

#### **401 KAR 58:005. Accreditation of asbestos professionals.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 C.F.R. 763.80 - 763.99, Appendices A - E

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-300 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program. This administrative regulation establishes the process for the accreditation of individuals who inspect for asbestos in school, public, and commercial buildings; who design, supervise, or perform response actions in school, public, or commercial buildings; and who prepare plans addressing potential and actual asbestos hazards in school buildings. Additionally, this administrative regulation establishes the process for the review and approval of training courses that are prerequisites for accreditation.

##### **Section 1. Definitions.**

- (1) "Abatement project design" means a plan specifying the scope of a proposed response action and the procedures, equipment, and controls to be used to conduct the response action, in compliance with applicable regulations, in a school, public, or commercial building.
- (2) "Abatement project designer" means a person who prepares an abatement project design.
- (3) "Accredited" means that a person has been issued an accreditation certificate pursuant to Section 5 of this administrative regulation.
- (4) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite, and tremolite.
- (5) "Asbestos abatement activity" means an inspection, a management plan, an abatement project design, or a response action.
- (6) "Asbestos abatement supervisor" means the person responsible for the on-site supervision of a response action in a school, public, or commercial building. An asbestos abatement supervisor can also perform the duties of an asbestos abatement worker.
- (7) "Asbestos abatement worker" means a person who performs a response action.
- (8) "Compliance inspection" means activity performed by federal, state, or local regulatory agencies to determine adherence to statutes and administrative regulations.
- (9) "Contingent approval" means temporary approval contingent upon a training course provider's submitting to a site audit.
- (10) "Day" means a calendar day.
- (11) "Discipline" means inspection, management planning, abatement project design, asbestos abatement supervision, or asbestos abatement work.
- (12) "EPA-approved state" means a state that has been authorized by the U.S. EPA to approve training courses for accreditation purposes.
- (13) "EPA-approved training course" means an initial or refresher training course for the discipline for which accreditation is requested and that is approved by the U.S. EPA or an EPA-approved state at the time the course is taken to comply with the requirements of 15 U.S.C. 2646 (Section 206 of the Toxic Substances Control Act (TSCA)).
- (14) "Management plan" means a document submitted or maintained by a local education agency (LEA) to satisfy the requirements of 40 C.F.R. 763.93 and 401 KAR 58:010.
- (15) "Management planner" means a person who develops management plans. A management planner can also perform the duties of an inspector.

(16) "Proof of training" means a document issued by a training course provider to a course attendee pursuant to Unit I.D. of the Kentucky Asbestos Accreditation Program (KAAP).

(17) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Section 2. Applicability. This administrative regulation shall apply to:

- (1) Persons required to be accredited pursuant to 401 KAR 58:010 and the KAAP; and
- (2) Persons who provide accreditation training in the Commonwealth of Kentucky pursuant to the KAAP.

Section 3. Prohibitions.

- (1) The cabinet shall not consider a person for initial accreditation or accreditation renewal unless the training requirements of Section 9 of this administrative regulation are completed prior to application.
- (2) A person shall not engage in, nor allow a person to engage in, an asbestos abatement project at a school on or after October 12, 1988, or at a public or commercial building on or after July 7, 1998, unless an accreditation certificate to engage in these projects has been issued to the person by the cabinet, is currently in effect, and is maintained on the person at all times while the asbestos abatement project is being conducted.
- (3) A person shall not provide accreditation training in Kentucky unless the requirements of Section 10 of this administrative regulation have been met.

Section 4. Applications for Accreditation.

- (1) An application for initial accreditation and accreditation renewal shall be made on the Application for Asbestos Accreditation, DEP 6038. The application shall include a copy of the most current proof of training in the discipline for which accreditation is requested.
  - (a) In lieu of a proof of training, the applicant may submit other proof of satisfactory completion from an EPA-approved state pursuant to Unit H of the KAAP document.
  - (b) The proof of training or other proof of satisfactory completion issued by the training provider shall contain the information required in Unit I.C. of the KAAP document.
  - (c) If original proofs of training are submitted with the request for accreditation, the proofs of training shall be returned to the applicant at the time the requested accreditation certificate is provided or at the time the cabinet denies the request for accreditation in writing.
- (2) An application for accreditation shall be signed by the individual requesting accreditation. The signature shall constitute personal affirmation that the statements made in the application are true and complete.
- (3) An application shall be accompanied by the applicable accreditation fee as established in Section 7(1) and (2) of this administrative regulation.

Section 5. Consideration of Applications. The cabinet shall make a determination regarding issuance or denial of accreditation based upon the information contained in the application and the qualification requirements of the KAAP document. The cabinet may deny an application for accreditation if the applicant willfully made a misstatement in the application, or if the applicant has violated a provision of this administrative regulation, the KAAP document, 401 KAR 58:010, or 401 KAR 58:025. Failure by an applicant to supply information required by the cabinet to act upon the renewal application shall result in denial of that renewal.

- (1) Application for initial accreditation. Within fifteen (15) days after receipt of an application for initial accreditation, the cabinet shall make a completeness determination concerning the application. If the application is not complete, the cabinet shall identify

the additional information that is necessary in order to evaluate the application. Issuance by the cabinet of the accreditation certificate within this fifteen (15) day period shall have the effect of documenting the completeness of the application.

(a) Within fifteen (15) days after the application is deemed complete, the cabinet shall make a determination to issue or deny the accreditation certificate, unless the cabinet determines, and the applicant concurs, that an additional period of time is necessary.

(b) If the application is approved, the cabinet shall issue an accreditation certificate. If accreditation is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

(2) Application for renewal of accreditation. The cabinet shall make its determination to approve or deny a request for renewal within fifteen (15) days of receipt of a complete renewal application.

(a) If the renewal is approved, the cabinet shall issue a renewed accreditation certificate pursuant to this administrative regulation and 401 KAR 58:010.

(b) If the renewal is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

Section 6. Duration of Accreditation Certificates. Unless the cabinet revokes an initial accreditation certificate, pursuant to Unit I.G. of the KAAP document, the certificate shall remain in effect until expiration of the proof of training issued pursuant to Unit I.D. of the KAAP document.

(1) An expired accreditation certificate may be renewed if the applicant completes all requirements for renewal of accreditation within one (1) year after the accreditation certificate has expired.

(2) If a person fails to renew an accreditation certificate within one (1) year of expiration of a previously-issued accreditation certificate, the individual shall complete all requirements for initial accreditation to receive accreditation.

Section 7. Fees. Fees shall be submitted to the cabinet by check or money order, made payable to the Kentucky State Treasurer.

(1) Initial accreditation.

(a) The fee for inspector, management planner, abatement project designer, or asbestos abatement supervisor accreditation shall be \$100.

(b) The fee for asbestos abatement worker accreditation shall be twenty (20) dollars.

(c) The fee for accreditation in more than one (1) discipline shall be obtained by summing the fees for each of the requested accreditations.

(2) Renewal of accreditation. The fee for renewal of accreditation for each discipline shall be one-half (1/2) the initial accreditation fee.

(3) Course review fees. Training providers who request cabinet review for approval of training courses shall submit the required fee with the request for a course review. The formula for the fee for course review shall be \$350 per day of training times the total number of days of training. The minimum review fee for course approval shall be \$350.

Section 8. Accreditation Revocation. The cabinet may revoke an accreditation issued pursuant to this administrative regulation pursuant to Unit I.G and Unit III of the KAAP document.

Section 9. Training Requirements.

(1) Initial accreditation. To be eligible for initial accreditation, an applicant shall successfully complete an EPA-approved training course in the discipline for which accreditation is requested within one (1) year prior to the date on which the application is filed. Eligibility for accreditation shall expire one (1) year after successful completion of the training course.

(2) Renewal of accreditation. Accreditation shall be renewed annually.

(a) To be eligible for accreditation renewal, an applicant shall successfully complete an EPA-approved refresher course in the discipline for which accreditation renewal is requested, pursuant to Unit I.E. of the KAAP document.

(b) An applicant may renew accreditation only in a discipline for which the applicant has been accredited during the two (2) year period immediately preceding the date the application is filed.

#### Section 10. Approval of Training Courses.

(1) Providers of courses that are not EPA-approved shall either gain approval from an EPA-approved state or apply for and receive contingent approval from the cabinet, pursuant to this administrative regulation and the KAAP document before presenting the course in Kentucky.

(2) EPA-approved training courses shall be considered approved by the cabinet at the same level as their approval by the U.S. EPA or an EPA-approved state (for example, contingent or full).

(3) Training providers shall allow representatives of the cabinet to attend, evaluate, and monitor a training course presented in Kentucky without charge to the cabinet. Cabinet representatives shall not be required to give advance notice of their attendance to perform compliance inspections of training programs or to upgrade the approval of a course from contingent approval to full approval.

(a) The training provider shall provide written notification to the cabinet of:

1. An upcoming training course, at least ten (10) days before the course is presented;
2. The training provider's name, address, phone number, and a contact person;
3. Training course title;
4. Inclusive dates of the training course and examination;
5. Description of the training course as either a public offering, contract training, or in-house training for the provider's employees;
6. Location of and directions to the training facility; and
7. The language in which the course will be taught.

(b) If the training course is cancelled, the provider shall notify the cabinet at least twenty-four (24) hours before the scheduled start date.

(4) The application for course approval shall be accompanied by the applicable review fee as established in Section 7(3) of this administrative regulation. The cabinet shall receive the total applicable review fee prior to the course being granted contingent approval.

(5) Contingent approval. Applications for contingent approval by the cabinet shall be made pursuant to Unit III of the KAAP document.

(a) If the training course is to be presented in Kentucky, the application shall include written certification by the training provider that the requirements of subsection (3) of this section shall be met if the training course is approved.

(b) The cabinet shall review the training provider's request for course approval pursuant to the KAAP document and this administrative regulation. If there are no deficiencies, the cabinet shall give the training provider written notification that the training course has been given contingent approval. Unless suspended or revoked by the cabinet, contingent approval of a training course shall be valid for one (1) year and shall not be renewed. Throughout this year, the training provider shall meet the requirements of subsection (3) of this section.

(6) Full approval. For full approval of a training course, the training provider shall meet the contingent course approval criteria of subsection (5) of this section, the applicable course-content criteria of the KAAP document, and the criteria established in paragraph (a) of this subsection.

(a) Full approval criteria.

1. Course administration. The physical environment in which the course is conducted shall be conducive to learning (for example, adequate lighting and ventilation, minimal distractions, and adequate classroom layout). Teaching equipment shall operate properly. Classroom materials and instructional aids shall be organized in a logical fashion that is conducive to learning.

2. Teaching effectiveness. Instructors shall use clear and effective presentation methods, including stating the purpose and giving an overview for each topic, adhering to the agenda, checking for student comprehension, using teaching aids, and organizing presentation into logically-sequenced segments. Instructors shall also demonstrate their own satisfactory knowledge of course content by defining terms clearly, emphasizing key concepts, using analogies and examples correctly and appropriately, and distinguishing fact from opinion.

3. Hands-on training administration. Physical environment and equipment shall be conducive to learning (for example, functional equipment, appropriate student-to-work station ratio, appropriate student-trainer ratio, and adequate space and time). The trainer shall demonstrate the techniques covered, use appropriate hands-on teaching materials, and ensure student participation.

4. Courses to be audited by the cabinet for full approval shall be presented in English, unless prior arrangements have been made with the cabinet. The cabinet may require course providers whose courses are not presented in English to seek approval from an EPA-approved state with the linguistic capabilities to review these courses adequately.

(b) Duration of full approval. Full approval shall remain in effect unless suspended or revoked.

(7) Suspension or revocation of training course approval. The cabinet may suspend or revoke the approval of a training course pursuant to this administrative regulation and Units II and III of the KAAP document.

#### Section 11. Materials Incorporated by Reference.

(1) The following documents are incorporated by reference:

(a) "Application for Asbestos Accreditation, DEP 6038, June 2019,"

(b) "Kentucky Asbestos Accreditation Program (KAAP), May 1998."

(2) The material incorporated by reference is available on the internet at <http://eec.ky.gov>.

(3) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 2642 Russellville Road, Bowling Green, Kentucky 42101, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3358;

(f) Hazard Regional Office, 1332 South Kentucky Highway, Suite 100, Hazard, Kentucky 41701, (606) 435-6022;

(g) London Regional Office, 875 S. Main Street, Room 345, London Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive W, Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(15 Ky.R. 133; 1651; eff. 1-25-1989; Recodified from 401 KAR 63:045, 2-24-1992; 24 Ky.R. 1920; 2710; eff. 7-7-1998; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 9-16-2013; TAm eff. 7-8-2016; 46 Ky.R. 230, 904; eff. 9-10-2019.)