

FILED WITH LRC
TIME: <u>2:30pm</u>
SEP 25 2023
<i>Emily B Caudill</i>
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (New Administrative Regulation)

5 401 KAR 103:005. Definitions related to 401 KAR Chapter 103.

6 RELATES TO: KRS 224.10-100, 224.10-285, 224.43-345, 278.700 through 278.716

7 STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-
8 285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-285 requires the Energy and
10 Environment Cabinet to establish monitoring and enforcement requirements for the obligation
11 set for in KRS 278.710(3), (4), (5), (7) through (10) and KRS 224.10-100(30) and (31). This
12 administrative regulation defines essential terms that are used in this chapter.

13 Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 and
14 Chapter 278, terms in 401 KAR Chapter 103 shall have the meanings given in this section.

15 (1) "Abandon" or "Abandonment" means the relinquishment of all rights, title, or claim
16 to the merchant electric generating facility;

17 (2) "Above-ground facilities" means any portion of a system or structure located on the
18 surface of the site;

19 (3) "Annual report" means a yearly document that describes all operational activities in
20 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, controlling rights, or ownership of a merchant electric generating facility;

(5) "Cabinet" is defined in KRS 224.1-010;

(6) "Commence to construct" is defined in KRS 278.700;

(7) "Components" means either the solar panel or ancillary equipment of a solar array or solar panel system, or a constituent part;

(8) "Construction certificate" means a formal certification approved and issued by the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") to an owner-operator, or persons who have controlling rights, of a merchant electric generating facility that authorizes persons to construct and operate a merchant generating facility;

(9) "Control" is defined by KRS 278.010;

(10) "Current net salvage value" means the value of an asset expressed in current US dollars after it has become useless to the owner or the amount expected to be obtained when a fixed asset is disposed of at the end of its useful life and pursuant to KRS 278.706;

(11) "Decommission" means the process of removal or 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 dismantlement, removal, and disposal of structures,

1 systems, and components of a merchant electric generating facility at the time of
2 decommissioning pursuant to KRS 278.706;

3 (14) "Decommission plan" or "Decommissioning plan" means a plan to retire physical
4 facilities of a merchant electric generating facility, pursuant to KRS 278.706;

5 (15) "Disposal" is defined in KRS 224.1-010;

6 (16) "Facility" is defined by KRS 278.010;

7 (17) "Hazardous substance" is defined by KRS 224.1-400;

8 (18) "Land disposal" is defined in KRS 224.1-010;

9 (19) "Landowner" means a person who has legal ownership of land where a merchant
10 electric generating facility is located;

11 (20) "Megawatt" means a unit of power equal to one million watts, measure of output of
12 electrical power;

13 (21) "Merchant electric generating facility" is defined in KRS 278.700;

14 (22) "Mitigation measures" means an act or requirement established by the siting board
15 pursuant to KRS 278.708;

16 (23) "Modification" means a change in existing order or certificate, necessary to cure an
17 error;

18 (24) "Monitoring" is defined as the act of systematically inspecting and collecting data on
19 operational parameters or on the quality of a merchant electric generating facility;

20 (25) "Municipal government" means a city, town, or other local authority with an elected
21 governing body;

22 (26) "Net present value" means the difference between the present value inflow and
23 outflow over a period of time and pursuant to KRS 278.706;

1 (27) "Ordinance" means an official written act of a local government, the effect of which
2 is general and permanent in nature, which is enforceable by the enacting local government as a
3 local law within its jurisdiction;

4 (28) "Owner-operator" is defined as any person who owns a merchant electric generating
5 facility or is responsible for overall operation of a merchant electric generating facility, including
6 any contractor conducting operational activities;

7 (29) "Person" is defined in KRS 278.700;

8 (30) "Professional Engineer" is defined in KRS 322.010; an independent, professional
9 engineer shall be registered in Kentucky pursuant to KRS 322.040 and shall be experienced to
10 engage in the decommissioning of solar electric generating facilities;

11 (31) "Recycling" is defined in KRS 224.1-010;

12 (32) "Secretary" is defined in KRS 224.1-010;

13 (33) "Service" is defined by KRS 278.700;

14 (34) "Solar panel" means a panel or device containing photovoltaic cells designed to
15 absorb and convert sunlight into a source of generating electricity;

16 (35) "Successor" means one who succeeds to the rights to own or control a merchant
17 electric generating facility;

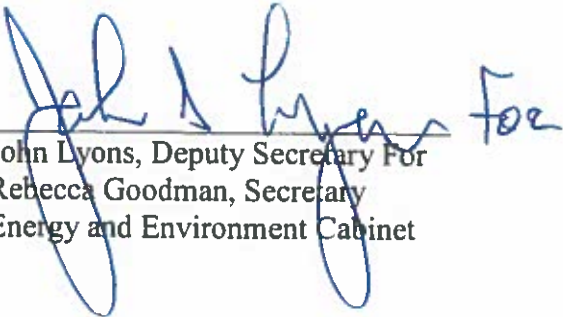
18 (36) "Useful life" means the estimated length of time that depreciable property will
19 generate income;

20 (37) "Waste" is defined in KRS 224.1-010;

21 Section 2. Acronyms and Abbreviations. Unless otherwise specifically indicated by context,
22 acronyms and abbreviations used in 401 KAR Chapter 103 shall have the meaning as identified
23 in Table 1 of this administrative regulation.

Table 1. Acronyms and Abbreviations	
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
MEGF	Merchant Electric Generating Facility
MW	Megawatt

401 KAR 103:005 Merchant Electric Generating Facilities definitions is approved for filing.


John Lyons, Deputy Secretary For
Rebecca Goodman, Secretary
Energy and Environment Cabinet

9/27/23
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2023, at 10:00AM Eastern Standard Time. The public hearing can be accessed at the following website address: <https://us05web.zoom.us/j/81334701532?pwd=eWjHA2kpT9I6PWurOirAnFpuYads2k.1> using access code M00m5c. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Tyler.Shields@ky.gov or mail this information to Tyler Shields, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "401 KAR 103:005" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall register to speak by December 14, 2023. If no one registers to speak by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2023. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to the contact person.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

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 (Subject line: "401 KAR 103:005")

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 103:005

Contact person: Tyler Shields, Environmental Control Supervisor

Phone: (502) 782-5325

Email: Tyler.Shields@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes definitions for Title 401 KAR Chapter 103, for which have not been established in KRS Chapter 224 or KRS Chapter 278.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish definitions for the chapter.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: 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 authorizes the cabinet to promulgate administrative regulations to establish the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7) through (10), and KRS 224.10-100(30) and (31).
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes definitions for Title 401 KAR Chapter 103 to assist in the comprehension of proposed administrative regulations.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: N/A
 - (b) The necessity of the amendment to this administrative regulation: N/A
 - (c) How the amendment conforms to the content of the authorizing statutes: N/A
 - (d) How the amendment will assist in the effective administration of statutes: N/A
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

This administrative regulation will affect owners-operators, persons who control or own rights to control a MEGF, organizations who represent landowners of which a MEGF is located, landowners where a MEGF is located, and state and local governing bodies who operate under the proposed chapter (401 KAR Chapter 103) of administrative regulations.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not have actions to comply with in relation to this administrative regulation.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not have a cost for the entities identified.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified will not accrue benefits from this administrative regulation.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The agency will not incur any additional costs for the implementation of this administrative regulation.
 - (b) On a continuing basis: The agency will not incur any continuing costs for the implementation of this administrative regulation.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
- The merchant electric generating facility monitoring and enforcement fund.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:
- No increase in fees or funding is necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any direct or indirect fees.
- (9) TIERING: Is tiering applied? (Explain why or why not) No. This administrative regulation establishes definitions for the chapter.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 103:005

Contact person: Tyler Shields Environmental Control Supervisor

Phone: (502) 782-5325

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1. Federal statute or regulation constituting the federal mandate.

Not applicable.

2. State compliance standards.

KRS 224.10-100(28), 224.10-100(30) and (31), 224.10-285, 224.43-345, KRS 278.710(3), (4), (5), (7) through (10)

3. Minimum or uniform standards contained in the federal mandate.

Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation imposes stricter requirements as there is no federal mandate for the decommissioning of merchant electric generating facilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

HB-4 mandated the Cabinet to promulgate administrative regulations for the monitoring and enforcement requirements for the obligations set forth in KRS 278.710(3), (4), (5), (7), (8), (9), and (10) and KRS 224.10-100(30) and (31).

FISCAL NOTE

401 KAR 103:005

Contact Person: Tyler Shields, Environmental Control Supervisor.

Phone: (502) 782-5325

Email: Tyler.Shields@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact state or local governments that have, own, or operate a merchant electric generating facility in their jurisdiction, as well as the Energy and Environment Cabinet and Public Service Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100(28), KRS 224.10-100(30), and KRS 224.10-285

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not affect the expenditures and revenues of a state or local government agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The proposed administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year?

The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs in the first year of the program.

(d) How much will it cost to administer this program for subsequent years?

The cost to administer the program for the currently approved thirty-five (35) facilities is \$278,000 annually. This total is the sum cost of hiring an Environmental Engineer II within the Solid Waste Branch for review of decommissioning plans and financial assurance documents, and an Environmental Scientist Advisor within the Field Operations Branch for site inspections. At the time of drafting this regulation, only three (3) of the thirty-five (35) facilities were currently under construction. Pursuant to KRS 278.710, the cabinet does not obtain authority over these facilities until the facility is constructed and generating electricity. Therefore, the cabinet cannot receive the annual fee until the facility is generating electricity. With no timetable of when these facilities will be constructed and begin generating electricity it is challenging to estimate the total costs for subsequent years of the program. KRS 224.10-285 was implemented with the intention to make this a self-supported program, with revenue being generated from the merchant electric generating facility monitoring and enforcement fund.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

The proposed administrative regulation will not generate cost savings for any regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The proposed administrative regulation will not generate cost savings for any regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There is no known cost to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

There is no known cost to the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): There is no known cost savings.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: This administrative regulation only establishes definitions for the chapter.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]

This proposed administrative regulation will not have a major economic impact.