

401 KAR 42:320. Hearings.

RELATES TO: KRS 224.10-410 -224.10-470, 224.60

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-130(1)(f)

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 224.60-130(1)(f) requires complaints brought regarding the payment of claims from the cabinet, in accordance with KRS 224.10-410 to 224.10-470 to be heard. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Postdetermination Actions. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may request:

- (1) Reconsideration, under Section 2 of this administrative regulation; or
- (2) A formal hearing, pursuant to KRS 224.10-420 and 224.10-440, under Section 3 of this administrative regulation.

Section 2. Reconsideration. (1) A request for reconsideration shall be:

- (a)1. Documented on Reconsideration Request Form, DEP 0063; and
 2. The applicant shall keep a copy of the form for his or her own records; and
 - (b) Received by the cabinet within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the adverse determination.
- (2) The request shall include:
- (a) A statement of the grounds for reconsideration;
 - (b) Supporting documents; and
 - (c) Other evidence not previously considered.
- (3) The cabinet shall reevaluate the eligibility determination or payment claim previously denied, if the evidence accompanying the request warrants reconsideration by demonstrating clear error or clarifying information through submittal of additional documentation.
- (4) The cabinet shall not reconsider a matter more than once.

Section 3. Formal Administrative Hearings. A person aggrieved by a final, adverse determination regarding reimbursement eligibility or a claim for payment may petition the cabinet for a formal administrative hearing.

- (1) The hearing shall be in accordance with KRS 224.10-420 and 224.10-440; and
- (2) 400 KAR Chapter 1 and 401 KAR 100:010.

Section 4. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

(2) The extension request shall be submitted in writing and received by the Underground Storage Tank Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet shall grant an extension if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 5. Incorporation by Reference. (1) "Reconsideration Request Form", DEP 0063, November 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Division of Waste Management's

Web site at <http://waste.ky.gov/ust>. (19 Ky.R. 1486; 1800; eff. 3-12-1993; 21 Ky.R. 1185; 1510; eff. 1-9-1995; 23 Ky.R. 2242; eff. 4-9-1997; 25 Ky.R. 1122; 26 Ky.R. 738; eff. 10-13-1999; Recodified from 415 KAR 1:120, 2-17-2005; 32 Ky.R. 532; 903; 1086; eff. 1-6-2006; 37 Ky.R. 2733; 38 Ky.R. 545; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018.)