not less than twenty-four (24) inches above the floor.

2. Strainer pads, parchment papers and gaskets shall be kept, until used, in the original package with covers closed, and stored in a suitable container or cabinet to protect them from contamination.

3. All equipment and utensils shall be accessible for inspection.

(e) Utensils-handling. After bactericidal treatment, containers and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come into contact. Sanitized product-contact surfaces, including farm cooling holding tank openings and outlets shall be protected against contact with unsanitized equipment and utensils, hands, clothing, splash, condensation and other sources of contamination. Any sanitized product-contact surfaces, which has been otherwise exposed to contamination shall be again cleaned and sanitized before being used.

Section 4. Cooling. (1) All milk shall be cooled within two (2) hours after milking to fifty (50) degrees Fahrenheit or lower and maintained at fifty (50) degrees Fahrenheit or lower until transferred to the transport truck unless delivered to the plant within two (2) hours after milking. Milk in bulk tanks shall be cooled to forty (40) degrees Fahrenheit or lower within [until] two (2) hours after milking and maintained at fifty (50) degrees Fahrenheit or lower until transferred to the transport truck.

(2) [Can] Cooling facilities shall be available to cool and store a full supply of milk between pick-up at fifty (50) degrees Fahrenheit or below. Can milk shall be collected at least every fourth day.

(3) Bulk tanks shall be designed and sized for everyday or every other day pick-up and be capable of cooling the milk to forty (40) degrees Fahrenheit after each milking and maintaining the milk to fifty (50) degrees Fahrenheit or below. In no case shall bulk tank milk be picked up after three (3) days.

(4) Milk shall not be transferred from one (1) producer to another or received by one (1) producer from another.

Section 5. Water supply. (1) Each producer shall have an adequate, properly located and properly protected water supply.

(2) The supply shall be adequate for the needs of the producer to properly clean his equipment, milkhouse and milking area.

(3) The supply shall, on physical inspection, be protected against surface water and in the case of cisterns have

a filter or roof wash barrel of approved type.

(4) In no case shall the supply be within 100 [fifty (50)] feet of any cesspool, privy or lateral field, *unless otherwise approved by the department.*

(5) *If the department is in doubt to the physical protection of the supply, a water sample may be collected and analyzed by the department. Samples not meeting the Department for Natural Resources and Environmental Protection's requirements shall be retested within thirty (30) days after notification is given to the producer in writing by the department. Whenever two (2) consecutive samples are found to be in excess of the coliform standard a notice of intent to suspend permit shall be issued by the department and a follow-up sample collected within thirty (30) days. In the event such sample is in excess of the standard, the producer shall be suspended until a negative sample is obtained.*

Section 6. Milkhouse, milking area and toilet waste. (1) Waste from the milkhouse, milking area and toilet shall be properly disposed of in a manner approved by the department.

(2) Milkhouse and milking area waste discharging to the ground surface shall not pool or cause fly breeding problems.

(3) Waste from flush type toilets shall be properly disposed of underground.

(4) Pit privies shall be properly constructed to prevent fly breeding.

Section 7. Personnel Health and Cleanliness. No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any dairy farm in any capacity which brings him into contact with the production, handling, storage and transportation of milk for manufacturing purposes, containers, equipment and utensils; and no milk producer shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form, or of being a carrier of such disease. Any milk producer upon whose dairy farm any communicable disease occurs or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such a disease in a communicable form, shall notify the regulatory agency immediately. All persons engaged in the milking operation shall wear clean outer garments. The milkers' hands shall be kept clean.

Section 8. Procedure When Infection is Suspected. When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk for manufacturing purposes, the department shall require any or all of the following measures:

(1) The immediate exclusion of that person from milk handling;

(2) The immediate exclusion of the milk supply concerned;

(3) Adequate medical and bacteriological examination of the person and body discharges.

Section 9. Prohibited Acts Relating to Manufacturing Milk Producers. The following acts and the causing thereof within the Commonwealth of Kentucky are hereby prohibited:

(1) No person shall produce, sell or offer for sale any manufacturing milk or milk products within this state without a permit as provided in this regulation.

(2) No person shall, within this state produce, provide, sell, offer or expose for sale or have in possession with intent to sell any manufacturing milk or milk product which is adulterated, misbranded or otherwise in violation of this regulation.

(3) No person shall prohibit entry of inspection, or prohibit the taking of a sample or prohibit the access to records or evidence, to duly authorized agents of the department.

(4) No person shall remove, destroy, alter, forge or falsely represent, without proper authority any tag, stamp, mark or label used by the department.

(5) No person shall remove or dispose of a detained or quarantined article without proper authority from the department.

Section 10. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) Individual producers permit may be suspended, whenever the department has reason to believe that a public health hazard exists; or whenever the producer has violated any of the requirements of this regulation; or whenever the producer has interfered with the department in the performance of its duties. Provided, that the department shall, in all cases except where the milk involved creates, or appears to create an imminent hazard to the public health; or in any case of a willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit, which notice shall specify with particularity the violation(s) in question and afford the permit holder reasonable opportunity to correct such violation(s). A suspension of a permit shall remain in effect until the violation(s) have been corrected to the satisfaction of the department.

(2) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend and in the latter case before suspension, the department shall within a reasonable time proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify or rescind the suspension or intention to suspend. Any permit suspended under the provisions of this section may be reinstated by submission of proper evidence satisfactory to the department that the violations have been corrected.

Section 11. Survey procedures. *Each manufacturing milk company's producers, producers' associations or other producer groups shall be surveyed by the department at least once every two (2) years. In the event such survey results has an unsatisfactory rating, such company, association or group shall be notified and shall be given a reasonable period of time, not to exceed six (6) months, to attain a satisfactory rating. [On and after July 1, 1975, each manufacturing milk company and a random number of their producers shall be surveyed by the department each year. In the event a company or its producers do not have a sanitation survey rating acceptable to the department, they shall be given a reasonable period of time by the department to improve their rating to an acceptable level. If upon resurvey, the company rating is not of an acceptable level, the department may notify the company to show cause why its permit should not be suspended.] If upon resurvey, the producer's rating is still not of an acceptable level, each producer shipping milk to such company shall be inspected by the department to determine individual compliance. Each producer found in violation may have their permit suspended in accordance with this*

regulation. No producer shall be allowed to transfer to another company during the reinspection period unless authorized by the department.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: July 3, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary, Department for Human Resources, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:002. Definitions.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the department, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth definitions for words and/or phrases used by the department in regulations pertaining to the provision of medical assistance.

Section 1. Definitions. Definitions of terms or phrases utilized in regulations relating to the Medical Assistance Program are as follows:

(1) "Actual acquisition cost," the amount paid by a provider for medical supplies minus any amounts refunded to, or deducted by, the provider on account of early or timely payment, purchasing in volume, or such other normal business practices, and which reduce the actual amount of capital investment required of the provider.

(2) "Charge," the amount of payment or reimbursement required by the provider for the medical procedure or service.

(a) "Prevailing charges," those charges which fall within the range of charges most frequently and most widely used in a medical area for particular medical procedures or services.

(b) "Reasonable charge," a charge for a health care service rendered that is consistent with efficiency, economy and quality of the care provided.

(c) "Usual and customary charge," the uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

(3) "C.F.R. (Code of Federal Regulations)," federal regulations which transfer to regulatory form the specific requirements of federal law.

(4) "Comparable services," generally speaking, medical services provided to the general public which are equivalent in nature, scope and delivery method to similar medical services provided to medical assistance program recipients.

(5) "Deductible," amounts payable by the recipient which fall within an aged beneficiary's deductible liability imposed by Title XVIII, Part B, Health Insurance for the Aged.

(6) "Co-Insurance," co-insurance amounts payable by the recipient under the provisions of Title XVIII, Part B, for covered medical services rendered under the Medicare program, and becoming due after satisfaction of the deductible liability.

(7) "Eligible individual," a person who has applied for medical assistance and has been found to meet all applicable conditions for eligibility pertaining to Kentucky's medical assistance program.

(8) "Excess income," that portion of the income of the individual or family group which exceeds amounts allowable to the individual or family group as disregarded income or income protected for basic maintenance, and which results in a determination of ineligibility.

(a) "Excess resources," that portion of the liquid assets or other resources of the individual or family group in excess of the amounts which may be retained for the individual or family group's security and personal use, not exempted from consideration or otherwise accounted for by special specified circumstances, and which result in a determination of ineligibility.

(b) "Spend-down," the process by which excess income is utilized for recognized medical expenses, and which, when *excess income* is depleted, results in a determination of eligibility if all other eligibility factors are met.

(9) "Flat fee schedule," a specified rate or grouping of rates at which reimbursement is made for a covered service or services, taking into account such factors as cost of providing the service, the necessity to ensure an adequate supply of providers for utilization by recipients, and the department's ability to pay.

(10) "Flat fee based on cost of service," a specified rate or grouping of rates at which reimbursement is made for a covered service or services, which is based more closely on the actual cost of providing the service or services with less weighting for other factors.

(11) "Initial visit," the first or more extensive visit made to a provider for the purpose of securing a covered medical service or services, and which may include the taking of medical history, diagnosis, and initial treatment.

(12) "Follow-up visits," visits to the provider subsequent to the initial visit, made for the purpose of securing added treatment for the medical problem, or for evaluation and adjustment of treatment.

(13) "Income protected," income of the individual or family group which the department recognizes as being needed for the basic maintenance of the individual or family group, and which the individual or family group retains for personal use.

(14) "Interim rates," the initial rates for reimbursement, based on the projected reasonable cost of providing the service and applying of accepted cost apportionment principles, most nearly approximating actual allowable costs, determined on a facility by facility basis; and usually, followed by reimbursement adjustments after provision of the service to account for differences between projected costs and actual costs.

(15) "I.C.F. (Intermediate Care Facility)," a facility licensed by the state to provide health care which is more than room and board but less than skilled nursing facility care.

(16) "Inpatient services," those services rendered for [by] any acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.

(17) "Outpatient services," services provided, in other than inpatient circumstances, for any condition detrimental to the individual recipient's physical or mental health[, which cannot be taken care of in the home situation].

(18) "Medicaid," the state program of medical assistance as administered by the department in compliance with Title XIX of the Social Security Act, and which is designed to provide for the medical care needs of Kentucky's medically indigent citizenry.

(19) "Medicare," the federal program under Title XVIII of the Social Security Act providing medical benefits to persons receiving Social Security Retirement payments or who have received Social Security benefits based on disability for a period of twenty-four (24) consecutive months.

(a) Part A, Hospital Insurance Benefits, provides hospital care, nursing home care and home health visits, subject to deductibles and co-insurance.

(b) Part B, Supplementary Medical Insurance, provides additional medical benefits to those persons eligible for Part A or any person sixty-five (65) years of age, but only if enrolled in the program and paying the monthly premium.

(20) "Medical assistance drug list (MADL)," a listing of drugs, covered under the medical assistance program, which includes the drug code, description, dosage strength, covered unit form, maximum dosage covered, and per unit price. *The official title of the list is "Kentucky Medical Assistance Program Outpatient Drug List."*

(21) "Medical service area," a designated geographical area within which medical services provision is compared for purposes of planning, reimbursement, etc.

(22) "Over-utilization," the use of program benefits in excess of that actually required for the treatment of the recipient's medical problem.

(23) "Participating," a provider of medical services taking part in the medical assistance program by agreeing to comply with program regulations and provide services to eligible recipients.

(24) "Provider," a person, organization, or institution certified to provide health or medical care services authorized under the medical assistance program.

(25) "Prior authorization; pre-authorization," the approval which must be given by the Division for Medical Assistance, or other specified authority, to a specified provider for specified services for a specified recipient [to a specified provider.] *in order for such service to be covered under Medicaid.*

(26) "Profile," an outline of the outstanding characteristics of a vendor practice in rendering health care services and recipient usage in receiving health care services.

(27) "Utilization review," the process of monitoring and controlling, to the extent possible, the quantity and quality of health care services delivered under the medical assistance program.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 13, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:009. Physicians' services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520[(3)] empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services: Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere.

Section 2. Limitations: (1) Coverage for initial and extensive visits shall be limited to two (2) visits per patient per physician per calendar year.

(2) Payment for outpatient psychiatric services rendered by other than board-eligible and board-certified psychiatrists shall be limited to four (4) such services per patient per physician per calendar year.

(3) *A patient placed in "lock-in" status due to over-utilization is to receive services only from his/her lock-in provider except in the case of emergency or referral.* [Pre-authorization by the Division for Medical Assistance shall be required for those patients who, due to over utilization, have been "locked-in" to one physician and one pharmacy, for payment for services in excess of four (4) prescriptions and four (4) physician visits per month.]

(4) Coverage for laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule.

(5) The cost of preparations used in injections shall not be considered a covered benefit.

(6) Telephone contacts with patients shall not be considered a covered benefit.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 13, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:026. Dental services.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520(3) empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to dental services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-Hospital Services. Payment for services is limited to those procedures listed in the department's Dental Benefit Schedule which are included in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Operative;
- (6) Crown and bridge;
- (7) Prosthetics;
- (8) Orthodontics;
- (9) Dentures; and
- (10) Other services.

Section 2. Limitations by Age Group: Payment for the following procedures shall be limited to recipients of medical assistance who are under age twenty-one (21):

- (1) Topical application of stannous fluoride, two (2) treatments per year excluding prophylaxis. *The dentist may, at his option, utilize dental sealant instead of the second topical application of stannous fluoride.*
- (2) Extirpation of pulp filling of one (1) rooted, two (2) rooted and three (3) rooted canal, excluding restoration.
- (3) Repair of fracture of transitional appliance or space maintainers.
- (4) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.
- (5) Fixed space maintainer, band type.
- (6) Removable space maintainer, acrylic.
- (7) Removable appliance for tooth guidance.
- (8) Fixed or cemented appliance for tooth guidance.
- (9) Transitional appliance, includes one (1) tooth on appliance, upper appliance.
- (10) Transitional appliance, includes one (1) tooth on appliance, lower appliance.
- (11) Each additional tooth on appliance.
- (12) Child dental prophylaxis, two (2) treatments per year.

Section 3. Calendar Year Restrictions: Procedures for which payment is limited on a calendar year basis are:

- (1) One (1) each for the following:
 - (a) Dental prophylaxis (for adults aged twenty-one (21) or over).
 - (b) Relining upper denture (flask cured only).
 - (c) Relining lower denture (flask cured only).

(d) Transitional appliance, includes one (1) tooth on appliance, upper appliance.

(e) Transitional appliance, includes one (1) tooth on appliance, lower appliance.

(2) Any two (2) from the following. This may be in the form of two (2) from any one (1) of the procedures, or one (1) each from any two (2) of the procedures:

- (a) Fixed space maintainer, band type.
- (b) Removable space maintainer, acrylic.
- (c) Removable appliance for tooth guidance.
- (d) Fixed or cemented appliance for tooth guidance.
- (3) Three (3) each for the following:
 - (a) Repair of fracture of transitional appliance or space maintainer.
 - (b) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance or space maintainer.
 - (c) Repairing broken denture with no teeth damaged.
 - (d) Repairing broken denture and replacing one (1) broken tooth.

Section 4. In-patient Hospital Services. (1) Payment shall be made for all hospital in-patient services rendered by oral surgeons.

(2) Payment for services, pre-authorized by the Division for Medical Assistance, rendered by general dentists for hospital in-patient care shall be limited to multiple extractions for patients termed to be "medically a high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 5. Dentures: Dentures, excluding replacement and interim dentures, are provided only when preauthorized by the department. Such preauthorization shall be granted only when submitted prior to extraction and full-mouth extraction of remaining teeth of the eligible recipient is the indicated method of dental treatment. *Recipients currently edentulous (without teeth at the time of the preauthorization request) are not eligible for this benefit. Coverage of dentures shall end at that point in each fiscal year when the funds appropriated for provision of dentures are exhausted, and shall resume at such time as funds appropriated for that purpose again become available.*

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 15, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Bureau for Social Insurance
(Proposed Amendment)

904 KAR 1:034. Early and periodic screening, diagnosis and treatment.

RELATES TO: KRS 205.520

PURSUANT TO: KRS 13.082, 194.050

NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520[(3)] empowers the department, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to the early and periodic screening, diagnosis and treatment service for which payment shall be made by the medical assistance program in behalf of both categorically needy and medically needy children under age twenty-one (21).

Section 1. Screening. Services rendered by a participating screening clinic or organized group of paramedical professionals directed toward the early detection of diseases and abnormalities shall include but not necessarily be limited to the following:

- (1) Medical history;
- (2) Assessment of physical growth;
- (3) Inspection for obvious physical defects;
- (4) Inspection of ears, nose, mouth, teeth and throat;
- (5) Visual screening, audiometric testing;
- (6) Screening for anemia, including sickle cell anemia;
- (7) Screening for urinary problems;

(8) Assessment of immunization status and updating immunization;

(9) Tuberculin skin test;

(10) Blood pressure on all patients over six (6) years of age and others when indicated;

(11) Venereal disease testing of post-puberty patients when indicated.

Section 2. Immunizations: Effective November 1, 1978 each screening provider shall be required to make available, at the time of screening, immunizations appropriate for age and health history of the recipient being screened.

Section 3. [2.] Diagnosis and Treatment: If, as a result of screening, referral for additional service is indicated, further diagnosis and medical treatment shall be provided for any service which is considered a covered service under the Medical Assistance Program.

Section 4. Periodicity: The following is the policy of the department with regard to periodicity:

(1) Definition: Periodicity means the frequency with which an individual may be screened or re-screened.

(2) Periodicity limitations: Each eligible recipient may be screened or re-screened once annually (each 365 days), and may not be screened or re-screened within the succeeding 335 days except on the basis of medical necessity.

GAIL S. HUECKER, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 13, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, DHR Building, 275
East Main Street, Frankfort, Kentucky 40621.

Proposed Regulations

COUNCIL ON HIGHER EDUCATION

13 KAR 2:010. Residency classification for participation in contract programs.

RELATES TO: KRS 164.530, 164.540, 164.020

PURSUANT TO: KRS 13.081, 164.540

NECESSITY AND FUNCTION: Under its authority as administrator of regional compacts and contract programs (KRS 164.530, 164.540) and pursuant to KRS 164.020(3), the Council on Higher Education as a matter of policy establishes guidelines and procedures for determining the resident status of individuals who wish to apply for entering spaces in veterinary medicine, optometry, public health, and other contracts that may be negotiated at a later date. Entering spaces made available to Kentucky by means of contracts are limited; hence, participation is restricted to bona fide residents of the Commonwealth. Residency classification for participation in contract programs is an independent process and should not be confused with the Council policy on Classification of Students for Fee Assessment Purposes at State-Supported Institutions of Higher Education.

Section 1. Definitions. Wherever used in this regulation: (1) The word "institution" shall mean a university, college, or community college which has agreed to maintain spaces in an instructional program for residents of the Commonwealth of Kentucky through the Council on Higher Education.

(2) The word "residence" or "reside" shall denote continuous presence within this state, provided that temporary absence for short periods of time shall not affect the establishment of a residence.

(3) The word "domicile" shall denote a person's true, fixed, and permanent home and place of habitation. It is the place where he intends to remain, and to which he expects to return when he leaves without intending to establish a new domicile elsewhere. Residence and domicile convey the same notion of permanence and principal home and are used interchangeably.

(4) The term "emancipated person" shall mean a person who has attained the age of eighteen (18) years, and whose parents:

(a) Have entirely surrendered the right to the care, custody, and earnings of such person;

(b) Who no longer are under any legal obligation to support or maintain such person;

(c) Who no longer, in fact, voluntarily contribute substantial financial assistance; and

(d) Whose parents' income is not taken into account by any private or governmental agency furnishing financial educational assistance to such person, including scholarships, loans, and other assistance.

If all of the aforesaid dependency tests are not met, said person shall be deemed an "unemancipated person."

(5) The word "parent" shall mean a person's father or mother, or the parent having custody, or if there is a legal guardian or legal custodian of an unemancipated person, then such guardian or legal custodian; provided that such guardianship or custodianship was not created primarily for the purpose of conferring the status of resident on such unemancipated person.

(6) Attendance at a college or colleges in this state shall be deemed "continuous" if the person claiming con-

tinuous attendance has been enrolled at a college(s) in this state as a full-time student, as such term is defined by the governing body of said college(s), for two (2) consecutive regular semesters since the beginning of the period for which continuous attendance is claimed. Such person need not attend summer sessions or other such intersession in order to render his attendance "continuous."

(7) The word "his" shall apply to the female as well as the male sex.

Section 2. Guidelines for Determination of Status. (1) The domicile of an unemancipated person is that of his parent.

(2) Upon moving to this state, an emancipated person who provides persuasive evidence of domicile may apply for resident classification for his unemancipated children; and provided that said person is not himself in this state primarily as a full-time student, his unemancipated children may at once be so classified.

(3) Individuals who declare emancipated status and who wish to apply for admission must document their claim, and such individuals may request a residency classification subject to the presumptions, type of evidence, and procedures cited therein.

(4) Any person who remains in this state after his parent(s), having theretofore been domiciled in this state, removes from this state, must claim emancipated status and may request a residency classification as provided in Section 3(3).

Section 3. Presumptions. Unless the contrary appears from clear and convincing evidence, it shall be presumed that: (1) Except as provided in Section 4(2), every emancipated person remaining in this state in a nonstudent or part-time student status for the thirty-six (36) months immediately preceding the date of application shall be presumed to be a resident and eligible to participate in contract programs. Persons having their domicile elsewhere than in this state shall be classified as nonresidents.

(2) No emancipated person shall be deemed to have gained residence while attending any educational institution (public or private) in this state as a full-time student, as such status is defined by the governing board of such institution, in the absence of a clear demonstration that he has established domicile in the state.

(3) The domicile of a married person shall be determined by the provisions of this policy independent of the residency of the spouse.

(4) A person does not gain or lose resident status for reason of his presence in any state or country while a member of the Armed Forces of the United States.

(5) In the event an unemancipated person's parents should have separate domiciles, his domicile shall be that of the parent having legal custody. In the event neither parent has legal custody, his domicile shall be that of parent furnishing him the greater financial assistance.

(6) Aliens lawfully admitted to the United States for permanent residence under a permanent visa may establish Kentucky residence in the same manner as any other nonresident. An alien who possesses a student visa cannot be classified as a resident.

Section 4. Types of Evidence to be Considered for Establishment of Domicile. If a person asserts that he has established domicile in Kentucky for a period of thirty-six

(36) months immediately preceding the date of application, he has the burden of proving he has done so. The following statements pertain to the kinds of evidence that will be considered in reviewing an assertion by a person claiming domicile in Kentucky:

(1) The following facts, although not conclusive, have probative value in support of a claim for resident classification: acceptance of an offer of permanent employment in this state; former residence in the state and the maintenance of significant connections therein while absent; or abandonment of a former domicile and establishing domicile in the state with attendance at an institution following and only an incident to such domicile.

(2) The following facts are not necessarily sufficient evidence of domicile: employment by an institution as a fellow, scholar, assistant, or in any position normally filled by students; a statement of intention to acquire a domicile in this state; voting or registration for voting; the lease of living quarters; payment of local and state taxes; Kentucky automobile registration; Kentucky operators license; continued presence in Kentucky during vacation periods; marriage to a Kentucky resident; or the owning of any real property.

Section 5. Residency Classification. (1) Each applicant for a contract space must complete an application for residency classification and forward the application with any accompanying materials to council staff for processing. After reviewing all materials, council staff will classify applicants and notify each applicant as to the disposition of his application. In the event of an unfavorable ruling, applicants may request further review by the executive director and/or the executive committee.

(2) Applications for residency classification will be distributed by council staff and by the respective advisors on each campus. Applications will be due in council offices one (1) month before the admissions application is due at the participating institution.

Section 6. Effective Date. This policy will be effective on September 1, 1980.

HARRY N. SNYDER, Executive Director

ADOPTED: April 11, 1979

RECEIVED BY LRC: June 18, 1979 at 11:30 a.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Roger L. Crittenden, Legal Counsel, Council on
Higher Education, West Frankfort Office Complex, U.S.
Highway 127 South, Frankfort, Kentucky 40601.

DEPARTMENT OF FINANCE
Division of Occupations and Professions
Board of Accountancy

201 KAR 1:061. Standards for certification.

RELATES TO: KRS 325.261, 325.265, 325.270,
325.280

PURSUANT TO: KRS 325.240

NECESSITY AND FUNCTION: To promulgate administrative regulations of the State Board of Accountancy of Kentucky. This regulation pertains to granting certificates.

Section 1. The board shall issue a certificate as Certified Public Accountant to any person who meets the qualifications set forth in KRS 325.261.

Section 2. (1) The educational requirements of KRS 325.261(3)(a) and (b), referring to a baccalaureate degree and/or masters degree "conferred by a college or university recognized by the board," is defined as a degree from an institution whose credits would be accorded full recognition upon transfer to the University of Kentucky or the University of Louisville. Evidence that the applicant possesses the educational qualifications prescribed herein shall consist of an official transcript or transcripts issued by the institution(s) granting the degree(s) claimed. Such transcripts shall be submitted with an application for examination, or an application for certificate by waiver of examination, and remain a part thereof.

(2) A major or concentration program in accounting is defined as a minimum of thirty (30) semester hours in accounting, business law, economics or finance, of which a minimum of twenty (20) semester hours must be in accounting subjects.

Section 3. (1) The experience, referred to in KRS 325.261(3)(a), (b), (f), (h) and (i) attained after receiving a baccalaureate degree shall be considered full-time provided such employment is on a full-time basis and is for a period of at least ninety (90) consecutive calendar days. A minimum of one (1) year of the experience requirement must be obtained through full-time work.

(2) The experience requirements, referred to in KRS 325.261(3)(a) may be partially fulfilled by employment on a part-time basis. Any experience attained after high school graduation and before awarding of a baccalaureate degree shall be considered part-time. In the case of part-time work experience, one-half (½) hour credit will be given for each hour worked, such credit being limited to twenty (20) hours per week. Each applicant who relies on experience gained through part-time work shall cause to be filed over the signature of the certified public accountant or public accountant supervising such experience, a schedule of hours of part-time work by week, not to exceed forty (40) hours per week.

(3) Each applicant who relies in whole or in part on the experience described in KRS 325.261(3)(a), (b), (h) and (i), shall cause an affidavit to be filed, in a form acceptable to the board, signed and sworn to by a certified public accountant of any state or a public accountant as defined in KRS 325.220, under whose supervision the applicant worked. Such affidavit must attest to the dates and nature of the applicant's employment and that the type, quality and duration of the experience through involvement in the attest function for third-party reliance was sufficient to demonstrate competence as a certified public accountant; and that such experience included examination of financial data and statements using standards promulgated by the American Institute of Certified Public Accountants.

(4) An applicant who relies in whole or in part on the experience of KRS 325.261(3)(f) must submit an affidavit, in a form approved by the board, signed by the Chief of the Examination (Audit) Section in the Internal Revenue Service. Such affidavit must attest that the applicant's experience included auditing financial statements and supporting materials of three (3) or more distinct lines of commercial or industrial businesses to determine the reliability and fairness of the financial reporting and compliance with generally accepted accounting principles and applicable laws and government regulations.

(5) An applicant who relies in whole or in part on "such other experience or employment as the board in its discretion may regard as substantially equivalent thereto," as contained in KRS 325.261, shall submit to the board, evidence, that such experience is of a nature as defined in subsections (1) to (4) of this section.

(6) "Supervision" referred to in this section, shall mean supervision according to standards promulgated by the American Institute of Certified Public Accountants and shall include direct and continuing instruction and review by a certified public accountant of any state or a public accountant as defined in KRS 325.220, working in a level above the applicant's employment level.

Section 4. After receiving the affidavit required by Section 3, the board may make such further investigation of the applicant's experience as it may deem necessary or desirable to determine whether the applicant has satisfied the experience requirements of KRS 325.261(3)(a), (b), (f), (h) and (i).

Section 5. 201 KAR 1:060 is hereby repealed.

JAMES T. AHLER, Executive Director

ADOPTED: July 6, 1979

RECEIVED BY LRC: July 11, 1979 at 11 a.m.

PUBLIC HEARING: A public hearing will be held Tuesday, September 4, 1979 at 10 a.m. EDT at the Executive-West, Louisville, Kentucky.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:141. Disposal of excess spoil.

RELATES TO: KRS 350.440

PURSUANT TO: KRS 13.082, 350.028

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for the disposal of excess spoil.

Section 1. Definitions. (1) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(2) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is

placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

Section 2. General Requirements. (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with this regulation. The spoil shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the effluent limitations of 405 KAR 1:170, Section 1;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 1:100. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 405 KAR 1:190, Section 1. All disturbed areas, including diversion ditches that are not rippapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with 405 KAR 1:070, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 1:130, Section 3(3).

(9) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and

rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The registered engineer or other qualified professional specialist shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

(a) Demonstrated to be nontoxic and nonacid forming; and

(b) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or man-made water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the Mine Safety and Health Administration.

Section 3. Valley Fills. Disposal of excess spoil in valley fills shall meet all requirements of Section 2 and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A.

(d) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel,

sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet or less if required by the department in order to:

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrains; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 4. Head-of-Hollow Fills. Disposal of excess spoil in head-of-hollow fills shall meet all requirements of Sections 2 and 3 and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 3, with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards, may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 3(2)(d).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3) percent). Instead of the requirements of Section 2(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this

pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, twenty-four (24) hour precipitation event, or larger event specified by the department.

Section 5. Durable Rock Fills. (1) In lieu of the requirements of Sections 3 and 4, the department may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 2 are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper

than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 1:190, Section 1.

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Appendix A of 405 KAR 1:141E

Minimum Size of Underdrain

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ³	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd ³	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 1:141E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: June 25, 1979

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

PUBLIC HEARING: A public hearing will be held on this regulation by the department at 10:00 a.m., August 14, 1979, in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 1:260. Contemporaneous reclamation.

RELATES TO: KRS 350.093, 350.100

PURSUANT TO: KRS 13.082, 350.028, 350.093, 350.100

NECESSITY AND FUNCTION: KRS 350.028 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the strip mining of coal. This regulation sets forth requirements for keeping reclamation operations current with mining operations.

Section 1. Applicability. This regulation shall apply to all strip mining operations conducted on or after May 3, 1978.

Section 2. Backfilling and Grading. Backfilling and grading operations shall proceed as concurrently with mining operations as possible, in accordance with the approved plan for backfilling and grading, and in accordance with the requirements of this section.

(1) Area mining. Backfilling and grading to approximate original contour on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area, and shall not be more than four (4) spoil ridges behind the pit being mined, with the spoil from the pit being mined being considered the first spoil ridge.

(2) Auger mining. Coal removal in a given location shall be completed within thirty (30) calendar days after the initial surface disturbance by removal of topsoil or overburden at that location. Except when specifically authorized in writing by the department, each auger hole which discharges water shall be sealed within seventy-two (72) hours of completion of the auger hole by backfilling and compacting noncombustible and impervious material into the auger hole to form a watertight seal. Backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(3) Contour mining. Coal removal in a given location shall be completed within thirty (30) calendar days after the initial surface disturbance at that location. Completed backfilling and grading to approximate original contour shall follow coal removal by not more than sixty (60) calendar days and by not more than 1500 linear feet.

(4) Combined contour mining and auger mining. Coal removal by contour mining at a given location shall be completed within thirty (30) calendar days after the initial surface disturbance at that location. Auger mining at a given location shall be completed within thirty (30) calendar days after coal removal by contour mining at that location. Sealing of auger holes and backfilling and grading shall then be completed as described in subsection (2) of this section.

(5) Mountaintop removal. Backfilling and grading on a disturbed area shall be completed within 180 calendar days following the removal of coal from that area.

(6) All final backfilling and grading shall be completed before equipment necessary for backfilling and grading is removed from the site.

Section 3. Soil Preparation and Revegetation. (1) When backfilling and grading have been completed on an area, the required topsoil redistribution, liming, fertilizing,

other soil preparation, seeding, planting, and mulching of that area shall be completed within thirty (30) calendar days in a manner consistent with the approved plans for topsoil handling and revegetation.

(2) The time allowed for soil preparation and revegetation pursuant to subsection (1) may exceed thirty (30) calendar days when specifically authorized in the approved plans for topsoil handling and revegetation.

Section 4. Time Extensions Due to Adverse Natural Conditions. In individual cases the department may grant additional time for backfilling and grading, topsoil redistribution, liming, fertilizing, other soil preparation, seeding, planting, and mulching, when adverse weather conditions or other natural conditions beyond the operator's control make it impossible to conduct such reclamation operations in a timely manner, and such conditions are appropriately documented and are successfully demonstrated to the department. However, no claim for lost time in reclamation operations will be accepted if operations related to mining were conducted at the time in question.

Section 5. Exceptions and Variances. The department may authorize in writing such exceptions and variances to the requirements of this regulation as the department may deem necessary to reasonably and properly address site-specific conditions.

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: June 25, 1979

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

PUBLIC HEARING: A public hearing will be held on this regulation by the department at 10:00 a.m., August 14, 1979, in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

**DEPARTMENT FOR NATURAL RESOURCES
AND ENVIRONMENTAL PROTECTION**
Bureau of Surface Mining Reclamation and Enforcement

405 KAR 3:111. Disposal of excess rock and earth.

RELATES TO: KRS 350.151

PURSUANT TO: KRS 13.082, 350.151

NECESSITY AND FUNCTION: KRS 350.151 requires the Department for Natural Resources and Environmental Protection to adopt rules and regulations for the surface effects of underground mining. This regulation sets forth requirements for the disposal of excess rock and earth.

Section 1. Definitions. (1) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In fills with less than 250,000 cubic yards of material, the top surface of the fill may be at the elevation of the bench of the face-up area. In all other

head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(2) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

Section 2. General Requirements. (1) Excess rock and earth materials produced from an underground mine and not disposed of in underground workings or not used in backfilling and grading operations to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with this regulation. The excess rock and earth materials shall be placed in a controlled manner to ensure:

(a) That leachate and surface runoff from the fill will not degrade surface or groundwaters or exceed the effluent limitations of 405 KAR 3:140, Section 1;

(b) Stability of the fill; and

(c) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under 405 KAR 3:080, Section 1. If approved by the department, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface-erosion at the site. Diversion design shall conform with the requirements of 405 KAR 3:160, Section 1. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the department. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The excess rock and earth materials shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) No depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the department and consistent with 405 KAR 3:100, Section 4(2).

(9) Where the slope in the disposal area exceeds 1v:2.8h (thirty-six (36) percent), or such lesser slope as may be designated by the department based on local conditions,

keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: removal of all organic material and topsoil; placement of underdrainage systems; installation of surface drainage systems; placement and compaction of fill materials; and revegetation. The registered engineer or other qualified professional specialist shall provide to the department a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved by the department. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

(a) Demonstrated to be nontoxic and nonacid forming; and

(b) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or man-made water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess rock and earth materials may be returned to underground mine workings, but only in accordance with a disposal program approved by the department and the Mine Safety and Health Administration.

Section 3. Valley Fills. Disposal of excess rock and earth materials in valley fills shall meet all requirements of Section 2 and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(a) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (d) of this subsection and:

1. Be installed along the natural drainage system;

2. Extend from the toe to the head of the fill; and

3. Contain lateral drains to each area of potential drainage or seepage.

(b) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(c) In constructing the underdrains, no more than ten (10) percent of the rock may be less than twelve (12) inches

in size and no single rock may be larger than twenty-five (25) percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (d) of this subsection. The minimum size of the main underdrain shall be as specified in Appendix A.

(d) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Excess rock and earth material shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the department, in lifts no greater than four (4) feet or less if required by the department in order to:

(a) Achieve the densities designed to ensure mass stability;

(b) Prevent mass movement;

(c) Avoid contamination of the rock underdrains; and

(d) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event or larger event specified by the department. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (five (5) percent). The vertical distance between terraces shall not exceed fifty (50) feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1v:2h (fifty (50) percent). The department may require a flatter slope.

Section 4. Head-of-Hollow Fills. Disposal of excess rock and earth materials in head-of-hollow fills shall meet all requirements of Sections 2 and 3 and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in Section 3, with diversion of runoff around the fill.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(a) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least sixteen (16) feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of Section 3(2)(d).

(b) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(c) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1v:33h (three (3)

percent). Instead of the requirements of Section 2(7), a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a three (3) to five (5) percent grade toward the fill and a one (1) percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, twenty-four (24) hour precipitation event, or larger event specified by the department.

Section 5. Durable Rock Fills. (1) In lieu of the requirements of Sections 3 and 4, the department may approve alternate methods for disposal of hard rock material, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this section and Section 2 are met. For this section, hard rock material shall be defined as rockfill consisting of at least eighty (80) percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock material to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the department.

(2) Excess rock and earth materials are to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(a) The method of placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(b) Loads of non-cemented clay shale and/or clay in the fill shall be mixed with hard rock material in a controlled manner to limit on a unit basis concentrations of non-cemented clay shale and clay in the fill. Such materials shall comprise no more than twenty (20) percent of the fill volume as determined by tests performed by a registered engineer and approved by the department.

(3) (a) Stability analyses shall be made by a registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations including borings, and laboratory tests.

(b) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the factors of safety in Appendix B of this regulation.

(4) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(a) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(b) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(c) The internal drain shall be protected by a properly designed filter system.

(5) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are design-

ed to pass safely the runoff from a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(6) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(7) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, twenty-four (24) hour precipitation event. Diversion design shall comply with the requirements of 405 KAR 3:160, Section 1.

(8) Terraces shall be constructed on the outslope if required for control of erosion or for roads. Terraces shall meet the following requirements.

(a) The slope of the outslope between terrace benches shall not exceed 1v:2h (fifty (50) percent).

(b) To control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (five (5) percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(c) Terrace ditches shall have a five (5) percent slope toward the channels specified in subsection (7) of this section, unless steeper slopes are necessary in conjunction with approved roads.

Section 6. Where the volume of the excess rock and earth materials is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment, the department may modify the requirements of this regulation in accordance with 405 KAR 3:100, Section 2(1), regarding backfilling and grading.

Appendix A of 405 KAR 3:111E

Minimum Size of Underdrain

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ³	Sandstone	10	4
Do.	Shale	16	8
More than 1,000,000 yd ³	Sandstone	16	8
Do.	Shale	16	16

Appendix B of 405 KAR 3:111E

Safety Factors

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

LOWELL E. BRANDENBURG, Commissioner

ADOPTED: June 25, 1979

APPROVED: EUGENE F. MOONEY, Secretary

RECEIVED BY LRC: June 26, 1979 at 2:15 p.m.

PUBLIC HEARING: A public hearing will be held on this regulation by the department at 10:00 a.m., August 14, 1979, in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky.

EDUCATION AND ARTS CABINET

Department of Education
Bureau of Instruction

704 KAR 2:011. Repeal of 704 KAR 2:010.

RELATES TO: KRS 156.100

PURSUANT TO: KRS 13.082, 156.070, 156.160.

NECESSITY AND FUNCTION: Sections 201-207 of Title II, Public Law 89-10, require as a basic condition for the granting of federal funds a plan of understanding which will guarantee a program for the acquisition of school library resources, textbooks and other printed and published instructional material.

Section 1. 704 KAR 2:010 is hereby repealed.

JAMES B. GRAHAM

Superintendent of Public Instruction

ADOPTED: June 12, 1979

RECEIVED BY LRC: July 2, 1979 at 3 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Mr. Fred Schultz, Secretary, Kentucky State Board for Elementary and Secondary Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 24:021. Acquisition of controlling stock.

RELATES TO: KRS 304.24-410

PURSUANT TO: KRS 13.082, 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation implements KRS 304.24-410 by defining certain terms and establishing standards for the filing, content and administrative review of the application required to be filed with the Commissioner prior to proposing acquisition of the capital stock which controls a Kentucky domestic insurer.

Section 1. In addition to the definitions contained in KRS Chapter 304, Subtitle 1, the following terms, words or phrases, as used in KRS 304.24-410 and this regulation, are defined as:

(1) "Person" means any legal entity, as defined in KRS 304.1-020, acting alone or in concert with others.

(2) "Proposing to acquire" means any offer for or attempt to obtain any lawful or equitable right, title or interest, directly or indirectly, in the controlling capital stock (as defined herein) of any domestic insurer, or other corporation of which such domestic insurer is a controlled subsidiary, through any means other than by inheritance, devise by will, merger, consolidation or affiliation.

(3) "Controlling capital stock" means fifteen (15) percent or more of the currently issued and outstanding shares

of any class of shares representing proprietary interest in a domestic insurer, or other corporation of which such domestic insurer is a controlled subsidiary, unless the commissioner shall find, after a hearing, that a lesser percentage of any such class of shares constitutes actual control of the insurer, as defined herein, in which case such lesser percentage of such class of shares shall be deemed to be controlling capital stock.

(4) "Control of the insurer" means the ability to cause the insurer to act or to refrain from acting in any matter which may materially affect the insuring public or such insurer's policyholders, its other shareholders or the corporation itself. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with a power to vote, or holds proxies for controlling capital stock.

(5) "First apply" means to make written application in form and substance required by this regulation without public notice or comment until either:

(a) The commissioner approves or disapproves the application;

(b) The commissioner calls a public hearing on the application; or

(c) Thirty (30) days following the filing of the application and during which time the commissioner has failed to act.

Section 2. Any person proposing to acquire the controlling capital stock of a domestic insurer, or other corporation of which such domestic insurer is a controlled subsidiary, shall be presumed to do so for the purpose, but not necessarily to the exclusion of other purposes, of changing the control of such insurer and any such person shall first apply to the commissioner for and receive his approval of such proposed change of control of the insurer before taking any other action which may impair existing control of the insurer. No person shall propose to acquire such controlling capital stock except in compliance with KRS 304.24-410 and this regulation.

Section 3. The application required herein shall be in writing and shall be filed in duplicate with the commissioner personally and a copy thereof shall be immediately forwarded by registered mail to the chief executive officer of the domestic insurer the change of control of which is the subject of the application. The application shall contain the following information and any such additional information as the commissioner may require to determine the character, experience, ability, and other qualifications of such person for the protection of the policyholders and other shareholders of such insurer specifically, as well as the insuring public generally:

(1) The identity of, and the background information specified in Section 4 on, each natural person by whom, or on whose behalf the acquisition is to be made, and if the acquisition is to be made by or on behalf of a corporation, association or trust, the identity of, and the background information specified in Section 4 on, each director, officer, trustee or other natural person performing duties similar to that of a director, officer or trustee for the corporation, association or trust;

(2) The source and amount of the funds or other consideration used, or to be used, in making the acquisition;

(3) Any plans or proposals which such persons may have made to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; and any plans or proposals which such persons may have made to liquidate any controlling or affiliated com-

pany of such insurer, to sell its assets or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management;

(4) The number and class of shares which such person proposes to acquire and the terms of the offer or exchange, as the case may be;

(5) Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such insurer or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, naming the party with whom such contract, arrangements or understandings have been entered into and giving the details thereof; and,

(6) If the person is not a resident of this state, a statement to the effect that the person subjects himself to the administrative and judicial processes of this state for any and all actions stemming from the filing of the application and appointing the commissioner his agent for service of process for any such action.

Section 4. (1) The information as to the background and identity of each person, which information is required to be furnished pursuant to Section 3(1), shall include:

(a) Such person's occupations, positions of employment, and offices held during the past ten (10) years.

(b) The principal business and address of any business, corporation or other organization in which each such office was held, or in which such occupation or position of employment was carried on.

(c) Whether such person was, at any time during such ten (10) year period, convicted of any crime other than a traffic violation.

(d) Whether such person has been, at any time during such ten (10) year period, the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

(e) Whether, during such ten (10) year period, such person has been the subject of any proceeding under the Federal Bankruptcy Act or whether, during such ten (10) year period, any corporation, partnership, firm, trust or association in which such person was a director, officer, trustee, partner or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner or other official, or within twelve (12) months thereafter.

(f) Whether, during such ten (10) year period, such person has been enjoined by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(2) Any corporation, association or trust filing the application required by this section shall give all required information as is within the knowledge of its directors, trustees, officers or others performing functions similar to that of a director, officer or trustee.

(3) If any material change occurs in the facts set forth in the application filed with the commissioner and sent to such insurer or controlling company pursuant to this section, an amendment setting forth such changes shall be filed immediately with the commissioner and sent immediately to such insurer.

Section 5. The acquisition of controlling capital stock shall be deemed approved unless the commissioner, within

thirty (30) days after the application required by Section 1 has been filed, calls a public hearing to consider the matter. The commissioner shall call and hold such public hearing if requested in writing to do so by the domestic insurer (or other corporation of which such domestic insurer is a controlled subsidiary) within ten (10) days and, if not so requested, may call and hold such public hearing in his discretion.

Section 6. The person or persons filing the application required by Section 2 shall have the burden of proof. The commissioner shall not approve the proposed change of control of the insurer if he finds, on the basis of the application, records available to the commissioner and the record made at a public hearing, if any, that:

(1) The proposed new owners are not qualified by character, experience or financial responsibility to control and operate the insurer, or cause the insurer to be operated, in a lawful and proper manner; or

(2) As a result of the proposed change of control the insurer may not be qualified for a certificate of authority under the provisions of Subtitle 3; or

(3) The interests of the insurer or other stockholders of the insurer or policyholders would be impaired through the proposed change of control; or

(4) The proposed change of control would tend materially to lessen competition, or to create any monopoly, as to kinds of insurance involved, in this state or elsewhere; or

(5) There exists or will exist any cause for which any license issued by the Kentucky Department of Insurance to or for the benefit of the person or persons filing such application can be or could have been refused, suspended or revoked by the commissioner under any other section of KRS Chapter 304 upon his gaining knowledge thereof.

Section 7. Any person proposing to acquire or acquiring control of the capital stock of a domestic insurer (or of a corporation of which the domestic insurer is a controlled subsidiary) in a manner inconsistent with this regulation and the written approval of the commissioner shall be deemed to be a person who is either incompetent, dishonest, untrustworthy or so lacking in insurance company managerial experience as to render him unfit to exercise control of or be a part of the management of any insurer authorized to do business in this state and shall cause the commissioner to take all appropriate actions necessary to protect the policyholders or other shareholders of such insurer, located in this state, or of the insurance buying or investing public of this state, including but not limited to the refusal to continue in effect the certificate of authority for any and all such insurers as provided for in KRS 304.3-080.

Section 8. Nothing contained in this regulation shall prevent the commissioner from proceeding against any person pursuant to any other provision of the Kentucky Insurance Code whether or not such person has theretofore been approved by the commissioner in accordance with KRS 304.24-410 and this regulation.

Section 9. If any provision of this regulation or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are separable.

Section 10. 806 KAR 24:020 is hereby repealed.

HAROLD B. MCGUFFEY, Commissioner
ADOPTED: June 27, 1979

APPROVED: MIKE HELTON, Secretary

RECEIVED BY LRC: July 13, 1979 at 1 p.m.

PUBLIC HEARING: A public hearing will be held on this regulation on Friday, August 31, 1979, at 10 a.m. in the hearing room at the Department of Insurance, 151 Elkhorn Court, Frankfort, Kentucky 40601.

DEPARTMENT FOR HUMAN RESOURCES Bureau for Administrative Services

901 KAR 5:100. Cadavers.

RELATES TO: KRS Chapter 213

PURSUANT TO: KRS 13.082, 194.050, 211.090

NECESSITY AND FUNCTION: KRS Chapter 213, relating to Vital Statistics, authorizes the Department for Human Resources to regulate the transportation, disposal and interment of dead bodies and the use of dead bodies or parts thereof for educational and scientific purposes. The purpose of this regulation is to regulate, except as otherwise provided by law, the transportation, use, disposal and interment of dead bodies brought into this state from another state for educational or scientific purposes.

Section 1. Approval Required for Importation of Dead Body Into State for Educational or Scientific Purposes; Exceptions. (1) Except as otherwise authorized by subsection (6), no person shall transport into this state, a dead body or part thereof, for educational or scientific purposes without first obtaining the prior approval of the Department for Human Resources.

(2) An applicant desiring to transport a dead body or part thereof into this state for educational or scientific purposes shall file a notarized application with the department setting forth the proposed use, need, qualifications of personnel and adequacy of equipment and facilities.

(3) Upon receipt of the notarized application the department shall cause an investigation to be made to determine the proposed use, need, qualifications of personnel and the adequacy of equipment and facilities.

(4) The Secretary for Human Resources shall, on the basis of his investigation, either grant or deny the application. In the event the application is approved, the secretary shall require the applicant to post a bond in the sum of \$1,000 conditioned upon compliance with the terms of this regulation and the lawful use and disposition of any dead bodies or parts thereof that may be received by the applicant.

(5) After the use of the dead bodies or parts thereof has been completed as approved by the department, such bodies or parts thereof shall be disposed of as set forth in the approved application, or as otherwise authorized by law. A special transit permit shall be obtained for the transportation of such dead bodies or parts thereof from the Department for Human Resources.

(6) This regulation shall not restrict the importation and use of dead bodies for educational or scientific purposes by

any state publicly funded, accredited medical school located in Kentucky, nor the importation and use of any dead body or part thereof, the donation of which was made pursuant to the Kentucky Uniform Anatomical Gift Act, KRS 311.165 to 311.235, or as may be otherwise authorized by law.

Section 2. Facility Requirements. An applicant for approval to import a dead body into this state for educational or scientific purposes shall meet the following facility requirements: (1) Comply with applicable state and local fire safety, housing and plumbing codes as evidenced by written approvals from appropriate governmental agencies:

- (2) Maintain all facilities in a sanitary condition;
- (3) Maintain strict rules of privacy and allow no one in the area in which a dead human body is being dissected or stored except for faculty and duly registered students of the facility or authorized personnel;
- (4) Store all cadavers by use of one (1) of the following methods:
 - (a) In covered vats or tanks submersed in a preservative acceptable to the department;
 - (b) Wrapped in gauze or similar material, after embalming, soaked with formalin or other acceptable preservative, and stored in a morgue type refrigeration unit or equivalent with a temperature range of thirty-eight (38) to forty (40) degrees Fahrenheit.
 - (c) Enclosed in sealed plastic bags, after embalming; or
 - (d) By other means which would be acceptable to the department.
- (5) Provide outside ventilation, including continuous air changes and mechanical power to provide sufficient air movement to rooms housing cadaver storage vents, tanks or refrigeration units.
- (6) Provide security to all storage areas at all times;
- (7) Provide a dissection area that shall contain:
 - (a) A minimum of 100 square feet of floor area with a minimum room area of 180 square feet, exclusive of cadaver storage space;
 - (b) Flooring constructed of terrazo, tile, concrete or other waterproof or impervious material from wall to wall;
 - (c) Dissection table with stainless steel top with rolled edge and drainage;
 - (d) Ventilation to outside of building with mechanical power sufficient to provide adequate air movement;
 - (e) Lighting at the table level of not less than 1,000 foot candles;
 - (f) Adequate electrical outlets including outlets in proximity to dissection table;
 - (g) Slop sink with running water and adequate drainage;
 - (h) Storage area for supplies and equipment;
 - (i) Work counter with sink equipped for handwashing; and
 - (j) Sanitary waste receptacle.

ROBERT SLATON, Commissioner
PETER D. CONN, Secretary

ADOPTED: June 13, 1979

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Secretary for Human Resources, 275 East Main
Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES Kentucky Drug Formulary Council

902 KAR 1:027. Dicyclomine hydrochloride.

RELATES TO: KRS 217.814 to 217.826,
217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Dicyclomine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Dicyclomine Hydrochloride Capsule Pharmaceutical Products. The following Dicyclomine Hydrochloride capsule pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Dicyclomine Hydrochloride 10 mg. Capsule Form:

- (1) Dicyclomine Hydrochloride: Barr Laboratories, Cooper Drug Company, H. L. Moore Drug Exchange, Three P Products Corporation, United Research Laboratories;
- (2) Spastyl: Vanguard Laboratories.

Section 2. Dicyclomine Hydrochloride Tablet Pharmaceutical Products. The following Dicyclomine Hydrochloride tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Dicyclomine Hydrochloride 20 mg. Tablet Form:

- (1) Dicyclomine Hydrochloride: Barr Laboratories, H. L. Moore Drug Exchange, Three P Products Corporation;
- (2) Spastyl: Vanguard Laboratories.

Section 3. Dicyclomine Hydrochloride Syrup Pharmaceutical Products. The following Dicyclomine Hydrochloride syrup pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Dicyclomine Hydrochloride 10 mg/5 ml Syrup Form: Dicyclomine Hydrochloride: Barre Drug Company, Richie Pharmacal Company.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council

902 KAR 1:032. Meperidine hydrochloride.

RELATES TO: KRS 217.814 to 217.826,
217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Meperidine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Meperidine Hydrochloride Tablet Pharmaceutical Products. The following Meperidine Hydrochloride tablet pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

- (1) Meperidine Hydrochloride 50 mg. Tablet Form:
 - (a) Meperidine Hydrochloride: Spencer-Mead, Inc.;
 - (b) Pethadol: Halsey Drug Company.
- (2) Meperidine Hydrochloride: 100 mg. Tablet Form:
 - (a) Meperidine Hydrochloride: Spencer-Mead, Inc.;
 - (b) Pethadol: Halsey Drug Company.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council

902 KAR 1:037. Griseofulvin.

RELATES TO: KRS 217.814 to 217.826,
217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Griseofulvin pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Griseofulvin Gelatin Capsule Pharmaceutical Products. The following Griseofulvin gelatin capsule pharmaceutical products are determined to be therapeutically

equivalent, in each respective dosage: Griseofulvin 250 mg. Gelatin Capsule Form:

- (1) Grisactin: Ayerst Laboratories;
- (2) GrisOwen: Owen Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council

902 KAR 1:042. Piperazine citrate.

RELATES TO: KRS 217.814 to 217.826,
217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Piperazine Citrate pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Piperazine Citrate Syrup Pharmaceutical Products. The following Piperazine Citrate syrup pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Piperazine Citrate 550 mg/5 ml Syrup Form:

- (1) Antepar: Burroughs Wellcome Company;
- (2) Piperazine Citrate Syrup: Barre Drug Company, Bay Laboratories, Murray Drug Corporation, Parmed Pharmaceuticals, Richie Pharmacal Company, Spencer-Mead, Inc., Theda Corporation, Westward, Inc.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED:

PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING
TO: Andy Naff, Kentucky Drug Formulary Council, 275
East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council**

902 KAR 1:047. Theophylline.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Theophylline pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Theophylline Elixir Pharmaceutical Products. The following Theophylline Elixir pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage: Theophylline 80 mg/15 ml Elixir Form:

- (1) Elixophyllin Elixir: Cooper Laboratories;
- (2) Theophylline Elixir: Bay Laboratories, Bell Pharmacal, Columbia Medical Company, Cooper Drug Company, Henry Schein, Inc., H. L. Moore Drug Exchange, Barre Drug Company, Philips-Roxane Laboratories, Richie Pharmacal Company, Rugby Laboratories, Theda Corporation, Trust Pharmaceuticals, Vanguard Laboratories.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

Hydrochloride ophthalmic solution pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Pilocarpine Hydrochloride 0.5% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Steri-Med, Inc.

(2) Pilocarpine Hydrochloride 1% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Barre Drug Company, Interstate Drug Exchange, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc.

(3) Pilocarpine Hydrochloride 2% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Barre Drug Company, Interstate Drug Exchange, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc.

(4) Pilocarpine Hydrochloride 3% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Spencer-Mead, Inc., Steri-Med, Inc.

(5) Pilocarpine Hydrochloride 4% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Barre Drug Company, Interstate Drug Exchange, Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc.

(6) Pilocarpine Hydrochloride 6% Ophthalmic Solution Form:

- (a) Isopto Carpine: Alcon Laboratories;
- (b) Pilocarpine Hydrochloride: Rugby Laboratories, Spencer-Mead, Inc., Steri-Med, Inc.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

**DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council**

902 KAR 1:052. Pilocarpine hydrochloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Pilocarpine Hydrochloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Pilocarpine Hydrochloride Ophthalmic Solution Pharmaceutical Products. The following Pilocarpine

**DEPARTMENT FOR HUMAN RESOURCES
Kentucky Drug Formulary Council**

902 KAR 1:057. Potassium chloride.

RELATES TO: KRS 217.814 to 217.826, 217.990(9)(10)

PURSUANT TO: KRS 13.082

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Drug Formulary Council to prepare a formulary of drugs and pharmaceuticals with their generic or chemical names that are determined by the council to be therapeutically equivalent to specified brand name drugs and pharmaceuticals. This regulation lists Potassium Chloride pharmaceutical products by their generic and brand names that have been determined by the council to be therapeutically equivalent.

Section 1. Potassium Chloride Oral Liquid Pharmaceutical Products. The following Potassium Chloride oral liquid pharmaceutical products are determined to be therapeutically equivalent, in each respective dosage:

(1) Potassium Chloride 10% Oral Liquid, with sugar: Barre Drug Company, Cooper Drug Company, Richie Pharmacal Company, Spencer-Mead, Inc., Theda Corporation.

(2) Potassium Chloride 10% Oral Liquid, without sugar:

(a) Kaon SF 10%: Warren-Teed Laboratories;

(b) Potassium Chloride: Barre Drug Company, Cooper Drug Company, Geneva Generics, Lederle Laboratories, Murray Drug Company, Parmed Pharmaceuticals, Philips-Roxane Laboratories, Purepac Pharmaceuticals, Richie Pharmacal Company, Rugby Laboratories, Spencer-Mead, Inc., Theda Corporation, Three P Products Corporation.

(3) Potassium Chloride 20% Oral Liquid, without sugar:

(a) Kaon CL 20%: Warren-Teed Laboratories;

(b) Potassium Chloride: Barre Drug Company, Cooper Drug Company, Lederle Laboratories, Murray Drug Company, Philips-Roxane Laboratories, Purepac Pharmaceuticals, Theda Corporation, Three P Products Corporation.

KENNETH P. CRAWFORD, M.D., Chairperson

ADOPTED: June 8, 1979

APPROVED: PETER D. CONN, Secretary

RECEIVED BY LRC: July 3, 1979 at 2 p.m.

SUBMIT COMMENT OR REQUEST FOR HEARING

TO: Andy Naff, Kentucky Drug Formulary Council, 275 East Main Street, Frankfort, Kentucky 40621.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 17, 1979 Meeting

(Subject to subcommittee approval at its August 1, 1979 Meeting.)

The Administrative Regulation Review Subcommittee met on July 17, 1979, at 10 a.m., in Room 327 of the Capitol. The minutes of the June 6, 1979 meeting were approved. Present were:

Members: Representative William T. Brinkley, Chairman; Senator Donald L. Johnson and Representative Albert Robinson.

Guests: Craig Combs and Iris Converse, Public Information; Harold Newton, H. Gene Taylor, Department of Personnel; Stanley A. Stratford, Department for Local Government; Charles D. Wickliffe, Department of Finance; Charles Henry, C. E. Brocow, Department of Transportation; Conley Manning, Department of Education; Robert Harrison, Department of Labor; John Hinkle, David Rose, Kentucky Retail Federation; Ellyn Crutcher, John Hungate, Alex Marshall, Jr., Energy and Utility Regulatory Commissions; Ron Sheets, Eugene N. Buchheit, Kentucky Association of Electric Cooperatives; H. A. McElroy, Patsy Meeks, Warren Rural Electric; Joyce Bell, Edward E. Crews, Carlos Hernandez, Ked R. Fitzpatrick, Don Dixon, Rick Crawford, Department for Human Resources; Barbara Aldridge, Kentucky Drug Formulary Council.

LRC Staff: Mabel D. Robertson, Deborah Herd, Joe Hood and Garnett Evins.

On motion of Senator Johnson, seconded by Representative Robinson the following regulations were deferred until the August 1, 1979 meeting:

REGISTRY OF ELECTION FINANCE Reports and Forms

801 KAR 1:007. Committees; definition, responsibilities.

OCCUPATIONS AND PROFESSIONS

Board of Optometric Examiners (Deferred at the request of the Board.)

201 KAR 5:010. Application for examination; reciprocity.

201 KAR 5:040. Unprofessional conduct.

DEPARTMENT OF LABOR

Labor Standards; Wages and Hours

803 KAR 1:020. Employment of apprentices and trainees. (Deferred at the request of the issuing agency.)

Occupational Safety and Health

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

PUBLIC SERVICE COMMISSIONS

Utility Regulatory Commission

807 KAR 25:040. Telephone.

Energy Regulatory Commission

807 KAR 50:015. General rules.

BUREAU FOR SOCIAL INSURANCE

Public Assistance

904 KAR 2:020. Child support. (Deferred at the request of the issuing agency.)

On the motion of Senator Johnson, seconded by Representative Robinson, the following regulations were approved and ordered filed.

DEPARTMENT OF PERSONNEL

Personnel Rules

101 KAR 1:050. Compensation plan.

DEPARTMENT FOR LOCAL GOVERNMENT

Boards

109 KAR 5:010. District boards; directors, terms. (As amended)

DEPARTMENT OF FINANCE**Purchasing**

200 KAR 5:300. Distribution of procurement activities and functions.

200 KAR 5:301. Delegation of purchasing authority.

200 KAR 5:302. Management and procedures manual. (As amended)

200 KAR 5:303. Written procurement determinations. (As amended)

200 KAR 5:304. Application to be placed on vendor's list.

200 KAR 5:305. Performance bonds; forms; payments.

200 KAR 5:306. Competitive sealed bidding.

200 KAR 5:307. Competitively negotiated contracts.

200 KAR 5:308. Small purchase procedures.

200 KAR 5:309. Noncompetitive negotiations.

200 KAR 5:310. Multiple contracts. (As amended)

200 KAR 5:311. Contract modifications.

200 KAR 5:312. Termination of contracts.

200 KAR 5:313. General and special conditions for bidding.

200 KAR 5:314. General food and perishable items purchasing.

200 KAR 5:315. Disciplinary action for failure to perform. (As amended)

200 KAR 5:316. Works of art.

DEPARTMENT OF TRANSPORTATION**Bureau of Highways****Maintenance**

603 KAR 3:051. Recyclers. (As amended)

Traffic

603 KAR 5:040. Use of rest areas.

603 KAR 5:050. Uniform traffic control devices. (As amended)

603 KAR 5:096. Highway classifications.

DEPARTMENT OF EDUCATION**Bureau of Instruction****Instructional Services**

704 KAR 3:305. Minimum unit requirements for high school graduation. (As amended)

KENTUCKY SCHOOL BUILDING AUTHORITY**School Building Construction**

723 KAR 1:005. Funding procedures.

723 KAR 1:015. Eligibility criteria.

723 KAR 1:025. Cost participation formulae.

723 KAR 1:035. Approval of documents, forms, and other instruments.

723 KAR 1:045. Project architects, engineers and fiscal agents.

723 KAR 1:055. Insurance coverage.

PUBLIC SERVICE COMMISSIONS**Utility Regulatory Commission**

807 KAR 25:060. Sewage.

Energy Regulatory Commission

807 KAR 50:075. Fuel adjustment clause. (As amended)

807 KAR 50:085. Sewage.

DEPARTMENT FOR HUMAN RESOURCES**Bureau of Administration and Operations****Controlled Substances**

901 KAR 1:025. Schedule III substances.

Bureau for Health Services**Drug Formulary**

902 KAR 1:011. Acetazolamide.

902 KAR 1:012. Metaproterenol.

902 KAR 1:013. Methapyrilene.

902 KAR 1:014. Methocarbamol.

902 KAR 1:016. Methenamine mandelate.

902 KAR 1:018. Norethindrone with mestranol.

902 KAR 1:019. Nylidrin hydrochloride.

902 KAR 1:021. Phentermine hydrochloride.

902 KAR 1:291. Ferrous gluconate.

902 KAR 1:301. Dioctyl sodium sulfosuccinate with casanthranol.

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902 KAR 2:060. Immunization schedules.

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902 KAR 10:040. Youth camps.

Bureau for Social Insurance**Medical Assistance**

904 KAR 1:041. Payments for intermediate care facility services.

Public Assistance

904 KAR 2:015. Supplemental programs for the aged, blind, and disabled.

Unemployment Insurance

904 KAR 5:191. Repeal of 904 KAR 5:190.

On motion of Senator Johnson, seconded by Representative Robinson, the meeting was adjourned at 12:20 p.m., to meet again on August 1, 1979 at 10 a.m., in Room 327 of the Capitol.

Administrative Register ^{of} *kentucky*

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