

405 KAR 30:180. Petitions for rulemaking.

RELATES TO: KRS 350.255, 350.600

STATUTORY AUTHORITY: KRS 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. Such administrative regulations are to be based on sound scientific and engineering data and are to be reasonably necessary to protect the people and environment of the Commonwealth. This administrative regulation specifies how any person may petition the secretary of the cabinet to initiate rulemaking procedures. The administrative regulation sets forth petition requirements, time limits, and other aspects of the rulemaking petition process.

Section 1. Petitions for Rulemaking. (1) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any administrative regulation promulgated pursuant to KRS Chapter 350. The cabinet will not accept a petition relating to a administrative regulation that is in the process of being promulgated or amended under the normal promulgation procedures of KRS Chapter 13 since the petitioner is provided an opportunity to be heard under those procedures. Similarly, the cabinet will not accept a petition on an emergency administrative regulation where the cabinet is intending to or has initiated the regular promulgation process under KRS Chapter 13.

(2) The person petitioning for a rulemaking shall make his petition in writing and shall set forth the facts, technical justification and law which support the petition. The facts and the technical justification must be sufficient for the cabinet to make a decision as to the merits of the petition within the time required below. Insufficient facts and technical justification shall be grounds for denial of the petition. The petition shall set forth the basis in law for the proposed rulemaking and shall justify the proposal as being consistent with the cabinet's statutory duties.

(3) Upon submission of a petition, the petitioner shall publish notice of submission of the petition in newspapers pursuant to KRS Chapter 424. The notice shall briefly identify the subject of the petition, state that copies are on file for public review at the Frankfort office of the cabinet, and state that any person may within fifteen (15) days of publication of the notice request a public hearing on the petition by written request to the cabinet. The notice shall also state that anyone requesting a hearing will be informed by letter from the cabinet of the time and place of the hearing.

(4) A petition will not be deemed complete until the petitioner submits to the cabinet a copy of the published notice and proof of publication of the notice in the form of an affidavit from the publishers.

(5) The cabinet will hold the requested public hearing within thirty (30) days of the filing of the complete petition. The hearing shall be legislative in nature.

(6) The secretary shall render a final order granting or denying the petition within thirty (30) days after the hearing or within sixty (60) days of the filing of the complete petition if no hearing was requested. The final order shall grant or deny the petition on the grounds that there is or is not a reasonable basis for the petitioned rule change or that such change is required or prohibited by law. The order shall be in writing and shall explicitly set forth the reasons for the decision.

(7) If a petition is granted proposing the issuance, amendment or repeal of administrative regulations which were the subject of the petition, the secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13 within thirty (30) days of the final order granting the petition.

(8) Any participant in the petition proceedings may seek review of an order of the secretary denying all or any portion of the action requested in a petition in the Franklin County Circuit Court.

Section 2. Frivolous Petitions. Nothing in this administrative regulation shall require the cabinet to process frivolous petitions. Should the cabinet find that the petition is frivolous it shall notify the petitioner in writing and specify the reasons for the determination. (8 Ky.R. 109; eff. 3-1-1982; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)