106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39E.040, 39E.050, 39E.110, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.220, 39E.230, 61.800, 61.805, 61.810, 61.820, 61.823, 61.826, 61.835, Chapter 424, 40 C.F.R. Part 355, Appendix A, Appendix B, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.040, 39E.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050.

Section 1. Definitions. (1) "EHS facility emergency response plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:

(a) Has in its inventory an extremely hazardous substance (EHS) above threshold planning quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III, 42 U.S.C. 11003, KRS 39E.110, KRS 39E.130, KRS 39E.140, KRS 39E.150, KRS 39E.160, KRS 39E.170, and KRS 39E.220, and the Kentucky Emergency Response Commission's planning requirements found in the Emergency Response Planning Guide for EHS Facilities: Self-Study Manual KERC Document; 730-PGSS, incorporated by reference in 106 KAR 1:081.

(2) "EHS Facility Emergency Response Plan Checklist" or "KERC Form: 303-PC" means the checklist completed by all LEPCs and submitted to their Kentucky Emergency Management (KYEM) area manager (AM) for all EHS facility emergency response plans requiring submission to the KERC for approval and in accordance with the Emergency Response Planning Guide for EHS Facilities: Self-Study Manual, KERC Document: 730-PGSS, incorporated by reference in 106 KAR 1:081.

(3) "Emergency Response Planning Guide for EHS Facilities: Self-Study Manual" or "KERC Document: 730-PGSS" means the packet, incorporated by reference in 106 KAR 1:081, published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS facility emergency response plan required to be compliant with all EPCRA, 42 U.S.C. 11001 through 11050, KRS Chapter 39E, and Title 106 KAR requirements for the current calendar year.

(4) "Grant ledger" or "KERC Form: 105-GL" means the form LEPCs are required to use to record all of the checks, cash payments, and outlays of cash in the "(Name of County) Emergency Planning Committee Fee Account" during the calendar year, January 1 through December 31.

(5) "KERC Document Library" or "KERC Document: 001-LIB" means the packet published and annually reviewed by the Kentucky Emergency Response Commission (KERC) that contains the complete library of required and optional materials, including all aspects of LEPC planning and grants.

(6) "LEPC Annual Certification Letter (ACL)" or "KERC Form 302-ACL" means the letter annually submitted by the local emergency planning committee (LEPC) listing the status of all EHS facility emergency response plans in the planning district, which includes information that was received from covered facilities by March 1, for the previous calendar year, and in accordance with all ACL requirements found in the Emergency Response Planning Guide for EHS Facilities: Self-

Study Manual, (KERC Document: 730-PGSS.

(7) "LEPC Detailed Budget" or "KERC Form: 102-DB" means the form submitted by LEPCs annually identifying by category, all intended purchases and expenses for the upcoming calendar year using, if approved, KERC grant funds in accordance with the LEPC Grant Applications Manual KERC Document: 720-GASS.

(8) "LEPC Grant Application" or "KERC Form: 101-GA" means the form submitted by LEPCs initially requesting KERC grant funds in accordance with the LEPC Grant Applications Manual KERC Document: 720-GASS.

(9) "LEPC Grant Applications Manual" or "KERC Document: 720-GASS" means the packet, annually updated and published by Kentucky Emergency Management, which provides instructions for the request for assistance through the KERC grant funds, including templates for all forms required for the current calendar year.

(10) "LEPC Membership Cover Page" or "KERC Form 104-MCP" means the cover letter submitted by LEPCs with their annually required submission of an updated membership list that serves as a checklist, ensuring all representatives required by EPCRA, 42 U.S.C. 11001 through 11050, and KRS Chapter 39E are included within each LEPC membership.

(11) "Personal Property Inventory" or "KERC Form: 103-PPI" means the form submitted by LEPCs annually listing all property purchased using KERC grant funds in accordance with the LEPC Grant Applications Manual KERC Document: 720-GASS.

(12) "Public (Legal) Notice Advertisement" means the template established in Section 7 of this administrative regulation and used by LEPCs to meet the EPCRA, 42 U.S.C. 11001 through 11050, requirements found in Section 324, which require that each LEPC annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted.

Section 2. LEPC Eligibility Requirements. (1) To be eligible for financial assistance, local emergency planning committees that have extremely hazardous substances (EHS) as listed in 40 C.F.R. 355, Appendices A and B, in excess of the TPQ present in their community shall meet all the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The local emergency planning committee shall meet all requirements set forth in KRS 39E.110.

(b) The local emergency planning committee shall have an EHS Facility Emergency Response Plan that has been approved by the KERC pursuant to KRS 39E.110(1)(a), (e), (f) and 39E.150 as set out in the Emergency Response Planning Guide for EHS Facilities: Self-Study Manual, KERC Document: 730-PGSS, for each facility in the planning district that has an extremely hazardous substance (EHS) in excess of the TPQ.

1. The local emergency planning committee shall submit a completed EHS Facility Emergency Response Plan Checklist, KERC Form: 303-PC, with all EHS Facility Emergency Response plans submitted for KERC approval.

2. The local emergency planning committee shall submit new EHS Facility Emergency Response Plans to the Kentucky Emergency Management (KYEM) area manager (AM) within sixty (60) days of notification that the facility has an extremely hazardous substance (EHS) in excess of the threshold planning quantity (TPQ).

3. The KYEM AM shall review new EHS Facility Emergency plans and their accompanying checklists for completeness.

a. Complete plans shall be forwarded to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.

b. Incomplete plans shall be returned to the local emergency planning committee with recommendations.

(c) The local emergency planning committee shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

(d)1. No later than January 31 each calendar year (January 1 through December 31) in accordance with KRS Chapter 424, Legal Notices, the local emergency planning committee shall publish public information on committee activities as set out in Section 7 of this administrative regulation.

2. No later than February 28, each local emergency planning committees shall provide the KERC chairman, or designee, with a photocopy of the legal notice published established in Section 7 of this administrative regulation clearly showing the name of the newspaper and the date of publication.

(e)1. After new equivalent plans are submitted, no later than April 1 each year, the local emergency planning committee shall review all existing EHS Facility Emergency Response plans and send an Annual Certification Letter (ACL) to the Kentucky Emergency Management (KYEM) area manager (AM) stating that:

a. There were no changes and therefore the plan is correct as is; or

b. The plan has been revised and the revisions are included with the ACL.

2. The KYEM AM shall review the ACL and all EHS Facility Emergency Response Plan revisions received from the local emergency planning committee for completeness.

a. Complete plans shall be forwarded to the KERC chairman, or designee, no later than May 1 each year.

b. Incomplete plans shall be returned to the local emergency planning committee with recommendations.

(f)1. No later than April 1, the local emergency planning committee shall submit Grant Application, KERC Form: 101-GA, to the KYEM AM.

2. The KYEM AM shall review the grant request form for completeness and conformance to KRS Chapter 39E and Title 106 KAR.

a. Complete grant applications shall be forwarded to the KERC chairman, or designee, no later than May 1 each year.

b. Incomplete grant applications shall be returned to the local emergency planning committee with recommendations.

(g) No later than April 1, the local emergency planning committee shall provide the KERC chairman, or designee, documentation of expenditures, including bank statements, canceled checks, invoices, receipts, and a Grant Ledger, KERC Form: 105-GL, for the preceding year.

(h) No later than June 1, local emergency planning committees shall submit a LEPC Detailed Budget, KERC Form: 102-DB, to the Chairman of the Kentucky Emergency Response Commission or designee, identifying how the funds requested on the LEPC Grant Application are to be spent.

(i) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list and LEPC Membership Cover Page, KERC Form 104-MCP, to the KERC chairman, or designee.

(j)1. No later than December 1 each year, the bylaws of each local emergency planning committee shall be provided to the KERC chairman, or designee, with certification stating that:

a. There were no changes and therefore the bylaws are identical to last year; or

b. The bylaws have been revised and the revisions are included.

2. The bylaws shall identify the position or person who will be responsible for accountability for

the funds and who will be listed as the authorized applicant as shown on the Grant Application, KERC Form: 101-GA.

(k) No later than December 1, local emergency planning committees shall submit a Personal Property Inventory, KERC Form: 103-PPI, identifying all property items valued in excess of $500 purchased using KERC grant funds.

(2) To be eligible for financial assistance, local emergency planning committees that do not have any extremely hazardous substance as defined in 106 KAR 1:081, Section 1, in excess of the TPQ present in their community shall meet the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The local emergency planning committee shall meet criteria set forth in KRS 39E.110(1)(b), (c), (d), (2), (4), (5) and subsection (1)(d), (f), (g), (h), (i), (j), and (k) of this section.

(b) The local emergency planning committee shall meet at least once during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

Section 3. KERC Grant Review Procedures. (1) The KYEM AM, the KERC chairman or designee, or the grant review committee may request additional information that shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

(a) The KERC chairman, or designee, shall annually update, publish, and promulgate all grant requirements in the LEPC Grant Applications Manual (KERC Document #720-GASS).

(b) The KERC chairman, or designee, shall annually review, publish, and promulgate all grant required KERC forms in the KERC Document Library (KERC Document #001-LIB).

(2) The schedule of due dates shall be as established in this subsection.

(a) No later than June 1, the KERC chairman, or designee, shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations, and forward it to the grant review committee.

(b) No later than July 1, the grant review committee, with a quorum present, shall review all grant requests and LEPC Detailed Budgets, KERC Form: 102-DB, and forward their recommendations to the KERC for final approval.

(c) No later than September 15, the KERC shall make the grant awards pursuant to this administrative regulation.

Section 4. Requests for Modifications. (1) A modification of a grant award shall be required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds for the purpose for which the grant was awarded.

(a) A request for modification shall be submitted by the LEPC for approval by the commission.

(b) Unexpended monies shall be returned to the KERC fee account fund.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget, KERC Form: 102-DB, and, except for due dates, shall be processed in accordance with Sections 2 and 3 of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the KERC shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on a Grant Application, KERC Form

#101-GA, and LEPC Detailed Budget, KERC Form: 102-DB, and, except for due dates, shall be processed in accordance with this section and Sections 2 and 3 of this administrative regulation.

(3) If a local emergency planning committee requests supplemental money, the schedule of due dates shall be as established in this subsection.

(a) Thirty (30) days from notification by the KERC of the availability of supplemental LEPC money, the local emergency planning committee shall submit the supplemental Grant Application, KERC Form: 101-GA, and LEPC Detailed Budget, KERC Form: 102-DB, to the KYEM AM.

(b) Thirty (30) days from receipt of the supplemental grant request, the KYEM AM shall review the supplemental grant request documents for completeness and conformance to statutes and administrative regulations. 1. Complete grant applications shall be forwarded with the LEPC Detailed Budget, KERC Form: 102-DB, to the KERC chairman, or designee.

2. Incomplete grant applications shall be returned with the LEPC Detailed Budget, KERC Form: 102-DB, to the local emergency planning committee with recommendations.

(c) Thirty (30) days from receipt of the supplemental grant request, the KERC chairman, or designee, shall review the supplemental grant request in accordance with Section 3 of this administrative regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Section 3 of this administrative regulation and forward their recommendations to the KERC.

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the KERC shall make the supplemental grant award pursuant to this administrative regulation.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the KERC shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the KERC and the state auditor of public accounts.

(2) Grant awards approved by the KERC may be withheld for noncompliance with KRS 39E.050 and this administrative regulation and for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the KERC and shall be dependent upon availability of fees collected.

(4) Unexpended monies shall be returned to the Kentucky Emergency Response Commission fee account fund.

Section 7. "Public (Legal) Notice Advertisement" Template.

(1) LEPCs shall use the template established in this section to comply with EPCRA, 42 U.S.C. 1101 through 11050, and annual requirements established in Section 324.

(2) Template:

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 11001 et seq., the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of KRS 61.800, 61.805, 61.810, 61.823, 61.826, 61.835. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county)

County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by the SARA Law, is (emergency number adopted by county planning committee).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Grant Ledger", KERC Form: 105-GL, January 2017;
(b) "LEPC Grant Applications Self-Study Manual", KERC Document 720-GASS, 2016;
(c) "LEPC Annual Certification Letter (ACL)", KERC Form 302-ACL, January 2017;
(d) "LEPC Detailed Budget", KERC Form: 102-DB, January 2017;
(e) "LEPC Grant Application", KERC Form: 101-GA", January 2017;
(f) "LEPC Membership Cover Page", KERC Form 104-MCP, January 2017;
(g) "Personal Property Inventory", KERC Form: 103-PPI, January 2017; and
(h) "KERC Document Library", KERC Document: 001-LIB, 2016.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m. (18 Ky.R. 1712; Am. 2325; 2522; eff. 1-27-1992; 22 Ky.R. 606; 898; eff. 10-11-1995; 43 Ky.R. 1224, 1519; eff. 3-31-2017.)