Energy and Environment Cabinet

Department for Environmental Protection

Division for Air Quality

(Amendment)

401 KAR 58:010. Local education agencies.

RELATES TO: KRS 224.10-100(10), 224.20-100, 224.20-110, 224.20-120, 224.20-300, 40 C.F.R. Part 763, Subpart E and[~~763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99,~~] Appendices A through E[~~A B and D (October 30, 1987)~~], 15 U.S.C. 2601 Toxic Substances Control Act, and 15 U.S.C. 2641 Asbestos Hazard Emergency Response Act (AHERA)[~~II and the related sections which follow as in effect on July 18, 1988.~~]

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 224.10-100, 224.20-300, 224.20-310, 224.99-010, [~~40 C.F.R. 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 U.S.C. 2601 and the related sections which follow, as in effect on July 18, 1988)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes[~~requires~~] the [~~Environmental and Public Protection~~] cabinet to promulgate[~~prescribe~~] 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 relating to asbestos in schools. This administrative regulation

establishes[~~provides for~~] the control of asbestos emissions in schools by requiring local education agencies to submit management plans to provide for the adequate identification and assessment of asbestos in schools and the removal or other appropriate treatment of friable asbestos-containing materials.

Section 1. Definitions. Terms [~~As~~] used in this administrative regulation and applicable portions of 40 C.F.R. [~~CFR~~] Part 763, Subpart E [~~the following terms~~] shall have the [~~following~~] meanings established in this section. All terms [~~If~~] not defined in this section [~~, a term~~] shall have the meaning established in 40 C.F.R. 763.83, [~~given it by commonly accepted usage.~~]

(1) [~~"Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.~~

~~(2) "Accessible" means, when referring to ACM, that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.~~

~~(3) "Accredited" means when referring to an individual or a laboratory that the individual or laboratory is accredited in accordance with section 206 of Title II of the Act.~~]

~~(4)~~] "Accreditation certificate" means a certificate issued by the cabinet attesting to the qualifications of an individual to perform specified asbestos abatement projects.

(2) [~~(5) "Air erosion" means the passage of air over friable ACBM which may result in the release of asbestos fibers.~~

~~(6) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.~~

~~(7)~~] "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

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(3) [~~(8) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos by area.~~

~~(9) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.~~

~~(10) "Asbestos debris" means:~~

~~(a) Pieces of ACBM that can be identified by color, texture, or composition; or~~

~~(b) Dust, if the dust is determined by an accredited inspector to be ACM.~~

~~(11)~~] "Cabinet" is defined by KRS 224.1-010(9).

(4) [~~has the meaning given it in KRS 224.01-010.~~

~~(12) "Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.~~

~~(13) "Damage friable surfacing ACM" means friable surfacing ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate, or which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains,~~

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~~scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.~~

~~(14) "Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact so that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings or jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.~~

~~(15)~~] "Day" means calendar day.

(5) [~~(16)~~] "Emergency response action" means a response action that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failure of equipment.

(6) [~~(17) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).~~

~~(18) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.~~

~~(19)~~] "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(7) [~~(20)~~] "EPA-approved training course" means a training or refresher course that is approved by the U.S. EPA, at the time the course is taken as meeting the requirements of section 206 of the Act.

[~~(21) "Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.~~

~~(22) "Friable" means that the material, when dry, may be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.~~

~~(23) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.~~

~~(24) "High-efficiency particulate air" or "HEPA" means a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles three/tenths (0.3) um in diameter or larger.~~

~~(25) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.~~

~~(26)~~] "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(8) [~~(27)~~] "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(9) [~~(28)~~] "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 20 U.S.C. 1401(19). [~~198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board~~

~~of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school~~].

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921, and the related sections which follow).

(10) [~~(29)~~] "Management plan" means a plan submitted by an LEA and which is not disapproved, which contains the items required in 40 CFR 763.93.

(11) [~~(30)~~] "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(12) [~~(31) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.~~

~~(32) "Miscellaneous material" means interior building material on structural components, structural members, or 2ixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.~~

~~(33) "Nonfriable" means material in a school building which when dry may not be broken, crumbled, pulverized, or reduced to powder by hand pressure.~~

~~(34) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers~~

~~previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.~~

~~(35)~~] "Person" is defined by KRS 224.1-010(16).

(13) [~~has the meaning given it in KRS 224.01-010.~~

~~(36) "Potential damage" means circumstances in which:~~

~~(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities; or~~

~~(b) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.~~

~~(37) "Potential significant damage" means circumstances in which:~~

~~(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities;~~

~~(b) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage; or~~

~~(c) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.~~

~~(38) "Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.~~

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~~(39) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.~~

~~(40) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.~~

~~(41) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.~~

~~(42) "Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.~~

~~(43)~~] "School" means any elementary school as defined in 20 U.S.C. 1401(6) or secondary school as defined in 20 U.S.C. 1401(27) [~~section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854)~~].

(14) [~~(44) "School building" means:~~

~~(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;~~

~~(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;~~

~~(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;~~

~~(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;~~

~~(e) Any portico or covered exterior hallway or walkway; or~~

~~(f) Any exterior portion of a mechanical system used to condition interior space.~~

~~(45) "Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.~~

~~(46) "Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.~~

~~(47) "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.~~

~~(48) "Surfacing ACM" means surfacing material that is ACM.~~

~~(49) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.~~

~~(50) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.~~

~~(51) "Thermal system insulation ACM" means thermal system insulation that is ACM.~~

~~(52)~~] "Timely [~~manner~~]" means that the LEA has fulfilled or is fulfilling its responsibilities in a manner that is as expeditious as possible, taking into account circumstances which are unique to the LEA. The determination of timeliness shall be made by the cabinet.

(15) [~~(53)~~] "µm" [~~"um"] means~~ micrometer.

[~~(54) "Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.~~]

Section 2. Applicability. The provisions of this administrative regulation shall apply to all LEAs.

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Section 3. Compliance requirements.

(1) LEAs shall comply with the following requirements:

(a) 40 C.F.R. 763.80, Scope and purpose;

(b) 40 C.F.R. 763.84, General local education agency responsibilities;

(c) 40 C.F.R. 763.85, Inspections and reinspections;

(d) 40 C.F.R. 763.86, Sampling;

(e) 40 C.F.R. 763.87, Analysis;

(f) 40 C.F.R. 763.88, Assessment;

(g) 40 C.F.R. 763.90, Response actions;

(h) 40 C.F.R. 763.91, Operations and maintenance;

(i) 40 C.F.R. 763.92, Training and periodic surveillance;

(j) 40 C.F.R. 763.93, Management plans;

(k) 40 C.F.R. 763.94, Recordkeeping;

(l) 40 C.F.R. 763.95, Warning labels;

(m) 40 C.F.R. 763.97, Compliance and enforcement;

(n) 40 C.F.R. 763.99, Exclusions; and

(o) [~~Responsibilities of LEAs.~~

~~(1) The subject matter of this administrative regulation is governed by 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D, as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.~~

~~(2) No LEA may permit, allow, or require any individual or other person to perform any asbestos abatement project after October 12, 1988, unless the individual has been issued by~~

~~the cabinet an accreditation certificate to so engage in these projects in accordance with the provisions of 401 KAR 58:005, which is currently in effect, and which is maintained on his person.~~

~~(3) LEAs shall revise their management plans when changes in the schools, school buildings, status of the ACM, or response actions occur. The LEA may submit only the revised portion of the plan. If the entire plan is resubmitted then the revised portions shall be clearly indicated. These revisions shall comply with the applicable provisions of 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D. LEAs shall submit the revisions according to the provisions of Section 5 of this administrative regulation.~~]

Appendices A, C, [~~B and~~] D, and E to 40 C.F.R. Part 763, Subpart E; [~~as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.~~]

(2) An [~~(2) No~~] LEA shall not[~~may~~] permit, allow, or require an [~~any~~] individual or other person to perform any asbestos abatement project [~~after October 12, 1988,~~] unless the individual has been issued [~~by the cabinet~~] an accreditation certificate pursuant to [~~so engage in these projects in accordance with the provisions of~~] 401 KAR 58:005, and the accreditation certificate is in effect and maintained on the individual's person. [~~, which is currently in effect, and which is maintained on his person.~~]

(3) An LEA [~~(3) LEAs~~] shall revise the [~~their~~] management plan if [~~plans when~~] changes in the schools, school buildings, status of the ACM, or response actions occur.

(a) The LEA may submit:

(1.) Only the revised portion of the plan; or [~~.~~]

(2.) [~~If~~] The entire plan, if [~~is resubmitted then~~] the revised portions are [~~shall be~~] clearly indicated.

(b) All [~~These~~] revisions shall comply with the applicable provisions of 40 CFR 763, subpart E; and

(c) [~~.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D.~~] LEAs shall submit the revisions according to the provisions of Section 4 [~~5~~] of this administrative regulation.

Section 4. [~~Deferrals. If a LEA is unable to submit to the cabinet its management plan required in 40 CFR 763.93 by October 12, 1988, it may request a deferral to May 9, 1989, for the submission of the plan for one (1) or more schools under its jurisdiction. Deferral requests shall be submitted to the cabinet by the original due date of October 12, 1988, shall be notarized, and shall contain all of the requirements of subsections (1) to (5) of this section. Deferral requests may be submitted using forms prepared by the cabinet for that purpose.~~

~~(1) A listing of all schools covered by the request.~~

~~(2) A statement and brief explanation as to why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.~~

~~(3) A statement that the LEA has made at least one (1) of the following documents available for inspection at each school for which a deferral is sought:~~

~~(a) A solicitation by the LEA to contract with an accredited inspector or accredited management planner for inspection or management plan development, respectively;~~

~~(b) A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development;~~

~~(c) Documentation showing that suspected ACM from the school is being analyzed at an accredited laboratory; or~~

~~(d) Documentation showing that an inspection or management plan has been completed in at least one (1) other school under the LEA's authority.~~

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(4) A statement giving assurance that the LEA has carried out notification of affected groups and, for public schools, a public meeting. Before filing a deferral request, a LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. For public schools, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.

(5) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule shall contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector, unless inspections are to be performed by accredited school personnel. Laboratory analysis and management plan development shall also be included in the activity schedule.

(6) The cabinet shall respond to the LEA in writing within thirty (30) days of receipt of the request to acknowledge whether the deferral request is complete or incomplete. If incomplete, the cabinet shall identify in the response the items which are missing from the request. The LEA may correct and refile its request with the cabinet no later than fifteen (15) days after it has received a response from the cabinet.

(7) The deferral request shall be considered to be granted only when the cabinet has responded in writing that the deferral request is accepted as complete.

(8) An LEA whose deferral request has been approved shall submit to the cabinet a management plan no later than May 9, 1989. The plan shall include a copy of the deferral request and the appropriate assurances of subsections (1) to (5) of this section which accompanied the original request. The cabinet shall review the deferred management plan in accordance with the procedures in Section 6 of this administrative regulation, except the LEA shall submit a revised

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~~deferred plan within thirty (30) days of disapproval. The cabinet may extend the thirty (30) day period by not more than thirty (30) days.~~

~~(9) Deferral or acceptance of the deferred management plan shall not exempt the LEA from its responsibility to begin implementation of the deferred management plan by July 9, 1989.~~

~~Section 5~~.] Submittal of Plans.

(1) Management plans [~~required in 40 CFR 763.93, deferred management plans,~~] and revisions to management plans required by 40 C.F.R. 763.93, shall be submitted using DEP 58_010_2 as incorporated by reference in Section 10 of this administrative regulation, which [~~forms approved by the cabinet for that purpose and~~] shall contain all the information [~~that the cabinet deems is~~] necessary to determine if the plan should be approved, including all information required in 40 C.F.R. 763.93[~~40 CFR 763.93~~].

(2) Except as specified in subsection (3) of this section, management plans[~~, deferred management plans,~~] and revisions to management plans [~~submitted after October 12, 1988,~~] shall include payment of applicable fees as established [~~the fee specified~~] in Section 7[~~8~~] of this administrative regulation. [~~LEAs which submitted plans on or before October 12, 1988, shall submit to the cabinet the fee specified in Section 8 of this administrative regulation by December 12, 1988.~~]

(3) Management plan revisions shall be submitted as follows:

(a) If an LEA acquires or otherwise puts into service any building or portion of a building, and if that building or portion of a building would have been required to be included in the management plan if it had been in use at the time the plan was submitted, then the LEA shall submit a management plan for the building or portion to the cabinet for review and approval, with the fees required in Section 7[~~8~~] of this administrative regulation.

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(b) The LEA shall notify the cabinet of any building that will be deleted from the plan prior to its deletion; this notification shall not require the submittal of any fees.

(c) [~~(b)~~] If an LEA intends to change a planned response action from removal to any other response action, then the LEA shall submit a revision to the management plan for review and approval, with the fees required in Section 7[~~8~~] of this administrative regulation.

(d) Delays of dates in management plans.[~~(c)~~] If an LEA intends to delay the date of removal, encapsulation, or enclosure of asbestos-containing material for

1. More than one (1) year beyond the date identified in the management plan, then the LEA shall submit a revision to the management plan for review and approval with the required fees. [~~If the delay in these response actions shall be one~~]

2. One (1) year or less from the date identified in the management plan, then the LEA shall notify the cabinet of the new date. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require approval by the cabinet before the response action begins. If the LEA does not receive approval or acknowledgment from the cabinet within sixty (60) days and does not receive notice that the proposed action has been denied, the LEA may proceed with the response action.

(e) [~~(d)~~] If an LEA intends to perform any response actions identified in paragraph (d)[~~(c)~~] of this subsection in advance of the date identified in the management plan, then the LEA shall notify the cabinet of the new date and shall receive the cabinet's approval before the response action begins. The notification shall not require the submittal of any fees. If the LEA does not receive approval or acknowledgment from the cabinet within sixty (60) days and does not receive notice that the proposed action has been denied, the LEA may proceed with the response action.

(f)[~~(e)~~] If an LEA intends to remove asbestos-containing material which is identified in the management plan to be encapsulated, enclosed, or otherwise treated in a manner other than

removal, then the LEA shall notify the cabinet of the proposed removal. The notification shall not constitute a plan revision and shall not require the submittal of any fees, but the proposed action shall require the cabinet's approval before the response action begins.

(g)[~~(f)~~] An LEA shall not be required to notify the cabinet of small scale, short-duration maintenance activities and shall not be required to submit plan revisions or fees for these activities. Notification of these activities may be required under 401 KAR 58:025.

(h) The materials listed in this section shall be submitted in electronic form, via the cabinet's website: https://dep.gateway.ky.gov/eForms/Home.

Section 5. [~~6~~] Consideration of Management Plans.

(3) At any time, the cabinet shall disapprove the management plan, [~~deferred management plan,~~] or revised management plan if the plan:

(a) Does not conform with the requirements of this administrative regulation, 401 KAR 58:025, or 401 KAR 58:040;

(b) Does not ensure [~~assure~~] that any action or service required to be performed by accredited individuals in any of the regulations contained in 40 CFR 763, Subpart E will be performed by accredited individuals, and does not ensure [~~assure~~] that the provisions of Section 3(16)[~~3(2)~~] of this administrative regulation will be met;

(c) Does not contain a response action schedule which is reasonable and timely as determined by the cabinet, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the LEA's authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the LEA to continue to provide educational services to the community; or

(d) Does not provide response actions which adequately protect human health or the environment from friable ACBM.

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(4) The cabinet shall deny a management plan if the cabinet determines that the LEA willfully made any misstatements in the plan, or the LEA cannot reasonably be expected to fulfill the obligations of the plan.

(5) If the cabinet disapproves a plan, the cabinet shall explain in writing to the LEA the reasons why the plan was disapproved and the changes that shall be made in the plan. Within thirty (30) days after the date on which notice of the plan's disapproval is received, the LEA shall revise the plan to conform with the suggested changes. The cabinet may extend the thirty (30) day period for not more than ninety (90) days.

Section 6. [~~7~~] Notification. As required in 40 C.F.R.[~~40 CFR~~] 763.93 the management plan shall contain the dates when each response action will begin and end. If the schedule is amended, the LEA shall notify the cabinet of any response action which will occur and which must be performed by an accredited individual, at least ten (10) days prior to commencement, unless the response action is an emergency response action that must be performed by an accredited individual. The LEA shall notify the cabinet of these emergency response actions as soon as possible, as determined by the cabinet, prior to commencing the emergency response action. If the notification is not in writing, then written confirmation of the response action shall also be provided as soon as possible, as determined by the cabinet.

Section 7[~~8~~]. Fees. [~~Fees required in this section shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer.~~]

(1) The fee for review of a management plan shall be sixty (60) dollars for each school building that is identified in the plan as containing ACM and thirty (30) dollars for each school building that is identified in the plan as not containing ACM.

(2) The fee for review of a revision to the management plan shall be thirty (30) dollars for each building contained in the revision and in the original management plan, for which a new

response action is proposed. For each new building contained in the revision, the fee shall be sixty (60) dollars if the building contains ACM, and thirty (30) dollars if it does not contain ACM.

(3) If the cabinet does not respond to an LEA on a management plan approval or revision within 180 days of receipt of the management plan or revision for which a fee was required, the cabinet shall issue a refund for the appropriate fee.

(4) Fees required in this section shall be submitted to the cabinet on-line via the cabinet's website.

Section 8. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the AHERA program.

Section 9. Penalties. Any LEA which violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS 224.99-010.

Section 10. Incorporation by Reference.

(1) The following materials are incorporated by reference:

(a) DEP 58_010_1, "AHERA REINSPECTION REPORT", December 2026; and

(b) DEP 58_010_2, "AHERA MANAGEMENT PLAN", December 2026.

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