

Andy Beshear
Governor

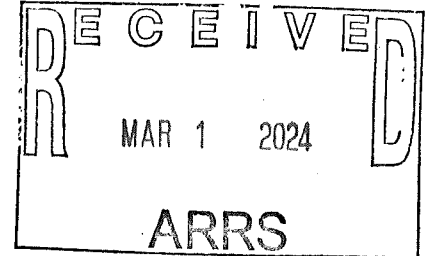


Jamie Link
Secretary, Education and
Labor Cabinet

Robin Fields Kinney
Interim Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

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March 1, 2024

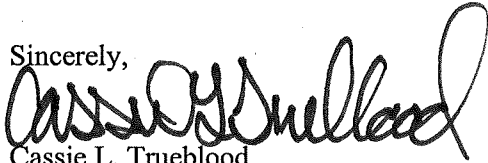
Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
089, Capitol Annex
Frankfort KY 40601

Re: 16 KAR 4:020. Certification requirements for teachers of exceptional children.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 16 KAR 4:020 the Education Professional Standards Board proposes the attached amendment to 16 KAR 4:020.

Sincerely,


Cassie L. Trueblood
Policy Advisor and Counsel

Staff-suggested Amendment

**Final Version 2/22/2024
EDUCATION AND LABOR CABINET
Education Professional Standards Board**

16 KAR 4:020. Certification requirements for teachers of exceptional children.

Page 1

RELATES TO paragraph

Line 5

After "20 U.S.C. 1412", insert "z".

Delete ";".

Page 3

Section 2(3)

Line 12

After "decision on the", insert "approval".

Delete "waiver".



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

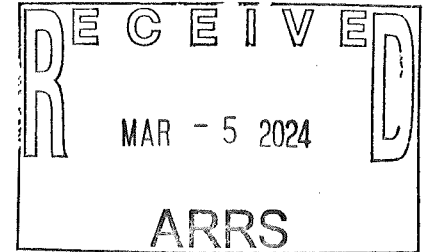
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Kentucky Public
Pensions Authority

March 5, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 105 KAR 1:390. Employment after retirement.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:390, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

Final, 3-4-2024

SUGGESTED SUBSTITUTE

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority**

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505, 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510, 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.590, 61.637(18), 78.5540(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) requires the Kentucky Public Pensions Authority to promulgate administrative regulations to implement the requirements of KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions.

(1) "Bona fide separation from service" means:

(a) A cessation of the employment relationship between the member and the member's employer; and

(b) There is no prearranged agreement. ["Agency" means:]

~~[(a)] [Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and]~~

~~[(b)] [Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.]~~

(2) "Employee" means a retired member who is performing services for an employer in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service.

(3) ~~["Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).]~~

~~[(4)] ["File" means a form has been received at the retirement office by mail, fax, secure email, in-person delivery, or upload via Self Service on the Web site maintained by the agency (if available).]~~

~~[(5)] ["Fiscal Year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).]~~

~~[(6)] ["Hazardous position" is defined by KRS 78.510(42).]~~

~~[(7)] ["Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).]~~

~~[(8)] ["Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).]~~

~~[(9)] ["Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).]~~

~~[(10)] "Non-participating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.~~

~~[(11)] ["Participating employer" means any employer that participates in one (1) of the systems operated by the agency.]~~

~~(4)[(12)] "Participating position" means a regular full-time position or a regular full-time officer position.~~

~~(5) "Prearranged agreement" means a verbal or written, explicit or implicit agreement:~~

~~(a) Between the retired member and his or her employer for the retired member to reemploy with the employer within twelve (12) months after the retired member's effective retirement date; and~~

~~(b) That occurred prior to the retired member's effective retirement date.~~

~~[(13)] ["Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent retirement date.]~~

~~[(14)] ["Regular full-time officer position" is defined by KRS 16.505(22).]~~

~~[(15)] ["Regular full-time position" is defined by KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16).]~~

~~[(16)] ["Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]~~

~~(6)[(17)] "Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545(4).~~

~~[(18)] ["Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).]~~

~~[(19)] ["School board" is defined by KRS 78.510(4).]~~

~~[(20)] ["Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).]~~

~~[(21)] ["Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.]~~

~~[(22)] ["Volunteer" is defined by KRS 61.510(42) and 78.510(39).]~~

Section 2. Form 6000 Certification.

(1) In order to retire with the systems~~[operated by the agency]~~, an eligible member shall complete and file a valid~~[submit a]~~ Form 6000, Notification of Retirement, which~~[as incorporated by reference in 105 KAR 1:200. The Form 6000, Notification of Retirement,]~~ shall comply with the requirements of KRS 61.590, KRS 78.545, and 105 KAR 1:200.

(2) The agency shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, shall have:

(a) A bona fide separation from service~~[as provided in subsection (2) of this section]~~; and

(b) A break in service as provided in subsection (3) of this section.

(2)

(a) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions shall not have a prearranged agreement.~~["Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.]~~

~~[(b)] ["Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) months after the member's retirement date.]~~

(b)[(e)] An elected official who is reelected and takes office in the same elected position as he or she held prior to retirement within twelve (12) months after his or her effective retirement date shall be deemed to have a prearranged agreement.~~[official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of retirement, the official is reelected and takes office in the same position as the elected official held prior to retirement.]~~

(3) "Break in service" as provided in this section shall require that:

(a) For effective retirement dates prior to January 1, 2024:

1. A member who retired from a hazardous position shall have a one (1) month break in service before returning to work with any participating employer in a regular full-time hazardous participating position.

2. ~~[(b)]~~ Except as provided in subparagraph 1. of this paragraph~~[paragraph(a) of this subsection]~~, a member who retired from a hazardous or nonhazardous position shall have a three (3) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(b) For effective retirement dates beginning January 1, 2024, a member who retired from a hazardous or nonhazardous position shall have a one (1) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(4) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her retirement date, then the following shall be filed~~[at the retirement office]~~:

(a) A valid Form 6751, Employer Certification Regarding Reemployment, completed by the~~[The] participating employer, which shall certify that there was no prearranged agreement~~~~[on a completed Form 6751, Employer Certification Regarding Reemployment]~~;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(5)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and additional requested information.

(b) If the agency determines that the retired member failed to comply with any of the requirements of this section or federal law~~[have a bona fide separation from service or a break in service and returned to work with any participating employer in any position, including a participating position or a nonparticipating position]~~, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and hospital and medical insurance~~[health]~~ plan premiums paid by the systems.

Section 4. Independent Contractors and Leased Employees.

(1) If a retired member seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee within twelve (12) months of the retired member's retirement date, then the following shall be filed~~[at the retirement office]~~:

(a) A valid Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member;

(c) A complete copy of any contract under which services are provided by the retired member to the participating employer; and

(d) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(9) and 78.5540(2)(b).

(2) The agency shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, **Independent Contractor or Employee**, to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer.

(3)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the agency determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity:

1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and

2. The employer shall do the following:

a. Report the retired member as required by KRS 61.675, KRS 78.625, and 105 KAR 1:145;

b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c. Reimburse the systems for the cost of hospital and medical~~[health]~~ insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 5. Volunteers.

(1) If a retired member seeks to volunteer with a participating employer within twelve (12) months of the retired member's retirement date, then the following shall be filed~~[-at the retirement office]:~~

- (a) A valid Form 6753, Employer Certification of Volunteer, completed by the participating employer;
- (b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and
- (c) Any other information requested by the agency from the participating employer and retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(2)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.

(b) If the Agency determines that the retired member is an employee of the participating employer, rather than a volunteer:

- 1. The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and
- 2. The employer shall do the following:
 - a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:145;
 - b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
 - c. Reimburse the systems for the cost of hospital and medical[health] insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is a volunteer, the retired member may still be required to observe a bona fide separation from service to the extent required by federal law.

Section 6. Hospital and Medical[Health] Insurance Plan Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) If a retired member is reemployed by multiple participating employers in a month in two (2) or more[positions that qualify as] regular full-time positions, one (1) regular full-time position and one (1) or more part-time positions pursuant to KRS 61.680(6) and 78.545, or multiple part-time positions pursuant to KRS 61.680(6) and 78.545, then:

(a) Each~~[-each]~~ participating employer shall be responsible for reimbursing the systems for a portion of the hospital and medical[health] insurance plan premium paid by the systems to provide coverage for the retired member for that month; and

(b) The portion shall be~~[that is]~~ equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of hospital and medical[health] insurance plan premiums.

(3)~~(2)~~ Participating employers that are exempt from reimbursement of hospital and medical[health] insurance plan premiums under Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) calendar days or less during the fiscal year, are not responsible for hospital and medical[health] insurance plan premiums under this section.

Section 7. Exemption for Payment Of Employer Contributions and Reimbursement of Hospital and Medical[Health] Insurance Plan Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2)

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical[health] insurance plan premiums paid by the

systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a valid~~[completed]~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid~~[completed]~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid~~[completed]~~ Form 6760 and supporting documentation are on file ~~[at the retirement office]~~.

(3)~~(2)~~

(a) For each subsequent term of reappointment after the initial term of appointment listed on the valid~~[completed]~~ Form 6760, County Police or Sheriff Appointment of Retired Police Officer, described in subsection (1) of this section, the participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical~~[health]~~ insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a valid~~[completed]~~ Form 6764, Recertification of Retired Police Officer, is on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid~~[completed]~~ Form 6764, Recertification of Retired Police Officer, is not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid~~[completed]~~ Form 6764 and supporting documentation are on file ~~[at the retirement office]~~.

(4)~~(3)~~

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical~~[health]~~ insurance plan premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid~~[completed]~~ Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid~~[completed]~~ Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the month after a valid~~[completed]~~ Form 6766 and supporting documentation are on file ~~[at the retirement office]~~.

(5)~~(4)~~

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical~~[health]~~ insurance plan premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid~~[completed]~~ Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid~~[completed]~~ Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~

insurance plan premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the month after a valid~~[completed]~~ Form 6767 and supporting documentation are on file~~[at the retirement office]~~.

~~(6)~~~~(5)~~

(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical~~[health]~~ insurance plan premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a valid~~[completed]~~ Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment.

(b) If a valid~~[completed]~~ Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the month after a valid~~[completed]~~ Form 6768 and supporting documentation are on file~~[at the retirement office]~~.

~~(7)~~~~(6)~~ A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of hospital and medical~~[health]~~ insurance plan premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file~~[at the retirement office]~~.

~~(8)~~~~(7)~~

(a) A participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file ~~[at the retirement office]~~ shall be exempt from paying employer contributions and from reimbursing the systems for the costs of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a valid~~[completed]~~ Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment.

(b) If a valid~~[completed]~~ Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of appointment, then the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file ~~[at the retirement office]~~ shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the month after a valid~~[completed]~~ Form 6770 and supporting documentation are on file~~[at the retirement office]~~.

~~(9)~~~~(8)~~

(a) For each~~[Each]~~ subsequent term of reappointment after the initial term of appointment listed on the valid~~[completed]~~ Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and hospital and medical~~[health]~~ insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a valid~~[completed]~~ Form 6774, City Recertification of Retired Police Officer, is on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment.

(b) If a valid~~[completed]~~ Form 6774, City Recertification of Retired Police Officer, is not on file ~~[at the retirement office]~~ prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical~~[health]~~ insurance plan premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the month after a valid~~[completed]~~ Form 6774 is on file~~[at the retirement office]~~.

(10) If the appropriate form ~~and~~ **as required by indicated in** this **section/subsection** is not on file, **then** the employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6000, "Notification of Retirement", June 2023;

(b) Form 6751, "Employer Certification Regarding Reemployment[;]", ~~December 2023~~ **March 2022**;

(c) ~~(b)~~ Form 6752, "Employer Certification of Independent Contractor/Leased Employee[;]", ~~December 2023~~ **April 2024**;

(d) ~~(e)~~ Form 6753, "Employer Certification of Volunteer[;]", ~~December 2023~~ **April 2024**;

(e) ~~(e)~~ Form 6754, "Member Reemployment Certification[;]", ~~December 2023~~ **April 2024**;

(f) ~~(e)~~ Form 6760, "County Police or Sheriff Appointment of Retired Police Officer[;]", ~~December 2023~~ **March 2022**;

(g) ~~(f)~~ Form 6764, "Recertification of Retired Police Officer[;]", ~~December 2023~~ **June 2019**;

(h) ~~(g)~~ Form 6766, "Appointment of Retired School Resource Officer[;]", ~~December 2023~~ **March 2022**;

(i) ~~(h)~~ Form 6767, "Appointment of Kentucky State Police School Resource Officer[;]", ~~December 2023~~ **March 2022**;

(j) ~~(i)~~ Form 6768, "Postsecondary Institution Appointment of Retired Police Officer[;]", ~~December 2023~~ **March 2022**;

(k) ~~(j)~~ Form 6769, "Certification of Employed Police Officers Calendar Year 2015[;]", ~~December 2023~~ **July 2016**;

(l) ~~(k)~~ Form 6770, "City Appointment of Retired Police Officer[;]", ~~December 2023~~ **March 2022**;

(m) ~~(l)~~ Form 6774, "City Recertification of Retired Police Officer[;]", ~~December 2023~~ **July 2016**; and

(n) ~~(m)~~ Internal Revenue Service Publication 1779, "Independent Contractor or Employee[;]", ~~March 2023~~ **2012**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the Authority's Web site at kyret.ky.gov.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, email Legal.Non-Advocacy@kyret.ky.gov, phone (502) 696-8800 ext. 8570, fax (502) 696-8615.



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

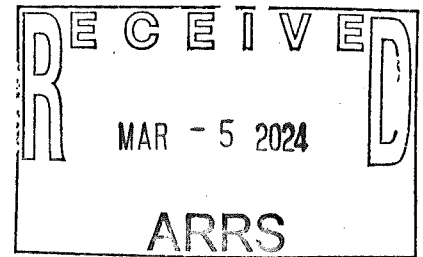
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Kentucky Public
Pensions Authority

March 5, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 105 KAR 1:455 In line of duty Hazardous Retirement Disability Benefits.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:455, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

Final, 3-4-2024

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority

105 KAR 1:455. In line of duty Hazardous Retirement Disability Benefits.

RELATES TO: KRS 2.110, 16.505-16.652, [~~16.582~~, 61.505, 61.510-61.705, [~~61.542, 61.592, 61.610, 61.615, 61.640, 61.665, 61.685, 61.691~~, 78.510-78.852], ~~78.545, 78.5518, 78.5524, 78.5528, 78.5532~~]

STATUTORY AUTHORITY: KRS 61.505(1)(g), [~~and~~] (3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.582 and 78.5524 establish hazardous disability retirement benefits for employees in hazardous positions who are disabled from an act in line of duty. This administrative regulation establishes the procedures for filing an application or reapplication for in line of duty hazardous disability retirement benefits and total and permanent in line of duty hazardous disability retirement benefits, and the appeal procedures if denied.

Section 1. Definitions.

- (1) "Applicant" means a participant who has applied or is applying for ***in line of duty***(ILOD) disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524.
- (2) "Dependent child benefit" means a retirement benefit payable to a dependent child as provided by KRS 16.582(6)(b) and (7)(b) and 78.5524(6)(b) and (7)(b).
- (3) "Full-time student" means a person:
 - (a) Enrolled in a postsecondary program of study that meets the full-time student requirements of the institution in which he or she is enrolled;
 - (b) Enrolled in a continuing education or training program that meets the full-time requirements of the program or institution in which he or she is enrolled; or
 - (c) Enrolled in high school or a GED program that meets the full-time student requirements of the program or institution in which he or she is enrolled.
- (4) "ILOD disability" means a form of disability retirement benefits that requires a disability that was due to an act in line of duty.
- (5) "Retirement benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16).
- (6) "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site ***at <https://myretirement.ky.gov>***.
- (7) "Submit" means the employer required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.
- (8) "Total and permanent ILOD disability" means a form of disability retirement benefits that requires a total and permanent disability that was due to an act in line of duty.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide independent, licensed physicians to serve as medical examiners pursuant to KRS 61.665 and 78.545, and additional persons to fulfill non-physician roles throughout the ILOD disability or total and permanent ILOD disability application and review process.

Section 3. Documentation of applicant's last day of paid employment.

- (1) The applicant's last day of paid employment shall either be certified by the applicant's employer, or by a written statement filed by the applicant and corroborated by the reporting information received by the agency or the agency's third-party vendor from the applicant's employer.

(2) In accordance with KRS 61.685 and 78.545, the applicant's last day of paid employment may be corrected at any time upon discovery of any error or omission in the agency's records.

Section 4. Time period requirements.

(1)

(a) An application or reapplication for ILOD disability or total and permanent ILOD disability shall be filed by the end of day twenty-four (24) months from the applicant's last day of paid employment in a regular full-time position.

(b) The time period for filing shall begin on the day after the last day of paid employment in a regular full-time position and shall end at the end of day on the 730th calendar day.

(2) If the application or reapplication is not filed within the time period prescribed by subsection (1) of this section, except as provided in subsection (3) of this section, then the application or reapplication is not timely, and the applicant shall not qualify for ILOD disability or total and permanent ILOD disability.

(3) If the end of any time period prescribed in this administrative regulation falls on a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the time period shall be met if the application, documentation, form, or other requested information is filed or submitted no later than the end of day on the next business day following the weekend or holiday.

Section 5. Application or reapplication for ILOD disability or total and permanent ILOD disability.

(1) An application or reapplication for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582 and 78.5524 shall be made by completing and filing a valid Form 6000, Notification of Retirement, indicating the applicant's alleged disability is due to an act in line of duty. If available, a Workers' Compensation incident report shall be filed with the Form 6000.

(2)

(a) Once an application or reapplication pursuant to subsection (1) of this section is received by the agency, the agency or its third-party vendor shall notify the applicant of the following additional requirements that shall be completed and filed no later than the end of day 180 calendar days from filing a valid Form 6000:

1. A valid Form 8035, Employee Job Description;

2. A valid Form 8040, Prescription and Nonprescription Medications;

3. All supporting objective medical evidence;

4. A valid Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information; and

5. If the Workers' Compensation incident report was not filed with the application or reapplication, then a Workers' Compensation incident report, or a valid Form 8480, Certification of Statement of Disability – Act in the Line of Duty, indicating one (1) of the following:

a. The applicant is alleging that he or she is disabled due to an act in line of duty, but cannot provide an incident report; or

b. The applicant is not alleging that he or she is disabled due to an act in line of duty. If the applicant indicates he or she is not alleging disability due to an act in line of duty, the application or reapplication will not be reviewed for ILOD disability or total and permanent ILOD disability.

(b) The agency or the agency's third-party vendor shall provide the applicant's employer with a Form 8030, Employer Job Description. The employer shall have until the end of day 180 calendar days from the date of the filed valid Form 6000, Notification of Retirement, to complete and submit the valid Form 8030.

(3) A reapplication for ILOD disability or total and permanent ILOD disability based on the same claim of incapacity shall only be considered if accompanied by new objective medical evidence or new evidence concerning the act in line of duty that was not considered with previous applications.

(4)

(a) Once all requirements established in subsections[subsection] (1) through [-](3) of this section are on file or submitted, the agency or the agency's third-party vendor shall review and evaluate the documentation in accordance with KRS 61.665 and 78.545. Upon review, the agency or its third-party vendor may:

1. Request the applicant complete an independent medical or psychological evaluation in accordance with Section 6 of this administrative regulation; or
 2. Request additional information including additional objective medical evidence, information about the applicant's job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports from the employer or applicant, and any other relevant information. If the employer or applicant fail to return the requested information by the end of day sixty (60) calendar days from the date the request for additional information was provided, the agency or the agency's third-party vendor shall make a determination using the information on file.
- (b) If all requirements established in this section are not on file or submitted within the prescribed time period, the request for ILOD disability or total and permanent ILOD disability shall be void. The Form 6000, Notification of Retirement, shall still be reviewed for other benefits for which the applicant may be entitled.

Section 6. Medical or psychological examination requested at the expense of the agency.

(1) If the agency or the agency's third-party vendor recommends an independent medical or psychological examination, including physical or mental functional evaluations or assessments be conducted pursuant to KRS 61.665(2)(j) and 78.545, or KRS 61.665(3)(c) and 78.545, a Form 8025, Authorization for Independent Medical or Psychological Examination and Release of Medical Information, will be provided to the applicant.

(a) The applicant shall complete and file a valid Form 8025 by the end of day sixty (60) calendar days from the date the Form 8025 is provided.

(b) Once the valid Form 8025 is filed, the applicant shall be notified in writing of the date, time, and location of the appointment. Records from the examination shall be used in determining eligibility for ILOD disability, total and permanent ILOD disability, or any other disability benefits for which the applicant may be entitled.

(c) If the applicant fails to file a valid Form 8025 within the prescribed time period, or fails or refuses to complete a scheduled medical or psychological examination, the agency or the agency's third-party vendor shall make a determination using the medical information on file.

(d) If the applicant fails to appear at the medical or psychological examination or fails to cancel the appointment within the time period required in the notice of appointment, the applicant shall be responsible for payment of any charges associated with the medical or psychological examination.

(2)

(a) The agency shall reimburse the applicant for expenses associated with the medical or psychological examination in the same manner as prescribed in 105 KAR 1:210, Section 8.

(b)

1. To receive reimbursement for mileage, actual parking costs, and any actual bridge or highway toll charges, the applicant shall file a valid Form 8846, Travel Voucher for Independent Examination, and all necessary receipts no later than end of day fifteen (15) calendar days from the date of the examination or evaluation.

2. If the applicant fails to file the Form 8846 by the end of day fifteen (15) calendar days from the date of the examination or evaluation, the applicant shall not be eligible for reimbursement.

Section 7. Determining applicant's eligibility for ILOD disability or total and permanent ILOD disability.

(1)

(a) An applicant may qualify for disability retirement benefits if he or she has sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), and 78.615(1). The service requirements shall be waived for ILOD disability or total and permanent ILOD disability pursuant to KRS 16.582(2)(a) and 78.5524(2)(a).

(b) To be eligible for any type of disability retirement allowance, the applicant shall receive a satisfactory disability determination pursuant to KRS 61.665.

(2) The agency or the agency's third-party vendor shall evaluate and determine eligibility for ILOD disability or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, and shall notify the applicant of the findings.

(3) Denial of ILOD disability, total and permanent ILOD disability, or both.

(a) The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the options listed in paragraph (b) of this subsection if:

1. The application is denied for ILOD disability, total and permanent ILOD disability, or both; and

2.

a. The applicant did not meet the service requirements for hazardous disability or total and permanent disability pursuant to subsection (1) of this section; or

b. Is approved for hazardous disability or total and permanent disability.

(b)

1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both.

(c) The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding ILOD disability, total and permanent ILOD disability, or both. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(4) Approval of ILOD disability and denial of total and permanent ILOD disability.

(a) If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the following:

1. File additional supporting information in accordance with Section 8 of this administrative regulation; or

2. Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

(b) The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation while awaiting a determination or during the pendency of the appeal regarding total and permanent ILOD disability. An adverse determination or denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(5) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability. If the application is denied for ILOD disability, total and permanent ILOD disability, hazardous disability, and total and permanent disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to complete one (1) of the following:

(a) File additional supporting information in accordance with Section 8 of this administrative regulation; or

(b) Request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, hazardous disability, total and permanent disability, or all that are applicable.

(6)

(a) The denial of ILOD disability or total and permanent ILOD disability may only be appealed if the applicant indicated on the valid Form 6000, Notification of Retirement, or the valid Form 8480, Certification of Statement of Disability – Act In the Line of Duty, that he or she was disabled due to an act in line of duty. Responses on the valid Form 8480 shall supersede responses on the valid Form 6000.

(b) The denial of total and permanent disability alone is not appealable.

(7) Denial of ILOD disability, total and permanent ILOD disability, hazardous disability, or total and permanent disability shall not affect any other benefits to which the applicant may be entitled.

Section 8. Additional Supporting Information.

(1)

(a) Upon denial of ILOD disability or total and permanent ILOD disability in accordance with Section 7 of this administrative regulation, the agency or its third-party vendor shall provide the applicant with a Form 8001, Certification of Application for Disability Retirement and Supporting Medical Information.

(b) The agency or its third-party vendor shall review and evaluate the additional supporting information upon receipt of the valid Form 8001 and additional supporting information, including additional medical information, information about his or her job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports, or other required documentation, **if[when]** filed within the required time period.

(2) Once the agency or its third-party vendor completes the evaluation of the additional supporting information, the agency or its third-party vendor shall make a determination and notify the applicant of the findings.

(a)

1. The applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the ILOD disability, total and permanent ILOD disability, or both, if **the applicant**:

- a. ~~[The application]~~ is denied for ILOD disability, total and permanent ILOD disability, or both; and
- b. Does not meet the service requirements for hazardous disability or total and permanent disability pursuant to Section 7(1) of this administrative regulation; or
- c. Is approved for hazardous disability or total and permanent disability.

2. The applicant shall receive any approved hazardous disability or total and permanent disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of appeal regarding ILOD disability, total and permanent ILOD disability, or both. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(b)

1. If the application is approved for ILOD disability, but denied for total and permanent ILOD disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the denial of the total and permanent ILOD disability.

2. The applicant shall receive the approved ILOD disability within the time period requirements established by Section 11(1) of this administrative regulation during the pendency of the appeal regarding total and permanent ILOD disability. A denial of the appeal shall not affect the benefits for which the applicant has already been approved or is already receiving.

(c) Except as provided in Section 7(6) of this administrative regulation, if the application is denied for ILOD disability, total and permanent ILOD disability, and hazardous disability, the applicant shall have until the end of day 180 calendar days from the date the notice of denial is provided to request a formal hearing in accordance with Section 16 of this administrative regulation to appeal the following:

1. Denial of the ILOD disability;
2. Total and permanent ILOD disability;
3. Hazardous disability; or
4. All that are applicable.

Section 9. Reapplication for ILOD disability or total and permanent ILOD disability while prior application or reapplication is pending.

(1) If a reapplication for ILOD disability or total and permanent ILOD disability that complies with KRS 16.582 and 78.5524 and Section 5 of this administrative regulation is filed while a prior application or reapplication is pending or within the statutory time periods for appeal, the agency shall process according to the following:

(a) If there is a prior application or reapplication pending a determination, including when the applicant has submitted additional supporting information and **the[such]** information is pending a determination as prescribed in Section 8 of this administrative regulation, then the subsequent reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545, and shall not be reviewed.

(b) If there is a prior denial that is still within the statutory time period to appeal the determination and the applicant has not submitted additional supporting information as prescribed in Section 8 of this

administrative regulation or requested an appeal in accordance with Section 16 of this administrative regulation, then:

1. The subsequently filed reapplication shall be found as a notice of intent to not submit additional supporting information or request an administrative hearing to appeal the previous denial determination; and

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication was filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section.

(c) If there is a prior denial, the applicant has requested an administrative hearing to appeal the denial, and it is prior to a Final Order of the Disability Appeals Committee (DAC), then:

1. The subsequently filed reapplication shall be found as a notice of intent to dismiss the request for an administrative hearing;

2. The reapplication shall be processed by the agency in accordance with this administrative regulation unless the applicant files a written statement indicating the subsequently filed reapplication has been filed solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The written statement shall be filed by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section; and

3. The subsequently filed reapplication shall not be reviewed by the agency until thirty-one (31) calendar days after the entry of a Final Order of DAC dismissing the previously requested administrative hearing to appeal, except that a new beneficiary designated on the subsequently filed reapplication in accordance with KRS 61.542 and 78.545 shall be effective immediately.

(d)

1. If there is a prior denial, a Final Order of DAC has been issued affirming the prior denial, and the claimant has requested an appeal of the Final Order or is within the statutory time period to do so, then the subsequently filed reapplication shall be accepted solely for the purpose of designating a new beneficiary in accordance with KRS 61.542(4) and 78.545. The reapplication shall not be reviewed unless the applicant files one (1) of the following by the end of day fifteen (15) calendar days from the date of the notice indicated in subsection (2) of this section:

a. A written statement that he or she shall not appeal the Final Order of DAC; or

b. A final unappealable Order of a court with jurisdiction over the matter.

2. If the applicant files the documentation indicated in ~~subparagraph~~paragraph (d) 1.a. or b. of this ~~paragraph~~subsection, then the subsequently filed reapplication shall be reviewed by the agency thirty-one (31) calendar days after the entry of a Final Order of DAC, or after a final unappealable Order of a court with jurisdiction over the matter has been entered.

(2) If a subsequent reapplication for ILOD disability or total and permanent ILOD disability that complies with Section 5 of this administrative regulation is filed, the applicant may receive notification of how the reapplication shall be administered based on the status of the previously filed application or reapplication and in accordance with subsection (1) of this section.

Section 10. Voiding the Form 6000, Notification of Retirement.

(1) The Form 6000, Notification of Retirement, shall be void if:

(a) The Form 6000 is invalid or withdrawn;

(b) The applicant is approved for benefits, but fails to complete the requirements of Section 11 of this administrative regulation;

(c) The applicant died during the pendency of a determination, is approved for benefits after his or her death, and the beneficiary, representative of the deceased applicant's estate, or trustee fails to complete the requirements of Section 14 of this administrative regulation; or

(d) The Form 6000 does not result in the applicant receiving a retirement benefit and all applicable time periods to appeal as provided in Sections 7 through 9 of this administrative regulation have expired.

(2)

(a) If an applicant's Form 6000, Notification of Retirement, is void, the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the most recently filed valid Form 2035, Beneficiary Designation, shall remain in full force and effect, except as provided in paragraph (b) of this subsection.

(b) If the applicant was receiving an ongoing benefit based on a previously filed valid Form 6000, Notification of Retirement, then the beneficiary or beneficiaries and contingent beneficiary or beneficiaries designated on the Form 6000 indicated in this paragraph shall remain in full force and effect.

Section 11. Administration of benefits upon approval of ILOD disability or total and permanent ILOD disability.

(1)

(a) Once an applicant is approved for hazardous disability, total and permanent disability, ILOD disability, or total and permanent ILOD disability, the applicant shall complete all requirements to begin receiving the benefit for which he or she was approved no later than six (6) months from the date the notice of approval was provided in accordance with KRS 61.590(5)(b) and 78.545. Appealing the denial of ILOD disability or total and permanent ILOD disability, or both, does not affect this requirement.

(b) If the applicant does not comply with paragraph (a) of this subsection, the applicant shall forfeit his or her right to the benefit for which he or she was approved, and shall have no right to appeal the forfeiture. This shall not preclude the applicant from:

1. Filing a reapplication for hazardous disability, ILOD disability, or total and permanent ILOD disability in accordance with KRS 16.582 and 78.5524, 105 KAR 1:210, and this administrative regulation; or

2. Filing for or receiving any other benefits that he or she may be eligible to receive.

(2) If the applicant received Social Security or Workers' Compensation benefits during the pendency of a determination, the applicant shall file detailed documentation of the benefits received in accordance with KRS 61.607, KRS 78.5530, and 105 KAR 1:210, Section 9.

(3) The agency shall provide the applicant the monthly payment options, as provided in 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, available on the Form 6010, Estimated Retirement Allowance. An applicant that was awarded Social Security or Workers' Compensation benefits during the pendency of a determination shall not be provided the Form 6010 until he or she complies with the requirements of subsection (2) of this section.

(a) The applicant shall complete and file a valid Form 6010 by the end of day six (6) months from the date the notification of approval for benefits was provided pursuant to KRS 61.590(5) and 78.545.

(b)

1. If the applicant selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, **[or a Spouse] Beneficiary, or Alternate Payee Regarding[~~of~~]** an Eligible Rollover Distribution, selecting the option for payment.

2. If the applicant intends to have the funds rolled over directly into an IRA or other qualified plan, the applicant shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(4)

(a) Approved benefits shall be paid retroactive to the first of the month following the month of the applicant's last day of paid employment in a regular full-time position.

(b) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the applicant's ILOD disability or total and permanent ILOD disability, as applicable, in determining the total retroactive payments owed and the monthly retirement allowance.

(5) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

(a) If the applicant did not receive any retirement benefits during the pendency of the approval, the applicant shall receive a payment for the retroactive period as prescribed in subsection (4) of this section.

(b)

1. If the applicant received other retirement benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the applicant the difference between the retirement benefit which was paid to the applicant and the ILOD disability or total and permanent ILOD disability payment owed.

2. The applicant shall not change the beneficiary named or the payment option selected upon early, normal, or any disability retirement benefit, except as provided in KRS 61.542(5)(a) ~~and~~, 61.542(5)(b), and 78.545.

(c) If the applicant received Social Security or Workers' Compensation benefits, the agency shall calculate payment in accordance with 105 KAR 1:210, Section 9.

(6) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the applicant shall receive any applicable backpay and begin receiving the monthly retirement allowance owed.

Section 12. Requirements for dependent child benefits.

(1) If dependent child benefits are payable to a dependent child, each eligible dependent child or his or her parent or guardian shall file the following documents:

(a)

1. If the applicant is approved for ILOD disability, a valid Form 6456, Designation of Dependent Child; or

2. If the applicant is approved for total and permanent ILOD disability, a valid Form 6448, Designation of Dependent Child for Qualifying Total and Permanent Disability.

(b) If the dependent child is age eighteen (18) or over and a full-time student, written verification of full-time student status;

(c)

1. If the dependent child is age eighteen (18) or over and receives federal Social Security disability benefits, a copy of the most recent statement issued by the Social Security Administration indicating the dependent child is disabled; or

2. If the dependent child is being claimed as a qualifying child for tax purposes due to the dependent child's total and permanent disability, a copy of the applicant's most recent tax return showing the dependent child is totally and permanently disabled for tax purposes, or duly appointed order of the court specifying the dependent child is a disabled dependent child of the applicant;

(d)

1. A copy of the dependent child's birth certificate; or

2. A final order or decree of adoption which shall include his or her date of birth or other reliable proof of date of birth that may be used by the courts to verify date of birth; and

(e) If a dependent child is less than eighteen (18) years of age, a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.

(2)

(a) After the dependent child begins receiving dependent child benefits, the dependent child or the parent or guardian of the dependent child shall:

1. Notify the agency of the death or marriage of the dependent child;

2. If applicable, notify the agency if the dependent child ceases to be a full-time student;

3. If applicable, file a copy of the dependent child's written verification of full-time student status with the agency for each semester of study by the end of day thirty (30) calendar days following the start and by the end of day thirty (30) calendar days following the end of each semester; and

4. If applicable, notify the agency if the dependent child's disability status changes.

(b) The dependent child and the parent or guardian of the dependent child shall be responsible for repaying any dependent child benefits overpaid due to the failure of the dependent child or parent or guardian of the dependent child to provide the information required by paragraph (a) of this subsection.

(5)

(a) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the dependent child shall begin receiving the benefit owed.

(b) Approved benefits shall be paid retroactive to the first of the month following the month of the applicant's last day of paid employment in a regular full-time position.

(c) Any increases provided under KRS 61.691 and 78.5518 shall be applied to the dependent child's benefits in determining the total retroactive payments owed and the monthly retirement allowance.

(d) Payment for benefits owed during the pendency of approval of ILOD disability or total and permanent ILOD disability shall be calculated accordingly:

1. If the dependent child did not receive dependent child benefits during the pendency of the approval, he or she shall receive a payment for the retroactive period as prescribed in paragraph (b) of this subsection.

2. If the dependent child received other dependent child benefits based on the same last date of paid employment during the pendency of the approval, the agency shall calculate and pay to the dependent child the difference between the dependent child benefit which was paid and the dependent child benefit owed.

Section 13. Distribution of payments.

(1) The agency shall not disperse payment until the requirements of either subsection (2) or (3) of this section are complete and on file.

(2)

(a) Except as provided in subsection (3) of this section, to begin receiving payment, the applicant, beneficiary, representative of the deceased applicant's estate, trustee, dependent child, or parent or guardian of a dependent child, as applicable, shall authorize direct deposit to an account in a financial institution in the following way:

1. File a valid Form 6130, Authorization for Deposit of Retirement Payment, provide direct deposit information on the valid Form 6000, Notification of Retirement, or authorize direct deposit via the Self-Service Web site; and

2. Provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution, including any authorizations or information needed from the financial institution.

(b) At any time while receiving a monthly benefit, a recipient may change the designated institution by completing and filing a new valid Form 6130, Authorization for Deposit of Retirement Payment, or by updating the authorization for deposit of retirement payments on the Self-Service Web site maintained by the agency.

(3) If the applicant, beneficiary, dependent child, or parent or guardian of a dependent child, as applicable, does not currently have an account with a financial institution, or his or her financial institution does not participate in the electronic funds transfer program, the applicant may receive benefits by check. To receive benefits by check, an applicant, beneficiary, dependent child, or the parent or guardian of a dependent child, as applicable, shall file a valid Form 6135, Request for Payment by Check.

(4) The most recently filed valid Form 6130, Authorization for Deposit of Retirement Payment, authorization for deposit of retirement payments on the Self-Service Web site, or valid Form 6135, Request for Payment by Check, shall control the payment or electronic transfer designation of the payable benefits.

Section 14. Death during ILOD disability or total and permanent ILOD disability application process.

(1)

(a) If an applicant who is not receiving any retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability; and

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file; and

(c) The time period requirements established in Sections 4 ~~through~~-9 of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000 shall file the following within the time period requirements established by Sections 4-9 of this administrative regulation:

a. Any outstanding forms or documents required by Sections 5 ~~through~~-9 of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. The beneficiary shall only have the rights specified in subparagraphs (a)-(d) of this paragraph if he or she files a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member.

a. The right to continue the application or reapplication whether or not additional forms or documentation are needed. The beneficiary shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;

b. The right to withdraw the application or reapplication whether or not additional forms or documentation are needed. If the Form 6008 is not on file within the time period requirements established in Sections 5 ~~through~~-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically. Withdrawal of the application or reapplication may impact the beneficiary as prescribed in Section 10(2) of this administrative regulation;

c. The right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and

d. The right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5 ~~through~~-9 of this administrative regulation.

3. If the beneficiary is an estate, then the beneficiary shall file a duly entered or certified court order from a court with jurisdiction appointing the representative of the applicant's estate within the time period requirements established by this subsection.

4. If the beneficiary does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(2)

(a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;

(b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;

(c) Lump sum or monthly benefits are payable to the beneficiary listed on the Form 6000; and

(d) The time period requirements established by Sections 4-9 of this administrative regulation have not expired; then:

1. In order to proceed with the application or reapplication, the beneficiary named on the valid Form 6000 shall file the following within the time period requirements established in Sections 4-9 of this administrative regulation:

a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and

b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.

2. The beneficiary shall file a valid Form 6008, Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member, to:

- a. Continue the application or reapplication whether or not additional forms or documentation are needed. The beneficiary shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;
 - b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the Form 6008 is not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically.
 - c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and
 - d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The Form 6008 shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.
3. If the beneficiary does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(3)

- (a) If an applicant who is receiving a monthly retirement benefit dies prior to being fully approved for ILOD disability or total and permanent ILOD disability;
- (b) A valid Form 6000, Notification of Retirement, that complies with Section 5 of this administrative regulation is on file;
- (c) No monthly or lump-sum benefits are payable to the beneficiary listed on the Form 6000 or the designated beneficiary is the estate or trust; and
- (d) The time period requirements established in Sections 4-9 of this administrative regulation have not expired; then:
 1. In order to proceed with the application or reapplication, the representative of the deceased applicant's estate or the trustee shall file the following no later than the time period requirements established in Sections 4-9 of this administrative regulation:
 - a. Any outstanding forms or documentation required by Sections 5-9 of this administrative regulation; and
 - b. Any additional relevant objective medical evidence and a valid Form 8002, Certification of Application for Disability Retirement and Supporting Medical Information.
 2. The representative of the applicant's estate shall file a duly entered or certified court order from a court with jurisdiction appointing the person(s) as representative of the applicant's estate, and a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. Both requirements of this paragraph shall be on file to:
 - a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;
 - b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;
 - c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and
 - d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

3. The trustee shall file a written statement that the application or reapplication for ILOD disability or total and permanent ILOD disability shall continue or be withdrawn as applicable. The requirements of this paragraph shall be on file to:

- a. Continue the application or reapplication whether or not additional forms or documentation are needed. The representative of the applicant's estate shall be subject to subsection 4-6 of this section prior to payment of a disability retirement benefit owed;
- b. Withdraw the application or reapplication whether or not additional forms or documentation are needed. If the requirements of this subsection are not on file within the time period requirements established in Sections 5-9 of this administrative regulation, the application or reapplication shall be withdrawn automatically;
- c. Have the right to submit additional supporting information in accordance with Section 8 of this administrative regulation if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to submit additional supporting information as provided in Section 8 of this administrative regulation; and
- d. Have the right to request an administrative hearing if there is a denial of disability retirement benefits of any kind. The requirements of this subsection shall be on file within the time period requirements to request an administrative hearing as provided in Sections 5-9 of this administrative regulation.

4. If the representative of the deceased applicant's estate or the trustee does not file the required forms and documentation within the time periods required by this administrative regulation and KRS 61.665 and 78.545, then the application or reapplication for disability retirement benefits of any kind shall not be processed by the agency.

(4) If the beneficiary, representative of the deceased applicant's estate, or trustee provides all needed forms and documentation as provided in subsections (1)-(3) of this section and Section 11(2) of this administrative regulation, and benefits are approved:

(a) The agency shall provide the beneficiary with a Form 6810, Certification of Beneficiary. The beneficiary shall complete and file a valid Form 6810.

(b) If the applicant was not receiving a retirement benefit prior to his or her death, the agency shall provide the beneficiary with the payment options available on the Form 6010, Estimated Retirement Allowance. The beneficiary shall complete and file a valid Form 6010.

1. If the beneficiary, representative of the deceased applicant's estate, or trust is eligible for and selects an actuarial refund retirement payment option, lump-sum refund of the accumulated account balance, or partial lump-sum retirement payment option, he or she shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, ~~[or a Spouse]~~ Beneficiary, or Alternate Payee Regarding ~~of~~ an Eligible Rollover Distribution, indicating the payment option elected.

2. If the beneficiary, representative of the deceased applicant's estate, or trustee intends to have the funds rolled over directly into an IRA or other qualified plan, the beneficiary, representative of the deceased applicant's estate, or trustee shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(c) If the applicant was receiving a retirement benefit prior to his or her death, the beneficiary, the deceased applicant's estate, or trust shall receive benefits based on the payment option designated by the applicant.

(d) Upon the completion of all requirements of this section and Section 13 of this administrative regulation, the beneficiary, the deceased applicant's estate, or trust shall receive or begin receiving the benefit owed.

(5)

(a) If the applicant received any retirement benefits while awaiting a disability determination of any kind, the beneficiary is not eligible to receive the difference between what the applicant already received and the disability back payments owed for the time period from the applicant's disability retirement date through the end of the month in which the applicant died. When this occurs, the deceased applicant's estate or trust shall receive any back payment owed for the time period indicated in this paragraph.

(b) If the applicant never received retirement benefits of any kind, the beneficiary is eligible to receive the disability back payments owed for the time period from the applicant's disability retirement date through the date of approval of the disability retirement benefit.

Section 15. Recipient's ILOD disability or total and permanent ILOD disability discontinued upon review. If, upon review in accordance with KRS 61.610, 61.615, 78.5528, or other applicable statute, the agency or its third-party vendor determines:

- (1) A recipient of total and permanent ILOD disability no longer meets eligibility requirements, then the agency or its third-party vendor shall determine if the recipient is qualified and remains eligible for ILOD disability in accordance with KRS 16.582 and 78.5524, and this administrative regulation; or
- (2) A recipient of ILOD disability no longer meets eligibility requirements, then the agency shall determine if the recipient is qualified and remains eligible for early or normal retirement benefits in accordance with KRS 61.592 and 78.5520.

Section 16. Right to appeal.

- (1) In accordance with KRS 61.665 and 78.545, a request for a formal hearing to appeal a denial or discontinuance determination shall be made by filing a written request containing a short and plain statement of the issues being appealed.
- (2) The hearing shall be conducted in accordance with KRS Chapter 13B and 105 KAR 1:215.
- (3) The hearing officer presiding over an administrative hearing shall review the administrative record and any records introduced at the administrative hearing.
 - (a) The determination of other state and federal agencies' approval of benefits including the Kentucky Department of Workers' Claims and the Social Security Administration, may support a final determination if accompanied by underlying objective medical evidence or vocational evidence.
 - (b) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.
- (4) The final determination shall not be bound by factual or legal findings of other state or federal agencies. The final determination shall be based on objective medical evidence and vocational records, including objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.
- (5) Once a final determination is issued, the person who filed the appeal shall be notified of the final order of the Disability Appeals Committee (DAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).
- (6) All evidentiary filings made during an administrative hearing process to appeal the denial of an application or reapplication shall be included in the information reviewed in a subsequently filed reapplication.

Section 17. Incorporation by reference.

(1) The following material is incorporated by reference:

(a) **Form 2035, "Beneficiary Designation", updated September 2022;**

(b) Form 6000, "Notification of Retirement", updated June 2023;

(c) ~~(b)~~ Form 6008, "Beneficiary Election to Continue Disability Application Process on Behalf of Deceased Member", updated November 2023;

(d) ~~(c)~~ Form 6010, "Estimated Retirement Allowance", updated April 2021;

(e) ~~(d)~~ Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, Beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", updated June 2023;

(f) ~~(e)~~ Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", updated June 2023;

(g) ~~(f)~~ Form 6130, "Authorization for Deposit of Retirement Payment", updated June 2023;

(h) ~~(g)~~ Form 6135, "Request for Payment by Check", updated June 2023;

(i) ~~(h)~~ Form 6448, "Designation of Dependent Child for Qualifying Total and Permanent Disability", updated November 2023;

(j) ~~(i)~~ Form 6456, "Designation of Dependent Child", updated November 2023;

(k)(4) Form 6810, "Certification of Beneficiary", updated April 2021;

(l)(4) Form 8001, "Certification of Application for Disability Retirement and Supporting Medical Information", updated November 2023;

(m)(4) Form 8002, "Certification of Application for Disability Retirement and Supporting Medical Information", updated November 2023;

(n)(4) Form 8025, "Authorization for Independent Medical or Psychological Examination and Release of Medical Information", updated November 2023;

(o)(4) Form 8030, "Employer Job Description", updated June 2023;

(p)(4) Form 8035, "Employee Job Description", updated November 2023;

(q)(4) Form 8040, "Prescription and Nonprescription Medications", updated November 2023;

(r)(4) Form 8480, "Certification of Statement of Disability – Act in the Line of Duty", updated November 2023; and

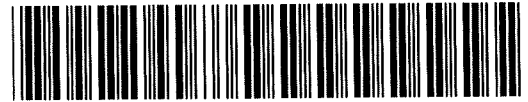
(s)(4) Form 8846, "Travel Voucher for Independent Examination", updated November 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, email Legal.Non-Advocacy@kyret.ky.gov, phone (502) 696-8800 ext. 8570, fax (502) 696-8615.

MATERIAL INCORPORATED BY REFERENCE

At the time that the agency files this staff suggested amendment, it needs to file one (1) clean copy of Form 2035, "Beneficiary Designation" with the edition date of September 2022.



Print Form

Beneficiary Designation

Member Information Please provide your Member ID or Social Security Number in the Member ID box below.

Member Name:	Phone(select type) <input type="checkbox"/> Mobile <input type="checkbox"/> Home <input type="checkbox"/> Work	Member ID:
Address:	City:	State: Zip Code:
Member's Date of Birth:	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	Email:

Notice: This form is not valid unless it is completed correctly and received in the retirement office prior to the member's death.

The member and a witness must sign this form or it will not be accepted. You may name one or more individuals, your estate, or a trust as principal or contingent beneficiary of your retirement account. If you wish to name more than four individuals as principal or contingent beneficiaries, please contact our office. Your beneficiary designation may be changed at any time prior to retirement by filing a new Form 2035. **Principal Beneficiary Section: Please select one of the beneficiary types below by checking the appropriate box. The principal beneficiary will receive benefits in the event of your death.**

Person

You cannot name yourself as principal beneficiary. You also cannot name the same person as both principal and contingent beneficiary. If you name a single individual as beneficiary, that individual may be eligible for a lifetime benefit upon your death, depending on your total service credit. If you name multiple individuals, your estate or a trust, no lifetime benefit is available. If you name more than one individual as principal beneficiary you may indicate the percentage each beneficiary is to receive. Percentages for the principal beneficiary section should total but not exceed 100%. If you do not indicate percentages, disbursement of payment will be divided equally among living principal beneficiaries, or if all principal beneficiaries have died, among all living contingent beneficiaries, as provided in KRS 61.542.

1 Name: _____ %: _____ Social Security Number: _____ Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Date of Birth: _____ Relationship: <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other Address: _____ City: _____ State: _____ Zip Code: _____	2 Name: _____ %: _____ Social Security Number: _____ Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Date of Birth: _____ Relationship: <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other Address: _____ City: _____ State: _____ Zip Code: _____
3 Name: _____ %: _____ Social Security Number: _____ Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Date of Birth: _____ Relationship: <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other Address: _____ City: _____ State: _____ Zip Code: _____	4 Name: _____ %: _____ Social Security Number: _____ Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Date of Birth: _____ Relationship: <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other Address: _____ City: _____ State: _____ Zip Code: _____

My Estate

If you name your estate as a principal beneficiary, you cannot name a contingent beneficiary. No additional information required.

Living Trust

The following information is required to designate a living trust. You must write the name of the trust as it appears in the trust document and submit a copy of the trust with this form. A charitable organization or a religious charity cannot be named as beneficiary unless it is a trust.

Name of Trust: _____ Trust Tax ID: _____ Date of Trust: _____

Trustee or Successor Trustee Contact Information: Our office will contact the trustee listed below following your death.

Name: _____ Phone (select type) Mobile Home Work

Address: _____ City: _____ State: _____ Zip Code: _____

Testamentary Trust

A testamentary trust is established by the member's will and takes effect following the member's death. No additional information required.

Contingent Beneficiary Section: Please select one of the beneficiary types below by checking the appropriate box. The contingent beneficiary will receive benefits in the event of your death only if all of the named principal beneficiaries are deceased.

Person

You cannot name yourself as contingent beneficiary. You also cannot name the same person as both principal and contingent beneficiary. If you name more than one individual as contingent beneficiary you may indicate the percentage each beneficiary is to receive. Percentages for the contingent beneficiary section should total but not exceed 100%. If you do not indicate percentages, disbursement of payment will be divided equally among living principal beneficiaries, or if all principal beneficiaries have died, among all living contingent beneficiaries, as provided in KRS 61.542.

1 Name: _____ %: _____
 Social Security Number: _____ Sex: Male Female
 Date of Birth: _____ Relationship: Spouse Child Parent Other
 Address: _____
 City: _____ State: _____ Zip Code: _____

2 Name: _____ %: _____
 Social Security Number: _____ Sex: Male Female
 Date of Birth: _____ Relationship: Spouse Child Parent Other
 Address: _____
 City: _____ State: _____ Zip Code: _____

3 Name: _____ %: _____
 Social Security Number: _____ Sex: Male Female
 Date of Birth: _____ Relationship: Spouse Child Parent Other
 Address: _____
 City: _____ State: _____ Zip Code: _____

4 Name: _____ %: _____
 Social Security Number: _____ Sex: Male Female
 Date of Birth: _____ Relationship: Spouse Child Parent Other
 Address: _____
 City: _____ State: _____ Zip Code: _____

My Estate

If you name your estate as a principal beneficiary, you cannot name a contingent beneficiary. No additional information required.

Living Trust

The following information is required to designate a living trust. You must write the name of the trust as it appears in the trust document and submit a copy of the trust with this form. A charitable organization or a religious charity cannot be named as beneficiary unless it is a trust.

Name of Trust: _____ Trust Tax ID: _____ Date of Trust: _____
 Trustee or Successor Trustee Contact Information: Our office will contact the trustee listed below following your death.
 Name: _____ Phone (select type) Mobile Home Work
 Trustee Address: _____ City: _____ State: _____ Zip Code: _____

Testamentary Trust

A testamentary trust is established by the member's will and takes effect following the member's death. No additional information required.



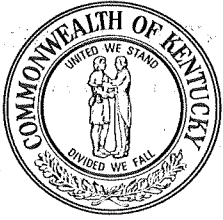
This form is not valid unless signed by the member and witnessed. Please ensure that you have only checked one beneficiary type box in the principal beneficiary section and one beneficiary type box in the contingent beneficiary section. If you select more than one beneficiary type in either section, this form will be considered invalid. Please initial all corrections you have made to the form. Failure to initial changes may cause the form to be invalid.

Your Signature: _____

Member ID: _____

Witness Signature: _____
 (REQUIRED)

Date: _____



KENTUCKY PUBLIC PENSIONS AUTHORITY

David L. Eager, Executive Director

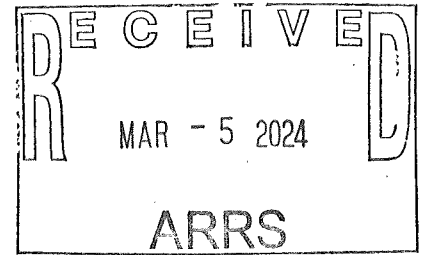
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Kentucky Public
Pensions Authority

March 5, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601



Re: 105 KAR 1:470 Agency Communications.

Dear Co-Chairs West and Lewis:

After discussions with the Administrative Regulation Review Subcommittee staff of issues raised by 105 KAR 1:470, the Kentucky Public Pensions Authority accepts the proposed attached staff suggested amendments.

Sincerely,

Jessica Beaubien

Jessica Beaubien, Policy Specialist
Kentucky Public Pensions Authority
1270 Louisville Road
Frankfort, KY 40601

Final, 3-04-2024

STAFF-SUGGESTED AMENDMENT

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority**

105 KAR 1:470. Agency Communications.

**Page 2
Section 1(6)
Line 9**

After "agency Web site", insert the following:
at myretirement.ky.gov

**Page 2
Section 1(8)
Line 15**

After "including:", delete the period.

**Page 3
Section 2(2)(b)
Line 5**

After "valid email address on file", insert a comma.

**Page 3
Section 3(1)(a)
Line 12**

After "one", insert "(1)".

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

After "one", insert "(1)".

**Page 6
Section 6(2)
Line 16**

After "one", insert "(1)".

**Page 9
Section 11(1)
Line 6**

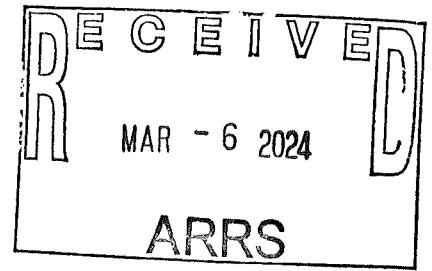
After "one", insert "(1)".

**Page 10
Section 13(1)
Line 5**

After "2040,", insert opening quotation marks.
After "Information", insert closing quotation marks.



DEPARTMENT OF MILITARY AFFAIRS



Andy Beshear
Governor

100 Minuteman Parkway
BNGC – EOC Building
Frankfort, KY 40601-6168

Haldane B. Lamberton
Major General, KYNG
The Adjutant General

March 6, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ms. Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
Capitol Annex, Rm. 029
702 Capital Ave.
Frankfort, KY 40601

RE: 106 KAR 1:131 Kentucky Emergency Response Commission civil penalty assessment and hearings procedure

Dear Co-Chairs West and Lewis,

After discussion with Administrative Regulation Review Subcommittee staff, the Department of Military Affairs respectfully submits the attached amendment to the following administrative regulation for Subcommittee consideration: 106 KAR 1:131.

Respectfully,

Charla R. Sands

Charla R. Sands, Attorney
Department of Military Affairs
100 Minuteman Parkway
Frankfort, KY 40601

Subcommittee Substitute

GENERAL GOVERNMENT CABINET
Department of Military Affairs
(As Amended at ARRS)

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990

STATUTORY AUTHORITY: KRS ~~39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210, 39E.990, [and the Emergency Planning and Community Right-to-Know Act of 1986,]~~ 42 U.S.C. ~~11001 [11000]~~ to 11050~~[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210, 39E.990]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~39E.010(1), [KRS] 39E.040(6), and [KRS] 39E.080(4)~~ requires the Kentucky Emergency Response Commission and the Division of Emergency Management to ~~promulgate [issue]~~ administrative regulations to implement KRS Chapter 39E and ~~[the Emergency Planning and Community Right-to-Know Act of 1986,]~~ 42 U.S.C. ~~11001 [11000]~~ to 11050~~;~~ governing the reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. This administrative regulation provides the procedure to assess, protest, and appeal penalties provided for in KRS ~~39E.990.~~~~[39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), and 39E.210~~ require the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations governing the activities of the Kentucky Emergency Response Commission, including standards and procedures for the operations of the commission and local emergency planning committees, fee system, hazardous substance inventory and substance release reporting, emergency procedures and requirements, and establishment of warning and notification standards. This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS ~~39E.990.~~

Section 1. Definitions.

(1) "Compliance Review Board" means any current five (5) members of the Kentucky Emergency Response Commission, selected by the commission chairman, to review and issue findings ~~and;~~ ~~recommendations;~~ ~~and penalties]~~ regarding violations of KRS 39E.050, 39E.120, 39E.130, 39E.190, 39E.220, ~~or any administrative regulation promulgated or order issued pursuant to KRS Chapter 39E,~~ and ~~issue penalties in accordance with 39E.990;~~ ~~and any administrative regulation promulgated, or order issued pursuant to KRS Chapter 39E].~~

(2) "Notice of Non-Compliance" means the notice sent to a facility owner or operator to inform them of a violation, or violations, of KRS 39E or KAR Title 106 and the penalties due and owed ~~pursuant to [per] KRS 39E.990.~~

Section 2. Notice of Non-Compliance.

(1) The commission chairman, or designee, shall mail a notice of non-compliance when the commission has notice of the existence of a violation of any provision of KRS 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.220, ~~[or 39E.990,]~~ or any administrative regulation promulgated ~~[,]~~ or order issued pursuant to KRS Chapter 39E.

(2) The notice of non-compliance shall contain the specific date, time, and place of the violation, if applicable, and a summary of the factual, legal, or other grounds upon which the notice is based, including the applicable provision of KRS Chapter 39E or KAR Title 106.

(3) Upon receiving a notice of non-compliance, the facility owner or operator shall **[either]:**

(a) Agree to the violation cited in the notice of non-compliance and become compliant by remedying the violation, submitting payment for past due fees, and submitting payment **of penalties~~[,]~~** within thirty (30) days of the date of the notice of non-compliance; or

(b) Disagree with the violation and penalty cited in the notice of non-compliance. If the facility owner or operator disagrees with the notice of non-compliance, they may file a protest **in accordance with ~~[per]~~** Section 3 of this administrative regulation.

(4) The commission may grant an extension of time for actions in subsection (3)(a) of this section, to **extend ~~[extended]~~** beyond thirty (30) days, with the approval of the commission chairman ~~[,]~~ or designee.

Section 3. Protesting a Notice of Non-Compliance.

(1) If a facility owner or operator protests the notice of non-compliance, the protest shall:

(a) Be received by the commission within thirty (30) days from the date of the notice of non-compliance;

(b) Be in writing; and

(c) Contain a supporting statement setting forth the grounds upon which the protest is made.

(2) Upon written request, the commission may grant an extension for filing the supporting statement if it determines the delay is necessary and unavoidable. The refusal of **an ~~[such]~~** extension may be reviewed in the same manner as a protested notice of non-compliance.

(3) ~~[(2)]~~ If a protest meets the requirements of subsection (1) of this section, the facility owner or operator may waive or request a conference with the **compliance ~~[non-compliance]~~** review board.

(a) If a conference is requested, the compliance review board shall give notice of the conference date, place, and time to all affected persons. This notice shall be provided to the facility owner or operator at least twenty (20) days before the date of the conference.

(b) The conference may be held in person, or virtually, and **in accordance with ~~[per]~~** the Open Meeting Act requirements contained in KRS 61.800 to 61.850. The compliance review board shall give the facility owner or operator, and other affected persons, an opportunity to present a statement or evidence challenging the notice of non-compliance. The facility owner or operator may appear in person or by a designated representative.

(c) Further conferences may be held by mutual agreement.

Section 4. Findings and Recommendations and Final Decision.

(1) After considering the protest, including any matters presented at the final conference, the

compliance review board shall issue findings and recommendations on any matter in controversy. These findings and recommendations shall be:

(a) In writing;

(b) Mailed to the facility owner or operator, and to all affected parties **pursuant to [per]** Section 6 of this administrative regulation, within fourteen (14) days of issuance; and

(c) Mailed or transmitted to the chairman, or his designee, within fourteen (14) days of issuance.

(2) The commission shall approve or disapprove the findings and recommendations of the compliance review board and issue a final decision at the first scheduled and available commission meeting in which there is a quorum.

(3) The final decision shall be signed by the commission chairman, or a designee, stating that it is a final decision of the commission, generally state the issue in controversy, the commission's position, and set forth the procedure for an appeal.

(4) The facility owner or operator shall have twenty (20) days after the final decision is signed, issued, and mailed **by[via]** certified mail, to:

(a) Resolve the findings; or

(b) Appeal the commission's final decision **pursuant to [per]** Section 5 of this administrative regulation by filing a request for an administrative hearing.

Section 5. Appeal of the Commission's Final Decision.

(1) The facility owner or operator shall request an administrative hearing by mailing **a [such]** request to the commission chairman, or designee, within the time set forth in Section 4(4)[,] of this administrative regulation.

(2) Upon receipt of the request, the commission chairman, or designee, shall request an administrative hearing officer for an administrative hearing. The administrative hearing **shall[will]** be held according to the procedures in KRS 13B.050.

Section 6. Service and Mailing of Documents.

(1) Service of documents by the commission, commission chairman or designee, or the compliance review board, shall be mailed by certified mail to the facility owner or operator at the address shown on the annual inventory report or facility plan required by KRS Chapter 39E. If no facility plans or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission, commission chairman or designee, or the compliance review board, by any party, shall be served by mail upon all other parties.[General Provisions.

(1) The commission shall commence an administrative action to impose a civil penalty under KRS 39E.990(3) against a person if the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990.

(2)

(a) The commission chairman (or designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the violation, if applicable, together with a summary of the factual, legal, and other grounds upon which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990 or Title 106 KAR that were

allegedly violated.

~~(b) Recitation of statutory or regulatory standards shall not be a sufficient summary of the grounds for the commission's action.~~

~~(3) The commission chairman (or designee) may attempt to informally resolve the violation. Informal resolution shall be in accordance with Section 3 of this administrative regulation.~~

~~(4) If, after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.~~

~~Section 2. Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party. Resolution shall be as established in this section.~~

~~(1) The commission shall give notice not less than twenty (20) days prior to an informal proceeding to all affected persons of the commission's notice of violation.~~

~~(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.~~

~~(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision.~~

~~Section 3. Parties. The parties to the proceeding shall be the commission chairman (or designee) and the alleged violator who shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060.~~

~~Section 4. Assignment to Hearing Officer; Duties and Authority.~~

~~(1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, the commission shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.~~

~~(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, and 401 KAR 100:010.~~

~~(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B, Title 106 KAR, 400 KAR 1:001, 400 KAR 1:030, 400 KAR 1:040, 400 KAR 1:090, or 401 KAR 100:010, including, for example, the authority to:~~

~~(a) Administer oaths and affirmations;~~

- ~~(b) Issue subpoenas for witnesses and production of documents or things;~~
- ~~(c) Regulate discovery;~~
- ~~(d) Rule on procedural requests;~~
- ~~(e) Hold prehearing conferences;~~
- ~~(f) Regulate the course of, and maintain order in the administrative hearing;~~
- ~~(g) Rule on evidentiary matters and admit in or exclude evidence from the record;~~
- ~~(h) Examine witnesses;~~
- ~~(i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;~~
- ~~(j) Make proposed findings of fact, conclusions of law, and recommended orders for the agency head; and~~
- ~~(k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.~~

Section 5. Continuances.

~~(1) Any party may request a continuance of a scheduled hearing for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from attending the hearing.~~

~~(a) The request shall be in writing and include the reason for the request.~~

~~(b) The request shall be submitted to the commission chairman (or designee) at least ten (10) days prior to the hearing date.~~

~~(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or designee) at least five (5) days prior to the scheduled hearing.~~

~~(3) The hearing officer shall rule on all requests for a continuance.~~

~~(a) In the hearing officer's absence, the commission chairman (or designee) shall rule on the requests.~~

~~(b) The commission chairman (or designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.~~

Section 6. Conflict of Interest; Recusal.

~~(1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.~~

~~(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts that demonstrate one (1) or more of the grounds for recusal set forth in KRS 13B.040(2)(b).~~

~~(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order.~~

Section 7. Ex Parte Contact Prohibited.

~~(1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect~~

interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

~~(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.~~

~~(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.~~

~~(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including deeming the person to have defaulted; striking all or part of that person's pleadings, claims, or defenses; denying any pending motions by the party; issuing a show cause order requiring the person to show why the hearing officer should not sanction the person; or taking such other actions as are appropriate pursuant to KRS Chapter 13B.~~

~~Section 8. Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.~~

~~Section 9. Filing of Papers.~~

~~(1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or not less than twenty (20) days in advance of a hearing.~~

~~(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.~~

~~(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation.~~

~~(a) A party filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing a paper mail the original paper to the commission.~~

~~(b) The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be the date the commission received the facsimile.~~

~~(4) Papers may be filed electronically to email tier2kyem@gmail.com. Papers filed electronically via email shall include a certificate that the paper copy is being filed by email and the original paper is being filed by mail immediately after electronic submittal.~~

~~(5) All papers filed in an administrative action shall be signed by the filing person.~~

~~(a) The signature of the filing person or his or her authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose.~~

~~(b) If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper, and take any action allowed as a consequence of the failure, strike all or part of any pleading, claim or defense asserted in the filing,~~

or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing in future administrative actions before the commission.

~~Section 10. Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law and the convenience of the parties, the witnesses, and the evidence.~~

~~Section 11. Default.~~

~~(1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his or her right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.~~

~~(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his or her right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.~~

~~(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.~~

~~(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for a death, serious illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a person acting with reasonable care and diligence to control that reasonably prevents a party from complying.~~

~~Section 12. Burden of Proof.~~

~~(1) The commission shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the commission's action.~~

~~(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.~~

~~(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.~~

~~Section 13. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law, and issue a recommended order for review and approval by the full commission with service on all parties.~~

~~(1) Any party may take exception in writing within fifteen (15) days of mailing of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, approve the findings of fact, conclusions of law, and recommended order or may modify the findings of fact, conclusions of law and recommended order.~~

~~(2) If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law, within thirty (30) days, the order of the hearing officer shall be final.~~

~~Section 14.~~

~~(1) Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the address shown on the annual inventory report or facility plan required to be filed by KRS Chapter 39E. If no facility plan or annual inventory report has been filed, then to the last known address.~~

~~(2) All documents filed with the commission by any party shall be served by mail upon all other parties.]~~

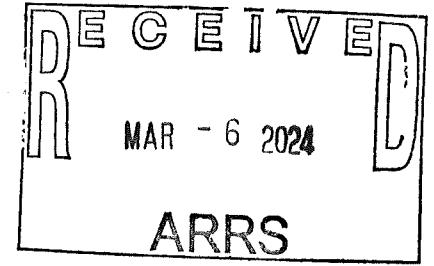
This is to certify that the Kentucky Emergency Response Commission approved this administrative regulation unanimously by Motion #046-2023 on Wednesday, November 15, 2023. The director of the Division of Emergency Management concurs with this administrative regulation as required by KRS 39E.080.

CONTACT PERSON: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601, phone (502) 330-3323, fax (502) 607-1240, email corey.a.jackson23.nfg@army.mil.



State Board of Accountancy

332 W. Broadway, Suite 310
Louisville, KY 40202
Phone: (502) 595-3037
Fax: (502) 595-4500
cpa@ky.gov



Joseph P. Donohue
Executive Director

March 4, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 201 KAR 1:200. Board of Accountancy Scholarship Funding.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 1.200, the Kentucky State Board of Accountancy proposes the attached suggested amendment to 201 KAR 1.200.

Please let me know if you have any questions or need anything further on this.

Sincerely,

Joseph P. Donohue, Executive Director
Kentucky State Board of Accountancy
332 W. Broadway, Suite 310
Louisville, KY 40202

Enc.

cc: Carrie Nichols (via email)

Final, 2-27-2024

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

State Board of Accountancy

201 KAR 1:200. Board of Accountancy Scholarship Funding.

RELATES TO: KRS 325.240

STATUTORY AUTHORITY: KRS 325.240(7)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.240(7)(b) authorizes the Kentucky State Board of Accountancy to expend funds from its account created by KRS 325.250 to support scholarship programs that assist students enrolled in a Kentucky-based college or university who also satisfy other criteria contained in an administrative regulation promulgated by the board. This administrative regulation identifies the scholarship program that ~~shall~~**[will]** be supported by the board and establishes the selection criteria that ~~shall~~**[will]** be used in connection with the scholarship funds awarded by the board.

Section 1. Definitions.

(1) "Board" is defined by KRS 325.220(2).

(2) "CPA" means certified public accountant.

(3) "Educational Foundation of the Kentucky Society of Certified Public Accountants" means the 501(c)(3) organization established in 1961 by Kentucky Society of Certified Public Accountants to strengthen and advance the profession through enriched educational programs and scholarships.

(4) "Kentucky Society of Certified Public Accountants" means the statewide, non-profit professional organization, founded in 1924, serving certified public accountants in public accounting firms, ~~businesses~~**[business]**, industry, government, and education.

Section 2. Scholarship Funding.

(1) The board's support of scholarship programs shall include financial contributions made directly to the scholarship program operated by the Educational Foundation of the Kentucky Society of Certified Public Accountants, which recognizes scholastic achievement and leadership qualities in students who plan to become CPAs.

(2) Decisions regarding the amount and timing of the board's scholarship funding distributions to the program shall be made ~~by~~**[at the sole discretion of]** the board, and ~~the~~**[such]** expenditures shall in no way hinder or interfere with the performance of the board's regulatory purpose or statutory responsibilities.

Section 3. Administration of the Scholarship Program and Criteria for Awards.

(1) Program scholarships funded by the board shall be administered by the trustees of the Educational Foundation consistent with the existing administrative guidelines of its scholarship program.

(2) Apart from its monetary contributions, the board shall have no involvement in any administration of the scholarship program. Even with regard to scholarship awards funded by the board, members of the Educational Foundation of the Kentucky Society of Certified Public Accountants shall continue to administer the program under its existing guidelines.

(3) As the one ~~(1)~~**[1]** and only departure from the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants, to be eligible to receive scholarship funds provided by the board, an applicant shall be enrolled in a Kentucky-based college or university.

(4) In all other respects, the existing parameters and guidelines of the scholarship program established and administered by the Educational Foundation of the Kentucky Society of Certified Public Accountants governing applicant eligibility; the application process; selection criteria; the selection process; and award amounts, distribution and ~~authorized~~**[permitted]** use, shall be utilized in connection with scholarship awards funded by the board's financial contributions.

(5) Information on each of those specific elements of the Educational Foundation's scholarship program may~~can~~ be found on the Web site~~website~~ of the Kentucky Society of Certified Public Accountants, [https://www.kycpa.org/edfoundation/scholarship\[kyepa.org\]](https://www.kycpa.org/edfoundation/scholarship[kyepa.org]).

CONTACT PERSON: Joseph P. Donohue, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595- 3037, email joep.donohue@ky.gov



February 7, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 302 KAR 45:020. Ginseng Growers Pilot Program

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 45:020 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 45:020.

Sincerely,

Clint Quarles
Staff Attorney
Kentucky Department of Agriculture
107 Corporate Drive
Frankfort, KY 40601



SUGGESTED SUBSTITUTE

Final Version: 03/04/24 at 10:29 a.m.

302 KAR 45:020. Ginseng Growers Pilot Program.

RELATES TO: KRS 246.030, 246.650, 246.660, ~~[246.990(9),]~~ 260.020, 260.030, 363.610, 50 C.F.R. Part 23

STATUTORY AUTHORITY: KRS 246.660, 260.020(3), 260.030(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.020(3) authorizes the commissioner to promulgate administrative regulations for the Office of Agricultural Marketing. KRS 246.660 requires the Department of Agriculture to administer a program for ginseng in Kentucky. This administrative regulation establishes a ginseng growing program.

Section 1. Registration. Each person~~[All persons]~~ wishing to sell, trade, or otherwise offer for transfer, live ginseng plants or seeds in the Commonwealth of Kentucky shall first register with the department~~[KDA]~~.

(1) A registrant shall submit a driver's license or other government-issued identification and a completed Pilot~~[fully-executed form-"]~~Ginseng Grower Registration~~["]~~.

(2) The department~~[KDA]~~ shall issue a grower ID number to registrants once the form is reviewed.

(3) The department~~[KDA]~~ may deny registration to persons with an infraction in the ginseng dealer program in the four (4) years prior to registration.

(4) A registration shall be~~[is]~~ valid for the remainder of the calendar year in which the registration~~[it]~~ was submitted~~[in]~~.

Section 2. Site Inspection and Ginseng Placement. Prior to sale or transfer of live plants or seed, the registrant shall have a physical inspection of the growing location in Kentucky. The department~~[KDA]~~ may inspect the site at any time after registration. Plants or seeds shall be located at least 300 feet away from known wild ginseng populations.

Section 3. Records Required. A registrant shall maintain records, for at least ten (10) years, of~~[the following]~~:

(1) Seed source and number of seeds or seed weight amounts, and a written receipts or invoices for all materials;~~[.]~~

(2) Live plant source and planting numbers;~~[.]~~

(3) A map of planting locations; and~~[.]~~

(4) ~~[Records of]~~All sales of all ginseng material, including live plants, seeds, and root material.

Section 4. Sales of Ginseng. All sales of live plants and seeds shall be from a registered grower.

(1) All harvest and sales of roots shall be in accordance with 302 KAR 45:010.

(2) Sales or purchases from any person not registered as a grower shall be grounds for~~[subject to]~~ the penalties of 302 KAR 45:010, including underage plant possession.

(3) All sales of roots shall be declared as other than wild for certification.

Section 5. Material Incorporated by Reference.

(1) The following material is incorporated by reference: "Pilot Ginseng Grower Program Registration", December~~[-(November)]~~ 2023.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at www.kyagr.com.

***General Reviewer's Notes:**

- File one (1) clean and one (1) dirty copy of the form with the revised title and "December 2023" edition date; and
- File a revised Summary of Material Incorporated by Reference, paginated as page 9, to reflect the packet being separated.



Pilot Ginseng Grower Program Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

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Background Introduction

Since the near beginning of the North American ginseng trade, landowners and property managers have grown American ginseng (*Panax quinquefolius*) in their forests and woodlots. Ginseng cultivation has fallen in and out of fashion over the past 150 years, depending on market forces. Large, focused pushes for ginseng cultivation are documented in historical governmental publications beginning in the 1890s.

A renewed, modern focus on ginseng production followed the 1975 listing of American ginseng (*Panax quinquefolius*) on Appendix II of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). For federal approval, states and tribes are required to develop programs outlining how trade legally meets the requirements set forth by 50 CFR Part 23, whether that ginseng is wild-collected or artificially propagated. Of those with an approved wild ginseng program, Kentucky traditionally reports the largest annual harvest of wild ginseng.

For landowners or property managers who are also ginseng growers, the Ginseng Grower Program is a way to distinguish an artificially propagated ginseng crop from those foraged from natural, wild populations. The goals of this grower program are to reduce harvest pressure on wild ginseng populations, create and recognize artificially propagated ginseng as a crop, and distinguish the market supply of artificially propagated ginseng from wild harvested ginseng.

Registering as a Kentucky ginseng grower:

- Establishes that artificially propagated ginseng is managed and harvested differently than wild, naturally occurring populations.
- Distinguishes a grower's artificially propagated ginseng as a crop, which allows the grower to make production, management, harvest, and marketing choices that better fit their needs and grants access to more agricultural opportunities and programs.
- Satisfies the market demand for American ginseng while minimizing harvest pressure on wild, natural populations.
- Provides a means for inventory tracking, documentation, and harvest and sales recordkeeping that establishes artificially propagated ginseng as crops, rather than wild, natural populations.
- Provides a legal, clear way to declare artificially propagated ginseng as a farmed crop in the market.

Regulatory References

- CITES Resolution Conf.11.11 (Rev. CoP17) Regulation of trade in plants establishes international definitions of wild and artificially propagated specimens.
- CITES Resolution Conf.16.7 (Rev. CoP17) Non-detriment findings.
- Endangered Species Act of 1973 – Ratifies CITES
- 50 CFR Part 23, with focus on 50 CFR Part 23.64 for artificial propagation criteria and 50 CFR Part 23.68 outlines state program responsibilities
- KRS 246.650, KRS 246.655, KRS 246.660, KRS 246.990 (8), 302 KAR 45:010, and 302 KAR 45:020

To become a Registered Kentucky Ginseng Grower, an applicant must:

1. Submit a completed Ginseng Grower Registration application.
2. Allow on-site visit(s) and evaluation of habitat and wild ginseng populations.
3. Receive approval from the state ginseng program prior to all sales.
4. Annually thereafter, a registered grower will provide:
 - a. Annual reporting on ginseng harvest, growing practices, and sales.
 - b. Crop Loss or Destruction Reports

Pilot Ginseng Grower Program Outline

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Page

- Registration
 - Registrations will be valid for a period of one year, from April 1 of the year of issuance to March 31 of the following year.
 - Registration may be renewed annually, beginning January 1 in the year of expiry of the grower's previous registration.
- Site Visits & Inspections
 - Approved third-party programs may be eligible to conduct site visits.
 - Provide documentation and application for third-party programs, as well as any program accreditations for approval determination.
 - A site examination visit will be conducted prior to any sales.
 - Visits may be conducted at any time after registration.
 - Site inspections will confirm locations of planting sites and any wild ginseng populations.
 - Inspections may include desk audits for a review of paperwork and inventory tracking.
 - Inspections add to the integrity of the grower program.
- Site Preparation
 - Good recordkeeping is essential for a grower. Use a notebook to record any horticultural methods and dates of site preparation.
- Planting
 - Maintain records of planting dates, locations, and parental source(s) for each planting site.
 - Follow a "do no harm" policy towards any current wild ginseng populations. This includes distancing new plantings a minimum of 300 feet from existing wild ginseng plants.
- Harvest
 - Artificially propagated ginseng that has been harvested may be designated as a wild-simulated, woods-grown or cultivated ginseng crop through the Pilot Ginseng Grower Program.
 - Artificially propagated ginseng harvested will follow harvest rule established under 302 KAR 45:101 Section 4.
- Certification
 - A grower may also apply to become a ginseng dealer for the purpose of certifying their artificially propagated ginseng.
 - An export certificate is required to allow artificially propagated ginseng to be legally exported out of Kentucky.
- Inventory Tracking
 - A ginseng dealer must prevent the co-mingling of wild ginseng with artificially propagated, wild-simulated, woods grown, and/or cultivated ginseng. This is true when growing, harvesting, buying, and/or selling ginseng.
 - A ginseng dealer purchasing wild ginseng roots from other harvesters or dealers, or purchasing certified ginseng roots from other states, must maintain proper inventory controls. Definitions for different ginseng types can be found under 302 KAR 45:010 Section 1.
- Reporting
 - Licensed ginseng growers must submit documentation of the following to the state ginseng program, using the appropriate forms:
 - Annual Application
 - Annual Reporting on production, harvest, and sales
 - Destruction/Crop Loss



Pilot Ginseng Grower Program Application *Registration*

Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

Application Instructions:

20 ___ - ___ Season

- Fill out "Grower Information" section completely.
- Submit the following two (2) items to the address below, after January 1:
 1. Original and completed ~~application~~ *registration form*
 2. A copy of your driver's license or any other valid, government issued identification.

Mail completed application to:

**Kentucky Department of Agriculture
Pilot Ginseng Grower Program
111 Corporate Drive
Frankfort, KY 40601**

New Grower Applicant New Planting Renewal

Grower Information

Grower Name _____ Ginseng Grower Number K Y

Company Name _____ Mailing address is my business address

Mailing Address _____

City _____ State _____ Zip _____

If your mailing address is a P.O. Box, please provide a street address. If the physical address is different than what is on your photo identification, please state why: This is my business address Other: _____

Physical Address _____

City _____ State _____ Zip _____

Phone () - _____ Alternate Phone () - _____ Fax () - _____

Grower Signature _____ Date _____

Current Production

1. Are you currently growing ginseng? Yes No
 - i. Can you document the source of the parental stock? Yes No
 - ii. Can you provide planting dates? Yes No
 - iii. Can you provide current inventory and population census of plants? Yes No
 - iv. Can you provide harvest records and yields? Yes No

Planting Stock Origination and Source

2. Tell us about the source and origins of your planting stock
 - a. Are you planting: Seeds Rootlets Wild Collected Transplants Other _____
 - b. Describe your source of parental stock.
 - Personal seed beds
Describe how you established your seed beds. _____
 - Seeds, Online source, domestic
 - Seeds, Online source, international
 - Unknown source of seed stock
 - Establishing from wild collected plants. Average age of wild plants _____
List county collected from: _____
 - Rootlets, sourced by: _____ Average age of rootlets _____
 - c. Have you conducted any genetic testing on your planting stock? Yes No

<input type="checkbox"/> New Grower Applicant <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20 ___ - ___ Season					
Grower Name		Ginseng Grower Number	K	Y			

Planting Location

3. Tell us about where you ginseng is growing.
- a. Are you growing on multiple parcels or multiple plots or patches? Yes No
 - b. What county(ies) are growing ginseng? _____
 - c. Parcel Number (PVA) (Legal Location) _____
 - d. Do you own, lease, or have a long-term contract on the property?
 - e. List in site under "Site Summary". Attach specific site location including parcel maps or plats for each planting site.

Pre-Planting Site Survey

4. This section covers ginseng production history on the property.
- a. Was ginseng purposely planted and grown here previously? Yes No Unsure
 - b. Are there known natural populations of ginseng on the property? Yes No Unsure
 - c. Have you surveyed for natural, wild populations Yes No
 - d. Who conducted the survey? _____

Horticultural Practices

5. How you prepare and manage ginseng pre-planting and post-planting impact the legal definition of your crop and the character of the root at harvest.
- a. Describe your cultivation, agronomy, and horticulture practices. _____

 - b. Will you grow under Natural shade, via tree canopy? Shade cloth canopy?
 Other _____
 - c. Will you remove of all understory by Chemical Mechanical methods No understory removal
 - d. Will you utilize Soil tillage Temporary leaf-litter removal No-till Raised beds
 - e. What is the size of your planting space? (Use acres or square feet, specify which) _____
 - f. How densely are you stands planted? (For example, how many plants or seeds per square foot)

 - g. Describe your disease management strategies. _____

 - h. Describe your pest management strategies. _____

 - i. Planting Dates _____

<input type="checkbox"/> New Grower Applicant <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20 ____ - ____ Season							
Grower Name			Ginseng Grower Number	K	Y				

Production Goals

6. Describe what you are producing. (Check any that may apply)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Wild (ginseng grown with minimal interference by humans and under natural canopy in forest or woodlands; or Mature ginseng plants if they are derived from seeds of wild ginseng that were planted as required under legal harvest.)
<input type="checkbox"/> Wild-Simulated (ginseng grown from seed that was not planted as required under legal harvest, with minimal interference by humans, and under natural canopy)
<input type="checkbox"/> Woodsgrown (ginseng grown under natural canopy and purposefully managed.)
<input type="checkbox"/> Cultivated (ginseng grown under artificial shade and in tilled soil) | <input type="checkbox"/> Mature roots, specify ideal age _____
<input type="checkbox"/> Seed bed production <ul style="list-style-type: none"> <input type="checkbox"/> To sell to create local seed source with genetic testing <input type="checkbox"/> Stratified <input type="checkbox"/> Rootlet production <ul style="list-style-type: none"> <input type="checkbox"/> to sell root stock <input type="checkbox"/> wholesale <input type="checkbox"/> retail |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- Refer to Nursery Regulation KRS 249.78-96 to see if your operation classifies as a nursery operation. If so you'll need to have the appropriate licensing.

Harvest Plans

7. Harvest

- a. When do you wish to harvest? Year round Legal season Other _____
- b. What is your expected yield at harvest in pounds?

Roots (Dry)	Roots (Wet)	Tops	Seeds	Seeds Under Stratification	Live Rootlets

Market Planning

8. What market are you growing for? (Check any that may apply)

- | | |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <input type="checkbox"/> Retail
<input type="checkbox"/> Wholesale | <input type="checkbox"/> Domestic use only
<input type="checkbox"/> Online |
|-----------------------------------------------------------------------|-------------------------------------------------------------------------------|

Wild Ginseng Business

9. Do you currently harvest, sell, or buy wild ginseng? Yes No
- a. Do you hold a Ginseng Dealer's License in any state including KY? _____ Yes No
- b. If yes, list each state and your dealer number for that state _____
- c. Describe your inventory system. Clearly explain how you eliminate co-mingling of grown, harvested, and/or purchased ginseng and documentation.
- _____
- _____

Other Non-Timber Forest Products

10. Are you growing or plan to grow other woodland crops besides American ginseng (*Panax quinquefolius*)? Check any that may apply. Add any others in space below.

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Black cohosh (<i>Actaea racemosa</i>)
<input type="checkbox"/> Bloodroot (<i>Sanguinaria Canadensis</i>)
<input type="checkbox"/> Blue cohosh (<i>Caulophyllum thalictroides</i>)
<input type="checkbox"/> False-unicorn root (<i>Chamaelirium luteum</i>)
<input type="checkbox"/> Goldenseal (<i>Hydrastis Canadensis</i>) | <input type="checkbox"/> Ramp or Wild leek (<i>Allium tricoccum</i>)
<input type="checkbox"/> Solomon's seal (<i>Polygonatum biflorum</i>)
<input type="checkbox"/> Stoneroot (<i>Collinsonia Canadensis</i>)
<input type="checkbox"/> Wild yam (<i>Dioscorea villosa</i>)
<input type="checkbox"/> Wood geranium (<i>Geranium maculatum</i>) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Deleto Farm

<input type="checkbox"/> New Grower Applicant <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20__ - __ Season				
Grower Name		Ginseng Grower Number	K	Y		

Site Summary

11. Attach specific site location including parcel maps or plats for each planting site. Label maps to match this list. Feel free to add any further information about specific sites regarding planting dates, planting stock origins, and horticulture practices.

Site Identification	Site Name	Site Size (note unit of measure)	Estimated Number of Plants	Average Age of Plants	Anticipated Yield at Harvest (note fresh or dry pounds)	Will you harvest this site this year?
1.						<input type="checkbox"/> Yes <input type="checkbox"/> No
2.						<input type="checkbox"/> Yes <input type="checkbox"/> No
3.						<input type="checkbox"/> Yes <input type="checkbox"/> No
4.						<input type="checkbox"/> Yes <input type="checkbox"/> No
5.						<input type="checkbox"/> Yes <input type="checkbox"/> No
6.						<input type="checkbox"/> Yes <input type="checkbox"/> No
7.						<input type="checkbox"/> Yes <input type="checkbox"/> No
8.						<input type="checkbox"/> Yes <input type="checkbox"/> No
9.						<input type="checkbox"/> Yes <input type="checkbox"/> No
10.						<input type="checkbox"/> Yes <input type="checkbox"/> No

Pelete Farm



Pilot Ginseng Grower Program Annual Reporting

Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

Instructions: Fill out "Grower Information" section completely. Submit annually by April 1.

20__ - __ Season

Grower Information

Grower Name _____ Ginseng Grower Number K Y

Company Name _____ Mailing address is my business address

Mailing Address _____

City _____ State _____ Zip _____

If your mailing address is a P.O. Box, please provide a street address. If the physical address is different than what is on your photo identification, please state why: This is my business address Other: _____

Physical Address _____

City _____ State _____ Zip _____

Phone () - _____ Alternate Phone () - _____ Fax () - _____

Grower Signature _____ Date _____

Growing Report

1. Amount of ginseng growing currently in production _____

a. Average age of plants (by prongs and planting date) _____

b. Average maturity of plants (by prongs) _____

c. Are they producing seeds? Yes No

i. Are you having germination from seeds? Yes No

Harvest Report

2. Harvest Location _____

3. Harvest Dates _____

4. Average age of harvest _____

5. Average weight of root harvested _____

6. Harvest yield (pounds):

Roots (Dry)	Roots (Wet)	Tops	Seeds	Seeds Under Stratification	Live Rootlets

Sales Report

Roots (Dry)	Roots (Wet)	Tops	Seeds	Seeds Under Stratification	Live Rootlets

Inventory No Sold Heldover

Roots (Dry)	Roots (Wet)	Tops	Seeds	Seeds Under Stratification	Live Rootlets



Pilot Ginseng Grower Program Crop Loss Reporting

Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

Delete Form

Instructions: Fill out "Grower Information" section completely and provide as many details as possible regarding any crop destruction. Submit within 45 days of any crop damage or loss.

20 ____ - ____ Season

Grower Information

Grower Name _____ Ginseng Grower Number K Y

Company Name _____ Mailing address is my business address

Mailing Address _____

City _____ State _____ Zip _____

If your mailing address is a P.O. Box, please provide a street address. If the physical address is different than what is on your photo identification, please state why: This is my business address Other: _____

Physical Address _____

City _____ State _____ Zip _____

Phone () - _____ Alternate Phone () - _____ Fax () - _____

Grower Signature _____ Date _____

Crop Loss Reporting

1. Natural Disaster

<input type="checkbox"/> Weather	<input type="checkbox"/> Weather Event
o Drought	o Earthquake
o Freeze	o Flood
o Hail	o Tornado
o Wind	<input type="checkbox"/> Other _____
o Excessive moisture	
o Excessive heat	

Date(s) of weather activity causing damage: _____

2. Disease

<input type="checkbox"/> Alternaria leaf blight	<input type="checkbox"/> Damping-off
<input type="checkbox"/> Root Rot	o Phythium
o Phytophthora	o Phytophthora
<input type="checkbox"/> Other _____	o Fusarium

a. Did you have disease diagnosed? Please attach any laboratory or diagnostic documentation. Attach any corresponding photos.

b. Age of plants affected: _____

3. Pest Destruction

Identify and describe pest destruction

Mice Moles Voles Deer browse Turkey Other _____

4. Theft

a. Did you conduct a police report? Yes No

b. Did you complete an insurance report? Yes No

c. Do you have cameras documenting theft? Yes No

d. Please provide any supplemental documentation.

e. Date(s) of theft _____

Delete Form



Pilot Ginseng Grower Program Planting Stock Origin

Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

Instructions: Fill out "Grower Information" section completely and provide as many details as possible regarding your parental stock.

20__ - __ Season

Grower Information

Grower Name _____ Ginseng Grower Number K Y

Company Name _____ Mailing address is my business address

Mailing Address _____

City _____ State _____ Zip _____

If your mailing address is a P.O. Box, please provide a street address. If the physical address is different than what is on your photo identification, please state why: This is my business address Other: _____

Physical Address _____

City _____ State _____ Zip _____

Phone () - _____ Alternate Phone () - _____ Fax () - _____

Grower Signature _____ Date _____

Seed and Planting Stock Source Information

Source Company Name _____

Contact Name _____

Source Mailing Address _____

City _____ State _____ Zip _____

Phone () _____ Alternate Phone () - _____ Fax () - _____

Planting Stock Details

Seed _____ Variety _____ Lot Number _____

Origin _____ If seed is repackaged and sold, original source of seed must be filed with agency.

Testing Date _____ Germination Rate _____

Treatments Inoculant Pelleted Fungicide Herbicide Insecticide Stratification

Other _____



Pilot Ginseng Grower Program Registration

Kentucky Department of Agriculture



Plant Marketing Division – Ginseng Program • 111 Corporate Drive, Frankfort, KY 40601 • (502) 573-0282

Registration Instructions:

20 ____ - ____ Season

- Fill out "Grower Information" section completely.
- Submit the following two (2) items to the address below, after January 1:
 1. Original and completed registration form.
 2. A copy of your driver's license or any other valid, government issued identification.

Mail completed registration form and materials to:

**Kentucky Department of Agriculture
Pilot Ginseng Grower Program
111 Corporate Drive
Frankfort, KY 40601**

New Grower Registration New Planting Renewal

Grower Information			
Grower Name _____	Ginseng Grower Number	K	Y _____
Company Name _____	<input type="checkbox"/> Mailing address is my business address		
Mailing Address _____			
City _____	State _____	Zip _____	
If your mailing address is a P.O. Box, please provide a street address. If the physical address is different than what is on your photo identification, please state why: <input type="checkbox"/> This is my business address <input type="checkbox"/> Other: _____			
Physical Address _____			
City _____	State _____	Zip _____	
Phone () - _____	Alternate Phone () - _____	Fax () - _____	
Grower Signature <input checked="" type="checkbox"/> _____	Date _____		

<input type="checkbox"/> New Grower Registration <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20 ____ - ____ Season					
Grower Name		Ginseng Grower Number	K	Y			

Current Production

1. Are you currently growing ginseng? Yes No
 - i. Can you document the source of the parental stock? Yes No
 - ii. Can you provide planting dates? Yes No
 - iii. Can you provide current inventory and population census of plants? Yes No
 - iv. Can you provide harvest records and yields? Yes No

Planting Stock Origination and Source

2. Tell us about the source and origins of your planting stock
 - a. Are you planting: Seeds Rootlets Wild Collected Transplants Other _____
 - b. Describe your source of parental stock.
 - Personal seed beds
Describe how you established your seed beds. _____
 - Seeds, Online source, domestic
 - Seeds, Online source, international
 - Unknown source of seed stock
 - Establishing from wild collected plants. Average age of wild plants _____
List county collected from: _____
 - Rootlets, sourced by: _____ Average age of rootlets _____
 - c. Have you conducted any genetic testing on your planting stock? Yes No

Planting Location

3. Tell us about where you ginseng is growing.
 - a. Are you growing on multiple parcels or multiple plots or patches? Yes No
 - b. What county(ies) are growing ginseng? _____
 - c. Parcel Number (PVA) (Legal Location) _____
 - d. Do you own, lease, or have a long-term contract on the property?
 - e. List in site under "Site Summary". Attach specific site location including parcel maps or plats for each planting site.

Pre-Planting Site Survey

4. This section covers ginseng production history on the property.
 - a. Was ginseng purposely planted and grown here previously? Yes No Unsure
 - b. Are there known natural populations of ginseng on the property? Yes No Unsure
 - c. Have you surveyed for natural, wild populations Yes No
 - d. Who conducted the survey? _____

<input type="checkbox"/> New Grower Registration <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20 ____ - ____ Season					
Grower Name		Ginseng Grower Number	K	Y			

Horticultural Practices

5. How you prepare and manage ginseng pre-planting and post-planting impact the legal definition of your crop and the character of the root at harvest.
- a. Describe your cultivation, agronomy, and horticulture practices. _____

 - b. Will you grow under Natural shade, via tree canopy? Shade cloth canopy?
 Other _____
 - c. Will you remove of all understory by Chemical Mechanical methods No understory removal
 - d. Will you utilize ----- Soil tillage Temporary leaf-litter removal No-till Raised beds
 - e. What is the size of your planting space? (Use acres or square feet, specify which) _____
 - f. How densely are you stands planted? (For example, how many plants or seeds per square foot)

 - g. Describe your disease management strategies. _____

 - h. Describe your pest management strategies. _____

 - i. Planting Dates _____

<input type="checkbox"/> New Grower Registration <input type="checkbox"/> New Planting <input type="checkbox"/> Renewal		20 ____ - ____ Season					
Grower Name		Ginseng Grower Number	K	Y			

Production Goals

6. Describe what you are producing. (Check any that may apply)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Wild (ginseng grown with minimal interference by humans and under natural canopy in forest or woodlands; or Mature ginseng plants if they are derived from seeds of wild ginseng that were planted as required under legal harvest.)
<input type="checkbox"/> Wild-Simulated (ginseng grown from seed that was not planted as required under legal harvest, with minimal interference by humans, and under natural canopy)
<input type="checkbox"/> Woodsgrown (ginseng grown under natural canopy and purposefully managed.)
<input type="checkbox"/> Cultivated (ginseng grown under artificial shade and in tilled soil) | <input type="checkbox"/> Mature roots, specify ideal age _____
<input type="checkbox"/> Seed bed production <ul style="list-style-type: none"> <input type="checkbox"/> To sell to create local seed source with genetic testing <input type="checkbox"/> Stratified <input type="checkbox"/> Rootlet production <ul style="list-style-type: none"> <input type="checkbox"/> to sell root stock <input type="checkbox"/> wholesale <input type="checkbox"/> retail |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
- Refer to Nursery Regulation KRS 249.78-96 to see if your operation classifies as a nursery operation. If so you'll need to have the appropriate licensing.

Harvest Plans

7. Harvest
- a. When do you wish to harvest? Year round Legal season Other _____
- b. What is your expected yield at harvest in pounds?

Roots (Dry)	Roots (Wet)	Tops	Seeds	Seeds Under Stratification	Live Rootlets

Market Planning

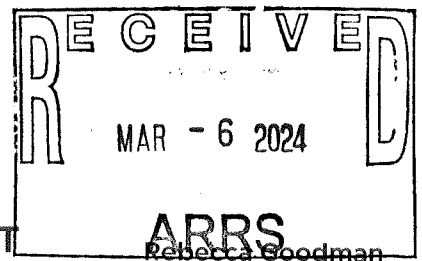
8. What market are you growing for? (Check any that may apply)
- | | |
|------------------------------------|--------------------------------------------|
| <input type="checkbox"/> Retail | <input type="checkbox"/> Domestic use only |
| <input type="checkbox"/> Wholesale | <input type="checkbox"/> Online |

Wild Ginseng Business

9. Do you currently harvest, sell, or buy wild ginseng? ----- Yes No
- a. Do you hold a Ginseng Dealer's License in any state including KY? _____ Yes No
- b. If yes, list each state and your dealer number for that state _____
- c. Describe your inventory system. Clearly explain how you eliminate co-mingling of grown, harvested, and/or purchased ginseng and documentation.
- _____
- _____

Other Non-Timber Forest Products

10. Are you growing or plan to grow other woodland crops besides American ginseng (*Panax quinquefolius*)? Check any that may apply. Add any others in space below.
- | | |
|----------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Black cohosh (<i>Actaea racemosa</i>) | <input type="checkbox"/> Ramp or Wild leek (<i>Allium tricoccum</i>) |
| <input type="checkbox"/> Bloodroot (<i>Sanguinaria Canadensis</i>) | <input type="checkbox"/> Solomon's seal (<i>Polygonatum biflorum</i>) |
| <input type="checkbox"/> Blue cohosh (<i>Caulophyllum thalictroides</i>) | <input type="checkbox"/> Stoneroot (<i>Collinsonia Canadensis</i>) |
| <input type="checkbox"/> False-unicorn root (<i>Chamaelirium luteum</i>) | <input type="checkbox"/> Wild yam (<i>Dioscorea villosa</i>) |
| <input type="checkbox"/> Goldenseal (<i>Hydrastis Canadensis</i>) | <input type="checkbox"/> Wood geranium (<i>Geranium maculatum</i>) |



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re: **401 KAR 45:010, Definitions for 401 KAR Chapter 45.**
 401 KAR 45:020, Types of Special Waste Permits.
 401 KAR 45:025, Permit Review and Determination Timetables.
 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
 401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
 401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
 401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
 401 KAR 45:100, Landfarming and Composting of Special Waste.
 401 KAR 45:105, Land Application of Biosolids
 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE

Final Version: 2/29/24 at 11:48 a.m.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

RELATES TO: KRS 224.1-010, 224.50-760, 224.50-765

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations that are consistent~~[not inconsistent]~~ with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain, ***or allow or permit*** the use of a waste site or facility to obtain a permit, pursuant to administrative regulations ***promulgated***~~[adopted]~~ by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions.

(1) "Beneficial reuse":

(a) Means the use or reuse of special wastes~~[, other than solids, residues, and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant that are subject to the provisions of 401 KAR 45:100,]~~ in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45; ~~and~~.

(b) Does not mean the use or reuse of biosolids that are ***governed by***~~[subject to]~~ the provisions of 401 KAR 45:105.

(2) "Biosolids" is defined by KRS 224.50-765(1).

(3) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of ***a training course and examination, both approved as established in 401 KAR 45:090***~~[an approved training course and examination]~~. The categories of certified operator ***include***~~[shall be]~~:

(a) Composting operator;~~[;]~~

(b) Interim operator;~~[;]~~

(c) Landfarming operator;~~[;]~~ and

(d) Landfill operator.

(4)~~[(3)]~~ "Closure" is defined by KRS 224.1-010(4).

(5)~~[(4)]~~ "Coal combustion by-products":

(a) Means special waste including fly ash, bottom ash, or scrubber sludge residues produced by coal-fired electrical generating units;~~[;]~~ and

(b) Does not mean residues of refuse derived fuels such as municipal waste, tires, or solvents.

(6)~~[(5)]~~ "Composting" ~~is defined by KRS 224.1-010(6).~~~~[Means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and that stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting:]~~

~~[(a)] [May include a process that creates an anaerobic zone within the composting material; and]~~
~~[(b)] [Does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.]~~

(7)(6) "Composting operator" means a certified operator who is ~~[the individual]~~ responsible for ensuring compliance with all permit conditions at a composting facility and who is ~~[reasonably]~~ available to the facility during operations.

(8)(7) "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(9)(8) "Construction and Operation~~[Construction/operation]~~ permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(10)(9) "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of **401 KAR Chapter 45**~~[this chapter]~~.

(11)(10) "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the ~~[approved]~~ permit application, **approved as established in 401 KAR 45:040**.

(12)(11) "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator pursuant to 401 KAR 45:090, Section 11.

(13)

~~[(a)]~~(12) "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by methods established in 401 KAR Chapter 45~~[contained in this chapter]~~, ~~[any method]~~ for purposes of disposal.

~~[(b)]~~ Disposal~~[it]~~ ~~[can be]~~ on any piece or pieces of land ~~could~~~~[, subject to approval, and may]~~~~[can]~~ improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and ~~does~~~~[will]~~ not disturb the soil below three (3) feet from the surface.

(14)(13) "Landfarming operator" means a certified operator who is ~~[the individual]~~ responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is ~~[reasonably]~~ available to be at the site or facility during operations.

(15)(14) "Landfill operator" means a certified operator who ~~has~~~~[is the individual with]~~ primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is ~~[reasonably]~~ available to be at the site or facility during operations.

(16)(15) "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(17) "Responsible corporate officer" means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

(b) The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or

(c) A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications.

(18)[(16)] "Special waste" **means:**

(a) **As established in/Is defined**[established][~~-by~~] KRS 224.50-760(1)(a); and

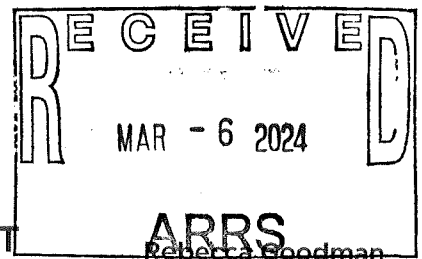
(b) ~~[Does not include special wastes that are]~~Coal combustion residuals, **which are** governed by 401 KAR Chapter 46 **and not included for the purposes of 401 KAR Chapter 45 provisions.**

(19)[(17)] "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

[Section 2.] [Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.]

[Table 1. Acronyms and Abbreviations]	
[C.F.R.]	[Code of Federal Regulations]
[EPA]	[Environmental Protection Agency]
[FDIC]	[Federal Deposit Insurance Corporation]
[FSLIC]	[Federal Savings and Loan Insurance Corporation]
[KAR]	[Kentucky Administrative Regulations]
[KPDES]	[Kentucky Pollutant Discharge Elimination System]
[KRS]	[Kentucky Revised Statutes]
[NCUA]	[National Credit Union Administration]
[NPDES]	[National Pollutant Discharge Elimination System]
[PCB]	[Polychlorinated Biphenyls]
[POTW]	[Publicly Owned Treatment Works]
[U.S.C.]	[United States Code]
[USDA]	[United States Department of Agriculture]
[USGS]	[United States Geological Survey]

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COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 401 KAR 45:020, Types of Special Waste Permits.
 401 KAR 45:025, Permit Review and Determination Timetables.
 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
 401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
 401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
 401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
 401 KAR 45:100, Landfarming and Composting of Special Waste.
 401 KAR 45:105, Land Application of Biosolids
 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE

Final Version: 02/29/24 4:14 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:020. Types of special waste permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS **224.50-760(1)(d) authorizes**~~[Chapter 224 requires]~~ the cabinet to ~~promulgate~~~~[adopt]~~ administrative regulations for the management~~[, processing, and disposal of]~~ special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or ~~allow~~~~[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~This administrative regulation ~~establishes~~~~[sets forth]~~ the classification of special waste sites or facilities for permitting~~[purposes]~~.

Section 1. Overview. This administrative regulation ~~establishes~~~~[sets forth]~~ the type of permit a person ~~shall~~~~[is required to]~~ obtain prior to engaging in the disposal or management of special waste.~~[The transition period for complying with requirements of this chapter is contained in Section 4 of this administrative regulation.]~~

Section 2. Permit Types. This section establishes the ~~[following]~~types of special waste site or facility permits.~~[:]~~

(1) Formal permit. A formal permitting process ~~shall be~~~~[is]~~ established that ~~shall include~~~~[includes]~~ the submittal of a complete application, review of the application, and permit issuance or denial by the cabinet. A formal permit shall be obtained by persons engaged in~~[the following activities]~~:

(a) Special waste landfill, ~~which shall be~~~~[This is]~~ a category of waste site or facility designed and operated to accept for disposal a limited number of special wastes that are characterizable. The administrative and technical requirements for a special waste landfill ~~shall be as established~~~~[are found]~~ in 401 KAR 45:030 and~~[401 KAR] 45:110; and~~~~[:]~~

(b) Landfarming and composting, ~~which shall be~~~~[This is]~~ a category of special waste site or facility that landfarms or composts special waste.

1. A special waste ~~[landfarming or]composting~~ site or facility that manages municipal wastewater treatment sludge ~~shall be~~~~[is]~~ classified as a Type A or Type B facility according to the metal concentrations of the sludge and volume of sludge accepted at the site as ~~established~~~~[specified]~~ in ~~[Section 2 of]~~401 KAR 45:100, ~~Section 2.~~~~[A Type B facility may be exempt from some of the requirements of a formal permit as specified in Section 2 of 401 KAR 45:100.]~~

2. Other special waste landfarming or composting ~~shall include~~~~[is]~~ the category of site or facility that manages special waste, other than municipal wastewater treatment sludge, which ~~shall be~~~~[is]~~ classified ~~as established~~~~[using parameters set forth]~~ in this administrative regulation and~~[additional parameters]~~ based upon the source, chemical and physical characteristics of the waste, volume of waste, and its potential for adverse impact on human health or the environment. Other special waste landfarming or composting facilities shall be classified as either a Type A or Type B facility in accordance with~~[Section 2 of]~~ 401 KAR 45:100, ~~Section 2.~~

3. Landfarming of biosolids, ~~[is]~~ the application to the land of sludges from the treatment of domestic sewage or sewage sludge from a treatment facility, shall be~~-and is~~ managed in accordance with 401 KAR 45:105.

(2) Permit-by-rule. This shall be~~is~~ a category of waste site or facility permit for certain special waste management practices established~~listed~~ in 401 KAR 45:060, which shall be~~that are~~ deemed to have a permit without the owner or operator having made application or registration with the cabinet.

(3) Registered permit-by-rule. This shall be~~is~~ a category of waste site or facility permit for certain special waste management practices established~~listed~~ in 401 KAR 45:070, which shall be~~that are~~ deemed to have a permit without further action by the cabinet upon acknowledgement by the cabinet of a complete registration by the owner or operator.

(4) Emergency permit. This shall be~~is~~ a category of special waste site or facility permit for the short-term storage or disposal of special waste generated during certain emergency situations.~~[,]~~These permits shall be~~are~~ issued in accordance with 401 KAR 45:135.

(5) Research, development, and demonstration permit. This shall be~~is~~ a category of special waste or facility permit to demonstrate unproven technology. These permits shall be~~are~~~~[,]~~ issued in accordance with 401 KAR 45:135.

Section 3. Special Waste Formal Permit Phases. The application process to obtain a formal permit shall consist of two (2) phases.~~[as follows:]~~

(1) Upon approval of a permit application, the cabinet shall issue a construction permit that authorizes the owner or operator to commence construction of a site or facility in accordance with the terms and conditions of the construction permit.~~[, and]~~

(2) Upon completion of the construction phase, the owner or operator shall notify the cabinet that construction of the special waste site or facility is complete, in accordance with~~[Section 1(11) of]~~ 401 KAR 45:140, Section 1(11)~~[, that construction of the site or facility is complete]~~. The cabinet shall inspect the site or facility to ensure compliance with all construction permit requirements~~[,]~~ and, upon execution of financial assurance and the submission of a fee established in~~specified in Section 2(1)(d) of]~~ 401 KAR 45:250, Section 2(1)(d), the cabinet shall issue a construction and operation~~[construction/operation]~~ permit.

~~[Section 4.] [Transition from Solid Waste Site or Facility Permits to Special Waste Site or Facility Permits.]~~

~~[(1)] [Within six (6) months of June 24, 1992, any person that possesses a solid waste landfill or landfarming permit that disposes of special waste as defined in KRS 224.50-760 issued before the effective date of this administrative regulation shall file a notice with the cabinet that states the operator's intent to meet the requirements of this chapter by July 1, 1993.]~~

~~[(2)] [After July 1, 1993, no person shall operate a special waste landfill or special waste landfarming facility unless one (1) of the paragraphs of this subsection is satisfied and the owner or operator has complied with subsection (1) of this section:]~~

~~[(a)] [The facility owner or operator possesses a permit issued or continued under 401 KAR Chapters 47 and 48:]~~

~~[(b)] [The facility owner or operator possesses a permit issued or modified to meet the technical standards of this chapter:]~~

~~[(c)] [An application for a permit modification for closure or conversion to a different classification under this chapter has been filed with the cabinet within twelve (12) months of June 24, 1992, and the cabinet has not yet rendered a decision with respect to the complete application; or]~~

~~[(3)] [An owner or operator of a site or facility that was previously regulated as a solid waste registered permit-by-rule, but is now regulated as a special waste registered permit-by-rule under 401 KAR 45:070,~~

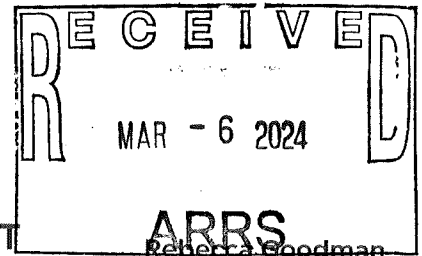
~~shall be deemed to have a special waste registered permit by rule without having to resubmit a registration.]~~

~~[(4)] [An owner or operator of a site or facility that was previously regulated as a solid waste permit by rule, but is now regulated as a special waste registered permit by rule, shall register with the cabinet in accordance with 401 KAR 45:070 by December 31, 1992.]~~

~~[Section 5.] [Solid Waste Facility Applications Pending on the Effective Date of this Administrative Regulation. Applications pending on June 24, 1992, shall be revised to meet all requirements of this chapter prior to being determined technically complete.]~~

~~[Section 6.] [Closure Criteria for Sites or Facilities Not Applying for a Special Waste Permit. Any person disposing of special waste under a solid waste landfill or landfarming permit issued before June 24, 1992, who elects to cease operation at the facility by July 1, 1993, shall comply with the closure requirements of the solid waste permit and 401 KAR Chapters 47 and 48.]~~

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- Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 401 KAR 45:020, Types of Special Waste Permits.
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 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE

Final Version: 02/29/24 at 2:44 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:025. Permit review and determination timetables.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.50

STATUTORY AUTHORITY: KRS 224.10-220, ~~224.40-305, 224.50-760(1)(d)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d) authorizes~~ ~~[Chapter 224 requires]~~ the cabinet to ~~promulgate~~ ~~[adopt]~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or ~~allow~~ ~~[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes standards applicable to all special waste sites or facilities.]~~ KRS 224.10-220 requires the cabinet to ~~promulgate administrative regulations to~~ establish timetables for the review and determination of permit applications. This administrative regulation ~~establishes~~ ~~[sets forth]~~ timetables for the review and determination of special waste permit applications and registrations ~~but does not establish permitting timetables for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility pursuant to 401 KAR 45:105.~~

Section 1. Submittal of Permit Applications and Registrations.

- (1) The official date of receipt for documents associated with a special permit application or registration shall be the date the document is stamped received by the Division of Waste Management.
- (2) The applicant or registrant shall submit all information required in the applicable permit application ~~[have the burden of establishing that the application or registration is in compliance with all requirements of KRS Chapter 224 and 401 KAR Chapters 30 and 45].~~

Section 2. Administrative Completeness Determination.

- (1)
 - (a) ~~A~~ ~~[No]~~ application or registration shall not be reviewed until the cabinet has determined that the application or registration is administratively complete. A determination by the cabinet that an application or registration is administratively complete means that the application or registration contains the major elements required by the applicable forms ~~[KRS Chapter 224 and 401 KAR Chapters 30 and 45 that are necessary to allow meaningful review by the cabinet].~~
 - (b) An application or registration shall not be deemed administratively complete if one (1) or more major components are found to be absent from the application or registration, which, by virtue of their absence, would require that the permit be denied. A determination that an application or registration is administratively complete shall not mean ~~[that the application is complete in every detail, nor shall it mean]~~ that any aspect of the application is technically sufficient ~~[or approvable]~~.
- (2) Within forty-five (45) calendar days of receipt of the application or registration, the cabinet shall provide written notice to the applicant or registrant as to the administrative completeness of the application or registration.
 - (a) ~~[If the application or registration is determined to be administratively complete, the cabinet shall notify the applicant or registrant in writing that the review and determination period provided by Section 3 of this administrative regulation has commenced.]~~

~~(b)~~ If the application or registration is determined to be incomplete, the cabinet shall notify the applicant or registrant of all the deficiencies that render it administratively incomplete. The applicant or registrant shall have thirty (30) calendar days from mailing or hand delivery of the cabinet's notice of deficiency to correct the deficiencies and render the application or registration administratively complete, unless the cabinet and applicant approve~~[approves]~~ a longer time period in writing~~[is approved by the cabinet]~~.

~~(b)(e)~~ The cabinet shall have thirty (30) calendar days from receipt of the applicant's or registrant's submittal of a complete response to a notice of deficiency to determine if the application or registration is administratively complete.

1. If the applicant or registrant submits~~[renders]~~ the application or registration administratively complete within the established~~[specified]~~ timetable, the cabinet shall notify the applicant or registrant in writing that the review and determination period established~~[provided]~~ by Section 3 of this administrative regulation has commenced.

2.

a. If the cabinet determines that the application or registration is not administratively complete at the end of the established timetable~~[period specified in this subsection]~~, the cabinet shall make a written determination to deny the permit. The reason the application or registration~~[with the stated reason that the application or registration, in its current form,]~~ fails to comply with the requirement to submit a complete application shall be submitted~~[provided]~~ to the applicant or registrant.

b. This action shall not preclude the submission of a new application or registration for the same site or facility in the future. Submission of a new application or registration shall be considered a new submittal~~[as if not previously submitted]~~ for the purpose of fees and review timetables.

Section 3. Timetables for Permit or Registration Review and Determination.

(1) All administratively complete permit applications and registrations shall be reviewed and a determination made to issue, acknowledge, or deny the permit within the ~~[following]~~ timetables established in paragraphs (a) through (h) of this subsection~~;~~

(a) Special Waste Formal Permit: 180 calendar days.

(b) Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit: ninety (90) calendar days.

(c) Registered Permit-by-rule: ninety (90) calendar days.

(d) Research, Development, and Demonstration Permit: 180 calendar days.

(e) Special Waste Permit modifications: 180 calendar days.

(f) Permit transfer: 180 calendar days.

(g) Permit renewal: ninety (90) calendar days.

(h) Permit-by-rule~~[Permit by rule]~~ applicability determinations:~~[Any other permit action not specifically set forth in this section:]~~ ninety (90) calendar days.

(2) The timetables established~~[specified]~~ in subsection (1) ~~[of this section]~~ may be extended at the initiative of either the cabinet or the applicant or registrant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant or registrant. The agreement to extend the timetable shall become part of the cabinet's permit or registration file.

Section 4. Timetable Exclusions. The time periods established~~[specified]~~ in Section 3 of this administrative regulation shall not run~~[during the following intervals]~~:

- (1) From the date the cabinet mails or hand delivers a notice of deficiency until the date the Division of Waste Management stamps as received a completed[complete] response to the deficiencies. If a notice of deficiency is sent to an applicant or registrant, the applicant or registrant shall have 180 calendar days to respond to the notice of deficiency. Failure to respond to a notice of deficiency within 180 calendar days shall be grounds for denial of the permit;
- (2) Sixty (60) days from the date of any public hearing on the application or registration to allow the cabinet time to consider public comments; and
- (3) From the date a permit application or registration is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings.

Section 5. Timetable Extensions.

- (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant.
- (2) If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate actions and final permit actions shall be accomplished.
- (3) The established time frame for final action shall not exceed the last date for action that is provided for under applicable statutes and **401 KAR Chapter 45**~~[administrative regulations]~~, based on all applications being considered and their filing dates.

[Section 6.] [Applicability Dates.]

~~[(1)] [The provisions of this administrative regulation shall apply to applications and registrations received after April 28, 1993.]~~

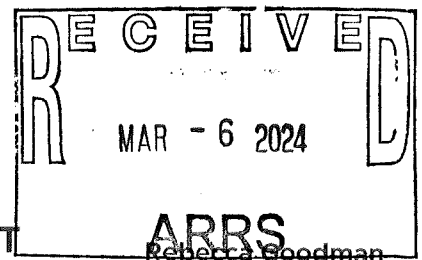
~~[(2)]~~

~~[(a)] [The provisions of this administrative regulation shall not apply to applications and registration pending on April 28, 1993 unless, within ninety (90) days of April 28, 1993, the applicant or registrant submits written notification to the cabinet that the applicant or registrant desires to have the application or registration subject to this administrative regulation.]~~

~~[(b)] [If the applicant or registrant fails to notify the cabinet in accordance with paragraph (a) of this subsection, the application or registration shall not be subject to the provisions of this administrative regulation.]~~

~~[(c)] [Applications and registrations for which the cabinet has mailed or hand delivered a notice of deficiency prior to the cabinet's receipt of the letter provided for in paragraph (a) of this subsection shall not be subject to the provisions of Section 2 of this administrative regulation. All other provisions of this administrative regulation shall apply beginning on the date the cabinet receives the notice provided for in paragraph (a) of this subsection.]~~

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March 6, 2024

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- Re:
- 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 - 401 KAR 45:020, Types of Special Waste Permits.
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 - 401 KAR 45:105, Land Application of Biosolids
 - 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
 - 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 - 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection

SUGGESTED SUBSTITUTE

Final Version: 03/01/24 at 8:41 a.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:030. Obtaining a special waste site or facility permit.

RELATES TO: KRS 146.200_-, 146.990, 224.1[224.04], 224.10, 224.40, 224.50, 224.70, 224.99, **Chapter 350**, 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

STATUTORY AUTHORITY: KRS ~~224.01-110,~~ 224.10-100, 224.10-210, 224.40-305, 224.40-330, 224.50-760(1)(d), 16 U.S.C. 661 et seq., 1273 et seq., 1531 et seq., 50 C.F.R. Part 402

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes~~[Chapter 224 requires]~~ the cabinet to promulgate~~[adopt]~~ administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow~~[permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the operating standards applicable to all special waste sites or facilities.]~~ This administrative regulation establishes the procedures for obtaining a permit for a special waste site or facility. This administrative regulation does not establish permitting or permit application standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility because those requirements are contained in 401 KAR 45:105.

Section 1. The Objective and Requirements of the Application for a Special Waste Formal Permit.

(1) All applicants for a special waste formal permit shall submit an application, on the designated application form, that contains all of the information required by~~[specified in this administrative regulation. The applicant shall submit the application on a form incorporated by reference]~~~~[approved]~~~~[by the cabinet and signed in accordance with Section 10 of]~~ this administrative regulation. Engineering drawings, specifications, and studies shall be certified by a professional engineer registered in Kentucky.

(2) The contents of the application shall be accurate and complete before the cabinet makes a preliminary determination as established in 401 KAR 45:050, Section 4, to issue a special waste formal permit.

Section 2. Scope of the Permit Requirements.

(1) Except as otherwise established~~[provided]~~ in this section, any person managing special waste shall maintain a special waste site or facility permit as established in~~[specified in Section 2 of]~~ 401 KAR 45:020, Section 2.

(2) Specific exclusions.

(a) The disposal of mining overburden, coal mining wastes, refuse, and coal mining by-products returned to the mine site of generation, including any nonhazardous waste generated directly as a result of the mining operation, shall not require a special waste site or facility permit. Owners or operators disposing of the materials in this subsection shall obtain and be regulated by the appropriate permit issued pursuant to KRS Chapter 350.

(b) Persons managing special waste during emergency situations shall be excluded, including~~[such as]~~:

1. A spill of a special waste;
2. An imminent and substantial threat of a spill of special waste; or

3. A spill of a material ~~that, if~~**[which, when]** spilled, becomes a special waste.
- (3) Specific inclusions.
- ~~[(a)] [Owners and operators of sites or facilities with permits under other programs for certain aspects of the facility operation shall also obtain the required special waste site or facility permit.]~~
- ~~[(b)] Any person who initiates or continues special waste containment or disposal activities after emergency actions are complete~~~~[situations are taken]~~ shall **comply with**~~[be subject to]~~ all applicable requirements of this chapter for those activities.
- (4)~~(a)~~ Permits for less than an entire facility. The cabinet may issue or deny a permit for one (1) or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.
- ~~(b)~~ A permit-by-rule for any unit for which a permit has not been issued or denied shall not be affected by the issuance or denial of a permit to any other unit at the facility.

Section 3. Considerations of State and Federal Law. Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable state and federal laws. These laws include~~[but are not limited to]~~:

- (1) 16 USC 661 et seq. (the Fish and Wildlife Coordination Act of 1958, as amended);
- (2) 16 USC 1273 et seq. (the National Wild and Scenic Rivers System);
- (3) 16 USC 1531 et seq. (the Endangered Species Act of 1983, as amended) and 50 CFR Part 402;
- (4) KRS 146.200 **through[to]** 146.360 and 400 KAR Chapter 4~~[401 KAR Chapters 4 and 5]~~ (the Wild Rivers system); and
- (5) KRS 146.410 **through[to]** 146.990 and 400 Chapters 2 and 3~~[KAR Title 400]~~~~[-(the Nature Preserves System)]~~.

Section 4. Limitations of a Permit.

- (1) A permit may be modified or revoked during its term for cause as established~~[set forth]~~ in 401 KAR 45:040 and in 401 KAR Chapter 40.
- (2) The issuance of a permit shall not convey any property rights or any exclusive privilege.
- (3) The issuance of a permit shall not authorize any injury to persons or property or invasion of other private property rights, or any infringement of state or local laws or administrative regulations.

Section 5. Prohibition of Use of Unpermitted Facilities. **A[No]** person shall **not** deliver, or cause to be delivered, special waste to a site or facility unless the owner or operator has:

- (1) ~~[Submitted a notice to the cabinet in accordance with Section 4(1) of 401 KAR 45:020 as an existing waste site or facility in operation on or before June 24, 1992;]~~
- ~~[(2)]~~ Qualified for a permit-by-rule in accordance with 401 KAR 45:060;
- ~~[(3)]~~ Obtained~~[Qualified]~~ for a registered permit-by-rule in accordance with 401 KAR 45:070 or 401 KAR 45:100, Section 8;
- ~~[(4)]~~ Obtained a solid waste facility permit providing for the disposal of special waste in accordance with 401 KAR Chapters 47 and 48; or
- ~~[(5)]~~ Obtained a special waste formal permit in accordance with **401 KAR Chapter 45**~~[this chapter]~~.

Section 6. Permit Required.

- (1) **A[No]** person shall **not** engage in the management, processing, or disposal of special waste at a waste site or facility without first obtaining a permit from the cabinet as **established in 401 KAR Chapter 45**~~[specified in this chapter]~~.

(2) ~~A/No~~ person shall not engage in the management, processing, or disposal of special waste and solid waste without first obtaining a permit from the cabinet as established[specified] in 401 KAR Chapters 47 and 48.

(3) ~~A/No~~ person shall not engage in the management, processing, or disposal of special waste and hazardous waste without first obtaining a permit from the cabinet as established[specified] in 401 KAR Chapter~~[Chapters 31 to]~~ 39.

(4) An owner or operator shall maintain a valid permit during the active life of the special waste site or facility, including the closure and postclosure periods required under 401 KAR 45:100 and ~~[401-KAR]~~ 45:110.

Section 7. New Special Waste Sites or Facilities.

(1) ~~A/No~~ person shall not begin physical construction of a new special waste site or facility without having received a special ~~[or solid]~~ waste permit.

(2) An applicant for a special waste formal permit shall submit to the cabinet an application that contains the information established[specified] in Section 8 of this administrative regulation.

(3) The site shall be designed in accordance with the applicable requirements of 401 KAR Chapter 45[this chapter].

(4) If the cabinet determines during the review of the application that the proposed site cannot meet the requirements of this chapter, the cabinet shall deny the permit.

~~[(5)] [The cabinet shall make a preliminary determination to issue or deny an application for a special waste formal permit within 180 calendar days from initial receipt of the application.]~~

~~[(6)] [If the application is incomplete, the cabinet shall notify the applicant in writing of the deficiencies. Failure to submit any required information noted by the cabinet within ninety (90) calendar days of receipt of the deficiencies may be grounds for denial of the application. Periods of deficiency correction shall not be counted against the review time frame specified in subsection (5) of this section.]~~

Section 8. Application for a Special Waste Formal Permit.

(1) Any person who is required to have a special waste site or facility permit under 401 KAR Chapter 45[this chapter] shall sign and submit a complete application to the cabinet.~~[The application forms are:]~~

(a) Persons applying for a special waste landfill permit shall use form ~~[DEP 7094A entitled]["]Application for a Special Waste Landfill Permit,["] form DEP 7094A,[(November 2016). The requirements contained in the special waste landfill permit application are incorporated in this administrative regulation by reference.]~~ The cabinet may require that additional information be included in the application to ensure that a draft permit conforms with the requirements of 401 KAR Chapter 45[this chapter].~~[The permit application form may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste;]~~

(b) Persons applying for a special waste landfarming facility permit for the land application of special waste other than biosolids shall use ~~[form DEP 7021A entitled]["]Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit" form DEP 7021A and[(November 2016), and form DEP 7021B entitled]["]Application for a Special Waste Landfarming Facility Permit" form DEP 7021B,[(November 2016). The requirements contained in forms DEP 7021A and DEP 7021B are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard,~~

Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste; and]

(c) Persons applying for a special waste composting facility permit shall use [~~form DEP 7021A entitled]["]Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit,["] form DEP 7021A and[(November 2016), and form DEP 7094D entitled-] [~~form DEP 7094D~~](November 2016). The requirements contained in forms DEP 7021A and DEP 7094D are incorporated in this administrative regulation by reference. Additional information may be required by the cabinet to ensure that a draft permit conforms to the requirements of this chapter. The permit application forms may be obtained from the Division of Waste Management, 300 Sewer Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste].~~

(2) Alternative application information may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer in accordance with 401 KAR 30:020, Section 2, that the alternative information results in information equal to or better than that in this administrative regulation to determine that the site and design comply with 401 KAR 30:031 and 401 KAR Chapter 45 [~~this chapter~~].

(3) Persons applying for a special waste formal permit shall submit to the cabinet, as part of the application, [~~form DEP 7094J entitled] ["]Past Performance Information,["] form DEP 7094J. [(November 2016). The requirements contained in form DEP 7094J are incorporated in this administrative regulation by reference.-]The past performance information shall be/is collected in accordance with the requirements of KRS 224.40-330(1) and (3). [~~The information form may be obtained from the Division of Waste Management, 300 Sewer Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~~~

(4) The cabinet shall not begin the processing of a formal permit application until the applicant has fully complied with the application requirements for a permit pursuant to this administrative regulation, 401 KAR 45:025, and [~~401 KAR~~] 45:100 or [~~401 KAR~~] 45:110, and [~~401 KAR~~] 45:160.

(5) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing waste site or facility, the cabinet shall state/specify in the notice of deficiency, a date for submitting the necessary information in accordance with the timetables established in 401 KAR 45:025. The cabinet shall notify the applicant in writing if/when the application is deemed complete after receiving any required additional information. The notification of completeness shall also contain any public notice required under [~~Section 4 of~~] 401 KAR 45:050, Section 4.

(6) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions shall be taken [~~under the appropriate statutory regulatory provisions~~].

(7) If [~~the cabinet determines that~~] a site investigation or visit is necessary for any reason in conjunction with the processing of an application, the applicant or an authorized representative of the applicant shall accompany the cabinet representative on a site investigation or visit if requested by the cabinet.

(8) The cabinet may require [~~such~~] additional information [~~as it deems~~] necessary in order to make a final determination to issue a permit or deny the permit application as established/provided in paragraph (1)(a) of this section.

Section 9. Formal Permit Issuance.

(1) The cabinet shall make a preliminary determination to issue or deny the permit application after review of the complete application. In making this preliminary determination, the cabinet shall consider the requirements **established in 401 KAR Chapter 45**~~[specified in this chapter]~~ and KRS 224.50-760~~[Chapter 224]~~.

(2)(a) If the cabinet makes a preliminary decision to deny the permit application, it shall issue a notice of intent to deny, ~~and [A notice of intent to deny the permit application]~~ **the permit applicant** shall **comply with**~~[be subject to]~~ the public information process as **established**~~[specified]~~ in 401 KAR 45:050.

(b) If the cabinet's final decision reverses the preliminary decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a draft construction permit shall be prepared containing ~~[the following information]~~:

(a) The proposed design and specifications; and

(b) Any conditions in accordance with ~~[Section 2 of]~~ 401 KAR 45:140, **Section 2**.

(4) The draft construction permit shall be based on the administrative record **established**~~[outlined]~~ in ~~[Section 3 of]~~ 401 KAR 45:050, **Section 3**.

(5) All draft construction permits prepared by the cabinet under this section, including those applications for horizontal expansions under ~~[Section 1 of]~~ 401 KAR 45:040, **Section 1(2)**, shall **comply with**~~[be subject to]~~ the public information process as **established**~~[specified]~~ in 401 KAR 45:050.

(6) After the close of the public comment period, the cabinet shall issue a final permit decision, **based on the submitted application**, to issue or deny the construction permit.

(7) A final permit decision shall become effective on the date of issuance of the construction permit by the cabinet.

(8) The cabinet shall document the disposition of significant comments received, and, within thirty (30) days of a final permit decision, make this documentation available to the public by supplying it to the repository established in the county in which the facility is proposed.

(9) The cabinet shall issue a construction permit if it finds that the applicant for the permit has met all the requirements for application, ~~and~~ the requirements of **401 KAR Chapter 45**~~[this chapter]~~, and KRS 224.50-760~~[Chapter 224]~~.

(10) The applicant shall maintain a construction permit in full force and effect until the **construction and operation**~~[construction/operation]~~ permit is issued by the cabinet.

(11) A **construction and operation**~~[construction/operation]~~ permit shall be issued by the cabinet **if**~~[when]~~:

(a) The applicant has notified the cabinet, in writing, that the liner system, if required, has been constructed; ~~[and]~~

(b) A representative of the cabinet has inspected the site and verified in writing to the applicant, within thirty (30) days of the inspection, that the site has been developed in accordance with plans approved by the cabinet;

(c) The required financial responsibility in 401 KAR 45:080 for closure has been established using any of the mechanisms required by 401 KAR 45:080 in an amount determined by an approved closure plan and cost estimate; and

(d) The applicant has submitted a certification by an engineer registered in Kentucky that the liner system, if required, and other features have been constructed in accordance with the approved plans and specifications.

(12) The cabinet may issue a permit ~~that includes~~[subject to specific conditions which include]; ~~but are not limited to;~~

- (a) Types of wastes ~~[which may be]~~accepted or disposed;[;]
- (b) Special operating conditions;[;]
- (c) Schedules for compliance for corrective action;[;] and
- (d) The issuance of other applicable permits of the cabinet.

Section 10. Signatures to Permit Applications and Reports.

(1) Applications. All permit applications and modifications shall be signed **as established in paragraphs (a) through (d) of this section.**~~(as follows:)~~

(a) ~~A responsible corporate officer shall sign permit applications and modification on behalf of a corporation. If the signature is by a person that meets the requirements of 401 KAR 45:010, Section 1(17)(c), then a copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.~~[For a corporation, by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:]

~~[1.] [A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;]~~

~~[2.] [The manager of one (1) or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million; or]~~

~~[3.] [A person who, pursuant to a corporation resolution, is designated to act on behalf and bind the corporation on all matters relating to permit applications and modifications. A copy of the corporation resolution shall be submitted to the cabinet attached to the permit application or modification.]~~

(b) ~~A general partner or the proprietor shall sign~~ for a partnership or sole proprietorship, ~~by a general partner or the proprietor, respectively~~[;]

(c) ~~A general partner shall sign~~ for a limited partnership, ~~by a general partner~~[; or]

(d) ~~A principal executive officer shall sign~~ for a municipality or state, federal, or other public agency, ~~by a principal executive officer~~. ~~[For purposes of this paragraph,]~~ ~~A principal executive officer shall include~~[includes]:

1. The ranking elected official;
2. The chief executive officer of the agency;
3. A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or
4. A person authorized, in writing, to sign on behalf of a person **established**~~[described]~~ in subparagraphs 1, 2, **or**~~[and]~~ 3 of this paragraph. The written authorization shall **state**~~[specify]~~ either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or a position of equivalent responsibility. A duly authorized representative **shall**~~[must thus]~~ be either a named individual or any individual occupying a named position.

(2) Reports.

(a) All reports required by permits, and other information requested by the cabinet, shall be signed by a person **established**~~[described]~~ in subsection (1) of this section, or by a duly authorized representative of that person.

(b) A person shall be a duly authorized representative only if:

1.~~[(a)]~~ The authorization is made in writing by a person ~~established~~~~[described]~~ in subsection (1) of this section;

2.~~[(b)]~~ The authorization ~~states~~~~[specifies]~~ either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative ~~shall~~~~[must thus]~~ be either a named individual or any individual occupying a named position; and

3.~~[(c)]~~ The written authorization is submitted to the cabinet ~~prior to or together with any reports.~~

(3) Changes to authorization. If an authorization under subsection (2)~~(b)~~ of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, ~~then~~ a new authorization satisfying the requirements of subsection (2)~~(b)~~ of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for such violations."

Section 11. Past Performance Considered in Review. Past performance of the owner, operator, and "key personnel", as defined ~~by~~~~[in]~~ KRS ~~224.1-010(43)~~~~[224.01-010(44)]~~, of the special waste site or facility shall be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions in accordance with KRS 224.40-330(1) and (3).

Section 12. Term and Expiration of Permits.

(1)~~(a)~~ Permits-by-rule and registered permits-by-rule shall be perpetual unless modified or revoked by the cabinet.

~~(b)~~ Permits-by-rule and registered permits-by-rule may be automatically revoked by the cabinet if the site or facility fails to meet the requirements of 401 KAR 30:031 or **401 KAR Chapter 45**~~[this chapter]~~.

(2) Special waste site or facility construction permits shall be effective for a fixed term ~~of~~~~[not to exceed]~~ five (5) years.

(3) Special waste landfill ~~construction and operation~~~~[construction/operating]~~ permits shall be issued for the anticipated life of the facility.~~[A shorter period may be specified by the cabinet.]~~

(4) Special waste landfarming facility ~~construction and operation~~~~[construction/operation]~~ permits shall be effective for a fixed term not to exceed ten (10) years. The cabinet shall review the conditions of the permit after five (5) years and modify the permit as necessary to maintain compliance with **401 KAR Chapter 45**~~[this chapter]~~.

(5) For ~~registered~~ ~~permits-by-rule or permit-by-rule~~~~[permit by rule or permits by rule]~~ (permits) issued under this administrative regulation for a term greater than five (5) years, the cabinet may reevaluate the terms and conditions of ~~those permits~~~~[the permit]~~ any time prior to ~~their~~~~[the]~~ expiration date~~[of the permit]~~. Issued permits ~~shall~~~~[may]~~ be reevaluated in accordance with the requirements of **401 KAR Chapter 45**~~[this chapter]~~~~[and KRS Chapter 224]~~, including reevaluation of the bond. After reevaluation of the permit, the cabinet may require modifications of the permit pursuant to ~~[Section 7 of]~~ 401 KAR 45:040, **Section 1**.

(6) Modification of term of permit. Except as ***established[provided]*** in Section 14 of this administrative regulation, the term of a permit shall not be extended by modification beyond the maximum duration ***established[specified]*** in subsections (2) ***through[to]*** (4) of this section.

(7) Reduced term of permit. The cabinet may issue any permit for a duration that is less than the full allowable term under subsections (2) ***through[to]*** (4) of this section.

Section 13. Renewal of Formal Permits.

(1) Any application to renew a construction or construction and operation[~~construction/operation~~] permit shall be submitted to the cabinet at least 180 days before the expiration date of the current permit. Persons applying for the renewal of a permit shall use [~~form DEP 7095 entitled~~][~~"]~~Application for Renewal of a Formal Permit,~~["]~~ form DEP 7095 (November 2016).~~[The requirements contained in the renewal application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that a renewed permit conforms to the requirements of this chapter and KRS Chapter 224. The renewal application forms may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

(2) Applications to renew a construction or construction and operation[~~construction/operation~~] permit shall be ***reviewed[subject to a review]*** in accordance with the requirements of ***401 KAR Chapter 45[this chapter]***.

(3) The cabinet, in issuing a renewal, shall consider ***if[whether]*** all conditions of prior permit conditions and agreed orders have been met. The cabinet may request updated information and impose additional or modified permit conditions to ensure compliance with 401 KAR Chapter 45[this chapter][~~when deemed appropriate~~].

Section 14. Continuation of Expiring Permits.

(1) The conditions of an expired permit shall continue in force to ensure the safe disposal of waste until the effective date of a new permit if:

(a) The permittee has submitted an an[a timely] application for renewal of a permit pursuant to[~~under~~] Section 13 of this administrative regulation. These applications shall be complete and the applicant shall have paid the appropriate fees due under 401 KAR 45:250;

(b) The cabinet, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit; and

(c) The cabinet has not given written notice of permit expiration due to enforcement actions or other reasons pursuant to the requirements of 401 KAR Chapter 45[this chapter].

(2) Effect. Permits continued under this section shall remain in full force and effect until the renewal application has been issued.

Section 15. Termination of Permits. Special waste site or facility permits shall automatically terminate on the expiration date unless the cabinet has reissued the permit or issued a continuation in accordance with Section 14 of this administrative regulation.

Section 16. Confidentiality of Information.

(1) Claims of confidentiality. Any information submitted to the cabinet pursuant to this chapter may be claimed as confidential by the applicant. Any [~~such-~~]claim ***of confidentiality*** shall be asserted at the time of submission in accordance with KRS 224.10-210 and 400 KAR 1:060. If a[no] claim is ***not*** made

in accordance with 400 KAR 1:060, the cabinet may make the information available to the public without further notice.

(2) Denial of claims of confidentiality. Claims that the name and address of any permit applicant or permittee is confidential shall be denied.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application For a Special Waste Landfill Permit", form DEP 7094A, February 2023;

(b) "Notice of Intent to Apply for a Special Waste Landfarming or Composting Permit", form DEP 7021A, February 2023;

(c) "Application for a Special Waste Landfarming Facility Permit", form DEP 7021B, February 2023;

(d) "Application for a Special Waste Composting Facility Permit", form DEP 7094D, August 2023;

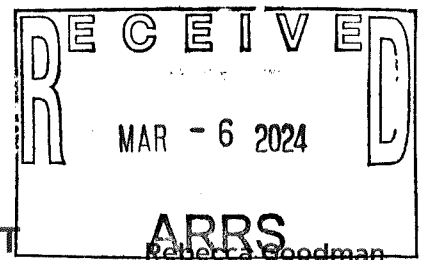
(e) "Past Performance Information", form DEP 7094J, November 2016; and

(f) "Application for Renewal of a Formal Permit", form DEP 7095, November 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

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ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re:
- 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 - 401 KAR 45:020, Types of Special Waste Permits.
 - 401 KAR 45:025, Permit Review and Determination Timetables.
 - 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
 - 401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
 - 401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
 - 401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
 - 401 KAR 45:100, Landfarming and Composting of Special Waste.
 - 401 KAR 45:105, Land Application of Biosolids
 - 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
 - 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 - 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection

SUGGESTED SUBSTITUTE
Final Version: 03/01/2r at 11:56 a.m.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 45:040. Modification, transfer or revocation of special waste permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.40-330, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes~~[Chapter 224 requires]~~ the cabinet to promulgate~~[adopt]~~ administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow~~[or permit]~~ the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation establishes~~[sets forth]~~ the requirements for modification, transfer, and revocation of special waste permits but does not establish standards for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility that are regulated pursuant to 401 KAR 45:105.

Section 1. Modification of Permits.

(1) A special waste site or facility permit may be modified during its term. Modification shall be conducted in accordance with this administrative regulation.

(a) If a permit is modified, only the conditions that relate to the~~[subject to]~~ modification shall be reopened. A permit modification shall comply with public notification requirements unless~~[be subject to public notice unless the cabinet determines]~~ the modification does not present a threat to human health and the environment~~[may be subject to public notice if the cabinet believes a significant degree of public interest exists with respect to an application].~~

(b) An application to modify a permit for a horizontal expansion beyond the permitted waste boundary shall require a public notice in accordance with 401 KAR 45:050.

(2)~~(4)~~ Modification of formal permits. Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a complete application to the cabinet that is appropriate for the type of facility being modified. The permittee shall use:

(a) ~~[“]Application for a Special Waste Landfill Permit, [“] form DEP7094A, incorporated by reference in 401 KAR 45:030;~~

(b) ~~[“]Application for a Special Waste Landfarming Facility Permit, [“] form DEP7021B, incorporated by reference in 401 KAR 45:030;~~

(c) ~~[“]Application for a Special Waste Composting Facility Permit, [“] form DEP 7094D, incorporated by reference in 401 KAR 45:030; or~~

(d) ~~[“]Application for a Research, Development, and Demonstration Permit, [“] form DEP 7094B, incorporated by reference in 401 KAR 45:135.~~

(3) ~~[Forms in paragraphs (a) through (c) of subsection (2) are incorporated by reference in 401 KAR 45:030. The form in paragraph (d) of subsection (2) is incorporated by reference in 401 KAR 45:135.]~~ form DEP 7094A entitled "Application for a Special Waste Landfill Permit," form DEP 7021B entitled "Application for a Special Waste Landfarming Facility Permit" or form DEP 7094D entitled "Application for a Special Waste Composting Facility" which are incorporated by reference in Section 2

of 401 KAR 45:030, or has submitted form DEP 7094B entitled "Application for a Research, Development, and Demonstration Permit" that is incorporated by reference in Section 2 of 401 KAR 45:135. The permittee shall complete the applicable sections of the application as directed by the cabinet.]

~~[(4)]~~ (2) Modification of a registered permit-by-rule. Registrants requesting a modification shall submit a new registration form in accordance with ~~[Section 4 of]~~ 401 KAR 45:070, **Section 4**.

~~[(4)]~~ ~~[(5)]~~ (3) Causes for modification. ~~[The following paragraphs list]~~ [are] Causes for modification of formal permits by the cabinet **shall include**:

(a) Material and substantial alterations or additions to the permitted special waste site or facility **[are]** being contemplated that justify new permit conditions that are different or absent in the existing permit;

(b) ~~A~~ **[The]** cabinet **determination** ~~[determines]~~ that the special waste site or facility, as previously permitted, is not likely to comply with 401 KAR 30:031;

(c) ~~[The cabinet determines]~~ Good cause exists for modification of a compliance schedule, such as an act of God, **labor** strike, ~~[flood,~~] materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;

(d) Modification of a closure plan **if required by 401 KAR Chapter 45** ~~[is required under this chapter]~~;

(e) The cabinet **receiving** ~~[receives]~~ notification of expected closure and **finding** ~~[finds]~~ that one (1) or more ~~[any]~~ of the permit conditions are no longer warranted;

(f) **Cabinet adjustment of** ~~[The cabinet adjusts]~~ the level of financial responsibility required pursuant to 401 KAR 45:080;

(g) ~~[The]~~ Corrective action program, **as included** ~~[specified]~~ in the permit, **failure to bring** ~~[has not brought]~~ the waste site or facility into compliance with the groundwater protection standards **as established in 401 KAR 45:160, Section 5** ~~[within a reasonable period of time]~~;

(h) ~~[To include]~~ A monitoring program meeting the requirements of 401 KAR 45:160;

(i) **Approval of** ~~[To approve]~~ a corrective action plan required by 401 KAR 45:160;

(j) ~~[To include]~~ Conditions applicable in new or amended statutes and administrative regulations;

(k) Modification ~~[is]~~ necessary to protect human health or the environment;

(l) ~~[To include]~~ Conditions applicable as a result of a hearing or enforcement action as **established** ~~[specified]~~ in 401 KAR Chapter 40;

(m) **Change of** ownership of the special waste site or facility ~~[changes]~~;

(n) **Expansion of** ~~[To expand]~~ the capacity of a special waste site or facility; or

(o) **Addition of** ~~[To add]~~ a new waste that contains different chemical characteristics than the waste source previously permitted.

Section 2. Procedures for Permit Modification.

(1) A permit for a special waste site or facility may be modified either at the request of the permittee or upon the cabinet's initiative.

(2) If the permittee requests the modification, the cabinet **shall determine** ~~[decides]~~ **if** ~~[whether]~~ the request is justified in accordance with Section 1 of this administrative regulation ~~[or for other good cause shown]~~. If the cabinet determines not to modify the permit, **the cabinet** ~~[it]~~ shall notify the permittee in writing and give a reason for the decision.

(3) If the cabinet makes a preliminary decision to modify a permit under this administrative regulation, **then** the cabinet shall prepare a draft modified permit incorporating the proposed changes. If the permit modification **requires** ~~[is subject to]~~ public notice ~~[requirements]~~, the permittee shall publish a notice in accordance with ~~[Section 4 of]~~ 401 KAR 45:050, **Section 4**.

(4) The cabinet shall provide the permittee with a copy of the draft modified permit and allow ten (10) working days for comment. Comments received from the permittee shall be considered in finalizing the draft modified permit.

(5) The cabinet shall issue the modified permit after consideration of the comments or following the ten (10) day comment period if no comments are received.

(6) The owners or operators of a special waste site or facility may request a hearing. **A hearing shall be requested** pursuant to KRS 224.10-420 within thirty (30) days of issuance of the permit modification by the cabinet.

(7) All terms of an existing permit **shall** remain in effect during the permit modification request.

(8) A permit modification requesting a horizontal expansion shall **comply with**~~[be subject to]~~ the requirements of public notice in accordance with 401 KAR 45:050. All draft permits for horizontal expansions shall be prepared **as established in**~~[under Sections 8 and 9 of]~~ 401 KAR 45:030, **Sections 8 and 9**, and shall be based on the administrative record required by ~~[Section 3 of]~~ 401 KAR 45:050, **Section 3**.

Section 3. Transfer of Permits.

(1) A permit **shall not be transferred**~~[is not transferable]~~ to any person without prior approval of the cabinet **based on the submitted application**. ~~[For purposes of this section,]~~ **A person requesting to transfer a formal permit for an existing special waste site or facility shall submit a completed Application to Transfer Special Waste Permit, form DEP 7094C. The**~~[permit transfer]~~ application **shall be**~~[is]~~ required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

~~(2) [A person requesting to transfer a formal permit for an existing special waste site or facility shall submit] [use form DEP 7094C entitled] ["Application To Transfer Special Waste Permit" form DEP 7094C.] [(November 2016). The requirements contained in the transfer application are incorporated in this administrative regulation by reference. The cabinet may require that additional information be included in the application to ensure that the prospective owner or operator complies with the requirements of this chapter. The transfer application form may be obtained from the Division of Waste Management, 300 Sewer Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

On the basis of the submitted application,~~[(3)]~~ the cabinet shall make a preliminary determination to approve or disapprove a formal permit transfer within 180 calendar days from the initial receipt of the application.

~~(3)~~~~[(4)]~~ If the transfer application is incomplete, the cabinet shall notify the applicant in writing of **all** the deficiencies. Periods of deficiency shall not be counted against the review time frame **established**~~[specified]~~ in subsection (3) of this section. Failure to submit ~~[any required]~~ information noted by the cabinet **related to the deficiencies** within ninety (90) calendar days of receipt of the notice of deficiency **shall be**~~[is]~~ grounds for disapproval of the transfer application.

~~(4)~~~~[(5)]~~ If the cabinet makes a preliminary determination to approve the transfer application, the applicant shall publish a public notice in accordance with ~~[Section 4 of]~~ 401 KAR 45:050, **Section 4**.

~~(5)~~~~[(6)]~~ After the public notice has been published by the applicant, the cabinet shall provide a public comment period in accordance with ~~[Sections 5 to 8 of]~~ 401 KAR 45:050, **Sections 5 through 8**.

~~(6)~~~~(7)~~ After the close of the public comment period, the cabinet shall make a final decision on the transfer application, **based on the submitted application.**

~~(7)~~~~(8)~~ A person requesting to transfer a registered permit-by-rule shall submit a registration in accordance with ~~[Section 2 of]~~401 KAR 45:070, **Section 2.**

Section 4. Modification, Suspension, and Revocation of a Permit. **(1)** The cabinet may modify, suspend, or revoke a permit issued under this chapter for: ~~[the items listed in subsections (1) through (7).]~~

~~(a)~~~~(1)~~ Violation of any requirement of KRS Chapter 224, **401 KAR Chapter 45**~~[this chapter]~~, or 401 KAR 30:031;~~;~~

~~(b)~~~~(2)~~ Aiding, abetting, or **allowing**~~[permitting]~~ the violation of KRS Chapter 224, **401 KAR Chapter 45**~~[this chapter]~~, or 401 KAR 30:031;~~;~~

~~(c)~~~~(3)~~ Any action or omission associated with maintenance and operation of the facility that could or does create a threat to public health or the environment;~~;~~

~~(d)~~~~(4)~~ Violations of a condition or a variance of the special waste site or facility permit;~~;~~

~~(e)~~~~(5)~~ Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;~~;~~

~~(f)~~~~(6)~~ Failure to comply with an order issued by the cabinet; ~~or~~;

~~(g)~~ **Transfer of**~~(7)~~ the facility ~~[is transferred]~~ to another person without prior approval of the cabinet.

(2)~~(8)~~ The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.

(3)~~(9)~~ If a permit is revoked, the owner or operator may reapply.

(4)~~(10)~~ Owners or operators of special waste sites or facilities may file a request for a hearing. **A request shall be** pursuant to KRS 224.10-420 upon revocation of the permit.

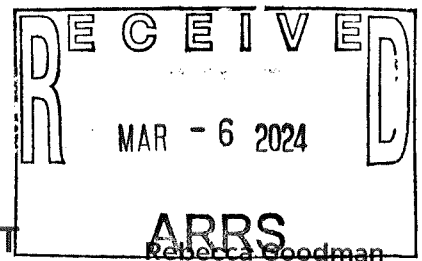
Section 5. Incorporation by Reference.

(1) "Application To Transfer Special Waste Permit", form DEP 7094C [November 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601; Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
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ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
401 KAR 45:020, Types of Special Waste Permits.
401 KAR 45:025, Permit Review and Determination Timetables.
401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
401 KAR 45:100, Landfarming and Composting of Special Waste.
401 KAR 45:105, Land Application of Biosolids
401 KAR 45:140, Conditions Applicable to All Special Waste Permits
401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection

SUGGESTED SUBSTITUTE

Final Version: 03/01/24 at 2:32 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:050. Public information procedures for special waste site or facility permits.

RELATES TO: KRS 224.1[224.04], 224.10, 224.40, 224.46, 224.50, ~~224.999~~[224.90]

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d) authorizes~~[Chapter 224 requires] the cabinet to ~~promulgate~~[adopt] administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or ~~allow~~[permit] the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~This administrative regulation ~~establishes~~[sets forth] public information procedures. This administrative regulation does not establish the public information procedures for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility.

Section 1. Applicability.

(1) Public information procedures shall apply to applicants for ~~the following permits~~[each person seeking]:

- (a) A new special waste landfill permit;
- (b) A permit for a horizontal expansion of a special waste landfill;
- (c) A Type A special waste landfarming or composting site or facility permit;
- (d) A research, development, and demonstration permit;
- (e) A transfer of ownership of a site facility with a formal special waste permit that originally required a public notice; and
- (f) Approval of a new waste permit that contains different chemical characteristics than the waste source previously permitted.

(2) The cabinet may require public information procedures for other permit actions or modifications if ~~it determines that~~ a significant degree of public interest exists with respect to an application or modification.

Section 2. Fact Sheet.

(1) A fact sheet shall be prepared by the cabinet for every draft permit. The fact sheet shall briefly ~~state~~[set forth] the principal facts and the significant factual, legal, methodological, and policy questions considered in processing the permit application. ~~[The cabinet shall send this fact sheet to the applicant and, on request, to any other person.]~~

(2) The fact sheet shall include:

- (a) A brief description of the type of facility or activity that is the subject of the draft permit;
- (b) The type and quantity of wastes that are proposed to be or are being stored, treated, or disposed;
- (c) A brief summary of the basis for the proposed permit conditions, including reference to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Section 3 of this administrative regulation;

- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:
 - 1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments shall be received;
 - 2. Procedures for requesting a hearing and the nature of that hearing; and
 - 3. Any other procedures including public participation in the final decision; and
- (f) Name and telephone number of a cabinet representative to contact for additional information.

Section 3. Administrative Record for Proposed Permits.

- (1) The provisions of a draft permit prepared by the cabinet under ~~[Section 9]~~ of 401 KAR 45:030, **Section 9**, shall be based on the administrative record.
- (2) The administrative record shall consist of:
 - (a) The application and any supporting data **submitted** furnished by the applicant;
 - (b) The draft permit or notice of intent to deny the application;
 - (c) The fact sheet prepared in accordance with Section 2 of this administrative regulation;
 - (d) All documents cited in the fact sheet; and
 - (e) Other documents contained in the supporting file for the proposed permit.
- (3) Material readily available at the cabinet's office need not be physically included with the rest of the record ~~if [as long as]~~ it is specifically referred to in the fact sheet, ~~including [This includes]~~ published material that is generally available~~[,]~~ and that is included in the administrative record.

Section 4. Public Notice.

- (1)
 - ~~(a)~~ Upon notification by the cabinet that the application is complete, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly major local newspaper of general circulation where the proposed site or facility is located.
 - ~~(b)~~ Verification of publication shall be provided to the cabinet within thirty (30) calendar days of the publication date. The notice shall contain ~~[the following information]~~:
 - 1. ~~(a)~~ Name and address of the cabinet's office processing the permit action for which notice is being given;
 - 2. ~~(b)~~ Name and address of the permit applicant and, if different, of the facility or site regulated by the permit;
 - 3. ~~(c)~~ A brief description of the business conducted or activity **included [described]** in the permit application;
 - 4. ~~(d)~~ A description of the proposed location of the special waste site or facility, including a description of the primary access roads;
 - 5. ~~(e)~~ Name, address, and telephone number of a person from whom interested persons may obtain further information; **and**
 - 6. ~~(f)~~ The following statement: "Within thirty (30) days of the publication of this notice, any person who wishes to comment on the application may submit written comments and, if desired, request from the cabinet, a public meeting" ~~[and]~~
 - ~~(g)~~ ~~[Any additional information required by the cabinet].~~
- (2) The cabinet may schedule a public meeting if a significant degree of public interest exists as a result of a public notice published under this section.
- (3) Upon notification by the cabinet that a draft permit has been prepared, the permit applicant shall publish a public notice, supplied by the cabinet, in a daily or weekly, major, local newspaper of general

circulation where the proposed site or facility is located. Verification of publication shall be provided to the cabinet within thirty (30) days of the publication date. The notice shall contain ~~[the following]~~:

- (a) The information required by subsection (1)(b)1. ~~Through~~**[to]** 6. ~~[(1)(a) to (e)]~~ of this section;
- (b) The location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet, and application;
- (c) The time and place of any hearing already scheduled and procedures by which the public may participate in the public comment period and public hearing;
- (d) The location of the administrative record required by Section 3 of this administrative regulation, including:

- 1. A local repository in the county in which the site or facility is proposed; ~~;~~
- 2. The times at which the record is open for public inspection; ~~;~~ and
- 3. A statement that all data submitted by the applicant is available as part of the administrative record; ~~and~~

(e) The following statement: "Any person who wishes to comment on the draft permit decision for this special waste site or facility may file comments with the cabinet and, if desired, request a public hearing within thirty (30) days of the publication of this notice pursuant to ~~[Section 6 of]~~ 401 KAR 45:050, **Section 6.**" ~~;~~ ~~and~~

~~[(f)] [Any additional information required by the cabinet.]~~

(4) Public notices may describe more than one (1) permit or permit action.

(5) Public notices shall be of a size to include not less than two (2) columns widths for advertising and shall be in a display format.

(6) The cabinet shall distribute the public notice ~~established~~**[specified]** in subsection (1) of this section to ~~[the following]~~:

(a) The Kentucky Department of Fish and Wildlife Resources; ~~;~~

~~(b)~~ The U.S. Fish and Wildlife Agency; ~~;~~

~~(c)~~ The Advisory Council on Historic Preservation; ~~;~~

~~(d)~~ The State Historic Preservation Officer; ~~;~~ ~~and~~

~~(e)~~ Other appropriate government authorities, including **those of** any other affected states; ~~and~~

~~(f)~~ ~~[(b)]~~ Any unit of local government having jurisdiction over the area where the facility is proposed to be located; ~~;~~ ~~and~~

~~(g)~~ ~~[(c)]~~ ~~[Each state agency, division, or department having any authority under state law with respect to the construction or operation of the proposed site or facility].~~

(7) The cabinet shall use any other public notice method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(8) In addition to the published public notices required in this section, an applicant shall deliver a notice that has been prepared by the cabinet to ~~[the following individuals]~~:

(a) Landowners of all adjacent and abutting properties surrounding the proposed special waste site or facility; and

(b) Occupants of all buildings or units within a building on adjacent and abutting properties surrounding the proposed special waste site or facility.

Section 5. Public Comment Period. The public comment period shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or permit decision, and may request a public hearing if a hearing has not already been scheduled. The comment period shall commence on the date of publication of the public notice.

Section 6. Public Hearings.

(1) The cabinet may hold a public hearing on the basis of written request or **if[when]** a significant degree of public interest exists concerning a special waste site or facility permit decision. The cabinet may hold a public hearing to clarify one (1) or more issues involved in the permit decision.

(2) **if[Whenever]** a public hearing is held, a presiding officer shall be designated by the cabinet for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required,

(4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 7. Reopening of the Public Comment Period.

(1) If any data, information, or arguments submitted during the public comment period, including information or arguments that any condition of the proposed permit or permit denial is inappropriate, appear to raise substantial new questions concerning a permit, the cabinet may:

(a) Prepare a new draft permit; or

(b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances **established[described]** in subsection (1) of this section, elect to hold further proceedings. This decision may be combined with any of the actions **established[enumerated]** in subsection (1) of this section.

Section 8. Response to Comments.

(1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:

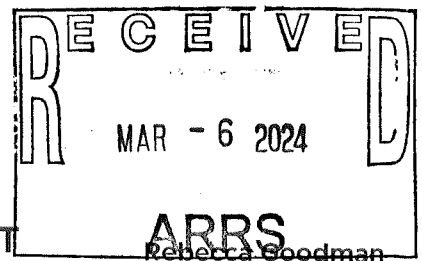
(a) **State[Specify]** which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all ~~significant~~ comments on the draft permit raised during the public comment period, or during any public hearing.

(2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county **in** which the site or facility is proposed.

Section 9. Adjudicatory Hearing. An aggrieved person's right to an adjudicatory hearing pursuant to KRS 224.10-420 **shall commence[commences]** upon the completion of the public comment and hearing period as **established[provided]** in Sections 5 ~~through~~ **6, and** 7 of this administrative regulation and upon the cabinet's rendering of a final permit decision in accordance with **[Section 9 of]** 401 KAR 45:030, **Section 9.**

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.



Andy Beshear
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ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
401 KAR 45:020, Types of Special Waste Permits.
401 KAR 45:025, Permit Review and Determination Timetables.
401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
401 KAR 45:100, Landfarming and Composting of Special Waste.
401 KAR 45:105, Land Application of Biosolids
401 KAR 45:140, Conditions Applicable to All Special Waste Permits
401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection

SUGGESTED SUBSTITUTE

Final Version: 03/01/24 at 3:15 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:080. Financial requirements and bonds for special waste facilities.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 355

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(1)(d)~~ *authorizes*[Chapter 224 requires] the cabinet to *promulgate*[*adopt*] administrative regulations for the managing, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or *allow*[*permit*] the use of a waste site or facility to obtain a permit. [~~This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.~~] This administrative regulation *establishes*[*sets forth*] the financial requirements for closure and postclosure of special waste sites or facilities but does not establish financial assurance requirements for biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility. Information related to the permitting of biosolids is located in 401 KAR 45:105.

Section 1. Applicability. The financial assurance criteria and bond requirements *shall* apply to the owner or operator of special waste landfills;~~;~~ Type A landfarming and composting sites or facilities;~~;~~ *and* research, development, and demonstration sites or facilities;~~;~~ and other sites or facilities if required by the cabinet as part of a remedy or requirement *included*[*set forth*] in a resolution of permit violations.

Section 2. Closure Cost Estimate. The owner or operator shall have a detailed, current written estimate, in dollars, of the cost of hiring a third party to close the special waste disposal site or facility in accordance with the closure plan developed to satisfy the closure requirements in [~~Section 4 of~~]401 KAR 45:100, *Section 4*, and [~~Section 5 of~~]401 KAR 45:110, *Section 5*.

(1) The estimate shall equal the cost of closing the special waste disposal site or facility at the point in the active life when the extent and manner of its operation would make closure the most expensive. The cabinet may adjust the figure for inflation and other factors. The owner or operator shall base the cost estimate on the following elements that are applicable depending on the type of site or facility:

- (a) Design;
- (b) Site grading and drainage;
- (c) Hauling and placing of each element of the approved cap;
- (d) Final grading and drainage of the cap;
- (e) Revegetation of the cap; and
- (f) Quality control and construction certification.

(2) The owner or operator shall increase the closure cost estimate and the amount of financial assurance *established*[*provided*] under Section 5 of this administrative regulation if changes to the closure plan or special waste disposal site or facility conditions increase the maximum cost of closure at any time during the active life.

(3) The owner or operator may request a reduction in the closure cost estimate and the amount of financial assurance *established*[*provided*] under Section 5 of this administrative regulation if the owner

or operator[he] can demonstrate that the cost estimate exceeds the maximum cost of closure at any time over the life of the special waste disposal site or facility.

(4) The owner or operator shall keep a copy of the latest closure cost estimate at the special waste disposal site or facility until the owner or operator has been notified by the cabinet that the owner or operator[he] has been released from closure financial assurance requirements under Section 5 of this administrative regulation.

Section 3. Postclosure Cost Estimate.

(1)

(a) The owner or operator shall have a current, detailed written estimate, in dollars, of the cost of hiring a third party to conduct each phase of postclosure monitoring and maintenance of the special waste site or facility in accordance with the postclosure plan developed to satisfy the postclosure requirements of ~~[Section 4 of]~~401 KAR 45:100, Section 4, and ~~[Section 5 of]~~401 KAR 45:110, Section 5.

(b) The postclosure cost estimate for each phase of postclosure used to demonstrate financial assurance in Section 6 of this administrative regulation shall be calculated by multiplying the annual cost estimate for each phase of postclosure by the number of years of postclosure care required.

(2) The cost estimate for each phase of postclosure shall be based on the most expensive costs of postclosure during that phase.

(3) The owner or operator shall increase the amount of the postclosure cost estimate and the amount of financial assurance ~~established~~provided under Section 6 of this administrative regulation if changes in the postclosure plan or facility conditions increase the maximum costs of postclosure.

(4) The owner or operator may request a reduction in the postclosure cost estimate and the amount of financial assurance ~~established~~provided under Section 6 of this administrative regulation if the owner or operator[he] can demonstrate to the satisfaction of the cabinet that the cost estimate exceeds the maximum costs of postclosure remaining over the postclosure period.

(5) The owner or operator shall keep a copy of the latest postclosure cost estimate at the site or facility until ~~[he has been]~~notified by the cabinet that the owner or operator[he] has been released from postclosure financial assurance requirements for the entire facility under Section 6 of this administrative regulation.

Section 4. Financial Mechanisms. The owner or operator shall use one (1) of the financial mechanisms ~~established~~specified in Section 7 or 10 of this administrative regulation, which satisfies the ~~[following]~~ criteria in subsections (1) through (3) of this section. The financial assurance mechanism shall:

(1) ~~[The financial assurance mechanism shall]~~Ensure that the amount of funds ~~shall be~~is sufficient to cover the costs of closure and postclosure care;

(2) ~~[The financial assurance mechanisms shall]~~Ensure that funds shall be available in a timely fashion; and

(3) ~~[The financial assurance mechanisms shall]~~Guarantee the availability of the required amount of coverage prior to the initial receipt of special waste.

Section 5. Closure Financial Assurance. The owner or operator of a special waste site or facility ~~governed~~governed by~~[subject to]~~ this administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for closure of the facility, in an amount equal to the most recent closure cost estimate prepared in accordance with Section 2 of this administrative regulation. The owner or operator shall provide continuous coverage for closure until released from financial assurance

requirements pursuant to ~~[Section 4 of]~~ 401 KAR 45:100, Section 4, or ~~[Section 5 of]~~ 401 KAR 45:110, Section 5.

Section 6. Postclosure Financial Assurance. The owner or operator of a special waste site or facility governed by~~[subject to]~~ this~~[the]~~ administrative regulation shall establish, in accordance with Section 4 of this administrative regulation, financial assurance for postclosure care of the facility, in an amount equal to the most recent postclosure cost estimate prepared in accordance with Section 3 of this administrative regulation. The owner or operator shall provide continuous coverage for postclosure until released from the financial assurance requirement pursuant to ~~[Section 4 of]~~ 401 KAR 45:100, Section 4, or ~~[Section 5 of]~~ 401 KAR 45:110, Section 5.

Section 7. Performance Agreement~~[Bond]~~.

(1) Before the cabinet shall issue a construction and operation~~[construction/operation]~~ permit, the owner or operator of a special waste site or facility that is required to post financial assurance pursuant to this administrative regulation shall complete a performance agreement form on ~~[“]Performance Agreement, [“] DWM 4650,~~ [bond on Form DEP 7094E entitled "Performance Bond" (November 2016). The requirements contained in the performance bond are incorporated in this administrative regulation by reference. The performance bond may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste/;

(2) To satisfy the financial requirement, the owner or operator shall submit a performance bond and one (1) of the following:

(a) A surety bond which is executed by filling in the required information on the performance bond form submitted in accordance with subsection (1) of this section and by submitting a copy of the surety bond agreement to the cabinet;

(b) A letter of credit submitted on form~~[as set forth on Form DEP 7094F entitled]~~ ~~[“]Irrevocable Letter of Credit, [“] DWM 4670; or~~ ~~(November 2016).~~ The requirements contained in the irrevocable letter of credit are incorporated in this administrative regulation by reference. The irrevocable letter of credit may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky, 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste/;

(c) An escrow agreement submitted on form~~[as set forth on Form DEP 7094G entitled]~~ ~~[“]Escrow Agreement, [“] DWM 4665,~~ ~~(November 2016).~~ The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference. The escrow agreement may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste/;

~~[(3)] [Other financial assurance as specified in Section 10 of this administrative regulation.]~~

Section 8. Release of Financial Assurance.

(1) Financial assurance posted to assure proper closure of a special waste landfarming or composting facility shall be released in accordance with ~~[Section 4 of]~~ 401 KAR 45:100, Section 4.

(2) Financial assurance posted to assure proper closure of a special waste landfill shall be released in accordance with ~~[Section 5 of]~~ 401 KAR 45:110, Section 5.

Section 9. Financial Assurance for Publicly Owned Facilities. The owner or operator of a publicly owned facility shall provide a budget for the permitting, construction, operation, closure, and postclosure care of the facility. The budget shall be revised and submitted annually. ~~[[When]~~ elements of the facility's permitting, construction, operation, closure, or postclosure care are to be accomplished by contract or agreement, a copy of the contract or agreement shall be submitted to the cabinet.

Section 10. Financial Assurance for Captive Facilities. The cabinet may accept other satisfactory financial assurance as adequate financial responsibility for a special waste site or facility ~~[which is]~~ exclusively owned and operated by a special waste generator on property owned by the special waste generator for the purpose of accepting special waste exclusively from the special waste generator.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Performance Agreement", form DWM 4650, ~~[[February 2019]]~~;

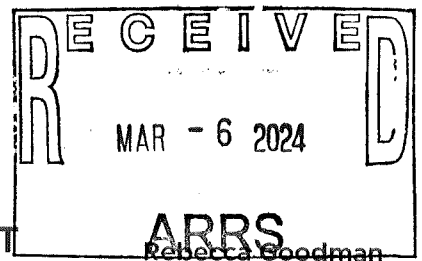
(b) "Irrevocable Letter of Credit" form DWM 4670, ~~[[February 2019]]~~; and

(c) "Escrow Agreement", form DWM 4665, ~~[[February 2019]]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

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Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

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ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
- 401 KAR 45:020, Types of Special Waste Permits.
- 401 KAR 45:025, Permit Review and Determination Timetables.
- 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
- 401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
- 401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
- 401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
- 401 KAR 45:100, Landfarming and Composting of Special Waste.
- 401 KAR 45:105, Land Application of Biosolids
- 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
- 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
- 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE
Final Version: 3/05/2 at 2:31 p.m.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 45:100. Landfarming and composting of special waste.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.50, 7 U.S.C. 136 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-305, 224.50-760(1)(d), 7 U.S.C. 136 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~224.50-760(a)(d)~~ **authorizes**[Chapter 224 requires] the cabinet to ~~promulgate~~**adopt** administrative regulations for the management, processing, and disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, ~~or allow~~**or permit** the use of a waste site or facility to obtain a permit.[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.] This administrative regulation ~~establishes~~**sets forth** requirements for special waste landfarming sites or facilities and special waste composting sites or facilities but does not include landfarming of biosolids.

Section 1. Applicability.

(1) The requirements in this administrative regulation **shall** apply to any person disposing of or treating special waste by:

(a) Composting; or

(b) Landfarming of special wastes that are not biosolids.[landfarming or composting].

(2) Landfarming of biosolids shall be regulated in accordance with 401 KAR 45:105.

Section 2. Classifications of Special Waste Landfarming and Composting Sites or Facilities. A special waste landfarming or composting site or facility **shall be**[is] classified as a Type A or Type B facility after the cabinet reviews the application filed pursuant 401 KAR 45:030, Section 8(1)(b).[Notice of Intent filed pursuant to Section 3 of this administrative regulation.] The classification **shall be**[is] based on the type and quantity of sludge or other special waste to be accepted at the landfarm or composting site or facility. **[The following]**Classifications **shall be established in accordance with subsections (1) through (3) of this section.**[are established:]

(1) A Type A landfarm or composting facility **shall be**[is] a site or facility that accepts Type A [wastewater treatment]sludge or other special waste. Type A [wastewater treatment]sludge **shall include**[is] sludge **containing these limits**[with the following parameters]:

Cadmium	Greater than 10 mg/kg[;]
Copper	Greater than 450 mg/kg[;]
Lead	Greater than 250 mg/kg[;]
Nickel	Greater than 50 mg/kg[;]
Zinc	Greater than 900 mg/kg[;]

(2)(a) A Type B landfarm or composting facility **shall be**[is] a site or facility that accepts Type B [wastewater treatment]sludge or other special waste. Type B [wastewater]sludge **shall include**[is] sludge **containing these limits**[with the following parameters]:

Cadmium	Less than or equal to 10 mg/kg[is]
Copper	Less than or equal to 450 mg/kg[is]
Lead	Less than or equal to 250 mg/kg[is]
Nickel	Less than or equal to 50 mg/kg[is]
Zinc	Less than or equal to 900 mg/kg[is]

(b) The maximum amount of [wastewater treatment]sludge that may be processed by a Type B landfarm or composting site or facility **shall be[is]** 250,000 gallons or 250 tons (dewatered) per calendar year. If the owner or operator is processing Type B sludge and exceeds this volume limitation, then the site or facility shall be classified as a Type A landfarm or composting facility.[~~Unless otherwise required by the cabinet, an applicant for a Type B landfarming or composting permit shall be exempt from the requirements of publishing a public notice, the posting of financial assurance, the monitoring of groundwater, and postclosure care.~~]

(3) One (1) time only disposal. An applicant for one (1) time only disposal of special waste by landfarming or composting methods shall submit an application for a Type B landfarming or composting facility[~~unless otherwise directed by the cabinet~~].

(4) ~~An application to landfarm biosolids shall meet the requirements of 401 KAR 45:105. [Other special waste. An application to landfarm or compost special waste other than municipal wastewater treatment sludge shall be classified using the parameters set forth in subsections (1) and (2) of this section and additional parameters based upon the source, chemical and physical characteristics of the waste, the volume of waste, and the waste potential for adverse impact on human health or the environment. After review of the notice of intent filed pursuant to Section 3 of this administrative regulation, the cabinet shall classify the site or facility as either a Type A or Type B landfarming or composting facility. The applicant shall comply with all requirements in this chapter for the designated type of landfarming or composting facility.]~~

(5) A facility composting a Type A [wastewater]sludge may, at the discretion of the cabinet, be classified as a Type B facility depending upon the volume of special waste received, methods of composting, and siting considerations.

(6) A special waste landfarm or composting site or facilities classification under this section shall be reevaluated based upon the annual analyses submitted under Section 6(19) or 9(5) of this administrative regulation. The cabinet may reassign a landfarming or composting site or facility classification based on this submittal and require the owner or operator of the landfarm or composting site or facility to modify the permit accordingly.

(7)(a) Classification under this section shall be based on the average concentration of [these]metals, listed in subsection (1) and (2) of this section, in a minimum of two (2) consecutive samples taken no closer than thirty (30) days apart. Metal concentration values shall be determined on a dry weight basis. Analysis shall be accomplished by determining the [heavy]metal concentration of the undried sample (wet weight) and converting to dry weight using percent solids. The following formula shall be used: mg/L or mg/kg (wet weight) divided by (percent solids/100) = mg/kg dry weight.

(b) A single metal parameter shall be sufficient to require a sludge to be classified as Type A.

Section 3. Application Procedure for a Special Waste Landfarming or Composting Permit.

(1)(a) Notice of intent to apply. An applicant for a special waste landfarming or composting permit shall submit a notice of intent to apply as required under ~~[Section 8(1)(b) or (c) of]~~401 KAR 45:030, **Section 8(1)(b) or (c)**. Upon review of the notice of intent to apply, the cabinet shall notify the applicant of the

special waste classification determination and designate the landfarming or composting facility as either a Type A or Type B facility.

~~(b) [An applicant may be exempt from submitting a notice of intent prior to submitting the permit application required in subsection (2) of this section if the applicant is classifying itself as a Type A facility.] [However,]~~ The applicant ~~shall~~is required to submit a notice of intent form with the permit application ~~established~~specified in subsection (2) of this section.

(2)(a) Contents of landfarming or composting permit application. Upon determination of a special waste classification, A person shall submit the designated permit application for a special waste landfarming or a composting facility as ~~established in Section 8(1)(b) or (c) of~~ 401 KAR 45:030, Section 8(1)(b) or (c), to the cabinet.

(b) A landfarming application may include parcels of land that are not located contiguously.

(3)(a) An applicant for a landfarming or composting facility formal permit shall comply with applicable requirements ~~[for a formal permit as specified]~~ in 401 KAR 45:030 ~~[when applying for a formal permit]~~.

(b) An applicant for a Type A landfarming or composting facility shall also comply with the:

1. Public notice requirement in 401 KAR 45:050; ~~the~~
2. Financial assurance requirements of 401 KAR 45:080; ~~the~~
3. Surface and groundwater requirements of 401 KAR 45:160; ~~and~~ ~~the~~
4. Postclosure requirements of Section 4 of this administrative regulation.

(4)(a) A groundwater monitoring plan pursuant to 401 KAR 45:160 shall be required for Type A facilities.

(b) Upon examination by the cabinet of the facility specific geologic setting ~~[geological aspects]~~ and any variance requests ~~[other relevant factors]~~ in the permit application ~~[by the cabinet]~~, the cabinet may require the applicant for a Type B facility ~~[may be required]~~ to prepare a groundwater monitoring plan to include location and specifications of wells, monitoring parameters, and monitoring schedules in accordance with 401 KAR 45:160. ~~[This plan shall be required for Type A landfarms or composting facilities.]~~

(5) ~~[The cabinet shall not allow landfarming or composting practices that may present a threat to human health or the environment.]~~ The cabinet shall base a decision to approve or deny a permit ~~[as to the land]~~ application for a special waste landfarming or composting facility based on the suitability of the facility, the ~~[a particular]~~ special waste's ~~[waste upon the]~~ ability ~~[of the waste]~~ to biodegrade in the environment, the potential for the special waste to be managed in a manner consistent with 401 KAR 30:031, the likelihood that special waste constituents will contaminate surface water or groundwater, the potential for nuisances from odors or unsightly conditions, and the potential for the special waste to harm human health or the environment.

Section 4. Closure and Postclosure of Landfarming and Composting Facilities.

(1) An owner or operator permanently ceasing to accept special waste at a Type A or Type B special waste landfarming or composting site or facility, shall submit to the cabinet a closure report that shall include ~~[includes]~~:

(a) The results of final soil samples taken in accordance with the ~~[construction/operation]~~ permit within eighteen (18) months following the last application of special waste;

(b)1. For landfarming sites or facilities, ~~[shall submit]~~ a historical summary of all landfarming, by subplot, showing:

- a. The allowable and actual rates of special waste application; ~~and~~
- b. Heavy metals and nitrogen; and ~~and~~
- c. Incorporating the annual landfarming review required by ~~[as set forth in]~~ Section 6(19) of this administrative regulation; or

2. ~~For~~ composting sites or facilities, ~~[shall prepare]~~ a historical summary of composting activities at the site incorporating the annual composting review report ~~required~~~~[as set forth]~~ in Section 9(5) of this administrative regulation; ~~and~~~~[;]~~

(c) A certification from the owner or operator that the site or facility is closed and is in compliance with 401 KAR 30:031; ~~[; and]~~

~~[(d)] [Any additional information required by the cabinet in the original landfarming or composting permit.]~~

(2) The cabinet shall review the closure report and determine ~~if~~~~[whether]~~ any additional monitoring or information shall be required to assure compliance of the site or facility with 401 KAR 30:031. If the site is not in conformance with 401 KAR 30:031 or the requirements of this chapter, the cabinet may take appropriate enforcement actions for violations of ~~401 KAR Chapter 45~~~~[this chapter]~~ or KRS Chapter 224.

(3)(a) A two (2) year postclosure monitoring maintenance period commencing on the first day after the facility permanently ceases accepting special waste ~~shall be~~~~[is]~~ required for all Type A landfarming and composting facilities and for any other landfarming or composting facility required to conduct groundwater or surface water monitoring ~~pursuant to~~~~[under]~~ 401 KAR 45:160.

(b) During the postclosure monitoring and maintenance period, the owner or operator shall conduct groundwater and surface monitoring as required by:

1. 401 KAR 45:160; ~~[;]~~

2. The facility's approved groundwater and surface water monitoring plans; ~~[;]~~ and

3. The terms of the facility's special waste permit.

(4)(a) At the conclusion of the two (2) year postclosure monitoring and maintenance period, the owner or operator shall submit a certification that postclosure is complete and that the site or facility is in compliance with 401 KAR 30:031 and the terms of this chapter.

(b) The cabinet shall review the postclosure certification and if ~~no~~~~[no]~~ additional monitoring or information is ~~not~~ required and the site or facility is not subject to any enforcement actions for violations of this chapter or KRS Chapter 224, then the cabinet shall accept the owner's or operator's certification of postclosure.

(5) Upon acceptance of certification of postclosure, the cabinet shall release the financial assurance bond.

(6) The two (2) year postclosure monitoring and maintenance period may be extended if groundwater contamination as ~~established~~~~[specified in Section 5 of]~~ 401 KAR 45:160, ~~Section 5~~, is documented and the owner or operator is required to submit a groundwater assessment plan.

(7) Any necessary environmental remediation steps or corrective action for groundwater contamination required under 401 KAR 45:160 shall be performed before the special waste landfarm or composting site or facility postclosure is certified as complete and financial assurance is released.

Section 5. Siting Requirements for Landfarming. Special waste landfarming sites or facilities shall comply with ~~subsections (1) through (5) of this section~~~~[the following siting requirements]~~:

(1) Special waste shall not be applied in the 100-year floodplain unless the special waste is injected or incorporated; ~~[;]~~

(2) Land application units shall have a minimum of four (4) feet of soil between the soil surface and both the seasonal high water table and bedrock; ~~[;]~~

(3) Special waste shall not be applied on soils with a permeability rate greater than six (6) inches per hour or less than two-tenths (0.2) inches per hour; ~~[; and]~~

(4) Land application units shall not be located on land with a slope greater than fifteen (15) percent.

(5) All landfarming facilities shall comply with 401 KAR 30:031 and shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet[Feet] From the Boundary of the Application Zone		
Structure or Object	Subsurface Injection or Incorporation	Surface Application
Residences & occupied Buildings	200	300
Water Well	200	300
Surface Water Body	200	300
Karst Feature	200	300
Perennial Stream	200	300
Intermittent Stream	30	50
Ephemeral Stream	30	50
Property Line	30	50
Public Road	30	50

Section 6. Operating Requirements for Special Waste Landfarming Facilities. Special waste landfarming sites or facilities shall comply with **subsections (1) through (29) of this section.**~~[the following:]~~

(1) Prior to applying sludges to the land, all sludges shall be processed to significantly reduce pathogens as **established**~~[specified]~~ in Section 11 of this administrative regulation.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available at the landfarming site during special waste application. All sludge applications shall be accomplished under the direction of a certified landfarming operator.

(3) ~~If~~**[When]** surface application is used in conjunction with soil incorporation methods, incorporation shall occur within forty-eight (48) hours of sludge application.

(4) Surface application without incorporation into the soil shall not be used on land without established vegetative cover or crop residue of at least seventy-five (75) percent.

(5) ~~[No]~~ Hazardous wastes or mixtures of hazardous and solid waste shall **not** be disposed at, discharged to, or placed in a landfarming site.

(6) ~~[No]~~ Toxic wastes or mixtures of toxic and nontoxic wastes regulated under 7 USC 136 et seq. (the Toxic Substances Control Act) shall **not** be disposed at, discharged to, or placed in a landfarming site.

(7) The ~~[following]~~ agricultural use restrictions **established in paragraphs (a) through (e) of this subsection** shall apply.~~;~~

(a) Land spreading shall not occur on land where leafy vegetables or root crops for human consumption will be harvested within twelve (12) months.~~;~~

(b) Land spreading shall not occur on land where crops for direct human consumption will be harvested within two (2) months.~~;~~

(c) Dairy grazing shall be prohibited for six (6) months after land spreading. Other livestock grazing shall be prohibited for three (3) months.~~;~~

(d) ~~The~~~~[If the]~~ annual application rate of cadmium shall meet the requirements in 401 KAR 30:031, Section 6.~~[exceeds 0.44 pound per acre, food chain crops shall not be utilized in the cropping season following land application]~~~~;~~ **and**

(e) **If the annual application rate of cadmium from sludge exceeds 0.44 pounds per acre at any time during the life of a site,** special waste shall not be land spread where tobacco is to be harvested

within five (5) years of special waste application, ~~if the annual application rate of cadmium from the sludge exceeds 0.44 pound per acre at any time during the life of the site.~~

(8) The general public shall be restricted from the application zone for a period of twelve (12) months after each application, unless the special waste has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation.

(9) Special waste shall not be land spread on frozen, snow-covered, ice-covered, or water-saturated soil, or during any precipitation event.

(10) ~~[No-]~~ special waste shall **not** be applied in excess of schedules and rates of special waste application established in subsection (23) of this section and Section 7 of this administrative regulation, ~~[approved by the cabinet.]~~

(11) ~~[No-]~~ Raw or unstabilized special waste shall **not** be landfarmed. The permittee shall maintain compliance with the ambient air quality standard for odor, as **established** ~~[set forth]~~ in 401 KAR 53:010.

(12) The amount of any single surface application shall not be greater than an average one-half (1/2) inch in thickness.

(13) High pressure spray irrigation of sludge **that** ~~[which]~~ produces aerosols shall be prohibited.

(14) Subplots shall be staked or otherwise clearly marked in the field.

(15) The owner or operator shall have a sign located at the entrance to the landfarming facility. The sign shall indicate the source and type of special waste and the type of operation, the name of operator, the permit number, the contact person, and the emergency telephone number.

(16) Surface water or special waste ponding within the application zone shall be prohibited.

(17) Surface run-off and run-on shall be controlled to minimize the possibility of applied special waste contaminating nearby surface water or adjacent land areas.

(18) Records of all landfarming activities shall be maintained throughout the operation of the site on the form, [entitled] Annual Landfarming Review, DEP 7048 ~~[forms provided by the cabinet throughout the operation of the site].~~ The records shall at a minimum contain the schedules and rates of special waste application and all laboratory analyses. Records shall be made available to the cabinet upon request.

(19) Each landfarming owner or operator shall submit an annual report of landfarming activities to the cabinet by March 15 [15th] for the landfarming activities conducted the previous calendar year ~~[sixty (60) days prior to the anniversary date of the permit issuance].~~ The report shall be submitted on form DEP 7048, ~~[entitled "Annual Landfarming Review" (November 2016)].~~ ~~[The requirements contained in the annual landfarming review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste.]~~

(20) Operational monitoring shall be performed **as established in paragraphs (a) and (b) of this subsection.** ~~[on the following schedule:]~~

(a) Soil shall be sampled annually in accordance with the soil monitoring plan in the approved permit, ~~[application; and]~~

(b) **1.** Special waste from ~~[municipal wastewater treatment,]~~ municipal water treatment facilities shall be sampled in accordance with the following table, or more frequently if required by the cabinet **based on an increase in concentrations from routine sampling or a change in sources to the municipal water treatment facility.**

2. Other special waste shall be sampled in accordance with a schedule approved by the cabinet **based on an increase in concentrations from routine sampling or a change in sources to the municipal water treatment facility.** Special waste shall be analyzed for solids content, pH,

ammonium nitrogen (NH₄-N), nitrate nitrogen (NO₃-N), total Kjeldahl nitrogen, total phosphorus, total potassium, PCBs, chromium, copper, zinc, nickel, lead, and cadmium. Laboratory analysis results shall be reported in milligrams per kilogram wet and dry weight.

Required Sampling Schedule	
Design Treatment Capacity(gallons per day)	Samples Per Year
Less than 1,000,000	2
1,000,001 - 10,000,000	4
More than 10,000,000	12

(21) Soil pH shall be maintained at six and five-tenths (6.5) or greater during crop production, hay production, or grazing.

(22) Special waste containing concentrations of PCBs greater than one (1) milligram per kilogram shall not be landfarmed.

(23)(a) The maximum amount of metals from special waste that may be applied during the life of the site shall be based upon the cation exchange capacity (CEC) of the soil and shall be as follows:

Maximum Amount of Metals Cation Exchange Capacity (meq/100g)			
Parameter	0-5	5-15	15+
Lead	500 lbs/ac.	1000 lbs/ac.	2000 lbs/ac.
Cadmium	4.46 lbs/ac.	8.92 lbs/ac.	17.84 lbs/ac.
Copper	125 lbs/ac.	250 lbs/ac.	500 lbs/ac.
Nickel	50 lbs/ac.	100 lbs/ac.	200 lbs/ac.
Zinc	250 lbs/ac.	500 lbs/ac.	1000 lbs/ac.

(b) The following equation shall be used to determine the maximum number of tons of special waste per acre that may be land spread without exceeding the above limitations:

$$\text{Tons waste/acre} = \frac{(\text{lbs per acre for each parameter Table 4})}{(\text{dry mg/kg of metal in waste sample}) \times 0.002}$$

(24) The amount of nitrogen land spread shall not exceed the nitrogen utilization rate of the vegetative cover in the application zone.(a)

(25)(a) If the laboratory analyses and calculations to determine quantities of metals applied to the soil **indicate[discloses]** that the cumulative concentration of a contaminant is above the maximum level **allowed[permitted]** under subsection (23) of this section, a written notice shall be given to the cabinet within ten (10) days of receipt of the monitoring results. The owner or operator shall cease further landfarming and submit to the cabinet within forty-five (45) days a report **stating[describing]** proposed corrective actions to be taken by the owner or operator.

(b) A notice shall be recorded on the property deed within forty-five (45) days of receipt of the monitoring results stating that the property has received special waste at concentrations exceeding permitted levels, and that food chain crops shall not be grown due to possible health hazards.

(26) In addition to the operating requirements in this section, the owner or operator who is landfarming Type A sludge shall sample surface water quarterly.

(a) Parameters to be monitored shall include:

1. pH;[]
2. Ammonium nitrogen (NH₄-N);[]

3. Fecal coliform bacteria;~~[r]~~
4. Chromium;~~[r]~~
5. Biological oxygen demand;~~[r]~~
6. Total organic carbon;~~[r]~~ and
7. Total dissolved solids.

(b) A minimum of one (1) upgradient and one (1) downgradient sampling point shall be required.

(27) Owners and operators of Type A landfarming or composting facilities and all Type B facilities that have documented contamination~~[other designated facilities]~~ shall conduct groundwater monitoring in accordance with 401 KAR 45:160.

(28) If ~~[heavy-]~~metal applications exceed the amounts listed in subsection (23) of this section, the owner or operator shall immediately commence closure of the facility and ~~[immediately-]~~submit a closure report within forty-five (45)[45] days containing the information required by Section 4(1) of this administrative regulation. The report shall also include a copy of the notice in the deed advising all future landowners in perpetuity that ~~[heavy-]~~metal concentrations exceed those allowed by this administrative regulation.

(29) Landfarming sites and facilities shall comply with all requirements established[set forth] in 401 KAR 45:140.

Section 7. Application Rates for Landfarming Sites or Facilities.

(1) The annual application rate shall be the lesser of the two (2) application rates ~~[as-]~~determined for cadmium and for nitrogen utilization.

(2) The applicant shall determine the percent of available organic nitrogen in the special waste using the following calculation: Percent available organic N = (percent total N) - (percent NH₄-N) - (percent NO₃-N).

(3) The applicant shall determine the amount of nitrogen that shall be available for plant uptake at the landfarming site using one (1) of the following calculations depending on the application method:

(a) Incorporation: Lbs available N/ton = (percent NH₄-N x 20) + (percent NH₃-N x 20) + (percent available organic N x 4); ~~or[-]~~

(b) Surface application: Lbs available N/ton = (percent NH₄-N x 10) + (percent NO₃-N x 20) + (percent available organic N x 4).

$$\text{Tons/acre} = \frac{\text{Nitrogen utilization rate of the vegetative cover}}{\text{Lbs available organic N/ton}}$$

(4) The annual application rate of cadmium from special waste shall not exceed 0.44 pound per acre. The annual application rate shall be determined using the following calculation:

$$\text{Tons/acre} = \frac{\text{pounds of allowable cadmium per acre}}{(\text{mg per kg of cadmium in sample}) \times 0.002}$$

Section 8. Sludge Giveaway Program. A municipal water ~~[or wastewater treatment]~~sludge generator may give away sludge equal to or less than the metal concentration limitation established[specified] in Section 2(2) of this administrative regulation to persons for subsequent use as a soil conditioner. This program shall be operated under a registered permit-by-rule in accordance with this administrative regulation and 401 KAR 45:070. The maximum amount of sludge that may be distributed annually to any person is limited to 2,000[2000] pounds (dry weight).

(1) During operation of the giveaway program the generator shall:

(a) Maintain a list of names and addresses of all persons receiving the sludge;

(b) Submit annually to the cabinet the sludge analysis performed in accordance with the schedule established[contained] in Section 6(20) of this administrative regulation, and a copy of the distribution log;

(c) Provide to persons receiving special waste, copies of the sludge analyses and a brochure, approved by the cabinet, explaining the proper procedures to be utilized in the landfarming of sludge; and

(d) Use a process to significantly reduce pathogens in accordance with Section 11 of this administrative regulation.

(2) Unless the sludge has undergone a process to further reduce pathogens in accordance with Section 12 of this administrative regulation, it shall not be used in a manner likely to allow direct human contact for a period of twelve (12) months from the date of application.

(3) The sludge generator shall maintain another approved means of sludge disposal to be used if the sludge is not given away.

Section 9. Operating Requirements for Composting Facilities. The owner or operator of a composting facility[facilities] shall comply with the following:

(1) Within one (1) month of receiving any materials that do not meet standards for land application established in the permit or by this administrative regulation, [the owner or operator shall] dispose of the material in a facility permitted to accept the waste or special waste[waste management facility any materials that do not meet standards for distribution within one (1) month of such a determination];

(2) After the compost has completed the curing process, ensure that at least seventy-five (75) percent of the compost shall be distributed within one (1) year;

(3) Use one (1) or more processes to further reduce pathogens in accordance with Section 12 of this administrative regulation;

(4) Process and store compost on an impermeable pad, or provide information on soils at the facility and a groundwater quality assurance plan;

(5) ~~[Each composting owner or operator shall]~~ Submit an annual report for the previous calendar year's activities to the cabinet by March 1[1st] of each year[sixty (60) days prior to the anniversary date of the permit issuance]. The report shall be submitted on form DEP 7048A, ~~[entitled "Annual Composting Review"]~~ [(November 2016). The requirements contained in the annual composting review are incorporated in this administrative regulation by reference. The review may be obtained from the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601 (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, or from the Web site at eec.ky.gov/environmental-protection/waste/]; and

(6) Composting sites or facilities shall comply with all requirements established[set forth] in 401 KAR 45:140.

Section 10. Usage of Composted and Treated Special Waste.

(1) Composted special waste and treated special waste that has undergone additional treatment to ~~[a level of a process to]~~ further reduce pathogens, as established[described] in Section 12 of this administrative regulation, shall meet the ~~[following]~~ criteria established in paragraphs (a) through (c) of this subsection in order to be distributed or marketed to the general public. ~~[;]~~

(a) The final product shall not exceed Type B metals concentration limits as established[specified] in Section ~~2(2)[(1)(b)]~~ of this administrative regulation.

(b) A brochure shall accompany all compost or treated special waste sold or given away. The brochure shall be subject to cabinet approval and shall contain, at a minimum, ~~[, the following information]~~:

1. The source or sources of the original material;

2. An ~~A recent~~ analysis of the parameters ~~established in~~ ~~in paragraph (b) of~~ Section 6(20)(b) within six (6) months of the finished product; and

3. Suggested uses and application rates for the product. ~~and~~

(c) The quantity distributed shall be limited to fifty (50) tons per person per year for composted special waste and fifteen (15) tons per person per year for treated special waste.

(2) A final product that exceeds metals concentration limits or exceeds the quantity limitation ~~established~~ ~~set forth~~ in subsection (1) of this section shall be disposed or distributed in accordance with the facility's permit ~~or otherwise directed by the cabinet~~.

Section 11. Processes to Significantly Reduce Pathogens. Processes to significantly reduce pathogens shall include one (1) or more of the following:

(1) Aerobic digestion. The process shall be conducted by agitating sludge with air or oxygen to maintain aerobic conditions at residence times ranging from sixty (60) days at fifteen degrees Celsius (15° C) to forty (40) days at twenty degrees Celsius (20° C), with a volatile solids reduction of at least thirty-eight (38) percent. ~~and~~

(2) Air drying. Liquid sludge shall be allowed to drain or dry on under-drained sand beds, or paved or unpaved basins. ~~Sludge in paved or unpaved basins~~ ~~in which the sludge~~ shall be at a depth of nine (9) inches. Air drying shall be conducted for a minimum of three (3) months, with two (2) months of temperatures ~~that~~ ~~which~~ average on a daily basis above zero degrees Celsius (0° C). ~~and~~

(3) Anaerobic digestion. The process shall be conducted in the absence of air at residence times ranging from sixty (60) days at twenty degrees Celsius (20° C) to fifteen (15) days at thirty-five degrees Celsius (35° C) to fifty-five degrees Celsius (55° C), with a volatile solids reduction of at least thirty-eight (38) percent. ~~and~~

(4) Composting. ~~If~~ ~~When~~ using the within-vessel, static aerated pile or windrow composting methods, the special waste shall be maintained at minimum operating conditions of forty degrees Celsius (40° C) for five (5) days. For four (4) hours during this period, the temperature shall exceed fifty-five degrees Celsius (55° C). ~~or~~

(5) Lime stabilization. Sufficient lime shall be added to produce a pH of twelve (12) for two (2) hours ~~of contact time~~.

~~(6) [Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.]~~

Section 12. Processes to Further Reduce Pathogens. Processes to further reduce pathogens shall include one (1) or more of the following:

(1)(a) Composting.

1. Using the within-vessel composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

2. Using the static aerated pile composting method, the special waste shall be maintained at operating conditions of fifty-five degrees Celsius (55° C) or greater for three (3) days.

3. Using the windrow composting method, the special waste shall:

a. Attain a temperature of fifty-five degrees Celsius (55° C) or greater for at least fifteen (15) days during the composting period; ~~and~~ ~~Also,~~

b. During the high temperature period, there shall be a minimum of five (5) turnings of the windrow.

(b)1. Heat drying. Dewatered sludge cake shall be dried by contact with hot gases, and moisture content shall be reduced to ten (10) percent or lower.

2. Sludge particles shall reach temperatures in excess of eighty degrees Celsius (80° C), or the wet bulb temperature of the gas stream in contact with the sludge at the point when it leaves the dryer shall be in excess of eighty degrees Celsius (80° C).

(c) Heat treatment. Liquid sludge shall be heated to 180 degrees Celsius (180°C) for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid sludge shall be agitated with air or oxygen to maintain aerobic conditions at residence times of ten (10) days at fifty-five to sixty degrees Celsius (55° - 60° C), with a volatile solids reduction of at least thirty-eight (38) percent; ~~or[.]~~

~~[(e)] [Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the methods in paragraphs (a) to (d) of this subsection.]~~

(2) Any of the processes ~~established~~**established**~~[described]~~ in paragraphs (a) ~~through (c)~~**through (c)**~~[to (d)]~~ of this subsection shall be added to the processes in Section 11 **of this administrative regulation**.~~[, if added to the processes described in Section 11 of this administrative regulation, further reduce pathogens. Because]~~ The processes ~~established~~**established**~~[listed]~~ in paragraphs (a) ~~through (c)~~**through (c)**~~[to (d)]~~ of this subsection, on their own, do not reduce the attraction of disease vectors ~~but are meant to be added to the processes in Section 11 of this administrative regulation~~. The following processes shall be an additional method of reducing pathogens:~~[, they are only add-on in nature:]~~

(a) Beta ray irradiation. Sludge shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C);~~[.]~~

(b) Gamma ray irradiation. Sludge shall be irradiated with gamma rays from certain isotopes, such as Cobalt-60 and Cesium-137, at dosages of at least one (1.0) megarad at room temperature, approximately twenty degrees Celsius (20° C); ~~and[.]~~

(c) Pasteurization. Sludge shall be maintained for at least thirty (30) minutes at a minimum temperature of seventy degrees Celsius (70° C).

~~[(d)] [Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the methods described in paragraphs (a) to (c) of this subsection.]~~

Section 13. Incorporation by Reference.

(1) The following material is incorporated by reference:

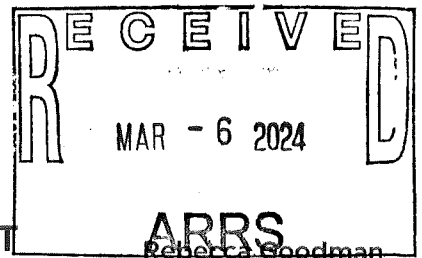
(a) "Annual Landfarming Review", Form DEP 7048, (February 2023); and

(b) "Annual Composting Review", Forms DEP 7048A, (February 2023).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
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ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
401 KAR 45:020, Types of Special Waste Permits.
401 KAR 45:025, Permit Review and Determination Timetables.
401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
401 KAR 45:100, Landfarming and Composting of Special Waste.
401 KAR 45:105, Land Application of Biosolids
401 KAR 45:140, Conditions Applicable to All Special Waste Permits
401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/02/24 at 1:24 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:105. Land application of biosolids.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d), 224.50-765, 40 C.F.R. Part 503

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes~~[Chapter 224 requires]~~ the cabinet to promulgate administrative regulations for the treatment, management, processing, or disposal of special wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow the use of a waste site or facility to obtain a permit. This administrative regulation establishes the standards and requirements for the application of biosolids, in accordance with 40 C.F.R. Part 503 and as required by KRS 224.50-765 from the treatment of domestic sewage or sewage sludge from a treatment facility. This administrative regulation is no more stringent than the corresponding federal rules but in order to comply with KRS 224.50-765(3), does have additional requirements that are not in 40 C.F.R. Part 503 related to a permitting program and siting criteria.

Section 1. Definitions.

- (1) "Karst feature" means sinkholes, sinking streams, cave openings, fensters, and springs.
- (2) "Ordinary high-water mark" means the line on the shore of a body of water established by the fluctuations of water and indicated by physical characteristics, such as defined, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, and the presence of litter and debris.
- (3) "Seasonal high-water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in years with normal rainfall.
- (4) "Sinkhole" means a depression in the land surface resulting from the chemical dissolution of the underlying carbonate rocks that create a potential direct conduit from surface water flow into the underlying groundwater system. This includes the immediately adjacent catchment area that could direct surface water flow into the underlying groundwater system.

Section 2. General Provisions.

(1) The general provisions related to the land application of biosolids shall be as established in 40 C.F.R. 503.5 through 40 C.F.R. 503.9.

(2)

(a) If a biosolid material is exempt from regulation pursuant to 40 C.F.R. 503.10, then the provisions of this administrative regulation shall not apply to the biosolid material, except as required in paragraph (b) of this subsection.

(b) The exemptions established in 40 C.F.R. 503.10 shall not exempt biosolids given away from the requirement to obtain a registered permit by rule established in 401 KAR 45:070.

Section 3. Land Application of Biosolids.

(1) Except for additional siting criteria standards established in Section 5 of this administrative regulation, the requirements related to the application of biosolids to the land shall be as established in 40 C.F.R. 503.10 through 40 C.F.R. 503.18.

(2) An operator certified in accordance with 401 KAR 45:090 shall be available ~~to~~**[at]** the land application site while biosolids are being applied to the land. All sludge land application operations shall be accomplished under the direction of a certified landfarming operator.

(3) The reports required by 40 C.F.R. 503.18 shall also be sent to the Kentucky Division of Waste Management.

(4) **Each permittee[Permittees]** shall submit to the cabinet ~~[“]Annual Biosolids Land Application Report[“]~~, form DEP 4506 by March ~~31~~**[31st]** of each year on the land application activity that occurred in the previous year. Permittees shall submit the report for years with no land application activity.

(5) In addition to the notification requirements in 40 C.F.R. 503.12, the person who prepares the biosolids shall notify the ~~person~~**[persons]** applying the biosolids or owner or operator of a biosolids land application site that the biosolids ~~could~~**[may]** contain constituents from an industrial pretreatment program.

(6) The notifications provided pursuant to subsection (5) of this section shall be given to adjoining landowners by the ~~person~~**[persons]** applying the biosolids or owner or operator of a biosolids land application site.

(7) The additional notifications in subsections (5) and (6) of this section shall be in writing and occur prior to submitting a biosolids application to the cabinet.

Section 4. Pathogens and Vector Attraction Reduction. The requirements related to the reduction of pathogens and the vectors that could transport those pathogens shall be as established in 40 C.F.R. 503.30 through 40 C.F.R. 503.33.

Section 5. Siting Criteria for Land Application of Biosolids. The land application of biosolids shall comply with the siting criteria in subsections (1) through (4) of this section.

(1) Biosolids shall not be applied in the 100-year floodplain.

(2)

(a) **An applicant[Applicants] shall use the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document to determine[when determining their] aquifer type.**~~[A minimum of four (4) feet of soil between the soil surface and the seasonal high water table shall be maintained for land application in areas comprised of the Granular unconsolidated and alluvial (Ohio River Alluvium) aquifers. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky~~

~~Aquifers document. Buffers located in subsection (4) of this section shall be maintained for aquifer types in this paragraph.]~~

(b) A minimum of four (4) feet of soil between the soil surface and the seasonal high-water table shall be maintained for land application in areas comprised of the Granular-unconsolidated, karst, and alluvial (Ohio River Alluvium) aquifers.~~[Buffers located in the table in subsection (4) of this section shall be maintained for land application in areas comprised of karst, shallow fracture and deep granular consolidated, and localized fracture and minor karst aquifer types. The aquifer type determination shall be made by using the map in the Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers document.]~~

(3) A land application unit shall not be located on land with a slope greater than fifteen (15) percent.

(4)

(a) The ten (10) meter buffer zone for surface waters established~~[listed]~~ in 40 C.F.R. 503.14(c) shall not be used. All biosolid land application facilities shall maintain the following buffer zones:

Required Buffer Zones Minimum Distance in Feet from the Boundary of the Application Zone	
Structure or Object	Application Buffer
Residences and Occupied Buildings	200
Water Well	200
Surface Water including Perennial Streams	100
Karst Feature	100
Intermittent Stream	50
Ephemeral Stream	30
Property Line and Public Roads	30

(b) The distances measured for buffer zones shall be as established in subparagraphs 1. through 7. of this paragraph.~~[:]~~

1. Residences and occupied buildings shall be measured from the building or residence to the closest boundary of the area that land application will occur.

2. Water wells buffer shall be measured from the well to the closest boundary of the area that land application will occur.

3. Surface Water including perennial streams buffer shall be measured from the baseline stream bank to the closest boundary of the area that land application will occur.

4. Karst features buffer shall be measured from the feature to the closest boundary of the area that land application will occur.

5. Ephemeral streams buffer shall be measured from the ordinary high-water mark to the closest boundary of the area that land application will occur.

6. Property line buffers shall be measured from the property line to the closest boundary of the area that land application will occur.

7. Public roads buffer shall be measured from the edge of the road to the closest boundary of the area that land application will occur.

Section 6. Biosolids Land Application Permit Required.

(1) **A person**~~[All persons]~~ operating under a permit issued prior to June 29, 2023 for the land application of biosolids shall operate in accordance with that permit until a renewal permit is issued by the cabinet. At the time for renewal, the applicant shall apply for a new permit under this administrative regulation.

(2) **A person**~~[All persons]~~ seeking to engage in the land application of biosolids after June 29, 2023 shall first obtain a permit issued in accordance with this administrative regulation from the cabinet prior to land application.

Section 7. Biosolid Land Application Permit Review.

(1) **A person**~~[Persons]~~ applying for a biosolids land application permit shall submit ~~[“]Application for a Biosolid Land Application Facility Permit, [“]~~ form DEP 4505. The completed permit application shall be submitted to the cabinet and include all of the attachments that are required by the application form. The attachments in the application shall include:

(a) Copies of property deeds or land application agreements;

(b) Lists of landfills receiving biosolids;

(c) Laboratory analysis of the biosolids;

(d) An enlargement of a current United States Geological Survey topographic map. The map shall have a minimum scale of one (1) inch equals 400 feet and the contour interval as published; and

(e) A certification statement.

(2) A fee in the amount established~~[specified]~~ in 401 KAR 45:250 shall accompany the permit application, unless the applicant is a municipality.

(3) The cabinet shall not require additional information that is not in the permit application. Any additional information requests shall be in the form of a notice of deficiency or in response to a variance request from the applicant pursuant to 401 KAR 30:020.

(4) The cabinet shall not review a permit application until the application has been deemed complete. An application for a biosolids land application permit shall be considered complete unless the forms submitted are incomplete or otherwise missing information that~~[which]~~ is necessary for review.

(5) If the application is determined to be incomplete, the cabinet shall notify the applicant of all the deficiencies that render it incomplete. ~~[and]~~ the applicant shall have the right to correct deficiencies identified by the cabinet. If the cabinet determines that the application is incomplete two (2) or more times, that determination shall be considered final and the applicant shall have the right to file a petition pursuant to KRS 224.10-420.

(6)

(a) The cabinet shall review complete applications and issue a final determination based on the submitted application, within 120 calendar days of the official day the permit application was received.

(b) The official date of receipt for a permit application shall be:

1. The date the paper document is stamped received by the Division of Waste Management;
or
 2. The submission date created by electronic submittal portal.
- (c) The cabinet's review timeframe shall be paused from the date:
1. The cabinet mails, hand delivers, or electronically sends a notice of deficiency until the date the Division of Waste Management receives the response to the deficiencies as established in paragraph (b) of this subsection; and
 2. A permit application is subject to an adjudicatory process that prevents the cabinet from making a determination to the date the administrative or judicial hearings are final and the parties are in compliance with the final orders resulting from those hearings.
- (d) The timetables established in this section may be extended at the initiative of either the cabinet or the applicant. The purpose and period of the extension shall be in writing and, if agreed to by both parties, shall be signed by both the cabinet and the applicant. The agreement to extend the timetable shall become part of the cabinet's permit file.

(7)

- (a) Upon final *determination*[approval] of the permit application, the cabinet shall post on its Web page, a public notice of the permit *determination*[issuance].**
- (b) A *person*[Persons] aggrieved by the final determination of the cabinet shall be afforded an opportunity to appeal the decision pursuant to KRS 224.10-420(2).**
- (c) Land application of biosolids under the approved permit shall not begin until thirty (30) days from the date of the *posted* public notice as established in paragraph (a) of this subsection.**

Section 8. Modification of Permits. A biosolids land application permit may be modified during its term. The modification shall be in accordance with this section.

- (1) If a permit is modified, only the conditions **related[subject]** to modification shall be reopened.
- (2) Modifications requested by the permittee shall not be considered by the cabinet until the permittee has submitted a completed **[]**Application for a Biosolid Land Application Facility Permit, **[]** form DEP 4505, to the cabinet.
- (3) Causes for modification. Causes for modification of permits shall include:
 - (a) Material and substantial alterations or additions to the permitted special waste site or facility that would justify new permit conditions that are different or absent in the existing permit;
 - (b) The cabinet determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable available remedy;
 - (c) The cabinet receiving notification of expected closure and finds that one (1) or more of the permit conditions are no longer warranted;
 - (d) The corrective action program established in the permit has not brought the site into compliance with the groundwater protection standards;
 - (e) To approve a corrective action plan required by 401 KAR 45:160;
 - (f) To include conditions applicable in new or amended statutes or administrative regulations;

- (g) To include conditions applicable as a result of a hearing or enforcement action as established in 401 KAR Chapter 40;
 - (h) Ownership of the special waste site or facility changes;
 - (i) To expand the capacity of a special waste site or facility; or
 - (j) To add a new special waste source.
- (4) All terms of an existing permit shall remain in effect during the permit modification request.
- (5) The cabinet shall make a final determination **based on the submitted application**, to approve or disapprove a permit modification within ninety (90) calendar days.

Section 9. Permit Transfers. A permit shall not be transferable to any person without prior approval of the cabinet. For purposes of this section, a permit transfer application shall be required if a person requests that the name on the permit be changed to a different person or entity or if the permittee is a corporation and fifty-one (51) percent or more of the stock is sold to a person who was not previously a stockholder, or was a stockholder owning less than five (5) percent of the stock.

- (1) A person requesting to transfer a permit for an existing special waste site or facility shall submit to the cabinet a completed Application to Transfer a Special Waste Permit form DEP 7094C, incorporated by reference in 401 KAR 45:040.
- (2) **Based on the submitted application**, the cabinet shall make a final determination to approve or disapprove a formal permit transfer within sixty (60) calendar days.
- (3) If the transfer application is incomplete, the cabinet shall notify the applicant in writing of all the deficiencies. Periods of deficiency shall not be counted against the review time frame. Failure to submit information noted by the cabinet related to the deficiencies within fifteen (15) calendar days of receipt of the notice of deficiency **shall be/is** grounds for disapproval of the transfer application.

Section 10. Suspension and Revocation of Biosolid Land Application Permits:

- (1) The cabinet may modify, suspend, or revoke a permit issued under this chapter for:
 - (a) Violation of any requirement of KRS Chapter 224, **401 KAR Chapter 45[this chapter]**, or 401 KAR 30:031;
 - (b) Aiding, abetting, or allowing the violation of KRS Chapter 224, **401 KAR Chapter 45[this chapter]**, or 401 KAR 30:031;
 - (c) A Violation of a condition or a variance of the special waste site or facility permit;
 - (d) Misrepresentation or omission of a significant fact by the owner or operator either in the application for the permit or in information subsequently reported to the cabinet;
 - (e) Failure to comply with an order issued by the cabinet; or
 - (f) The facility is transferred to another person without prior approval of the cabinet.
- (2) The cabinet shall follow the applicable procedures in this administrative regulation and 401 KAR Chapter 40 in revoking any permit under this section.
- (3) If a permit is revoked, the owner or operator may reapply.
- (4) Upon revocation of a permit, an owner or operator of a special waste site or facility may file a request for a hearing. A hearing request shall be pursuant to KRS 224.10-420 upon revocation of the permit.

Section 11. Permit Renewals.

- (1) Applications for renewal shall be submitted to the cabinet **at least** ninety (90) calendar days prior to the expiration of the permit. **A person[Persons]** applying for a renewal shall submit a completed Application for a Biosolid Land Application Facility Permit form DEP 4505, to the cabinet.
- (2) Applications for renewal shall **comply with[be subject to]** the review requirements in this administrative regulation.
- (3) The cabinet shall consider **if[whether]** all conditions of prior permit conditions have been met.

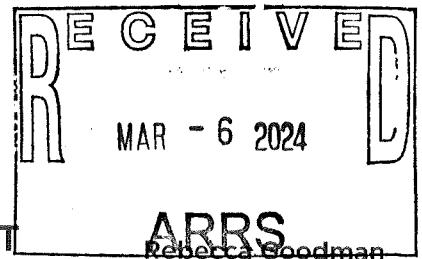
Section 12. Closure of a Biosolid Landfarming Site or Facility.

- (1) A landfarming site or facility shall send a letter of closure to the cabinet if:
 - (a) An owner or operator determines to permanently cease accepting biosolid at a special waste landfarming site or facility and does not exceed limits pursuant to Section 3 of this administrative regulation; or
 - (b) The landfarming site or facility has reached the limits in 40 C.F.R. 503.13 and is required to cease accepting biosolid at that location.
- (2) The notification shall be a letter to the cabinet indicating the special waste landfarming site or facility is in compliance with regulatory requirements and is no longer accepting biosolid at the location.

Section 13. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for a Biosolid Land Application Facility Permit", Form DEP 4505, **(December[July] 2023)**;
 - (b) "Annual Biosolids Land Application Report", Form DEP 4506, **(December[July] 2023)**; and
 - (c) "Kentucky Energy and Environment Cabinet Basics of Groundwater and Kentucky Aquifers", (July 2023).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.
- (3) This material may also be obtained on the division's Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.



Andy Beshear
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ENERGY AND ENVIRONMENT CABINET
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ARRS
Rebecca Goodman
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Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
401 KAR 45:020, Types of Special Waste Permits.
401 KAR 45:025, Permit Review and Determination Timetables.
401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
401 KAR 45:100, Landfarming and Composting of Special Waste.
401 KAR 45:105, Land Application of Biosolids
401 KAR 45:140, Conditions Applicable to All Special Waste Permits
401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection

TEAM
KENTUCKY

SUGGESTED SUBSTITUTE

Final Version: 03/02/24 at 2:00 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:140. Conditions applicable to all special waste permits.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) ~~authorizes~~[Chapter 224 requires] the cabinet to promulgate[adopt] administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain, or allow[permit] the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~This administrative regulation establishes[sets forth] the conditions applicable to all special waste permits.

Section 1. Conditions Applicable to All Permits. The conditions applicable to a special waste site or facility shall be incorporated into the permit either expressly or by reference.

(1) Duty to comply. The owner or operator shall comply with all conditions of the permit and all approved plans in the permit application. Any permit noncompliance shall constitute[constitutes] a violation of the appropriate requirement in KRS Chapter 224[Kentucky Revised Statute] and shall be[is] grounds for enforcement action that may result in revocation, modification, or denial of a permit application.

(2) Duty to reapply. If the owner or operator wishes to continue an activity regulated by the permit after the expiration date of the permit, ~~then~~[if applicable,] the owner or operator shall apply for and obtain a new permit.

(3) Duty to halt or reduce activity. It shall not be a defense for an owner or operator in an enforcement action to claim necessity to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The owner or operator shall comply with 401 KAR Chapter 45[~~this chapter~~] before commencing operations.

(4) Duty to mitigate. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to minimize releases to the environment, and shall carry out ~~[such]~~measures that[as] are reasonable to prevent additional releases or other noncompliances with 401 KAR Chapter 45 and KRS 224.50-760[significant adverse impacts on human health and the environment].

(5) Proper operation and maintenance. The owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control that are installed or used by the owner or operator to achieve compliance with the conditions of the permit. Proper operation and maintenance shall include[includes]:

(a) Effective performance;[;]

(b) Adequate funding;[;]

(c) Adequate operator staffing and training;[;] and

(d) Process controls, including appropriate quality assurance procedures.

(6) Permit actions. The permit may be modified or revoked due to noncompliance[non-compliances] with the provisions of 401 KAR Chapter 45 or[~~this chapter and~~] KRS 224.50-760[Chapter 50]. [for

cause.] The filing of a request by the owner or operator for a permit modification, revocation, or termination, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.

(7) Property rights. The permit shall not convey any property rights or any exclusive privilege.

(8) Duty to provide information. The owner or operator shall **provide[furnish]** the cabinet with [any] information that the cabinet reasonably requests to determine **if[whether]** cause exists for modifying, revoking, or terminating the permit, or to determine compliance with the permit or [any provision of KRS Chapter 224 or] **401 KAR Chapter 45[this chapter]**. The owner or operator shall [also] **submit[furnish]** to the cabinet upon request, copies of records required **under the conditions of the permit** to be kept by the permittee.

(9) Inspection and entry. The owner or operator shall allow the cabinet **[or its authorized representative-]to:**

(a) Enter upon the owner's or operator's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of the permit;

(b) Have access to and copy at reasonable times any records that are kept under the conditions of the permit;

(c) Inspect any facility's equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor, for the purposes of assuring permit compliance or determining compliance with KRS Chapter 224 or **401 KAR Chapter 45[this chapter]**, any substances or parameters within the boundaries of the permitted area and outside the boundaries of the permitted area if necessary to determine the environmental impacts resulting from a permitted activity[at any location].

(10) Signatory requirement. All applications, reports, and information submitted to the cabinet shall be signed and certified in accordance with **[Section 10 of]401 KAR 45:030, Section 10**.

(11) Authorization to operate. For a new special waste site or facility, or a facility undergoing an expansion or modification as stated in 401 KAR 45:040, the owner or operator shall not commence storage, treatment, or disposal of special waste in the modified portion of the facility until:

(a) The owner or operator has submitted to the cabinet, by certified mail or hand delivery, a request for the issuance of a construction and operation[construction/operation] permit signed by the owner or operator stating that the facility has been constructed or modified in compliance with the construction permit. The request shall be accompanied by a fee **established[specified]** in **[Section 2(1)(d) of]401 KAR 45:250, Section 2(1)(d);** and[

(b) The cabinet has inspected the newly constructed or modified facility and issued a special waste construction and operation[construction/operation] permit or modified **[construction/operation]** permit.

(12) Transfers. The permit shall not be transferable to any person without prior approval of the cabinet. Proposed new owners or operators shall submit a complete transfer permit application to the cabinet in accordance with **[Section 3 of]401 KAR 45:040, Section 3**.

(13) Monitoring reports. Monitoring results shall be reported at the intervals **established[specified]** in the approved permit application.

(14) Compliance schedules. Reports of compliance with, or any progress reports on, requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen (14) days following each scheduled date.

(15) Reports. **[Periodic-]Reports [as-]required in 401 KAR Chapter 45[this chapter]** or in the permit shall be submitted to the cabinet on the dates required in 401 KAR Chapter 45[this chapter] or in the permit[on a timely basis].

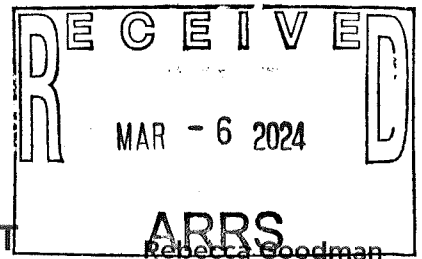
(16) Other information. If the owner or operator fails to submit any relevant facts in a permit application, or submits incorrect information in a permit application or in any report to the cabinet, the owner or operator[he] shall promptly submit the facts or correct information.

Section 2.

(1) Establishing Permit Conditions. In addition to conditions required for all permits in Section 1 of this administrative regulation, the cabinet shall establish conditions on a case-by-case basis in permits to ensure compliance with the requirements of 401 KAR Chapter 45~~[this chapter]~~.

(2) The cabinet may incorporate applicable requirements directly into the permit. Each special waste permit issued by the cabinet shall contain conditions as the cabinet determines necessary to assist in compliance with the approved application and 401 KAR Chapter 45~~[this chapter]~~[protect human health and the environment].

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.



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COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re: 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 401 KAR 45:020, Types of Special Waste Permits.
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 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
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 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/05/24 at 3:55 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 45:160. Surface and groundwater monitoring and corrective action for special waste sites or facilities.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99, Chapter 322A, 40 C.F.R. 302.4, Appendix A

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d), 40 C.F.R. 302.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.50-760(1)(d) authorizes~~[Chapter 224 requires]~~ the cabinet to promulgate~~[adopt]~~ administrative regulations for the treatment, management, processing, or disposal of wastes. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit. ~~[This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities.]~~ This administrative regulation establishes~~[sets forth]~~ the standards for groundwater and surface water monitoring and corrective action at special waste sites or facilities. This administrative regulation does not establish requirements for surface or groundwater monitoring of special waste sites or facilities where biosolids from the treatment of domestic sewage or sewage sludge from a treatment facility have been land applied, except as it applies to biosolid permit corrective action plans.

Section 1. Applicability.

(1) The requirements of this administrative regulation apply to owners and operators of special waste landfills, Type A special waste landfarming or composting sites or facilities, other special waste sites or facilities at which the cabinet determines groundwater and surface water monitoring shall be required pursuant to 401 KAR 45:100, Section 3(3), and special waste sites or facilities required to perform corrective action as a result of documented groundwater contamination.

(2) Designs, reports, and plans constituting the "public practice of geology", as defined by~~[in]~~ KRS 322A.010(3), shall be developed by a person registered pursuant to KRS Chapter 322A, except as established in~~[provided for]~~ by KRS 322A.080.

(3)(a) Landfarming and composting sites or facilities required to monitor surface water shall comply with ~~[Section 6(26) of]~~ 401 KAR 45:100, Section 6(26).

(b) Landfarming and composting sites or facilities required to perform corrective action shall comply with Section 5 of this administrative regulation.

(c) The owner or operator shall satisfy the requirements of this administrative regulation for all wastes and waste constituents contained in the site or facility.

(d) The cabinet may waive baseline groundwater characterization and groundwater monitoring, in accordance with~~[subject to]~~ the provisions of 401 KAR 30:020.

Section 2. Design Requirements for Groundwater Monitoring Systems. (1) The groundwater quality monitoring system to be utilized in the groundwater monitoring plan shall accurately analyze groundwater quality and characterize regional and local groundwater flow and flow systems. The monitoring system shall include~~[consist]~~ at a minimum, of the monitoring requirements established in paragraphs (a) and (b) of this subsection.~~[following:]~~

~~(a)(1)~~ Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area. Background wells shall be placed as **established**~~(described)~~ in **subparagraphs 1. and 2.**~~(paragraphs (a) and (b))~~ of this **paragraph**~~(subsection)~~.

~~1.(a)~~ At least one (1) background well **shall be placed** at a point hydraulically upgradient from the disposal area in the direction of increasing static head that is capable of providing data representative of groundwater not affected by the special waste site or facility.

~~2. If (b) When~~ the special waste site or facility occupies the most upgradient position in the flow system or the upgradient area is not representative, sufficient downgradient or side gradient monitoring wells shall be placed to accurately characterize the groundwater quality and regional and local groundwater flow systems~~[- Background wells shall be located so that they will not be affected by groundwater contamination from the disposal area];~~ and

~~(b)1.(2)~~ At least two (2) monitoring wells **shall be placed** at points hydraulically downgradient in the direction of decreasing static head from the area in which special waste has been or will be disposed.

~~2.~~ The cabinet may allow springs for monitoring points if the springs are hydraulically downgradient from the area in which special waste has been or will be disposed, if the springs are developed and protected in a manner approved by the cabinet, and if the springs are capable of detecting any contamination from the disposal facility.

~~3.~~ Downgradient monitoring wells shall be located so that they will provide early detection of groundwater contamination and progressive monitoring of the phases and units of the site or facility.

~~(2)(3)~~ An alternative monitoring plan may be proposed in an application for a special waste site or facility in accordance with ~~[Section 3(2) of]~~ 401 KAR 45:110, **Section 3(2)**.

Section 3. Requirements for Monitoring Well Construction.

(1)~~(a)~~ Precautions shall be taken during drilling and construction of monitoring wells to avoid introducing contaminants into the borehole.

~~(b)~~ Only potable water shall be used in drilling monitoring wells~~[- unless otherwise approved by the cabinet].~~

~~(c)~~ Drilling muds shall not be used except with prior approval of the cabinet.

~~(d)~~ Air systems and drilling lubricants shall not introduce contaminants into the boreholes.

(2) Decontamination of all equipment to be placed into the boring shall be performed before use at the site and between boreholes. ~~If [Where]~~ possible, upgradient wells shall be drilled first.

(3) Monitoring wells shall be cased as follows:

(a) In a manner to ensure the integrity of the monitoring well borehole by isolating water bearing units which are sampled by each well;

(b) With a minimum casing diameter of four (4) inches, unless otherwise approved by the cabinet in writing;

(c) With screens and appropriate gravel or sand where necessary, to enable collection of samples at depths where appropriate aquifer flow zones exist;

(d) To allow the casing to protrude at least one (1) foot above ground;

(e) To provide a drill hole diameter that is a minimum of four (4) inches larger than the outside diameter of the well casing;

(f) To produce an annular space above the sampling depth that is sealed to prevent contamination of samples and the groundwater; and

(g) If plastic casing is used, it shall be threaded and gasket sealed to preclude potential sample contamination from solvent welded joints, unless otherwise provided by the cabinet in the permit.

(4) Monitoring well casings shall be enclosed in a protective cover that shall:

- (a) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism, and also include protective barrier steel posts at the corners of the concrete pad;
 - (b) Be installed into firm rock, unless otherwise approved by the cabinet;
 - (c) Be grouted and placed with a cement collar below the frost line to hold it firmly in position, unless otherwise approved by the cabinet;
 - (d) Be numbered and painted in a highly visible color;
 - (e) Protrude at least one (1) inch higher above grade than the monitoring well casing;
 - (f) Have a locking cap; and
 - (g) Be made of steel or any other material of equivalent strength.
- (5) Each monitoring well shall have a concrete pad extending two (2) feet around the well and sloped away from the well.

Section 4. Sampling and Analysis.

- (1) Parameters listing. Owners or operators of special waste sites or facilities that require groundwater monitoring shall conduct sampling and analysis from each monitoring well for the parameters **established[listed]** in Section 8 of this administrative regulation.
- (2) Reporting of analysis results. Analyses of data required by this section shall be submitted to the cabinet. **The reporting may be submitted** on a form provided by the cabinet **or in another format.** **The report shall be submitted** within sixty (60) days of sampling or fifteen (15) days after completion of analyses, whichever is sooner, unless the cabinet approves another time period in the permit. Frequency of sampling shall be as **established[indicated]** in Section 8 of this administrative regulation.
- (3) If analysis of the sample results indicates contamination, the owner or operator shall notify the cabinet within forty-eight (48) hours of receiving the analysis results and shall arrange for the cabinet to split a sample no later than ten (10) days from the receipt of the results.

Section 5. Groundwater Contamination Assessment and Corrective Action.

- (1) The owner or operator of a special waste site or facility shall prepare and submit a groundwater assessment plan if laboratory analyses of one (1) or more public or private water supplies or monitoring wells at the site or facility shows the presence of one (1) or more parameters **established[listed]** in 40 C.F.R. 302.4 Appendix A [~~as of September 1991~~], above the maximum contaminant level (MCL) as **established[specified]** in 401 KAR 30:031 or significant increase over established background levels for parameters that have no MCL. For parameters that have no maximum contaminant levels, a significant increase over background shall be determined using a statistical test as **established[specified]** in Section 6 of this administrative regulation.
- (2) Confirmation sampling. The owner or operator of a special waste site or facility shall not be required to submit a groundwater assessment plan if ~~the following conditions are met~~:
 - (a) Within ten (10) days after receipt of sample results showing groundwater contamination the owner or operator resamples the affected wells; and
 - (b) Analysis from resampling **establishes** ~~shows to the cabinet's satisfaction~~ that groundwater contamination has not occurred.
- (3) The owner or operator of a special waste site or facility shall ~~be required to~~ provide alternate water supplies to affected parties within twenty-four (24) hours of notification of the cabinet that sample results indicate contamination of a drinking water supply if it has been determined that the special waste site or facility is the probable source of contamination.
- (4) The groundwater assessment plan shall be submitted to the cabinet within thirty (30) days of the occurrence of the conditions **established[described]** in subsection (1) of this section. The assessment plan shall **state[specify]** the manner in which the owner or operator will determine the existence, quality,

quantity, areal extent, and depth of groundwater degradation, and the rate and direction of migration of contaminants in the groundwater. The assessment plan shall be prepared by a registered geologist pursuant to ~~[subsection (2) of]~~ Section 1(2) of this administrative regulation~~[qualified professional in the field of hydrogeology]~~ and shall be implemented upon approval by the cabinet in accordance with the approved implementation schedule. The assessment plan shall be implemented within sixty (60) days after approval by the cabinet. The plan shall contain, at a minimum,~~[the following information]:~~

- (a) The number, location, size, casing type and depth of wells, lysimeters, borings, pits, piezometers, and other assessment structures or devices to be used;
 - (b) Sampling and analytical methods for the parameters to be evaluated;
 - (c) Analyses of all parameters listed in the approved monitoring plan in the permit application, and any other parameter required by the cabinet; and
 - (d) Evaluation procedures, including the use of previously gathered groundwater quality information, to determine the concentration, rate, and extent of groundwater degradation or pollution from the facility.
- (5) For public or private water supplies that **could[may]** be adversely affected by the facility, the owner or operator shall submit a detailed hydrogeologic study addressing the potential effect of the site or facility on the water supply.
- (6) If the ~~[cabinet determines that the]~~ assessment plan is inadequate, the cabinet may modify the plan and approve the plan as modified.
- (7) Within ninety (90) days after the implementation of the groundwater assessment plan, the owner or operator shall submit a groundwater assessment report containing the new data collected, analysis of the data, and recommendations on the necessity for abatement.
- (8) The cabinet may require abatement measures prior to approval of the groundwater assessment plan. **These are conditions that require the declaration of a secretary's emergency, as established in KRS 224.01-400, or impacts to offsite receptors, including to the public or the environment.**
- (9) Within ninety (90) days of cabinet approval of the groundwater assessment report, but no later than one (1) year from the event **established[specified]** in subsection (1) of this section, the owner or operator shall submit a remedial action plan to include~~[the following]:~~
- (a) The specific methods or techniques to be used to abate groundwater contamination from the facility;
 - (b) The specific methods or techniques to be used to prevent further groundwater contamination from the facility; and
 - (c) A description of the means used to restore or replace public or private water supplies affected by contamination from the special waste facility.
- (10) The owner or operator of a special waste site or facility shall take any other steps deemed necessary by the cabinet to ensure protection of human health and the environment.
- (11) Corrective action measures under this administrative regulation shall be initiated and completed within a period of time as **established[specified]** by the cabinet considering the extent of degradation determined pursuant to subsection (1) of this section.
- (12) Corrective action measures under this administrative regulation may be terminated upon approval of the cabinet **if[when]** the owner or operator demonstrates that concentrations have been reduced to levels below the maximum contaminant level or naturally occurring background.

Section 6. Statistical Methods for Groundwater Analysis. The owner or operator of a special waste site or facility shall use the following statistical procedure in determining **if[whether]** background values or concentration limits have been significantly exceeded:

(1) If the level of a parameter is to be compared to the parameter's background value and that background value has a sample coefficient of variation less than one (1.00):

(a) The owner or operator shall take at least four (4) portions from a sample at each well and determine whether the difference between the mean of the parameter at each well, using all portions taken, and the background value for the parameter is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Students' t-test. If the test indicates that the difference is significant, the owner or operator shall repeat the same procedures, with at least the same number of portions as used in the first test, with fresh samples from the monitoring wells. If this second round of analyses indicates that the difference is significant, the owner or operator shall conclude that a statistically significant change has occurred; or

(b) With prior approval from the cabinet, the owner or operator may use an equivalent statistical procedure for determining ***if[whether]*** a statistically significant change has occurred. The cabinet shall approve ***the[such-a]*** procedure in the permit if it is found that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility in a manner that is comparable to that of the statistical procedure ***established[described]*** in paragraph (a) of this subsection; ***and[.]***

(2) In all other situations, the owner or operator shall use a statistical procedure approved in the permit ***that[which]*** provides reasonable confidence that the migration of contamination from a special waste site or facility into and through the groundwater will be indicated. The cabinet shall approve a statistical procedure in the permit that:

(a) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(b) Provides a reasonable balance between the probability of falsely identifying a noncontaminating facility and the probability of failing to identify a contaminating facility.

Section 7. Baseline Groundwater Quality Characterization Parameters. For special waste sites or facilities that require groundwater monitoring, the following parameters are to be analyzed and the resulting data submitted in the permit application:

(1) For all landfarming or composting sites or facilities required to monitor groundwater, the characterization shall be based on the following ~~[dissolved-]~~metals and other waste analysis based parameters:

(a) 1. Specific conductance;

2. Chemical oxygen demand;

3. Total organic carbon;

4. Chloride;

5. Iron;

6. Manganese;

7. Sodium;

8. Total nitrogen;

9. Nitrate nitrogen;

10. Chromium;

11. Cadmium;

12. Coliform bacteria;

13. pH;

14. Calcium;

15. Magnesium;

16. Potassium;
17. Sulfate Bicarbonate; and
18. Carbonate.

(b) Groundwater elevation in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum; [.]

(2) For special waste landfills, used solely for the disposal of coal combustion by-products, the characterization shall be based on the following dissolved metals and other parameters:

- (a)1. Chloride;
2. Chemical oxygen demand;
3. Total dissolved solids;
4. Total organic carbon;
5. Specific conductance;
6. pH;
7. Copper;
8. Nickel;
9. Zinc;
10. Iron;
11. Sodium;
12. Arsenic;
13. Cadmium;
14. Lead;
15. Mercury;
16. Selenium;
17. Calcium;
18. Magnesium;
19. Potassium;
20. Sulfate;
21. Bicarbonate; and
22. Carbonate.

(b) Groundwater elevations recorded as a distance from the elevation at the well head referenced to mean sea level based on a United States Geological Survey (USGS) datum; and [.]

(3) For special waste sites or facilities other than those ***established[specified]*** in subsections (1) and (2) of this section, the characterization shall be for parameters determined by the cabinet based on a review of the chemical analysis of the waste provided in the application.

Section 8. Groundwater Monitoring Parameters.

(1) Owners or operators of landfarming or composting sites or facilities requiring groundwater monitoring shall monitor for the following parameters on a semiannual basis:

- (a)1. Chemical oxygen demand;
2. Total organic carbon;
3. Total nitrogen;
4. Nitrate nitrogen;
5. Lead;
6. Chromium;
7. Cadmium; and
8. Coliform bacteria; [.]

- (b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; and
- (c) Monitoring of additional parameters **that** may be required by the cabinet based on the waste analysis.

(2)(a) Owners or operators of special waste landfills used solely for the disposal of coal combustion by-products shall monitor semiannually for ~~the following~~:

1. (a)

- a. 1.** Chloride;
- b. 1. 2.** Chemical oxygen demand;
- c. 1. 3.** Total dissolved solids;
- d. 1. 4.** Total organic carbon;
- e. 1. 5.** Specific conductance;
- f. 1. 6.** pH; and
- g. 1. 7.** Copper;

2. (b) Groundwater elevations in monitoring wells recorded as a distance from the elevation at the well head referenced to mean sea level based on a USGS datum; **and**

3. (c) Monitoring of additional parameters **that** may be required by the cabinet based on a significant increase from the baseline characterization.

(b) (d) If, after four (4) initial monitoring events, analysis for the parameters in **paragraph (a) 1. through 3. (paragraphs (a) to (c))** of this subsection indicates no exceedances above levels **established [specified]** in Section 5(1) of this administrative regulation, the owner or operator may, upon request, be granted permission from the cabinet to reduce the monitoring parameters to those **established [listed]** in paragraph (a) of this subsection.

(3) Owners or operators of special waste sites or facilities other than those referenced in subsections (1) and (2) of this section shall monitor quarterly for parameters to be determined by the cabinet based upon chemical analysis of the waste to be disposed.

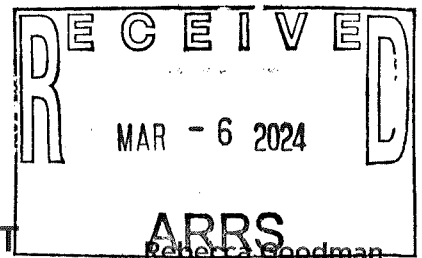
Section 9. Surface Water Monitoring and Corrective Action.

(1) Special waste sites or facilities required to monitor surface water shall do so in accordance with a plan provided in the permit application. The plan shall be sufficient to characterize the quality of surface water unaffected by the site or facility and to determine if water leaving the site or facility has been contaminated.

- (a) Baseline sampling shall include a minimum of two (2) samples collected at no less than thirty (30) day intervals and shall be sufficient to characterize baseline conditions.
- (b) Operational surface water monitoring shall be completed in accordance with the surface water monitoring plan approved in the permit application and shall be sufficient to determine if the site or facility is contaminating surface water.

(2) Corrective action shall be completed by a special waste site or facility owner or operator as necessary to comply with 401 KAR 30:031.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

ARRS
Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 6, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

- Re:
- 401 KAR 45:010, Definitions for 401 KAR Chapter 45.
 - 401 KAR 45:020, Types of Special Waste Permits.
 - 401 KAR 45:025, Permit Review and Determination Timetables.
 - 401 KAR 45:030, Obtaining a Special Waste Site or Facility Permit.
 - 401 KAR 45:040, Modification, Transfer, or Revocation of Special Waste Permits.
 - 401 KAR 45:050, Public Information Procedures for Special Waste Site or Facility Permits.
 - 401 KAR 45:080, Financial Requirements and Bonds for Special Waste Facilities.
 - 401 KAR 45:100, Landfarming and Composting of Special Waste.
 - 401 KAR 45:105, Land Application of Biosolids
 - 401 KAR 45:140, Conditions Applicable to All Special Waste Permits
 - 401 KAR 45:160, Surface and Groundwater Monitoring and Corrective Action for Special Waste Sites or Facilities.
 - 401 KAR 45:250, Special Waste Permit Fees.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250, the Department for Environmental Protection proposes the attached amendments to 401 KAR 45:001, 401 KAR 45:020, 401 KAR 45:025, 401 KAR 45:030, 401 KAR 45:040, 401 KAR 45:050, 401 KAR 45:080, 401 KAR 45:100, 401 KAR 45:105, 401 KAR 45:140, 401 KAR 45:160, and 401 KAR 45:250.

Sincerely,

Michael S. Mullins, Environmental Scientist Consultant II
Department for Environmental Protection



SUGGESTED SUBSTITUTE
Final Version: 01/04/25 at 1:31 p.m.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 45:250. Special waste permit fees.

RELATES TO: KRS 224.40

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) authorizes the cabinet to promulgate an administrative regulation to establish~~states that the cabinet may provide by administrative regulation for~~ a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. ~~[This chapter establishes standards for special waste sites or facilities.]~~ This administrative regulation establishes a fee schedule for the issuance and modification of special waste site or facility permits.

Section 1. Applicability. ~~[(1)]~~ The provisions of this administrative regulation shall apply to:

(1) the owner or operator of each special waste site or facility required to apply for a permit, permit renewal, permit modification, or permit transfer, except publicly-owned facilities; ~~and~~]

(2) ~~[The provisions of this administrative regulation shall also apply to]~~ Special waste site or facility permit applications for the land application of biosolids~~submitted on or after June 24, 1992].~~

Section 2. Filing Fees.

(1) Each permit application shall be accompanied by an appropriate filing fee determined as follows:

Application	Fee
(a) Notice of intent	\$500
(b) Request for alternate specification to design criteria or variance from regulatory requirements	\$500
(c) Formal application and modifications to expand the facility horizontally	\$5,000
(d) Construction/operation permit	\$500
(e) Renewal	\$500
(f) Permit modifications other than horizontal expansions:	
1. Vertical expansions	\$1,000
2. Modification to closure plan	\$500
3. Receipt of waste from new source	\$50
4. Change of ownership or transfer of an existing permitted facility	\$500
5. Cabinet mandated increase in financial assurance	\$0
6. Closure of a facility that is not under a current special waste facility permit	\$1,000
7. Modifications not otherwise specified	\$500

(g) Emergency permit	\$500
(h) Research, development and demonstration permit	\$2,500

(2) A filing fee shall be in the form of a check or money order and made payable to the Kentucky State Treasurer. Filing fees shall not be refundable.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II., 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

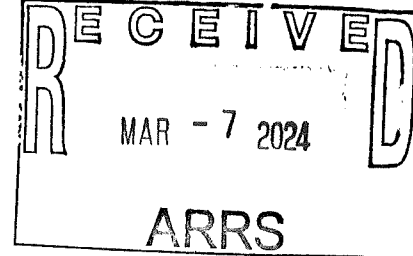


Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
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March 7, 2024



Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 103:005, Definitions for 401 KAR Chapter 103.
401 KAR 103:010, Notification and Transfer Procedures for Merchant Electric
Generating Facilities.
401 KAR 103:020, Decommissioning Standards.
401 KAR 103:030, Financial Requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030, the Department for Environmental Protection proposes the attached amendments to 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030.

Sincerely,

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/07/24 at 1:27 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 103:005. Definitions ~~for~~~~related to~~ 401 KAR Chapter 103.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), ~~[224.10-100]~~(30), (31), 224.10-285, ~~[224.43-345,~~
]278.710(3) ~~–~~~~[(4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation established~~[set for]~~ in KRS 278.710(3) through~~[(4),]~~ (5), and (7) through (10) and 224.10-100(30) and (31). This administrative regulation defines ~~[essential]~~ terms that are used in 401 KAR Chapter 103~~[this chapter]~~.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

(1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim to the merchant electric generating facility.

(2) "Above-ground facility~~[facilities]~~" means any portion of a system or structure located on the surface of the site.

(3) "Annual report" means a yearly document that includes~~[describes]~~ all operational activities in the previous year.

(4) "Applicant" means any person ~~[who received a construction certificate pursuant to KRS 278.710, or]~~ who is seeking the transfer of a construction certificate for ownership or control, or rights and obligations under a construction certificate, ~~[controlling rights, or ownership]~~ of a constructed and generating merchant electric generating facility.

(5) "Cabinet" is defined by KRS 224.1-010(8).

(6) "Commence to construct" is defined by KRS 278.700(4).

(7) "Components" means:

(a)~~[either]~~ The solar panel or ancillary equipment of a solar array or solar panel system; or

(b)~~[-or]~~ A constituent part of the solar panel or solar array.

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting (~~[the]~~~~[Siting]~~~~board~~~~[the]~~) ~~[to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility]~~ that authorizes a person~~[persons]~~ to construct and operate a merchant generating facility.

(9) "Construction certificate holder" means any person who received board approval to construct a merchant~~[merchang]~~ electric generating facility pursuant to KRS 278.710(1)~~[178.710(1)]~~ or any person who received approval to acquire~~[acquirer]~~ rights and obligations under the construction certificate pursuant to KRS 278.710(3)(b).

(10) "Control" is defined by KRS 278.010(19).

(11)~~(10)~~ "Current net salvage value" means, in current US dollars, the:

(a)~~[the]~~ Value of an asset ~~[expressed in current US dollars]~~ after the asset~~[it]~~ has become useless to the owner; or

~~(b)[the]~~ Amount expected to be obtained ~~if[when]~~ a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706(2).

~~(12)[(11)]~~ "Decommission" means the process of removing components [~~removal~~] or ~~facilities~~ [~~closing of solar panel system~~] at the end of the useful life.

~~(12)]~~ [~~"Decommission bond" or "Decommissioning bond" means an approved financial assurance mechanism used to guarantee the land used for a merchant electric generating facility will be returned to a substantially similar state upon decommissioning or abandonment of the project, unless otherwise requested by the landowner.~~]

(13) "Decommission costs" or "decommissioning costs" means the amount of all costs and expenses incurred in connection with the ~~decommissioning~~ [~~decommissioning~~] [~~dismantlement, removal, and disposal of structures, systems, and components~~] of a merchant electric generating facility [~~at the time of decommissioning~~] pursuant to KRS 278.706.

(14) "Decommission plan" or "decommissioning plan" means a plan to retire physical facilities of a merchant electric generating facility, pursuant to KRS 278.706.

(15) "Disposal" is defined by KRS 224.1-010(9).

(16) "Facility" is defined by KRS 278.010(11).

(17) "Hazardous substance" is defined by KRS 224.1-400(1)(a).

(18) "Land disposal" is defined by KRS 224.1-010(42).

(19) "Landowner" means a person who has legal ownership of land where a merchant electric generating facility is located.

(20) "Megawatt" means a unit of power equal to one (1) million watts, measure of output of electrical power.

(21) "Merchant electric generating facility" is defined by KRS 278.700(2).

(22) "Mitigation measures" means an act or requirement established by the siting board pursuant to KRS 278.708.

(23) "Modification" means a change in existing order or certificate, necessary to cure an error.

(24) "Monitoring" ~~means[is defined as]~~ the act of systematically inspecting and collecting data on operational parameters or on the quality of a merchant electric generating facility.

(25) "Municipal government" means a city, town, or other local authority with an elected governing body.

(26) "Net present value" means the difference between the present value inflow and outflow over a period of time and pursuant to KRS 278.706(2).

(27) "Ordinance" means an official written act of a local government, the effect of which is general and permanent in nature, which is enforceable by the enacting local government as a local law within its jurisdiction.

~~(28) ["Owner-operator" is defined as any person who owns a merchant electric generating facility or is responsible for overall operation of a merchant electric generating facility, including any contractor conducting operational activities.]~~

~~(29)]~~ "Person" is defined by KRS 278.700(3).

~~(29)[(30)]~~ "Professional engineer" is defined by KRS 322.010(3) ~~and licensed pursuant to KRS 322.040[; an independent, professional engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced]~~ to engage in the decommissioning of solar electric generating facilities.

~~(30)[(31)]~~ "Recycling" is defined by KRS 224.1-010(21).

~~(31)[(32)]~~ "Secretary" is defined by KRS 224.1-010(23).

~~(32)[(33)]~~ "Service" is defined by KRS ~~278.010(13)[278.700]~~.

~~(33)~~~~(34)~~ "Solar panel" means a panel or device containing photovoltaic cells designed to absorb and convert sunlight into a source of generating electricity.

~~(34)~~~~(35)~~ "Successor" means one who succeeds to the rights to own or control a merchant electric generating facility.

~~(35)~~~~(36)~~ "Useful life" means the estimated length of time that depreciable property will generate income.

~~(36)~~~~(37)~~ "Waste" is defined by KRS 224.1-010~~(30)~~.

Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context, acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning ~~[as identified]~~ in Table 1 of this ~~section~~~~[administrative regulation]~~.

Table 1. Acronyms and Abbreviations	
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

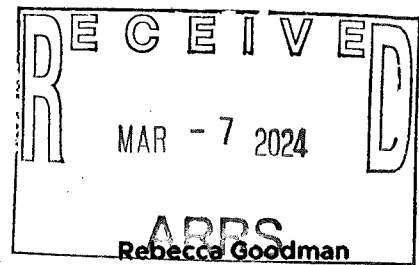
CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
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300 Sower Boulevard
Frankfort, Kentucky 40601
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Anthony R. Hatton
COMMISSIONER

March 7, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 103:005, Definitions for 401 KAR Chapter 103.
401 KAR 103:010, Notification and Transfer Procedures for Merchant Electric
Generating Facilities.
401 KAR 103:020, Decommissioning Standards.
401 KAR 103:030, Financial Requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030, the Department for Environmental Protection proposes the attached amendments to 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030.

Sincerely,

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/07/24 at 1:57 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 103:010. Notification and transfer procedures for merchant electric generating facilities.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 224.99-010, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, [~~224.43-345,~~]278.710(3) ~~[-(4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation established[set for] in KRS 278.710(3) through[-(4),] (5) and[;] (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations established[set forth] in KRS 278.710(3) through[-(4),] (5) and[;] (7) through (10). This administrative regulation establishes procedures for requirements concerning notifications, transfers of ownership, annual fees, and reporting pertaining to merchant electric generating facilities.

Section 1. Notification Procedures. [~~An applicant or person who has received~~]A construction certificate holder of[for] a merchant electric generating facility shall:

(1) File with the cabinet, and completed and notarized MEGF Construction-Operating Notification Form, DWM 4658, on or prior to the date upon which:

(a) Construction commences or is complete;

(b) Generation of electricity for sale begins;

(c) Permanent cessation of electric generation;

(d) Start of decommissioning plan implementation; and

(e) Facility ceases construction or generation for thirty (30) consecutive days after the MEGF commencement of construction;[;]

(2) For a[-MEGF that received a] construction certificate received by an MEGF prior to June 29, 2023, shall comply with the[be subject to] requirements of subsection one (1) of this section. The notice shall be submitted no later than July 15, 2024; and[ten (10) days after these administrative regulations take effect.]

(3) Provide all filings pursuant to [~~Section 3 of~~]KRS 278.710(3).

Section 2. Ownership Transfer Procedures.

(1) The applicant and construction certificate holder or person who controls or owns the right to control the MEGF[~~existing owner operator~~] shall file a completed and notarized[-the] MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, to provide notice to the cabinet of any pending or final transaction pursuant to KRS 278.710(3)(d) no later than ten (10) days prior to completing the transaction.

(2) Pursuant to KRS 278.710, upon transfer or sale of ownership, control, or the right to control the MEGF, a successor shall submit an updated or revised copy of the decommissioning plan, if applicable, pursuant to KRS 278.710(8).

(3) Transfer pursuant to KRS 278.710 shall not cause a lapse in financial assurance for the approved decommissioning plan.

(a) If the existing financial assurance previously filed with the cabinet pursuant to KRS 278.710 will continue to secure the approved decommissioning plan after transfer occurs, the ~~[applicant and]~~successor **and construction certificate holder or person who controls or owns the right to control the MEGF** shall jointly execute a certification of financial assurance ~~indicated~~**[denoted]** on the form in subsection (1) of this section; or

(b) Tender a proposed replacement financial assurance pursuant to 401 KAR 103:030, the existing financial assurance.

(4) **The annual fees established in**~~[A check, money order, or electronic funds transfer for annual fees in accordance with]~~ Section 4 of this administrative regulation **shall be**~~;~~ made payable to the Kentucky State Treasurer **by check, money order, or electronic funds transfer**.

(5)

(a) The **construction certificate holder**~~[owner-operator]~~ shall remain responsible **for obligations** pursuant to the **construction certificate and** decommissioning plan until the cabinet deems that ~~[both]~~the ~~[owner-operators and successors]~~MEGF Notice of Ownership Transfer Form, DW4652, including all required attachments, submitted pursuant to subsections (1) and (2) of this section are complete and any replacement financial assurance is deemed adequate to cover decommissioning cost.

(b) The cabinet shall have sixty (60) days to review and accept all submissions required of this section.

(c)

1. If the cabinet determines that any submissions required of this section are deficient, **pursuant to KRS 278.710(3), (4), and (7), the cabinet**~~[it]~~ shall send the **applicant and construction certificate holder**~~[owner-operator and successor]~~ a written notice **stating**~~[describing]~~ the deficiencies and stating the transfer is not accepted as complete, pursuant to KRS 278.710(5); and

2. The **applicant and construction certificate holder**~~[owner-operator and successor]~~ shall have thirty (30) calendar days from the date the cabinet issues a written deficiency to respond with information that will cure the deficiency. Failure to respond to the notice of deficiency shall be grounds for the cabinet to withhold the **existing**~~[original]~~ financial assurance until the deficiency is addressed and accepted by the cabinet.

3. The **deadline established**~~[timetable specified]~~ in paragraph (b) of this subsection shall toll from the date the cabinet issues a written notice of deficiency pursuant to subparagraph 1. of this paragraph until the **applicant and construction certificate holder**~~[owner-operator and successor]~~ submit a response required by subparagraph 2. of this paragraph.

Section 3. Decommissioning Notification.

(1) Upon permanent cessation of the generation of electricity, the **construction certificate holder, or**~~[owner-operator,]~~ person who controls or owns the right to control the MEGF shall file **a completed and notarized** MEGF Construction-Operating Notification Form, DWM 4658, notifying the cabinet within thirty (30) days of cessation. This notification shall serve as the start date for decommissioning to begin.

(2) Pursuant to KRS 224.10-285(1)~~[401 KAR 30:020(2)]~~, unless a written request is submitted to the cabinet, failure to fully implement the decommissioning plan within eighteen (18) months **shall constitute**~~[will be considered]~~ abandonment.

Section 4. Annual Fee.

(1) Fees collected pursuant to this section shall be used for administrative, compliance, and enforcement purposes **as established in 401 KAR Chapter 103**~~[specified in this Chapter]~~ and ~~[in]~~ KRS 224.10-285.

(2) The cabinet **shall**~~[will]~~ provide the **construction certificate holder or person who controls or owns the right to control the MEGF**~~[applicant]~~ with the MEGF Annual Fee Form, DWM 4656.

(a) **The construction certificate holder or person who controls or owns the right to control the MEGF shall submit a fee amount of \$6,000 no later than May 31 of each year for each MEGF in operation or decommissioning status.**~~[Based on the manufacturer's nameplate-rated capacity in the approved construction certificate, the annual fee is established pursuant to the table in paragraph (b) of this subsection.]~~

(b)

[MEGF Generating Capacity]	[Annual Fee]
[≥10 MW up to and including 75 MW]	[\$4,000]
[>75 MW up to and including 150 MW]	[\$8,000]
[>150 MW]	[\$12,000]

~~[(c)]~~ If the **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control fails to submit the annual fee required, ~~[may be subject to]~~ civil penalties **may apply and, if applied, shall be** pursuant to KRS 224.99-010(16).

(3) ~~[The owner-operator, or person who controls or owns the right to control the MEGF shall submit the annual fee no later than May 31 of each year for each MEGF in operation or decommissioning status.]~~

~~[(4)]~~

(a) The **construction certificate holder**~~[applicant, owner-operator]~~, or person who controls or owns the right to control the MEGF may request an extension to the annual fee deadline.

(b) The extension request shall be in writing stating the reasons therefore, and shall be received by the Solid Waste Branch of the Division of Waste Management ten (10) days prior to the deadline.

(c) ~~[If granted,]~~ The extension shall not exceed thirty (30) days.

Section 5. Reports. The **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall submit an annual report for a recordkeeping and reporting system.~~[The annual report shall meet the following requirements:]~~

(1) The MEGF shall submit **the annual report** to the cabinet, no later than the first anniversary of commencement of construction and every year thereafter no later than May 31. The report shall be submitted with the **completed and notarized** Merchant Electric Generating Facility Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments, and shall contain **the following**:

- (a) **A** description of construction activities during the year;
- (b) **A** description of compliance with mitigation measures;
- (c) **A** description of operation maintenance activities;
- (d) The date and quantity of system components taken out of service;
- (e) The date of when and where system components disposed or recycled; and

- (f) The quantity of system components disposed or recycled.
- (2) The annual report shall be certified by the **construction certificate holder**~~[owner-operator]~~, ensuring the MEGF is in compliance with all mitigation measures and requirements **included**~~[outlined]~~ in the construction certificate and decommissioning plan.
- (3) The **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall retain records of all required monitoring information, mitigation measures, copies of site assessment reports and annual reports, and records of all data used to complete the application for the construction certificate and decommissioning plan updates, for a period of at least three (3) years from the date of the sample, measurement, report, certification, or application. ~~[This period may be extended by request of the cabinet at any time.]~~
- (4) The **construction certificate holder**~~[owner-operator]~~, or person who controls or owns the right to control the MEGF shall keep records of the source, approved disposal location, and quantity of any release of a hazardous substance, pollutant or contaminant, or a waste that is listed or characterized as hazardous pursuant to KRS 224.1-400 and **401 KAR** Chapter 39. These records shall be available for cabinet inspection.
- (5) **Failure by a construction certificate holder**~~[Owners-operators]~~, or **person who controls**~~[persons who control]~~ or own the right to control a merchant electric generating facility, ~~[who fail]~~ to meet the requirements established in this administrative regulation **shall be grounds for**~~[may be subject to]~~ penalties established in KRS 224.99-010**(16)**.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "MEGF Construction-Operating Notification~~["]~~ Form", DWM 4658, **March**~~[January]~~ **2024**~~[September 2023]~~.
- (b) "MEGF Notice of Ownership Transfer", form, DW4652, **January 2024**~~[September 2023]~~.
- (c) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, **January 2024**~~[September 2023]~~; and
- (d) "MEGF Annual Fee" Form, DWM 4656, **January 2024**~~[September 2023]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.

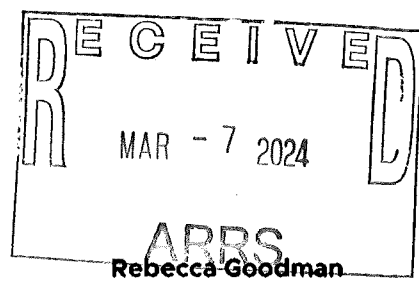
***General Reviewer's Note:** File one (1) clean and one (1) dirty copy for form DWM 4658, in conjunction with filing this suggested substitute.

Kentucky Department for Environmental Protection Division of Waste Management Solid Waste Branch 300 Sower Boulevard, Second Floor Frankfort, KY 40601 (502) 564-6716	FOR OFFICIAL USE ONLY. DO NOT WRITE IN THIS SPACE
Merchant Electric Generating Facility (MEGF) Operations Notification Form	
1. Agency Interest Number:	
2. Board Case No.:	
3. MEGF Construction Certificate Holder Information	
Company Name:	Mailing Address:
City:	State: Zip Code:
Contact Person:	Title:
Email Address:	Phone Number: () - Cell Number: () -
4. MEGF Information	
Facility Name:	Physical Address:
City:	State: Zip Code:
5. MEGF Construction / Operating Notification	
<input type="checkbox"/> Start of MEGF construction <u>or completion of construction</u> :	Date: / /
<input type="checkbox"/> Start of sale of MEGF produced electricity:	Date: / /
<input type="checkbox"/> Construction and/or <input type="checkbox"/> Operations interruption for a duration of a minimum 30 consecutive day period:	Date: / / to Date: / /
<input type="checkbox"/> Permanent cessation of MEGF electrical generation:	Date: / /
<input type="checkbox"/> Start of MEGF decommissioning plan implementation:	Date: / /
6. Certification	
"I certify under penalty of law that this documentation and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that KRS 224.99-010 provides for penalties."	
Name of MEGF:	
Name of MEGF Signatory:	Signature:
Title:	Date: / /
Subscribed and sworn to before me by:	
Notary public signature:	
My commission expires: / /	

IMPORTANT NOTE: All information submitted on this form will be subject to public disclosure to the extent provided by Kentucky law. Persons filing this form may make claims of confidentiality in accordance with 400 KAR 1:060.

Kentucky Department for Environmental Protection Division of Waste Management Solid Waste Branch 300 Sower Boulevard, Second Floor Frankfort, KY 40601 (502) 564-6716		FOR OFFICIAL USE ONLY. DO NOT WRITE IN THIS SPACE
Merchant Electric Generating Facility (MEGF) Operations Notification Form		
1. Agency Interest Number:		
2. Board Case No.:		
3. MEGF Construction Certificate Holder Information		
Company Name:		Mailing Address:
City:	State:	Zip Code:
Contact Person:		Title:
Email Address:	Phone Number: () -	Cell Number: () -
4. MEGF Information		
Facility Name:		Physical Address:
City:	State:	Zip Code:
5. MEGF Construction / Operating Notification		
<input type="checkbox"/> Start of MEGF construction or completion of construction:		Date: / /
<input type="checkbox"/> Start of sale of MEGF produced electricity:		Date: / /
<input type="checkbox"/> Construction and/or <input type="checkbox"/> Operations interruption for a duration of a minimum 30 consecutive day period:		Date: / / to Date: / /
<input type="checkbox"/> Permanent cessation of MEGF electrical generation:		Date: / /
<input type="checkbox"/> Start of MEGF decommissioning plan implementation:		Date: / /
6. Certification		
"I certify under penalty of law that this documentation and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that KRS 224.99-010 provides for penalties."		
Name of MEGF:		
Name of MEGF Signatory:		Signature:
Title:		Date: / /
Subscribed and sworn to before me by:		
Notary public signature:		
My commission expires: / /		

IMPORTANT NOTE: All information submitted on this form will be subject to public disclosure to the extent provided by Kentucky law. Persons filing this form may make claims of confidentiality in accordance with 400 KAR 1:060.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

Anthony R. Hatton
COMMISSIONER

March 7, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 103:005, Definitions for 401 KAR Chapter 103.
401 KAR 103:010, Notification and Transfer Procedures for Merchant Electric
Generating Facilities.
401 KAR 103:020, Decommissioning Standards.
401 KAR 103:030, Financial Requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030, the Department for Environmental Protection proposes the attached amendments to 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030.

Sincerely,

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/07/24 at 1:47 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 103:020. Decommissioning standards.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~[224.43-345,]~~278.710(3) ~~[, (4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation ~~established[set for]~~ in KRS 278.710(3) ~~through[, (4),]~~ (5) ~~and[,]~~ (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations ~~established[set forth]~~ in KRS 278.710(3) ~~through[, (4),]~~ (5) ~~and[,]~~ (7) through (10). This administrative regulation establishes procedures ***pertaining to merchant electric generating facilities*** for decommissioning plan technical requirements, decommissioning plan updates, decommissioning cost estimate updates, and cases of abandonment.

Section 1. Technical Requirements of Decommissioning Plan. The ***construction certificate holder[owner-operator,]*** or person who controls or owns right to control any MEGF ***shall comply with[are subject to]*** decommissioning requirements and mitigation measures ***established[outlined]*** in KRS ***278.706 and[278.704 through]*** 278.710.

- (1) This plan shall be certified by an independent professional engineer prior to submission to the cabinet.
- (2) Unless otherwise stated in an accommodation ***included[contained within]*** a lease agreement with the affected landowner, the decommissioning plan shall be designed to return the land to a substantially similar state as it was prior to the commencement of construction.
- (3) Decommissioning plans filed with the cabinet shall ~~[minimally]~~ meet the following technical requirements:
 - (a) Provide an estimated lifespan of the MEGF, including an estimated period of useful life for system components;
 - (b) Identify the party responsible for decommissioning;
 - (c) Define conditions upon which decommissioning will be ***implemented[initiated]***, including a statement defining how notification will be made ***to the cabinet, affected landowners, and local county or municipality in regard to implementation of [intent to start]*** the decommissioning process, ***pursuant to 401 KAR 103:010, Section 1(1)[103:010(1)]***;
 - (d) The ***estimated*** timeframe for commencement and completion of decommissioning activities;
 - (e) Include a revegetation plan, with native seed mixes, excluding any invasive species;
 - (f) Cost itemization of all estimated costs that factor into decommissioning the MEGF;
 - (g) Include the financial assurance mechanisms, in accordance with KRS 278.706 and 401 KAR 103:030;

(h) Describe any agreement with landowners regarding decommissioning, including any special accommodations made to any affected landowner, pursuant to KRS 278.706(2)(m)6;[;]

~~[1.] [Incorporate the accommodations as requirements into the lease agreement with landowners and the decommissioning plan; or]~~

~~[2.] [Deny the request to accommodate and submit a detailed correspondence to the landowner, county or municipal government, and cabinet.]~~

~~[3.] [The owner operator or person who controls or owns the right to control shall provide the landowner, county or municipal government, and cabinet with a timeline of any agreed upon accommodated request from the landowner or county or municipal government in accordance with paragraph (h) of this subsection.]~~

(i) Removal of any MEGF owned equipment and facilities, including:

1. Structures;
2. Fencing;
3. Roads;
4. Foundations or pads;
5. Erosion, sediment, and water control measures;
6. Modules or solar panels;
7. Racks;
8. Cables or wires;
9. Conduit;
10. Inverters; and
11. Transformers;[;]

(j) Remove any underground components and foundations of above-ground facilities. Underground components and facilities under this paragraph shall be removed to a depth of three (3) feet below the surface grade of the land in or on which the component was installed, unless otherwise requested by the landowner; and

(k) Incorporate the requirements of paragraphs (a) through (j) of this subsection into the applicant's or construction certificate holder's leases with landowners.

Section 2. Decommissioning Plan Updates.

(1) Pursuant to KRS 278.710, all MEGFs shall submit an updated decommissioning plan at least once every five (5) years. Decommissioning plan updates shall be submitted no later than 180 days prior to the fifth anniversary of the commencement of generation of electricity unless permission for a later date has been granted in writing by the cabinet, as established in KRS 278.710(8). The cabinet may, at any time, request updated information necessary for reevaluating the decommissioning plan updates. Requests for updates shall include:

- (a) Additional construction of equipment or facilities;
- (b) Removal of equipment or facilities; or
- (c) Changes in the facilities estimated decommissioning costs.

(2) Decommissioning plan updates shall:

- (a) Be submitted in conjunction with a notarized MEGF Annual Report or Decommissioning Plan Update Form, DWM 4657, including all required attachments;
- (b) Include an updated estimation of decommissioning costs in accordance with Section 3 of this administrative regulation and 401 KAR 103:030; and
- (c) Include any proposed measures to mitigate adverse impacts pursuant to KRS 278.710.

(3) Any engineering evaluation procured by the cabinet or at the cabinet's request and referred to the secretary to inform a final decision shall be considered preliminary, confidential, and not open for public inspection until after final action by the secretary.

(4) Decommissioning plan updates that require new construction ***shall comply with***~~*will be subject to standards in*~~ KRS 278.704 through 278.714.

(5) Upon review and approval of the updated decommissioning plan by the cabinet, the ***construction certificate holder***~~*owner-operator*~~, or person who controls or owns the right to control the MEGF shall file with the cabinet an updated copy of the decommissioning bond or other similar security, in accordance with 401 KAR 103:030, to reflect changes to the estimated cost of effectuating the decommissioning plan or to the net present value or the net salvage value of the facility or its components.

Section 3. Decommissioning Cost Estimates.

(1) The ***construction certificate holder***~~*applicants, owner-operator*~~*[,;]* or person who controls or owns the right to control a merchant electric generating facility shall have a detailed, written estimate, in current US dollar, of the cost to decommission the MEGF in accordance with KRS 278.706 and 278.710.

(2) The estimated cost shall equal the cost of completing the decommissioning plan of the MEGF at the end of the useful life pursuant to the approved decommissioning plan. The cost estimate shall include:

(a) Itemized costs for implementing, dismantling, removing, or disposing of all structures, systems, components, and requirements ***established***~~*described*~~ in Section 1 of this administrative regulation;

(b) ~~*Incorporate*~~ An estimated decommissioning cost per megawatt valuation;

(c) ***A recalculation***~~*Be recalculated*~~ at least once every five (5) years to accommodate for inflation or depreciation;

(d) ~~*The*~~~~*Include a*~~ defined useful life period of the MEGF; and

(e) ***Certification***~~*Be certified*~~ by an independent, licensed engineer pursuant to KRS 278.706.

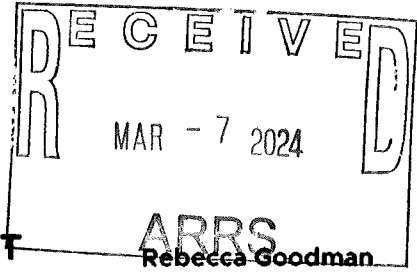
Section 4. Abandonment. In the event of abandonment or failure to complete decommissioning obligations by the responsible party, pursuant to KRS 224.10-100, the cabinet ***may***~~*will*~~ draw upon the ***financial assurance***~~*decommissioning bond*~~ and implement the decommissioning plan. Pursuant to KRS 278.706, if any party makes a successful claim on the approved financial assurance, that party shall be responsible for the requirements ***established***~~*set forth*~~ in the decommissioning plan.

Section 5. Incorporation by Reference.

(1) "MEGF Annual Report or Decommissioning Plan Update" Form, DWM 4657, ***January 2024***~~*September 2023*~~, is incorporated by reference.

(2) This material may be inspected, copies, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

March 7, 2024

Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 103:005, Definitions for 401 KAR Chapter 103.
401 KAR 103:010, Notification and Transfer Procedures for Merchant Electric
Generating Facilities.
401 KAR 103:020, Decommissioning Standards.
401 KAR 103:030, Financial Requirements.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030, the Department for Environmental Protection proposes the attached amendments to 401 KAR 103:005, 401 KAR 103:010, 401 KAR 103:020, and 401 KAR 103:030.

Sincerely,

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE – TO AMENDED AFTER COMMENTS VERSION

Final Version: 03/07/24 at 1:56 p.m.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management**

401 KAR 103:030. Financial requirements.

RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 224.99-010, 278.700 - 278.716

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30), (31), 224.10-285, ~~[224.43-345,]~~ 278.710(3) ~~[-(4),]~~ (5), (7) - (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-285(2) requires the Energy and Environment Cabinet to establish monitoring and enforcement requirements for the obligation established[set for] in KRS 278.710(3) through[-(4),] (5) and[;] (7) through (10) and 224.10-100(30) and (31). KRS 224.10-100(30) requires the Energy and Environment Cabinet to monitor and enforce compliance of a merchant electric generating entity to which a construction certificate has been issued and has generated pursuant to obligations established[set forth] in KRS 278.710(3) through[-(4),] (5) and[;] (7) through (10). KRS 224.10.100(31) authorizes the cabinet to draw upon the financial assurance for which it is named as a beneficiary and decommission a merchant generating facility in accordance with its approved decommissioning plan. This administrative regulation establishes procedures to administer the financial assurance mechanisms for the decommissioning responsibilities of merchant electric generating facilities.

Section 1. Applicability. The financial assurance criteria and requirements established in this administrative regulation shall apply to all applicants, construction certificate holders[owner-operators], or person who controls or owns the right to control a merchant electric generating facility, except as established[stated] in KRS 278.706 and 278.710.

Section 2. Financial Assurance Criteria.

(1) Applicants, construction certificate holders[owners-operators], or person who controls or owns the right to control a merchant electric generating facility shall:

(a) Ensure that the financial assurance mechanism shall be[mechanisms-is] sufficient to cover the costs of decommissioning pursuant to KRS 278.706;

(b) ~~[Ensure the financial assurance mechanisms be available no later than thirty (30) days after the issuance of a cabinet demand letter.]~~

~~[(c)] [Complete and notarize a revised financial assurance mechanism form, in accordance with Section 3 of this administrative regulation, for the revised financial assurance mechanism; and]~~

~~[(d)]~~ Ensure that the coverage of the financial assurance mechanism shall[does] not lapse, in accordance with KRS 278.710(4); and[;]

~~[(c)]~~~~[(e)]~~ Meet the requirements pursuant to KRS 278.706 and 278.710.

(2) The applicant, construction certificate holder[owner-operator], or person who controls or owns the right to control a merchant generating facility shall complete[execute] and submit a notarized MEGF Performance Agreement, form DWM 4651, for decommissioning, as established in Section 3 of this administrative regulation, with one (1) or more of the financial mechanisms established in Section 3 of this administrative regulation. ~~[- that satisfy the following criteria:]~~

~~[(a)] [The amount of the financial assurance provided by a single surety provider shall not exceed the limits of the most current United States Department of the Treasury's Circular 570.]~~

~~[(b)] [Upon receiving notice from the surety of the impending cancellation or lapse of the financial assurance mechanism, the cabinet shall seek agreement of any landowners who have not previously agreed pursuant to paragraph (c) below to make a demand on the financial assurance mechanism.]~~

~~[(c)] [The cabinet may seek agreement of the landowners to allow it to make a demand on the bond prior to receiving notice of impending cancellation or lapse.]~~

~~[(d)] [A landowner's agreement to allow the cabinet to make a demand on a bond pursuant to clause a. of this subparagraph may only be revoked in writing bearing a notarized signature of the landowner.]~~

~~(3) [Pursuant to Section 3 of this administrative regulation, financial assurance mechanism shall be:]~~

~~[(a)] [Submitted;]~~

~~[(b)] [Reviewed; and]~~

~~[1.] [Approved by the cabinet if the applicant, owner-operator, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of this administrative regulation; or]~~

~~[2.] [Denied by the cabinet if the updated or replacing financial assurance mechanism does not meet the requirements stated KRS 278.706, 278.710, and this administrative regulation.]~~

~~[(4)] Any applicant, construction certificate holder~~[Applicants, owners-operators]~~, or person who controls or owns the right to control a merchant electric generating facility who ~~fails~~~~[fail]~~ to meet the requirements established in this section, KRS 278.706, and ~~[KRS]~~278.710 may be ~~issued~~~~[subject to]~~ penalties, which shall be as established in KRS 224.99-010.~~

Section 3. Financial Assurance Mechanisms. The mechanisms used to demonstrate financial assurance in accordance with this administrative regulation shall ensure that the funds are sufficient~~[necessary]~~ to meet the costs of decommissioning the merchant generating facility upon the expiration of its useful life.

(1) A financial assurance mechanism shall be:

(a) Submitted;

(b) Reviewed; and

1. Approved by the cabinet if the applicant, construction certificate holder, or person who controls or owns the right to control a merchant electric generating facility is in compliance with the requirements of KRS 278.706 and 278.710 and this administrative regulation; or

2. Denied by the cabinet if the financial assurance mechanism does not meet the requirements established in KRS 278.706 and 278.710 and this administrative regulation.

(2) Before the cabinet approves a~~[an updated or replacement]~~ financial assurance mechanism, the applicant or construction certificate holder~~[successor]~~ shall:

(a) Complete and submit a notarized MEGF~~[notarize a]~~ Performance Agreement, form DWM 4651~~[of decommissioning pursuant to paragraph (c) of this section]; and~~

(b) Post at least one (1) of the following financial assurance mechanisms pursuant to KRS 278.706~~(2)(m)5:~~

1. A surety bond as established in subsection ~~(3)~~~~(2)~~ of this section;

2. An escrow agreement as established in subsection ~~(4)~~~~(3)~~ of this section; or

3. Other similar security pursuant to KRS 278.706.

~~[(c)] [A performance agreement, guaranteeing performance of decommissioning to allowable limits, shall be completed, and notarized on MEGF Performance Agreement Form, DWM 4651.]~~

~~(3)[(2)] A surety bond shall[;] be completed and notarized on MEGF Surety Bond Form, DWM 4653. [The requirements contained in the surety bond are incorporated in this administrative regulation by reference.]~~

~~(4)[(3)] An escrow agreement shall:~~

~~(a) Be completed on MEGF Escrow Agreement Form, DWM 4654; and [The requirements contained in the escrow agreement are incorporated in this administrative regulation by reference.]~~

~~(b) If a certificate of deposit is used in conjunction with the escrow agreement, [it shall] be made payable to the financial institution as the escrow agent.~~

~~(5)[(4)] Other financial assurance as **established[specified]** in KRS 278.706 and 278.710.~~

~~(6)[(5)] The applicant, **construction certificate holder[owner-operator]**, or person who controls or owns the right to control a merchant electric generating facility by establishing more than one (1) financial mechanism shall be limited to ~~the following~~:~~

~~(a) Surety bonds;~~

~~(b) Escrow agreements;~~

~~(c) Other financial assurance, pursuant to subsection (5)[(4)] of this section; and~~

~~(d) A combination of mechanisms established in this administrative regulation, rather than each single mechanism, that shall provide financial assurance for an amount at least equal to the financial assurance requirements established in KRS 278.706.~~

(7) If the cabinet receives notice from the financial guarantor of the impending cancellation or lapse of the financial assurance mechanism, the cabinet may seek agreement of any landowners who have not previously agreed pursuant to subsection (8) of this section, to make a demand on the financial assurance mechanism. A landowner's agreement to allow the cabinet to make a demand on a financial assurance mechanism shall only be revoked with a notarized signature of the landowner.

(8) Pursuant to KRS 224.10-100(31), the cabinet may seek an agreement with the landowner to allow the cabinet to make a demand on the financial assurance mechanism prior to receiving notice of impending cancellation. If the cabinet makes a demand on the financial assurance mechanism, the construction certificate holder or person who controls or owns the right to control the facility shall ensure that the financial assurance mechanism shall be available no later than thirty (30) days after issuance of the demand letter.

Section 4. Release of Financial Assurance.

(1) Financial assurance mechanisms posted to assure the proper decommissioning of the MEGF shall be released by the cabinet ~~if[when]~~ the **construction certificate holder[owner-operator]**, or person who controls or owns the right to control the MEGF demonstrates to the satisfaction of the cabinet that all decommissioning requirements pursuant to the decommissioning plan are complete in conformance with KRS 278.706 ~~and[;]~~ 278.710~~[;]~~ and 401 KAR 103:020.

(2) To demonstrate that all decommissioning requirements have been satisfied, the **construction certificate holder[owner-operator]**, or person who controls or owns the right to control the MEGF shall submit an assessment report certifying the facility is fully decommissioned pursuant to subsection (1) of this section.

Section 5. Incorporated by Reference.

(1) The following material is incorporated by reference:

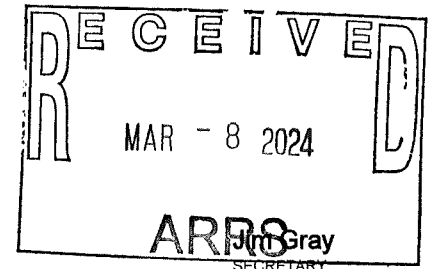
(a) "MEGF Performance Agreement" Form, DWM 4651, **January 2024**~~[September 2023]~~;

(b) "MEGF Surety Bond" Form, DWM 4653, **January 2024**~~[September 2023]~~; and

(c) "MEGF Escrow Agreement" Form, DWM 4654, **January 2024**~~[September 2023]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, 2nd floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m., from the Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.



Andy Beshear
GOVERNOR

TRANSPORTATION CABINET

200 Mero Street
Frankfort, Kentucky 406 01

March 8, 2024

Senator Stephen West
Representative Derek Lewis
Legislative Research Commission
Capitol Annex, Room 083
702 Capitol Avenue
Frankfort, KY 40601

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 601 KAR 012:080, the Transportation Cabinet proposes the attached suggested amendment to 601 KAR 012:080.

Sincerely,

Will Fogle

William H. Fogle
Executive Director
Office of Legal Services
Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622
(502) 564-7650

Staff-suggested Amendment

2/26/2024

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Drivers Licensing**

601 KAR 012:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence.

Page 1

Section 2

Line 20

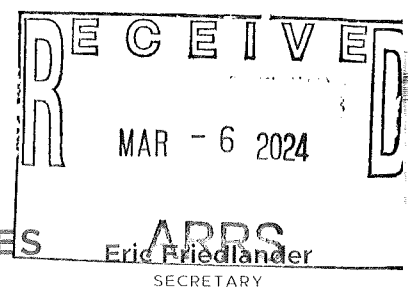
After "Duplicate Operator's License", insert "L".

Page 2

Section 2(2)

Line 7

After "shall complete", lowercase the word "Form".



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

March 6, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 910 KAR 1:170 Older Americans Act supportive services for the elderly

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 910 KAR 1:170, the Cabinet for Health and Family Services proposes the attached suggested substitute to 910 KAR 1:170.

Sincerely,

Krista Quarles
Office of Legislative and Regulatory Affairs

Attachments

Final, 2-29-2024

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Aging and Physical Disabilities

910 KAR 1:170. Older Americans Act supportive services for the elderly.

RELATES TO: KRS 194A.060, 205.201, 205.203, 205.455-~~205.460~~[205.465], 314.011, 5 U.S.C. 552, 42 U.S.C. 3001 et seq., 45 C.F.R. 85.42-85.43

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. This administrative regulation establishes the standards of operation for the Supportive Services Program in Kentucky.

Section 1. Definitions.

- (1) "Access" means information and referral services, outreach service and transportation service.
- (2) "Agency" means the area agency on aging, an entity designated by the state to administer, at the local level, the programs funded by the Older Americans Act of 1965, as amended.
- (3) "Assessment" means the collection and evaluation of information about a person's situation and functioning to determine the applicant or recipient service level and development of a plan of care utilizing a holistic, person centered approach by a case manager~~qualified independent care coordinator (ICC)~~.
- (4) "Assisted transportation" means a one-way trip to accompany an eligible person who requires assistance for safety or protection to or from his or her physician, dentist, or other necessary service.
- (5) "Case management" means a process, coordinated by a case manager, for linking a client to appropriate, comprehensive, and timely home or community based services as identified in the plan of care by:
 - (a) Planning;
 - (b) Referring;
 - (c) Monitoring;
 - (d) Advocating; and
 - (e) Following the timeline of the assessment agency to obtain:
 1. Service level; and
 2. Development of the plan of care.
- (6) "Case management supervisor" means an individual meeting the requirements of Section 5(1) and (2) of this administrative regulation and who has~~shall have~~ four (4) years or more experience as a case manager.
- (7) "Case manager" means the individual employee, meeting the requirements of Section 5 of this administrative regulation, and who is responsible for case management including:
 - (a) Coordinating services and supports from all agencies involved in providing services required by the plan of care;
 - (b) Completing the initial assessment, plan of care, and annual reassessment;
 - (c)~~(b)~~ Ensuring that all service providers have a working knowledge of the plan of care; and
 - (d)~~(c)~~ Ensuring that services are delivered as required.
- (8) "Community" means a county designated as either urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(9) "District" is defined by KRS 205.455(4).

(10) "Educational or experiential equivalent" means:

- (a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and
- (b) At least 400 documented hours of experience assisting aging or disabled individuals through:
 1. Practicum placement;
 2. Clinicals; or
 3. Volunteerism.

(11) "Home modification" means the provision of minor home adaptations, additions, or modifications to enable the elderly to live independently or safely or to facilitate mobility, including emergency summons systems.

(12) [~~"Independent care coordinator" or "ICC" means the individual that completes the initial assessment, plan of care, and reassessment.~~]

[(13)] "Information and assistance" means a service for individuals that provides current information about services available within the community.

[(13)][(14)] "In-home services" means the performance of heavy housecleaning, yard tasks, and other activities needed to assist a functionally impaired elderly person remain in his or her own home.

[(14)][(15)] "Legal assistance" means:

- (a) Legal advice and representation by an attorney; or
- (b) Counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney.

[(15)][(16)] "Multipurpose senior center" is defined by 42 U.S.C. 3002(36).

[(16)][(17)] "Natural supports" means a non-paid person or community resource who can provide, or has historically provided, assistance to the consumer or, due to the familial relationship, would be expected to provide assistance when capable.

[(17)][(18)] "OAA" means the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., as amended.

[(18)][(19)] "Outreach" means interventions with individuals initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits.

[(19)][(20)] "Planning and service area" is defined by 42 U.S.C. 3002 ~~(43)~~ [(42)].

[(20)][(21)] "Rural" means a community with less than 50,000 population as designated by the most current listing from the U.S. Census Bureau.

[(21)][(22)] "Satellite senior center" means a facility that is used to provide services specified in Section 10(3) of this administrative regulation if a multipurpose senior center is not available to provide the services.

[(22)][(23)] "Senior center services" means the provision of activities that foster the health or social well-being of individuals through social interaction and leisure.

[(23)][(24)] "Service level" means the minimum contact required through face-to-face visits and telephone calls by the case manager or social service assistant.

[(24)][(25)] "Social service assistant" means an individual who:

- (a) Has at least a high school diploma or equivalent;
- (b) Works directly under the direction of the case management supervisor;
- (c) Assists the case manager with record keeping, filing, data entry, and phone calls;
- (d) Helps determine what type of assistance a client needs;
- (e) Assists the client in getting services to carry out the plan of care;
- (f) Coordinates services provided to the client;
- (g) Assists a client in applying for other services or benefits for which he may qualify; and
- (h) Monitors a client to ensure services are provided appropriately.

[(25)][(26)] "Supportive service provider" means an entity that provides supportive services funded by the OAA under an approved area plan.

[(26)][(27)] "Telephone reassurance" means providing a wellness check by phone with the agreement of the individual.

[(27)][(28)] "Transportation" means transporting an individual from one (1) location to another.

[(28)][(29)] "Unit of service" means one (1):

- (a) Hour of direct contact with or on behalf of the participant;

- (b) Contact for the information and referral service;
- (c) Call for the telephone reassurance service;
- (d) Contact for the outreach service;
- (e) One-way trip for the transportation service; and
- (f) Contact for senior center service.

~~(29)~~~~(30)~~ "Urban" means a community with 50,000 or more population as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility.

- (1) Participants receiving supportive services funded by the OAA shall be sixty (60) years of age or older.
- (2) Agencies shall utilize the DAIL-GA-01 Priority Screening Tool for prioritizing applicants to ensure services are targeted to those in greatest need.
- (3) Means tests shall not be allowed to determine eligibility.

Section 3. Service Provider Responsibilities.

- (1) A service provider contracting with a district to provide supportive services supported in whole or in part from funds received from the cabinet shall:
 - (a) Provide services in accordance with the approved agency area plan which shall ensure the provision of supportive services throughout the geographic area covered under its plan;
 - (b) Review the provision of supportive services to assure safety and consistency;
 - (c) Treat the client in a respectful and dignified manner and involve the client and caregiver in the delivery of services;
 - (d) **Authorize**~~Permit~~ staff of the cabinet and the district to monitor and evaluate services provided;
 - (e) Assure that each paid or voluntary staff member meets qualification and training standards established for each specific service by the department;
 - (f) Maintain a written job description for each paid staff and volunteer position involved in direct service delivery;
 - (g) Develop and maintain written personnel policies and a wage scale for each job classification;
 - (h) Designate a supervisor to assure that staff providing in-home services are provided supervision;
 - (i) Monitor, evaluate, and conduct satisfaction surveys; and
 - (j) Maintain a record for each client including:
 - 1. Participant name;
 - 2. Address;
 - 3. Phone number;
 - 4. Emergency contact information;
 - 5. Request for services;
 - 6. Verification of eligibility;
 - 7. Services provided; and
 - 8. Monitoring of services provided.
- (2) Staff of the provider agency shall not:
 - (a) Accept personal gratuities from participants or vendors; or
 - (b) Be involved in any client financial transaction without prior approval from the contracting agency.
- (3) A procedure shall be utilized annually for the evaluation of unmet need, the results to be made available to the agency.
- (4) The legal assistance provider shall:
 - (a) Specify how it intends to target services for the needs of low-income minority individuals;
 - (b) Attempt to provide services to the population of low-income minority individuals in at least the same proportion as the population bears to the older population as a whole;
 - (c) Provide individual legal casework, legal referral, and legal education to the elderly and training for attorneys in areas of law relevant to the elderly;
 - (d) Contact institutionalized elderly and inform and educate these individuals about the legal assistance services available;

- (e) Specify how it intends to coordinate its efforts with the efforts of the Long-term Care Ombudsman Office;
- (f) Meet at least annually with the local ombudsman program;
- (g) Submit a written quarterly activities report to the agency, documenting the legal activities and services provided to participants; and
- (h) Not divulge information protected by the attorney-client privilege.

Section 4. Support Services. Services funded by the OAA and administered by the area agencies on aging and independent living shall be provided as established in this section.

- (1) Except for senior center and access services, the case manager[ICG] and the individual shall determine the service needs of the individual.
- (2) Information and assistance services shall:
 - (a) Provide information in response to an inquiry regarding opportunities and services available;
 - (b) Assist in accessing opportunities and services;
 - (c) Follow-up to determine whether services were received and identified needs were met; and
 - (d) Utilize current records of appropriate community resources, including local procedures for assessing participant needs and for making referrals to appropriate agencies.
- (3) Legal assistance services shall:
 - (a) Be available for institutionalized older persons and other elderly persons otherwise entitled to legal assistance;
 - (b) Not be denied because of a person's failure to disclose information about income or resources; and
 - (c) Assure providers maintain records to include individual client services and group activities, covering topics, presenters, locations, and numbers of participants.
- (4) Outreach services shall:
 - (a) Locate or reestablish contact initiated by providers, to identify participants in need of services;
 - (b) Provide information;
 - (c) Encourage the use of existing services;
 - (d) Be provided in the total geographic area served by the agency, in accordance with a plan to identify the elderly and caregivers in the area, with priority given to a rural, low income minority, limited English speaking, or disabled individual; and
 - (e) Be provided by a worker with current knowledge of services available to the elderly, caregivers, and individuals with disabilities in accordance with an established procedure for worker assistance to the participant in accessing appropriate services, including follow-up to assure needs have been met.
- (5) Senior center services shall provide activities which foster the health or social well-being of an individual through social interaction and the use of leisure time.
- (6) OAA Title IIIB allocation shall be provided:
 - (a) By staff who are knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director; and
 - (b) With consideration for the physical and mental conditions and activity preferences of a participant.
- (7) Telephone reassurance services shall:
 - (a) Provide regular telephone contact to or from isolated individuals;
 - (b) Be provided by a staff who is knowledgeable and skilled in the services provided, including a volunteer under the supervision of the center director;
 - (c) Include a prearranged schedule for contacting the participant;
 - (d) Maintain a log of calls documenting:
 - 1. Date of the contact;
 - 2. Length of the call;
 - 3. Summary of the contact;
 - 4. Demographics of the participant;
 - 5. Determination of safety and well-being; and
 - 6. Determination of special assistance needed;
 - (e) Establish a procedure to be implemented in the event of a non-answered call; and
 - (f) Include the participant's preference regarding frequency of calls.

- (8) Transportation services shall:
 - (a) Be provided by a trained individual;
 - (b) Carry older persons to or from community resources to access or receive needed services;
 - (c) Comply with federal, state, and local regulations; and
 - (d) Use vehicles safe and accessible to older persons and properly insured to protect the participants in accordance with state laws.
- (9) Assisted transportation services shall be provided:
 - (a) In accordance with subsection (8) of this section; and
 - (b) To a person who requires accompaniment for reasons of safety or protection to or from his or her physician, dentist, or other necessary services as determined by the case manager[ICG].
- (10) In-home services shall be provided:
 - (a) By trained staff; and
 - (b) As determined by the case manager[ICG].

Section 5. Case Manager Requirements.

- (1) A case manager [~~and an ICG~~] shall:
 - (a)
 - 1. Possess a bachelor's degree in a health or human services field from an accredited college or university:
 - a. With one (1) year experience in health or human services; or
 - b. The educational or experiential equivalent in the field of aging or physical disabilities;
 - 2. Be a currently licensed RN as defined in KRS 314.011(5) who has at least two (2) years of experience as a professional nurse in the field of aging or physical disabilities; or
 - 3. Be a currently licensed LPN as defined in KRS 314.011(9) who:
 - a. Has at least three (3) years of experience in the field of aging or physical disabilities; and
 - b. Is supervised by an RN who consults and collaborates on changes to the plan of care;
 - (b) Be a department certified case manager beginning July 1, 2015; and
 - (c) Be supervised by a case management supervisor.
- (2) A master's degree from an accredited college or university may be substituted for the required experience.
- (3) Each client shall be assigned a:
 - (a) Case manager; or
 - (b) Social service assistant.
- (4) A client shall be assessed initially and reassessed at least annually thereafter by a case manager[~~an ICG~~] that possesses a bachelor's degree, a master's degree, or is a licensed registered nurse (RN).
- (5) After each assessment or reassessment, the case manager[ICG] shall determine eligibility and service level based on the DAIL-HC-01, Scoring Service Level of each assessed individual.
- (6) If the client is ineligible, the case shall be closed and the reason documented in the case record with notification mailed to the client or caregiver.
- (7) The case manager shall:
 - (a) Be responsible for coordinating, arranging, and documenting those services provided by:
 - 1. Any funding source; or
 - 2. A volunteer;
 - (b) Make a reasonable effort to secure and utilize informal supports for each client;
 - (c) Document the reasonable effort in the client's case record;
 - (d) Monitor each client by conducting a home visit according to the assessed service level and coordinate a telephone contact between home visits. Clients shall be contacted at a minimum as follows:
 - 1. Level 1, a home visit shall be conducted every other month;
 - 2. Level 2, a home visit shall be conducted every four (4) months; or
 - 3. Level 3, a home visit shall be conducted every six (6) months; and
 - (e) Document in the case record each contact made with a client, as specified in paragraph (d) of this subsection.
- (8) A district shall employ a case manager[~~an ICG~~] to assess the eligibility and needs for each client.

- (9) A client assessed at a Level 1 or a Level 2 shall be assigned a case manager.
- (10) A client assessed at a Level 3 shall have a case manager or a social service assistant assigned to assist with meeting the client's~~[their]~~ needs.
- (11) A client shall receive in-home services in accordance with an individualized plan of care developed through participant directed planning which shall:
 - (a) Relate to an assessed problem;
 - (b) Identify goals to be achieved;
 - (c) Identify a scope, duration, and unit of service required;
 - (d) Identify a source of service;
 - (e) Include a plan for reassessment; and
 - (f) Be signed by the client or client's representative and case manager with a copy provided to the client.
- (12) Case management services shall not be provided to an individual on a waiting list.

Section 6. Multipurpose Senior Center Selection.

- (1) An AAAIL shall designate a multipurpose senior center within each urban community of the AAAIL's planning and service area.
- (2) If only rural communities are within an AAAIL's planning and service area, the AAAIL shall designate at least one (1) multipurpose senior center in the AAAIL's planning and service area.
- (3) Selection of a multipurpose senior center location shall be based on:
 - (a) Demographic information concerning the population of older persons in its service area; and
 - (b) The advice of public and voluntary agencies serving the elderly.
- (4) The AAAIL shall specify designation of a multipurpose senior center within its area plan.
- (5) The following factors shall be given consideration in choosing a site for the multipurpose senior center:
 - (a) Demographic information and projections;
 - (b) Accessibility to the maximum number of people with particular attention to:
 1. Low-income older individuals, including low-income minority older individuals;
 2. Older individuals with limited English proficiency;
 3. Older individuals residing in rural areas; and
 4. The number of older individuals at-risk for institutional placement;
 - (c) Proximity to other services and facilities;
 - (d) Convenience to public or private transportation or a location within walking distance for participants;
 - (e) The absence of structural barriers or difficult terrain; and
 - (f) The safety and security of participants and staff.

Section 7. Multipurpose Senior Center Specifications.

- (1) A multipurpose senior center shall:
 - (a) Provide barrier-free access and movement within the facility pursuant to 45 C.F.R. 85.42 and 85.43;
 - (b) Be clearly identified with a sign;
 - (c) Make arrangements:
 1. For the security of facility equipment, furniture, and files; and
 2. To offer activities at other sites in its service area; and
 - (d) Be free of physical hazards in accordance with the DAIL-MS-01 Multipurpose Senior Center Site Approval Checklist.
- (2) The facility shall be properly maintained and repaired to meet the safety and security of staff and participants.
- (3) An existing multipurpose senior center that does not meet the requirements of subsections (1) and (2) of this section shall comply with a corrective action plan administered by the department.
- (4) The multipurpose senior center shall have thirty (30) days from receipt of the corrective action plan to comply.
- (5) The department may withhold funding if the multipurpose senior center does not comply with the corrective action plan.

Section 8. Multipurpose Senior Center Requirements.

- (1) Each multipurpose senior center shall have a full time director and paid or volunteer staff to administer the center.
- (2) At least one (1) staff person or the director shall be present at the site during hours of operation.
- (3) At a minimum, a multipurpose senior center shall be open six (6) hours per day and five (5) days per week.
- (4) A multipurpose senior center shall provide the following services:
 - (a) Nutrition services in accordance with 910 KAR 1:190; and
 - (b) Support Services including:
 1. Transportation;
 2. Outreach;
 3. Information and assistance; and
 4. Other services identified in the planning and service regions area plan.
- (5) A multipurpose senior center shall:
 - (a) Comply with the confidentiality and disclosure of a client as follows:
 1. Adhere to the confidentiality and disclosure of client information pursuant to KRS 194A.060 and 5 U.S.C. 552, the Federal Freedom of Information Act;
 2. Not disclose client information without the informed consent of the person or legal representative, unless the disclosure is required by a court order or for program monitoring authorized by federal, state, or local monitoring agencies; and
 3. Not reveal client information that is protected by attorney-client privilege; and
 - (b) Refer reports of abuse, neglect, or exploitation to the Department for Community Based Services.

Section 9. Satellite Senior Center Selection.

- (1) The AAAIL shall designate a satellite senior center within the planning and service area of each rural community if:
 - (a) A multipurpose senior center is not already located in the county; or
 - (b) Additional satellite senior centers are needed to provide aging programs to seniors of that area.
- (2) The AAAIL shall specify designation of a satellite senior center within its area plan.
- (3) A satellite senior center shall meet the multipurpose senior center selection requirements of Section 6(2) of this administrative regulation.

Section 10. Satellite Senior Center Requirements.

- (1) Each satellite senior center shall have a director who is responsible for the administration of the site.
- (2) At least one (1) staff person or the director shall be present at the site during hours of operation.
- (3) At a minimum, a satellite senior center shall be open for eight (8) nonconsecutive hours per week.
- (4) An AAAIL shall organize and advertise activities, services, and schedules of operation in advance.
- (5) A satellite senior center shall:
 - (a) Unless already established in a multipurpose senior center in the same community, provide access services which shall include:
 1. Transportation;
 2. Outreach; and
 3. Information and referral; and
 - (b) Adhere to the confidentiality requirements of Section 8(5) of this administrative regulation.
- (6) A satellite senior center may provide nutrition services in accordance with 910 KAR 1:190.

Section 11. Approval of a Multipurpose and Satellite Senior Center.

- (1) Supportive or nutrition services shall be funded at a multipurpose and satellite senior center if the center has been approved by the department.
- (2) A multipurpose and satellite senior center shall not become operational until an on-site visit by the department has been completed and approval given by the department.
- (3) Prior to approval of a multipurpose and satellite senior center, it shall be inspected by the following:
 - (a) The local health department for compliance with applicable health codes depending on the types of services provided at the site;

- (b) The local fire department for compliance with fire and building safety codes; and
- (c) An AAAIL inspection using a:
 1. DAIL-MS-01 Multipurpose Senior Center Checklist; or
 2. DAIL-SS-02 Satellite Senior Center Checklist.

Section 12. Altering Multipurpose or Satellite Senior Center.

- (1) Prior approval shall be obtained from the department by an AAAIL which intends to:
 - (a) Close or open a new multipurpose or satellite senior center;
 - (b) Change the location of the multipurpose or satellite senior center;
 - (c) Change the method of providing services in a manner that affects availability of ongoing services;
 or
 - (d) Reduce the level or number of services.
- (2) Justification for the change shall include:
 - (a) The proposed effective date;
 - (b) The need or reason;
 - (c) The number of participants affected;
 - (d) Whether this change is temporary or permanent;
 - (e) A cost benefit analysis;
 - (f) For a change made to an existing multipurpose or satellite senior center, whether this facility was altered, renovated, or constructed with Older Americans Act funds and the date work was completed;
 - (g) Whether the AAAIL advisory council recommended this change;
 - (h) What provisions are proposed to continue services to the participants; and
 - (i) For a proposed multipurpose or satellite senior center, costs involved in meeting local fire, health, safety, and sanitation regulations.
- (3) A request to open a new multipurpose or satellite senior center shall include copies of completed local health department inspections and a completed:
 - (a) DAIL-MS-01 Multipurpose Senior Center Checklist; or
 - (b) DAIL-SS-02 Satellite Senior Center Checklist.
- (4) If meal preparation at a new multipurpose or satellite senior center is proposed, the multipurpose or satellite senior center shall notify the:
 - (a) Department;
 - (b) Local fire department; and
 - (c) Local health department.
- (5) The department shall review the information submitted and determine if an on-site visit is necessary for approval.
- (6) In case of altered multipurpose or satellite senior center operations due to damages caused by fire, flood, storm, high winds, tornados, or other safety issues, the department shall be notified within one (1) business day that emergency alterations are necessary by:
 - (a) Telephone;
 - (b) Email; or
 - (c) Fax.
- (7) Prior approval shall be obtained from the department on a conditional basis for emergency circumstances with final approval pending:
 - (a) Written documentation of the proposed change;
 - (b) Local fire, health, and safety inspections; and
 - (c) An on-site inspection by the department if the department determines a visit is necessary for final approval.
- (8) The AAAIL shall specify alterations of a multipurpose and satellite senior center within its area plan for department approval.

Section 13. Training and Education. An AAAIL shall implement the following training and education programs for multipurpose and satellite senior center providers of service:

- (1) An annual program assessment to identify training needs and develop correlating plans;
- (2) An identification and review of resources available to meet training needs;

- (3) The development of a comprehensive education and training plan;
- (4) A search for additional resources to implement the plan;
- (5) The coordination of education programs with private, public, governmental, and educational organizations and institutions; and
- (6) A plan to implement staff development initiatives.

Section 14. Monitoring. An AAAIL shall:

- (1) Monitor and assess services to determine compliance with contract requirements and an approved area plan; and
- (2) Submit written evaluation of its findings to DAIL annually.

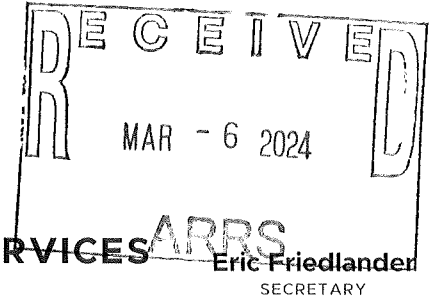
Section 15. Incorporation by Reference.

- (1) The following material is incorporated by reference:

- (a) "DAIL-GA-01, Priority Screening Tool", November 2014;
- (b) "DAIL-MS-01, Multipurpose Senior Center Checklist", August 2014;
- (c) "DAIL-SSC-02, Satellite Senior Center Checklist", August 2014; and
- (d) "DAIL-HC-01, Scoring Service Level", December 2023~~April 2014~~.

- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.



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Eric Friedlander
SECRETARY

March 5, 2024

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Emily Caudill
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort KY 40601

Re: 922 KAR 5:070 Suggested Substitute

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of issues raised by 922 KAR 5:070, the Department for Community Based Services proposes the attached LRC suggested substitute. If you have any questions, please contact Laura Begin at Laura.Begin@ky.gov.

Sincerely,

Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

Final Version: 03/04/24 at 8:29 a.m.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency**

922 KAR 5:070. Adult protective services.

RELATES TO: KRS [~~Chapter 13B,~~]61.872,[~~194A.010,~~] 202A.051, 202B.100, Chapter 209, 387.540(1)[~~42 U.S.C. 1397]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to ***promulgate[adopt-all]*** administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Authorized agency" is defined by KRS 209.020(17).
- (4) "Caretaker" is defined by KRS 209.020(6).
- (5) "Emergency" is defined by KRS 209.020(11).
- (6) "Employee" is defined by KRS 209.032(1)(a).
- (7) "Exploitation" is defined by KRS 209.020(9).
- (8) "Investigation" is defined by KRS 209.020(10).
- (9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that is inconsistent with an individual's medical care and:
 - (a) Requires medical or therapeutic treatment;
 - (b) Is manifested by a behavioral change; or
 - (c) Caused the person to feel fear, distress, humiliation, or ridicule.
- (10) "Neglect" is defined by KRS 209.020(16).
- (11) "Protective services" is defined by KRS 209.020(5).
- (12) "Records" is defined by KRS 209.020(15).
- (13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.
- (14) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation.

- (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:
 - (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
 - (b) Provide the information ***established[specified]*** in KRS 209.030(4).
- (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

- (a) Community resources;
- (b) General adult services in accordance with 922 KAR 5:090; or
- (c) A domestic violence protective services provider.

(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:

- (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
- (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse if the report alleges an adult:

- 1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;
- 2. Has an injury that:
 - a. Was inflicted by another person; or
 - b. Is of unknown origin in a critical area of the body;
- 3. Was sexually abused;
- 4. Was subjected to unreasonable confinement;
- 5. Was subjected to intimidation; or
- 6. Received a punishment that resulted in pain, injury, or mental injury;

(b) Neglect of an adult that may result in harm to the health and safety of the adult in the following areas:

- 1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
 - a. An act or omission by self or a caretaker; or
 - b. The absence of a caretaker;
- 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
- 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
- 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
- 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;

(c) Exploitation of an adult if the report alleges an adult has lost or is losing resources to a person in a position of trust to the alleged victim as a result of at least one (1) of the following:

1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
2. Physical or emotional dependency;
3. Manipulation; or
4. Acquiescence[~~;-and~~]
- ~~5.] [Loss of resources to a person in a position of trust to the alleged victim]; or~~

(d) An adult in need of protective services.

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective services[service] investigation:

(a) The report does not meet the statutory definitions of:

1. Adult[~~;-and~~]
- 2.[a-] Abuse;
- 3.[b-] Neglect; or
- 4.[c-] Exploitation; or

(b) There is insufficient information to:

1. Identify or locate the adult; or
2. Explore leads to identify or locate the adult.

(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information **established**[**specified**] in KRS 209.030(4):

- (a) For a determination of investigation assignment by cabinet supervisory staff;
- (b) To the local guardianship office, if the adult is a state guardianship client; and
- (c) To appropriate authorized agencies, as **established**[**specified**] in KRS 209.030(5).

Section 3. Adult Protective Services[Service] Investigations.

(1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective services[service] investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective services[service] investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective services[service] investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation.

(a) If the accepted report of alleged adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

- 1.[(a)] An emergency, the investigation shall be initiated within four (4) hours; or
- 2.[(b)] A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(b) If the accepted report of alleged adult abuse or neglect resulted in the death of an adult, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)

(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies;

2. Statement may be used in an administrative hearing conducted by the cabinet; and

3. Individual may be required to testify in an administrative hearing or in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;

(b) Obtain a copy of the death certificate for the case record, if possible;

(c) Notify the commissioner or designee;

(d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and

(e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation.

(1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;

(b) The alleged perpetrator's account of the situation, if available;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the adult or alleged perpetrator; and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective services[~~service~~] investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as **established**[~~specified~~] in KRS 209.030(5)(**d**), to include:

(a) Information reported in accordance with KRS 209.030(4); and

(b) A narrative documenting:

1. The investigation; and

2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective services[~~service~~] case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

- (a) Adult; and
- (b)
 - 1. Abuse;
 - 2. Neglect; or
 - 3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that **could[may]** compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the vulnerable adult maltreatment~~[caregiver misconduct]~~ registry established by 922 KAR 5:120.

Section 7. Opening a Case.

(1) A case may be opened:

(a) As a result of a protective services~~[service]~~ investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100.

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the **following**:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons.

(1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
- (b) Manage financial affairs; or
- (c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective services~~[service]~~ situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization.

(1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

- (a) The adult lacks the capacity to consent or refuses mental health treatment;
- (b) Other resources are not available;
- (c) Another petitioner is absent or unavailable; and
- (d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting.

(1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as ***established[specified]*** in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

- 1. Age;
- 2. Demographics;
- 3. Type of abuse;
- 4. The number of:
 - a. Accepted reports; and
 - b. Substantiated reports; and
- 5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning.

- (1) The cabinet's decision to close an adult protective services[~~service~~] case shall be based upon:
 - (a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;
 - (b) The request of the adult; or
 - (c) A lack of legal authority to obtain court ordered cooperation from the adult.
- (2) An adult shall be:
 - (a) Notified in writing of the decision to close the protective services[~~service~~] case; and
 - (b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.
- (3) If an adult protective services[~~service~~] case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:
 - (a) At the consent of the adult; and
 - (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.
- (4) If the cabinet closes the protective services[~~service~~] case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14. Appeal Rights.

- (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.
- (2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights in accordance with 922 KAR 5:120.

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