



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-3350
TELEFAX: 502-564-7484

August 11, 2020

Ms. Mary Walker
Regional Administrator
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Dear Ms. Walker:

On behalf of the Commonwealth of Kentucky, the Energy and Environment Cabinet (Cabinet), respectfully requests that the U.S. EPA approve the enclosed amended air quality regulation to Kentucky's SIP pursuant to 42 U.S.C. 7410(a). This regulation became effective in Kentucky on June 2, 2020, and a copy can be found at <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM>.

401 KAR 52:100. Public, affected state, and U.S. EPA review.

In accordance with 40 C.F.R. 51.102, the Cabinet made a copy of the proposed amended regulation available for public comment from November 18, 2019, until January 31, 2020. A copy of the amended administrative regulation is enclosed, and an electronic version of this submittal has been emailed directly to EPA Region 4.

The Cabinet appreciates your prompt response to this request. If you have any further questions or concerns about this submittal, please contact Ms. Kelly Lewis, Program Planning Manager for the Division for Air Quality at (502) 782-6687 or Kelly.Lewis@ky.gov.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca W. Goodman".

Rebecca W. Goodman,
Secretary

RWG/mad
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Executive Summary

This SIP amendment includes one administrative regulation, which became effective on June 2, 2020.

401 KAR 52:100. Public, affected state, and U.S. EPA review.

This regulation was filed with the Legislative Research Commission on November 14, 2019. It was published in the December 1, 2019 *Administrative Register of Kentucky*. Public comments were accepted on this regulation through January 31, 2020. No comments were received during the comment period.

The current SIP approved regulation 401 KAR 52:100, *Public, affected state, and U.S. EPA review* became effective on January 15, 2001. The SIP revision was submitted on March 15, 2001 and was approved into the SIP on September 6, 2006. (71 FR 52460)

This action requests EPA to approve the effective regulation to the Kentucky SIP as it became effective on June 2, 2020.

COMPLETENESS CRITERIA FOR SIP SUBMITTALS –
40 CFR PART 51 APPENDIX V

To ensure completeness of this SIP revision submittal, the following elements detailed in 40 CFR Part 51, Appendix V are listed:

A. ADMINISTRATIVE MATERIALS:

1. A formal letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision.

The cover letter dated August 11, 2020, signed by Secretary Rebecca W. Goodman, the Governor's designee, requests EPA's approval of the SIP revision to amend 401 KAR 52:100 Public, affected state, and U.S. EPA review.

2. Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement in final form. That evidence shall include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date.

The Commonwealth of Kentucky is submitting this document to request 401 KAR 52:100 be amended to the SIP. This regulation became effective on June 2, 2020. The effective date of the plan should be the date of the SIP revision submittal, August 11, 2020.

3. Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

The powers and duties of the Cabinet established in KRS 224.10-100 provide the Energy and Environment Cabinet with the statutory authority to prepare and develop a comprehensive plan or plans related to the environment of the Commonwealth. Additionally, KRS 224.10-100 requires the Cabinet to administer and enforce all rules, regulations and orders promulgated under Chapter 224, Environmental Protection, including those regulations that provide for the prevention, abatement, and control of air pollution.

4. A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made to the existing approved plan, where applicable. The submittal shall be a copy of the official State regulation/document signed, stamped, dated by the appropriate State official indicating that it is fully enforceable by the State. The effective date of the regulation/document shall, whenever possible, be indicated in the document itself.

A copy of 401 KAR 52:100 along with the approved changes is provided in Appendix A.

5. Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

The procedural requirements associated with this plan and public comment period are included in Appendix B.

6. Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

In accordance with 40 CFR 51.102, the Cabinet provided notice for the opportunity to submit written comments and to allow the public the opportunity to request a public hearing. A record of the filing of the proposed regulation was contained in the *Administrative Register of Kentucky* published on December 1, 2019 and is included in Appendix C. A copy of the public hearing notice published on the Division's website is included in the submittal package in Appendix B. A public hearing was scheduled for January 30, 2020. However, no request for public hearing was received, so the hearing was cancelled.

7. Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitutions, if applicable.

A public hearing notice was posted on the Division's website and sent to members of the community. This notice detailed that the public had until January 31, 2020 to provide comment and that a public hearing would be held on January 30, 2020, listing the time and location. The SIP revision document was made available for public review on the Division's website throughout the 30 day review period. Information related to public hearing notice requirements is provided in Appendix B.

8. Compilation of public comments and the State's response thereto.

EPA's comments on the SIP submittal and Kentucky's subsequent responses can be found in this submittal in Appendix D.

APPENDIX A

Proposed Regulation, November 14, 2019

Suggested Substitute, February 6, 2020

401 KAR 52:100, effective June 2, 2020

**Proposed Regulation
Filed with the Legislative Research Commission
on November 14, 2019**

FILED WITH URC
TIME: *J*
NOV 14 2019
Emily B Caudill
REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 52:100. Public, affected state, and U.S. EPA review.

6 RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2,

7 Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [40

9 ~~C.F.R. Parts 51, 70,~~] 42 U.S.C. 7410, 7661-7661f

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes

11 the~~[requires the Environmental and Public Protection]~~ Cabinet to promulgate administrative

12 regulations for the prevention, abatement, and control of air pollution. This administrative

13 regulation establishes the procedures used by the Cabinet to provide for the review of federally-

14 enforceable permits by the public, affected states, and the U.S. EPA.

15 Section 1. Applicability. This administrative regulation shall apply to the permit actions

16 established~~[specified]~~ in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state,

17 and U.S. EPA review.

18 Section 2. Public Comment Period. (1) For permit actions that require public review, the

19 Cabinet shall:

20 (a) Provide a minimum of thirty (30) days for public comment; and

21 (b) Prepare a response to the comments received during the comment period.

1 (2) The comment period:

2 (a) Shall begin on the date the public notice is posted on the Cabinet website at
3 https://eec.ky.gov~~[published in the newspaper]~~; and

4 (b) Shall end thirty (30) days after the date the public notice is posted on the Cabinet
5 website at https://eec.ky.gov~~[publication date]~~.

6 (3) The Cabinet shall consider:

7 (a) All written comments received during the public comment period;

8 (b) Comments received in alternate format to accommodate persons with disabilities; and

9 (c) The permit applicant's written response concerning the public comments, if received
10 not later than ten (10) days after the close of the public comment period.

11 (4) The Cabinet shall keep a record of the commentors and issues raised during the public
12 comment period and shall make this record available, upon request, to the public and the U.S.
13 EPA.

14 Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

15 (a) On the basis of written requests received, material issues have been raised concerning
16 the terms and conditions of the permit; or

17 (b) The permit action is of significant interest to the public.

18 (2) A request for a public hearing shall not require an extension of the public comment
19 period; however, the cabinet may allow additional time after the close of a public hearing for public
20 hearing participants to submit their comments in writing.

21 (3) If a public hearing is held, the cabinet shall:

22 (a) Provide public notice on the Cabinet website at https://eec.ky.gov, at least thirty (30)
23 days prior to the scheduled public hearing date; and

1 (b) Designate a presiding officer, who shall be responsible for the scheduling and orderly
2 conduct of the public hearing.

3 (4) Any person may submit statements or data during the public hearing concerning the
4 permit action.

5 (5) The Cabinet may:

6 (a) Set reasonable limits on the time allowed for oral statements; and

7 (b) Require that statements be submitted in writing.

8 (6) The Cabinet shall:

9 (a) Consider all comments received at the public hearing, including comments received in
10 alternate format to accommodate persons with disabilities;

11 (b) Keep a record of the participants and issues raised at the public hearing and make this
12 record available, upon request, to the public and the U.S. EPA; and

13 (c) Make available to the public at a reasonable reproduction cost;

14 1. A tape recording or written transcript of the public hearing; and

15 2. If requested, a written transcript in large type or Braille.

16 Section 4. Public Notice. (1) The Cabinet shall provide public notice of a public comment
17 period and any scheduled public hearing on the Cabinet website at <https://eec.ky.gov>. This shall
18 be the Cabinet's consistent method of public notice.

19 ~~(2)[by prominent publication in the newspaper having the largest general circulation in the~~
20 ~~area where a facility is applying for a permit.~~

21 ~~(2) The newspaper publication may be a paid advertisement, legal notice, or other~~
22 ~~appropriate format as determined by the cabinet.~~

1 (3) The Cabinet may provide additional notice to the public through other methods,
2 including newspapers, newsletters, and press releases.

3 Section 5. Information Included in Public Notice. The public notice shall include the
4 following information:

5 (1) Contact name and address of the Energy and Environment~~[Environmental and Public~~
6 ~~Protection]~~ Cabinet, Department ~~for~~~~[of]~~ Environmental Protection, Division for Air Quality;

7 (2) Name and address of the permit applicant and, if different, the name and address of the
8 facility;

9 (3) A brief description of the business conducted at the facility and the activity involved in
10 the permit action;

11 (4) A brief description of the comment procedures, including how to request a public
12 hearing;

13 (5) Date, time, and place of the public hearing, if one (1) has been scheduled;

14 (6) The end date of the public comment period;

15 (7) The end date of the U.S. EPA's review period;

16 (8) Reference to the dates of previous public notices relating to the permit;

17 (9) Description of any emission change involved in a permit revision;

18 (10) For permits subject to review under 401 KAR 51:017, the degree of increment
19 consumption expected to occur; and

20 (11) Name, address, and telephone number where interested persons may obtain the
21 following information:

22 (a) Copies of the draft permit or permit revision;

1 (b) Relevant supporting material, including permit applications, permits, compliance plans,
2 and monitoring and compliance certification reports, except for confidential business information
3 pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

4 (c) Other materials available to the cabinet that are relevant to the permit decision.

5 Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as
6 established[specified] in this section.

7 (1) For permit actions [~~that are~~] subject to review under 401 KAR 51:017 or 51:052, the
8 public notice shall be sent to:

9 (a) The permit applicant;

10 (b) The administrator of the U.S. EPA, through the appropriate regional office;

11 (c) Affected states;

12 (d) All persons on the mailing list established[specified] in Section 7 of this administrative
13 regulation; and

14 (e) The officials and agencies having authority over the area where the source will be
15 located, as follows:

16 1. Local air pollution control agencies;

17 2. The chief executive of the city and county;

18 3. Any comprehensive regional land use planning agency; and

19 4. Federal land manager or Indian governing body whose land may be affected by the
20 emissions from the proposed source.

21 (2) For permit actions at a major source that are not subject to review under 401 KAR
22 51:017 or 401 KAR 51:052, the public notice shall be sent to:

23 (a) The permit applicant;

- 1 (b) The administrator of the U.S. EPA, through the appropriate regional office;
2 (c) Affected states; and
3 (d) All persons on the mailing list established~~[specified]~~ in Section 7 of this administrative
4 regulation.

5 (3) For permit actions at a synthetic minor or conditional major source, notice shall be sent
6 to:

- 7 (a) The permit applicant;
8 (b) The administrator of the U.S. EPA, through the appropriate regional office; and
9 (c) All persons on the mailing list established~~[specified]~~ in Section 7 of this administrative
10 regulation.

11 Section 7. Mailing List. (1) The Cabinet shall compile and maintain a mailing list of
12 persons who request to be notified of permit actions.

13 (2) The Cabinet may:

14 (a) Notify the public of the opportunity to be on the list on the Cabinet website at
15 <https://eec.ky.gov>~~[through periodic publication in the public press, state funded publications, or~~
16 ~~state law journals]~~; and

17 (b) Delete from the list persons who fail to show continued interest in receiving notice.

18 Section 8. Public Inspection of Documents. (1) During the public comment period, the
19 Cabinet shall make available for public inspection all information, except that which is
20 confidential, contained in the:

- 21 (a) Permit application;
22 (b) Draft permit; and
23 (c) Supporting materials.

1 (2) The information shall be made available at:

2 (a) The ~~[main office of the]~~ Division for Air Quality, 300 Sower Boulevard, Frankfort,
3 Kentucky 40601; and

4 (b) The Division for Air Quality Regional Office~~[Regional Office of the Division for Air~~
5 ~~Quality]~~ having jurisdiction over the source~~[-; and~~

6 ~~(c) The local public library or office of the county clerk in the county or counties where the~~
7 ~~source is located].~~

8 (3) The draft permit shall also be posted, for the duration of the public comment period, on
9 the internet at <https://eec.ky.gov>~~[For general permits, the information specified in subsection (1)~~
10 ~~of this section shall be made available in at least one (1) location of the cabinet's discretion].~~

11 Section 9. Affected States Review. Except as provided in subsection (3) of this section, for
12 permit actions that require affected state review, the cabinet shall provide the draft permit or permit
13 revision to affected states at the same time or before notice of the permit action is provided to the
14 general public.

15 (1) The Cabinet may accept a recommendation made by an affected state if the
16 recommendation:

17 (a) Is received during the public comment period established~~[specified]~~ in Section 2 of this
18 administrative regulation;

19 (b) Is applicable to the permit action; and

20 (c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR
21 Chapters 50 to 65.

22 (2) If the Cabinet does not accept a recommendation made by an affected state, the cabinet
23 shall provide a written notice to the affected state and the U.S. EPA that:

1 (a) Gives the reason for not accepting the recommendation; and

2 (b) Is submitted to the state no later than the date the proposed permit is submitted to the
3 U.S. EPA.

4 (3) For a minor permit revision at a major source, the Cabinet shall:

5 (a) [~~Shall~~] Provide notice to affected states with a brief description of the requested revision
6 within five (5) workdays after a complete permit application is received; and

7 (b) After submittal of a proposed minor permit revision to the U.S. EPA, [~~the cabinet~~]:

8 1. [~~Shall~~] Notify the affected state and the U.S. EPA if a recommendation is not accepted;

9 and

10 2. [~~Shall~~] Provide the reason for not accepting the recommendation.

11 Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the
12 Cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

13 (a) Has had an opportunity to review and comment on the permit action and has not
14 objected to issuance of the permit within the forty-five (45) day period for an objection; or

15 (b) Waives its right of review.

16 (2) The Cabinet shall provide a statement that sets forth the legal and factual basis for the
17 draft permit conditions, including references to applicable statutory or regulatory provisions, and
18 shall send the statement to the U.S. EPA and to any other person who requests it.

19 (3) The Cabinet shall provide the U.S. EPA with copies of the:

20 (a) Permit application, including attachments;

21 (b) Other permit-related information such as public comments, settlements, and decisions
22 from permit appeals;

23 (c) Proposed permit or proposed permit revision; and

1 (d) Final permit or final permit revision.

2 (4) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit a
3 summary form and the relevant portion of the permit application and compliance plan in lieu of
4 the complete application and compliance plan.

5 (5) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit the
6 draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

7 (a) The Cabinet shall provide the U.S. EPA with:

8 1. The permit application, draft permit or permit revision, and supporting information no
9 later than the first day of the public comment period; and

10 2. All timely submitted public comments after the close of the public comment period;

11 (b) The draft permit shall become the final permit or permit revision at the end of the U.S.
12 EPA's forty-five (45) day review, unless:

13 1. A substantial change is made in the permit or permit revision following the public
14 comment period; or

15 2. The U.S. EPA files an objection to the permit or permit revision.

16 (c) If a substantial change is made in the draft permit or permit revision, the Cabinet shall
17 make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for
18 another forty-five (45) day review period.

19 (6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA
20 shall:

21 (a) File a statement of objection, in writing, within forty-five (45) days after receiving the
22 permit or permit revision and supporting information;

1 (b) Include in the statement the reasons for the objection and a description of the permit
2 changes needed to resolve the objection; and

3 (c) Provide the permit applicant with a copy of the filed objection.

4 (7) After an objection is filed, the cabinet shall make the appropriate revisions and submit
5 a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the
6 objection is filed.

7 (8) If the Cabinet does not submit a revised proposed permit or permit revision within
8 ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.

9 (9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the
10 U.S. EPA to file an objection.

11 (a) The U.S. EPA shall file the citizen objection if the petition is:

12 1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day
13 review period; and

14 2. Based only on objections raised with reasonable specificity during the public comment
15 period, unless:

16 a. The petitioner can demonstrate that it was impractical to raise the objection within the
17 public comment period, or

18 b. The grounds for objection arose after the end of the public comment period.

19 (b) If the U.S. EPA objects to a permit action as a result of a petition filed, the Cabinet shall
20 not issue the permit until the U.S. EPA objection has been resolved, except that a petition for
21 review does not stay the effectiveness of a permit or its requirements if the permit was issued after
22 the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

23 (c) If the Cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1 1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the
2 procedures in 40 C.F.R.~~[CFR]~~ 70.7(g)(4) and (5);

3 2. The Cabinet shall, upon receipt of the U.S. EPA objection,~~[then]~~ issue a revised permit
4 that satisfies the U.S. EPA objection; and

5 3. The source shall not be in violation for failing to submit a complete and timely
6 application.

7 (10) To the extent possible, all information provided to the U.S. EPA shall be submitted in
8 an electronic format that is compatible with the U.S. EPA's national database management system.

9 (11) The Cabinet shall keep records of all information submitted to the U.S. EPA for a
10 period of five (5) years.

11 (12)(a) If the Cabinet is authorized by the source to submit confidential information to the
12 U.S. EPA, a claim of confidentiality shall accompany the relevant information.

13 (b) If the Cabinet is not authorized by the source to submit confidential information to the
14 U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a
15 claim of confidentiality.

401 KAR 52:100 approved for filing.

11/14/2019

Date


Charles G. Snaveley, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation and the State Implementation Plan (SIP) Revision package for the amended administrative regulation will be held on January 30, 2020 at 10:00 A.M. (Eastern Time) in Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2020 five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx>. 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 until January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

This administrative regulation is contained in Kentucky's SIP approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective.

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:

Matthew Dollar, Environmental Scientist
Division for Air Quality
300 Sower Blvd.
Frankfort, KY 40601
Phone: (502) 782-6468
Fax: (502) 564-4245
E-mail: matthew.dollar@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 401 KAR 52:100

Contact person: Matthew Dollar

Phone: (502) 782-6468

E-mail: matthew.dollar@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the procedures used by the Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to retain delegation of authority for the implementation and enforcement of the standards established in 40 C.F.R. Parts 51 and 70 related to public participation in federally-enforceable permit proceedings.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation conforms to the statute by establishing the review procedures for permit actions by the public, affected states, and the U.S. EPA.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by enabling the Cabinet to continue to implement requirements consistent with the federal standards for review of permit actions by the public, affected states, and the U.S. EPA.
- (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: The amendment to this administrative regulation will establish alternative means of publication for public notices, public hearings, and public comment periods in relation to permit proceedings.

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting procedures consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.
 - (d) How the amendment will assist in the effective administration of statutes: The amendment adopts procedures to be consistent with the requirements of 40 C.F.R. Part 70.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.

This administrative regulation contains the procedures to be used by the Cabinet when providing an opportunity for federally-enforceable permits and permit revisions to be reviewed by the public, affected states, and the U.S. EPA. Approximately 117 federally-enforceable permits are submitted for review each year.

- (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 public, affected states, and U.S. EPA will be able to access documentation related to permit proceedings on the internet. Using the internet will provide constant access to these documents.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no cost associated with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the Cabinet will decrease expenditures associated with publishing public notices in newspapers and at local libraries or county clerk offices. The public will have access to information on the internet from home.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation initially.
 - (b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation on a continuing basis.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of the proposed amendment to this administrative regulation.
- (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 the proposed amendment to 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 fees, nor does it directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? (Explain why or why not) Yes. The administrative regulation establishes separate public notice procedures for different permit actions.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 401 KAR 52:100
Contact person: Matthew Dollar
Phone: (502) 782-6468
E-mail: matthew.dollar@ky.gov

1. Federal statute or regulation constituting the federal mandate.

The federal mandate is contained in 40 C.F.R. Parts 51 and 70, pursuant to 42 U.S.C. 7410, 7661-7661f.

2. State compliance standards.

This administrative regulation establishes procedures for federally-enforceable permit actions to be reviewed by the public, affected states, and the U.S. EPA.

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

40 C.F.R. Part 70 requires public notice on all permit proceedings, significant modifications, and renewals. These notices are to include an opportunity for public comment and a public hearing on the draft permit. 40 C.F.R. Part 70 also includes minimum timeframes for public comment and response to comment.

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

The proposed amendment to the administrative regulation will not impose stricter requirements or additional or different responsibilities or requirements than the federal mandate.

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

Stricter standards or additional or different responsibilities or requirements are not imposed.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

Administrative Regulation: 401 KAR 52:100

Contact person: Matthew Dollar

Phone Number: (502) 782-6468

E-mail: matthew.dollar@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?

The Division for Air Quality will continue to provide for public notice of federally-enforceable permit actions in accordance with this administrative regulation.

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

KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 51, 70, 42 U.S.C. 7410, 7661-7661f

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 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?

The proposed amendment to the administrative regulation will not generate revenue in the first year. However, public notice on the internet instead of a newspaper is expected to save the agency approximately \$30,000 each year.

- (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 amendment to the administrative regulation will not generate revenue in subsequent years. However, public notice on the internet instead of a newspaper is expected to save the agency approximately \$30,000 each year.

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

The Cabinet's current operating budget will be used to administer this program for the first year.

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

The Cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

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

Other Explanation: There is no further explanation.



ANDY BESHEAR
GOVERNOR

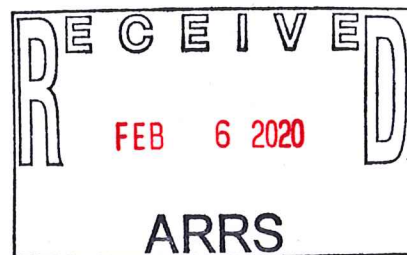
REBECCA W. GOODMAN
SECRETARY

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-2150
TELEFAX: 502-564-4245

February 6, 2020



Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
029, Capitol Annex
Frankfort KY 40601

Re: 401 KAR 52:100. Public, affected state, and U.S. EPA Review

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by the above referenced administrative regulation, the Energy and Environment Cabinet, Division for Air Quality, proposes the attached amendments.

Sincerely,

A handwritten signature in blue ink that reads "Melissa Duff".

Melissa Duff, Director
Division for Air Quality
300 Sower Boulevard, 2nd Floor
Frankfort, Kentucky 40601

MKD/md
Attachments

Final Suggested Substitute

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2, Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [40 C.F.R. Parts 51, 70,] 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the~~[requires the Environmental and Public Protection]~~ cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the cabinet to provide for the review of **federally enforceable**~~[federally-enforceable]~~ permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions established~~[specified]~~ in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

- (a) Provide a minimum of thirty (30) days for public comment; and
- (b) Prepare a response to the comments received during the comment period.

(2) The comment period ***shall***:

(a) ***[Shall]*** Begin on the date the public notice is posted on the ***cabinet's Web site***~~[Cabinet website]~~ at <https://eec.ky.gov>~~[published in the newspaper]~~; and

(b) ***[Shall]*** End thirty (30) days after the date the public notice is posted on the ***cabinet's Web site***~~[Cabinet website]~~ at <https://eec.ky.gov>~~[publication date]~~.

(3) The cabinet shall consider:

- (a) All written comments received during the public comment period;
- (b) Comments received in alternate format to accommodate persons with disabilities;

and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public

and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a public hearing shall not require an extension of the public comment period.~~;~~ **however,** The cabinet may allow additional time after the close of a public hearing for public hearing participants to submit **[their]** comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the **cabinet's Web site**[~~Cabinet website~~] at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.

(4) Any person may submit statements or data during the public hearing concerning the permit action.

(5) The cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

(c) Make available to the public at a reasonable reproduction cost;

1. A **[tape]** recording or written transcript of the public hearing; and

2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The cabinet shall provide public notice of a public comment period and any scheduled public hearing on the **cabinet's Web site**[~~Cabinet website~~] at <https://eec.ky.gov>. This shall be the cabinet's consistent method of public notice.

~~(2)~~ ~~[by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for a permit.~~

~~(2)~~ ~~The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.~~

~~(3)~~ The cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.

Section 5. Information Included in Public Notice. The public notice shall include ~~the~~

following information]:

(1) **The** contact name and address of the Energy and Environment~~[Environmental and Public Protection]~~ Cabinet, Department ~~for~~~~[of]~~ Environmental Protection, Division for Air Quality;

(2) **The** name and address of the permit applicant and, if different, the name and address of the facility;

(3) **A** brief description of the business conducted at the facility and the activity involved in the permit action;

(4) **A** brief description of the comment procedures, including how to request a public hearing;

(5) **The** date, time, and place of the public hearing, if one (1) has been scheduled;

(6) **The** end date of the public comment period;

(7) **The** end date of the U.S. EPA's review period;

(8) **A** reference to the dates of previous public notices relating to the permit;

(9) **A** description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, **the** degree of increment consumption expected to occur; and

(11) **The** name, address, and telephone number where interested persons may obtain~~[the following information]:~~

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as established~~[specified]~~ in this section. (1) For permit actions~~[that are]~~ subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list established~~[specified]~~ in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source, **as established in 40 C.F.R. 51.165.**

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list established[specified] in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office; and

(c) All persons on the mailing list established[specified] in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The cabinet ~~shall~~**[may]**:

(a) Notify the public of the opportunity to be on the list on the **cabinet's Web site[Cabinet website]** at <https://eec.ky.gov>~~[through periodic publication in the public press, state-funded publications, or state law journals];~~ and

(b) Delete from the list persons who fail to **respond to the cabinet's request to** show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

(a) Permit application;

(b) Draft permit; and

(c) Supporting materials.

(2) The information shall be made available at:

(a) ~~The[main office of the]~~ Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and

(b) The Division for Air Quality Regional Office~~[Regional Office of the Division for Air Quality]~~ having jurisdiction over the source~~[-and~~

~~(c)The local public library or office of the county clerk in the county or counties where the source is located].~~

(3) The draft permit shall also be posted, for the duration of the public comment period, on the **cabinet's Web site[internet]** at <https://eec.ky.gov>~~[For general permits, the information specified in subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion].~~

Section 9. Affected States Review. Except as **established[provided]** in subsection (3) of this section, for permit actions that require affected state review, the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public. (1) The cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the public comment period established[specified] in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 **through[te]** 65.

(2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the cabinet shall:

(a) ~~[Shall]~~ Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA ~~[,] [the cabinet]~~:

1. ~~[Shall]~~ Notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. ~~[Shall]~~ Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.

(3) The cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or proposed permit revision; and

(d) Final permit or final permit revision.

(4) ~~[On a case-by-case basis and]~~With prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) ~~[On a case-by-case basis and]~~With prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the public comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA **will[may]** issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA **will[shall]** file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period, or

b. The grounds for objection arose after the end of the public comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA ~~will~~**may** modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (5);

2. The cabinet shall, upon receipt of the U.S. EPA objection,~~[then]~~ issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The cabinet shall keep records of all information submitted to the U.S. EPA for a period of **at least** five (5) years.

(12)(a) If the cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

Regulation

401 KAR 52:100

Effective June 2, 2020

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2, Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the cabinet to provide for the review of federally enforceable permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions established in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

(a) Provide a minimum of thirty (30) days for public comment; and

(b) Prepare a response to the comments received during the comment period.

(2) The comment period shall:

(a) Begin on the date the public notice is posted on the cabinet's Web site at <https://eec.ky.gov>; and

(b) End thirty (30) days after the date the public notice is posted on the cabinet's Web site at <https://eec.ky.gov>.

(3) The cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Comments received in alternate format to accommodate persons with disabilities; and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a public hearing shall not require an extension of the public comment period. The cabinet may allow additional time after the close of a public hearing for public hearing participants to submit comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the cabinet's Web site at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.

(4) Any person may submit statements or data during the public hearing concerning the permit action.

(5) The cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

(c) Make available to the public at a reasonable reproduction cost;

1. A recording or written transcript of the public hearing; and

2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The cabinet shall provide public notice of a public comment period and any scheduled public hearing on the cabinet's Web site at <https://eec.ky.gov>. This shall be the cabinet's consistent method of public notice.

(2) The cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.

Section 5. Information Included in Public Notice. The public notice shall include:

(1) The contact name and address of the Energy and Environment Cabinet, Department for Environmental Protection, Division for Air Quality;

(2) The name and address of the permit applicant and, if different, the name and address of the facility;

(3) A brief description of the business conducted at the facility and the activity involved in the permit action;

(4) A brief description of the comment procedures, including how to request a public hearing;

(5) The date, time, and place of the public hearing, if one (1) has been scheduled;

(6) The end date of the public comment period;

(7) The end date of the U.S. EPA's review period;

(8) A reference to the dates of previous public notices relating to the permit;

(9) A description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, the degree of increment consumption expected to occur; and

(11) The name, address, and telephone number where interested persons may obtain:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as established in this section. (1) For permit actions subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list established in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source, as established in 40 C.F.R. 51.165.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list established in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office; and

(c) All persons on the mailing list established in Section 7 of this

administrative regulation.

Section 7. Mailing List. (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The cabinet shall:

(a) Notify the public of the opportunity to be on the list on the cabinet's Web site at <https://eec.ky.gov>; and

(b) Delete from the list persons who fail to respond to the cabinet's request to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

(a) Permit application;

(b) Draft permit; and

(c) Supporting materials.

(2) The information shall be made available at:

(a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and

(b) The Division for Air Quality Regional Office having jurisdiction over the source.

(3) The draft permit shall also be posted, for the duration of the public comment period, on the cabinet's Web site at <https://eec.ky.gov>.

Section 9. Affected States Review. Except as established in subsection (3) of this section, for permit actions that require affected state review, the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public. (1) The cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the public comment period established in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 through 65.

(2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the cabinet shall:

(a) Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA:

1. Notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.

(3) The cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or proposed permit revision; and

(d) Final permit or final permit revision.

(4) With prior U.S. EPA approval, the cabinet may submit a

summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) With prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the public comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA will issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA will file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period, or

b. The grounds for objection arose after the end of the public comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA will modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (5);

2. The cabinet shall, upon receipt of the U.S. EPA objection, issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The cabinet shall keep records of all information submitted to the U.S. EPA for a period of at least five (5) years.

(12)(a) If the cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confi-

dentiality. (27 Ky.R. 644; 1306; 1798; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; TAm eff. 7-8-2016; 46 Ky.R. 1937, 2399; eff. 6-2-2020.)

APPENDIX B

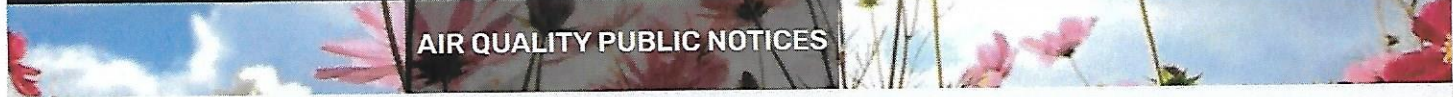
Public Notice Requirements

DAQ website public notice

Regulation public notice

Letter to concerned citizens

DAQ Website Public Notice



AIR QUALITY PUBLIC NOTICES

Public Hearings

December 23, 2019

The Kentucky Energy and Environment Cabinet will conduct a public hearing on December 23, 2019 at 10:00 a.m. (EST) in Training Room D at 500 Sower Boulevard, Frankfort, Kentucky. Pursuant to 401 KAR 50.020, Air Emissions Fee, the Division has the authority to collect Title V air emissions fees necessary to fund the state air permit program. The purpose of this public hearing is to receive comments on establishing the appropriate Title V air emissions fee necessary to cover all reasonable costs of administering the permit program.

Comments should be sent to Matthew.Dollar@ky.gov, Program Planning and Administration Branch, Division for Air Quality, 500 Sower Boulevard, Frankfort, KY 40601 and must be received by the close of the hearing on December 23, 2019. As the considered part of the hearing record. For more information, please refer to the full public hearing notice.

- Public Hearing Notice, Title V Air Emission Fees

January 30, 2020

The Kentucky Energy and Environment Cabinet will conduct a public hearing on January 30, 2020 at 10:00 a.m. in Conference Room 204 at 500 Sower Boulevard, Frankfort, Kentucky. In addition to receiving comments on 401 KAR 43.010 as noted below, this hearing will be held to receive comments on the following proposed regulation:

- 401 KAR 52.010, Public, affected state, and US EPA review

The proposed amendment to this administrative regulation will update the review procedures of federally enforceable permits by the public, state, and the US EPA. Final amendments to the administrative regulation will be submitted to the US EPA as part of a SIP revision.

Comments should be sent to Matthew.Dollar@ky.gov, Regulation Development Section, Division for Air Quality, 500 Sower Boulevard, Frankfort, KY 40601 and must be received by January 31, 2020 to be considered part of the public record. For more information, please refer to the full public hearing notice.

- Public Hearing Notice, 401 KAR 52.010

Regulation Public Notice

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation and the State Implementation Plan (SIP) Revision package for the amended administrative regulation will be held on January 30, 2020 at 10:00 A.M. (Eastern Time) in Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2020 five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx>. 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 until January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

This administrative regulation is contained in Kentucky's SIP approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective.

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:

Matthew Dollar, Environmental Scientist
Division for Air Quality
300 Sower Blvd.
Frankfort, KY 40601
Phone: (502) 782-6468
Fax: (502) 564-4245
E-mail: matthew.dollar@ky.gov

**NOTICE OF PUBLIC HEARING
KENTUCKY DIVISION FOR AIR QUALITY
KENTUCKY STATE IMPLEMENTATION PLAN REVISION
PROPOSED REGULATORY AMENDMENT**

The Kentucky Division for Air Quality will conduct a public hearing on January 30, 2020, at 10:00 a.m. in Conference Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. This hearing will be held to receive comments on the following proposed regulation:

401 KAR 52:100. Public, affected state, and U.S. EPA review.

The proposed amendment to this administrative regulation will update the review procedures of federally-enforceable permits by the public, states, and U.S. EPA. Final amendments to the administrative regulation will be submitted to U.S. EPA as part of a SIP revision.

This hearing is open to the public and all interested persons will be given the opportunity to present testimony. To assure that all comments are accurately recorded, the Division requests that oral comments presented at the hearing are also provided in written form, if possible. It is not necessary that the hearing be held or attended in order for persons to comment on the proposed regulatory amendments. If no request for a public hearing is received by January 24, 2020, the hearing will be cancelled, and notice of the cancellation will be posted at <https://eec.ky.gov/Environmental-Protection/Air/Pages/public-notices.aspx>. Written comments should be sent to the contact person and must be received by January 31, 2020, to be considered part of the public record.

The Energy and Environment Cabinet does not discriminate on the basis of race, color, national origin, sex, age, religion, or disability and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs, and activities.

The full text of the proposed amendment is available for public inspection and copying during regular business hours (8:00 a.m. to 4:30 p.m., local time) at the Division for Air Quality, 300 Sower Boulevard, Frankfort, Ky. Any individual requiring copies may submit a request to the Division for Air Quality in writing, by telephone, by FAX, or e-mail. Requests for copies should be directed to the contact person. The proposed regulation can be accessed at: <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM>.

CONTACT PERSON: Matthew Dollar, Regulation Development Section, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601. The phone number is (502) 782-6468, and email address is matthew.dollar@ky.gov.

Letter to Concerned Citizens



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

ANTHONY R. HATTON
COMMISSIONER

**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-2150
TELEFAX: 502-564-4245

November 19, 2019

Dear Concerned Citizen,

Pursuant to the public notification requirements of KRS 13A.270, the Kentucky Division for Air Quality has enclosed for your information the following proposed administrative regulation: **401 KAR 52:100 Public, affected state, and U.S. EPA review.**

The Division filed the proposed administrative regulation with the Legislative Research Commission on November 14, 2019. The proposed administrative regulation will be published in the December 1, 2019 Administrative Register of Kentucky. Full text of the filed administrative regulation can also be viewed on the Legislative Research Commission's web page at <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM>.

The regulation may also be found at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Proposed-Regulation-Changes.aspx>.

Written comments that identify anticipated effects of the proposed amended administrative regulation will be accepted through January 31, 2020. Written comments should be submitted to:

Matthew Dollar
Division for Air Quality
Program Planning and Administration Branch
300 Sower Boulevard
Frankfort, KY 40601

Written comments may also be submitted by e-mail to Matthew.Dollar@ky.gov. A public hearing is scheduled for January 30, 2020 at 10:00 a.m. at 300 Sower Boulevard, Frankfort, KY 40601. To waive future notifications, please contact me. I can be reached at (502) 782-6468, or by e-mail at Matthew.Dollar@ky.gov if you have any questions or concerns.

Thank you,

Matthew Dollar
Environmental Scientist III
Kentucky Energy and Environment Cabinet
Division for Air Quality
300 Sower Blvd.
Frankfort, KY 40601

APPENDIX C

Administrative Register of Kentucky, December 1, 2019

Administrative Register of Kentucky, March 1, 2020

Administrative Register of Kentucky, July 1, 2020

Administrative Register of Kentucky

December 1, 2019



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, November 15, 2019.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on December 16, 2019, at 1:00 p.m. in room 129 Capitol Annex.

ARRS Tentative Agenda - 1769 [Updated as needed online](#)

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Department of Insurance
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[013 KAR 004:010](#). State Authorization Reciprocity Agreement 1913

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[101 KAR 002:120](#). Incentive programs 1915

Department of Revenue

[103 KAR 026:080](#). Dentists and dental laboratories..... 1919

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Kentucky Retirement Systems

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Board of Pharmacy

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Board of Dentistry

[201 KAR 008:550](#). Anesthesia and sedation 1928

Department for Environmental Protection

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Parole Board

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Kentucky Fire Commission

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Department of Insurance

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Department for Public Health

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Kentucky Retirement Systems

[105 KAR 001:149](#). Quasi-governmental employer cessation window..... 1997

[105 KAR 001:445](#). Electronic ballots in Trustee elections . 2001

Department for Environmental Protection

[401 KAR 005:091](#). Repeal of 401 KAR 005:090 2003

Kentucky Fire Commission

[739 KAR 002:150](#). Alan "Chip" Terry Professional Development and Wellness Program 2005

Department for Medicaid Services

[907 KAR 010:840](#). Hospital Rate Improvement Program 2006

2020 at 10:00am, Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. 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 Amendment. Written comments shall be accepted through January 31, 2020. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for permits to perform sedation or anesthesia.

(b) The necessity of this administrative regulation: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

(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: This amendment updates the requirements for permits to perform sedation or anesthesia.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the administrative regulation up-to-date with the current legal and regulatory requirements and best practices for permits to perform sedation or anesthesia.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the requirements for permits to perform sedation or anesthesia are up-to-date in compliance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky and any individually qualified anesthesia providers who provide services to patients in cooperating with an operating dentist. Patients who are administered sedation or anesthesia by a Kentucky licensed dentist may also be affected.

(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 an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to administer sedation or anesthesia in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

(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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.035.

(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? None.

(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? None.

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2, Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [40 C.F.R. Parts 51, 70,] 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 ~~authorizes the~~[requires the Environmental and Public Protection] Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the

VOLUME 46, NUMBER 6— DECEMBER 1, 2019

Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions ~~established~~specified in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

(a) Provide a minimum of thirty (30) days for public comment; and

(b) Prepare a response to the comments received during the comment period.

(2) The comment period:

(a) Shall begin on the date the public notice is posted on the cabinet Web site at <https://eec.ky.gov>~~published in the newspaper~~; and

(b) Shall end thirty (30) days after the date the public notice is posted on the cabinet Web site at <https://eec.ky.gov>~~publication date~~.

(3) The Cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Comments received in alternate format to accommodate persons with disabilities; and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The Cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a public hearing shall not require an extension of the public comment period; however, the cabinet may allow additional time after the close of a public hearing for public hearing participants to submit their comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the cabinet Web site at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.

(4) Any person may submit statements or data during the public hearing concerning the permit action.

(5) The Cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The Cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

(c) Make available to the public at a reasonable reproduction cost;

1. A tape recording or written transcript of the public hearing; and

2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The Cabinet shall provide public notice of a public comment period and any scheduled public hearing on the cabinet Web site at <https://eec.ky.gov>. This shall be the cabinet's consistent method of public notice.

~~(2) [by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for~~

~~a permit.~~

~~(2) The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.~~

~~(3) The Cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.~~

Section 5. Information Included in Public Notice. The public notice shall include the following information:

(1) Contact name and address of the Energy and Environment~~Environmental and Public Protection~~ Cabinet, Department ~~for~~of Environmental Protection, Division for Air Quality;

(2) Name and address of the permit applicant and, if different, the name and address of the facility;

(3) A brief description of the business conducted at the facility and the activity involved in the permit action;

(4) A brief description of the comment procedures, including how to request a public hearing;

(5) Date, time, and place of the public hearing, if one (1) has been scheduled;

(6) The end date of the public comment period;

(7) The end date of the U.S. EPA's review period;

(8) Reference to the dates of previous public notices relating to the permit;

(9) Description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, the degree of increment consumption expected to occur; and

(11) Name, address, and telephone number where interested persons may obtain the following information:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as ~~established~~specified in this section.

(1) For permit actions~~that are~~ subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list establishedspecified in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list establishedspecified in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office; and

(c) All persons on the mailing list establishedspecified in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The Cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The Cabinet may:

(a) Notify the public of the opportunity to be on the list on the cabinet Web site at <https://eec.ky.gov> through periodic publication in the public press, state-funded publications, or state-law journals; and

(b) Delete from the list persons who fail to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the Cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

- (a) Permit application;
- (b) Draft permit; and
- (c) Supporting materials.

(2) The information shall be made available at:

(a) ~~The main office of the~~ Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and

(b) ~~The Division for Air Quality Regional Office [Regional Office of the Division for Air Quality]~~ having jurisdiction over the source; and

~~(c) The local public library or office of the county clerk in the county or counties where the source is located~~.

(3) The draft permit shall also be posted, for the duration of the public comment period, on the internet at <https://eec.ky.gov> [For general permits, the information specified in subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion].

Section 9. Affected States Review. Except as provided in subsection (3) of this section, for permit actions that require affected state review, the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public. (1) The Cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the public comment period established [specified] in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 to 65.

(2) If the Cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the Cabinet shall:

(a) ~~[Shall]~~ Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA, ~~[the cabinet]~~:

1. ~~[Shall]~~ Notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. ~~[Shall]~~ Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the Cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The Cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person

who requests it.

(3) The Cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or proposed permit revision; and

(d) Final permit or final permit revision.

(4) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) On a case-by-case basis and with prior U.S. EPA approval, the Cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The Cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the public comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the Cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the Cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA may issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA shall file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period, or

b. The grounds for objection arose after the end of the public comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the Cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the Cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA may modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (5);

2. The Cabinet shall, upon receipt of the U.S. EPA objection, [then] issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The Cabinet shall keep records of all information submitted to the U.S. EPA for a period of five (5) years.

(12)(a) If the Cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the Cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: November 14, 2019

FILED WITH LRC: November 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation and the State Implementation Plan (SIP) Revision package for the amended administrative regulation will be held on January 30, 2020 at 10:00 a.m. (Eastern Time) in Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 2020 five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be cancelled, and notification of the cancellation shall be posted at <https://eec.ky.gov/Environmental-Protection/Air/Pages/Public-Notices.aspx>. 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 until January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. This administrative regulation is contained in Kentucky's SIP approved by US EPA. The SIP revision package for the amended regulation will be submitted to US EPA once the proposed amendments to this administrative regulation become effective. 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: Matthew Dollar, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6468, fax (502) 564-4245, email matthew.dollar@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matthew Dollar

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and the U.S. EPA.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to retain delegation of authority for the implementation and enforcement of the standards established in 40 C.F.R. Parts 51 and 70 related to public participation in federally-enforceable permit proceedings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation conforms to the statute by establishing the review procedures for permit actions by the public, affected states, and the U.S. EPA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by enabling the Cabinet to continue to implement requirements consistent with the federal standards for review of permit actions by the public, affected states, and the U.S. EPA.

(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: The amendment to this administrative regulation will establish alternative means of publication for public notices, public hearings, and public comment periods in relation to permit proceedings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting procedures consistent with 42 U.S.C. 7661a(b)(6) and 42 U.S.C. 7661d.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts procedures to be consistent with the requirements of 40 C.F.R. Part 70.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation contains the procedures to be used by the Cabinet when providing an opportunity for federally-enforceable permits and permit revisions to be reviewed by the public, affected states, and the U.S. EPA. Approximately 117 federally-enforceable permits are submitted for review each year.

(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 public, affected states, and U.S. EPA will be able to access documentation related to permit proceedings on the internet. Using the internet will provide constant access to these documents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the Cabinet will decrease expenditures associated with publishing public notices in newspapers and at local libraries or county clerk offices. The public will have access to information on the internet from home.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this proposed amendment to this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of the proposed amendment to this administrative regulation.

(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 the proposed amendment to 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 fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative regulation establishes separate public notice procedures for different permit actions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in 40 C.F.R. Parts 51

and 70, pursuant to 42 U.S.C. 7410, 7661-7661f.

2. State compliance standards. This administrative regulation establishes procedures for federally-enforceable permit actions to be reviewed by the public, affected states, and the U.S. EPA.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 70 requires public notice on all permit proceedings, significant modifications, and renewals. These notices are to include an opportunity for public comment and a public hearing on the draft permit. 40 C.F.R. Part 70 also includes minimum timeframes for public comment and response to comment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment to the administrative regulation will not impose stricter requirements or additional or different responsibilities or requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or additional or different responsibilities or requirements are not imposed.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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? The Division for Air Quality will continue to provide for public notice of federally-enforceable permit actions in accordance with this administrative regulation.

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

KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 51, 70, 42 U.S.C. 7410, 7661-7661f

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 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? The proposed amendment to the administrative regulation will not generate revenue in the first year. However, public notice on the internet instead of a newspaper is expected to save the agency approximately \$30,000 each year.

(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 amendment to the administrative regulation will not generate revenue in subsequent years. However, public notice on the internet instead of a newspaper is expected to save the agency approximately \$30,000 each year.

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

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

Other Explanation: There is no further explanation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 63:010. Fugitive emissions.

RELATES TO: KRS[Chapter] 224.20, 224.10-100, 42 U.S.C. 7407

STATUTORY AUTHORITY: KRS 224.10-100(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the[requires the Environmental and Public Protection] Cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements[provides] for the control of fugitive emissions.

Section 1.[Applicability. The provisions of this administrative regulation are applicable to each affected facility as defined in Section 2 of this administrative regulation.

—Section 2. Definitions. Except as defined in this section, terms used in this administrative regulation[not defined herein] shall have the meaning given to them in 401 KAR 50:010. (1) "Affected facility" means an apparatus, operation, or road which emits or may emit fugitive emissions[provided that the fugitive emissions from such facility are] not elsewhere subject to an opacity standard within the administrative regulations of the Division for Air Quality.

(2) "Classification date" means June 29, 1979.

(3) "Emission time" means the accumulated amount of time that emissions are visible during the observation period.

(4) "Fugitive emissions" means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(5) "Observation period" means the accumulated time period during which observations are conducted.

(6)[(3)] "Open air" means the air outside buildings, structures, and equipment.[(4) "Classification date" means June 29, 1979.]

Section 2. Applicability. The provisions of this administrative regulation shall be applicable to each affected facility as defined in Section 1 of this administrative regulation.

Section 3. Standards for Fugitive Emissions. (1) A[No] person shall not cause, suffer, or allow any material to be handled, processed, transported, or stored; a building or its appurtenances to be constructed, altered, repaired, or demolished;[+] or a road to be used without taking reasonable precaution to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, when applicable[, but not be limited to the following]:

(a) Use, where possible, of water or suitable chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application and maintenance of asphalt, oil, water, or suitable chemicals on roads, materials stockpiles, and other surfaces which can create airborne dusts;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials, or the use of water sprays or other measures to suppress the dust emissions during handling. Adequate containment methods shall be employed during sandblasting or other similar operations;

(d) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;

(e) The maintenance of paved roadways in a clean condition;

or
(f) The prompt removal of earth or other material from a paved street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water.

(2) A[No] person shall not cause, suffer, or allow[permit the discharge of] visible fugitive dust emissions beyond the lot line of the property on which the emissions originate, as determined by Reference Method 22 of Appendix A in 40 C.F.R. Part 60, for:

(a) More than five (5) minutes of emission time during any sixty

Administrative Register of Kentucky

March 1, 2020



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 14, 2020.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on March 9, 2020, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 2381 [Updated as needed online](#)

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a person shall record in writing the:

- (a) Species;
 - (b) Date;
 - (c) County where taken; and
 - (d) Sex of the river otter or bobcat.
- (2) The information required by subsection (1)(a) through (d) of this section shall be documented on:

- (a) The hunter's log section on the reverse side of a license or permit;
 - (b) A hunter's log printed from the department's Web site at fw.ky.gov;
 - (c) A hunter's log available from any KDSS agent; or
 - (d) An index card or similar card.
- (3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 13. Checking a River Otter or Bobcat. (1) A person who harvests a river otter or bobcat shall check each animal by:

(a) Completing the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the river otter or bobcat is recovered;
2. Prior to processing the carcass; and
3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and

(b) Writing the check-in confirmation number on the hunter's log as established in this section [~~13 of this administrative regulation~~].

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and
 2. A street address where the tag is to be mailed; or
- (b) Complete the CITES tag request form on the department's Web site at fw.ky.gov.

(3) A person who is transferring a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the:

- (a) Confirmation number;
- (b) Hunter or trapper's name; and
- (c) Hunter or trapper's phone number.

(4) A person shall not knowingly provide false information when:

- (a) Completing the hunter's log;
 - (b) Checking a river otter or bobcat;
 - (c) Completing a CITES tag request form; or
 - (d) Creating a handmade carcass tag.
- (5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag issued by the department shall be prohibited.

Section 14. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

- (a) Fur buyer;
- (b) Fur processor; or
- (c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof without a proper carcass tag or CITES tag as established in Section ~~13~~14 of this administrative regulation; and

(b) Retain the information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

1. Name;

2. Address;
3. Confirmation number or CITES tag number; and
4. Date received for each river otter or bobcat.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, February 10, 2020)**

401 KAR 52:100. Public, affected state, and U.S. EPA review.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 2, Part 51, Part 70, 42 U.S.C. 7410, 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, [40 C.F.R. ~~Parts 51, 70,~~] 42 U.S.C. 7410, 7661-7661f

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the~~requires the~~ Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the procedures used by the cabinet to provide for the review of federally enforceable~~federally-enforceable~~ permits by the public, affected states, and the U.S. EPA.

Section 1. Applicability. This administrative regulation shall apply to the permit actions established~~specified~~ in 401 KAR 52:020 and 401 KAR 52:030 that require public, affected state, and U.S. EPA review.

Section 2. Public Comment Period. (1) For permit actions that require public review, the cabinet shall:

(a) Provide a minimum of thirty (30) days for public comment; and

(b) Prepare a response to the comments received during the comment period.

(2) The comment period shall:

(a) [Shall]Begin on the date the public notice is posted on the cabinet's Web site~~Cabinet website~~ at https://eec.ky.gov~~published in the newspaper~~; and

(b) [Shall]End thirty (30) days after the date the public notice is posted on the cabinet's Web site~~Cabinet website~~ at https://eec.ky.gov~~publication date~~.

(3) The cabinet shall consider:

(a) All written comments received during the public comment period;

(b) Comments received in alternate format to accommodate persons with disabilities; and

(c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.

(4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

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Section 3. Public Hearing. (1) A public hearing shall be held if the cabinet determines that:

(a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or

(b) The permit action is of significant interest to the public.

(2) A request for a public hearing shall not require an extension of the public comment period. ~~;~~ ~~however,~~ The cabinet may allow additional time after the close of a public hearing for public hearing participants to submit ~~their~~ comments in writing.

(3) If a public hearing is held, the cabinet shall:

(a) Provide public notice on the cabinet's Web site[Cabinet website] at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and

(b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.

(4) Any person may submit statements or data during the public hearing concerning the permit action.

(5) The cabinet may:

(a) Set reasonable limits on the time allowed for oral statements; and

(b) Require that statements be submitted in writing.

(6) The cabinet shall:

(a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;

(b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and

(c) Make available to the public at a reasonable reproduction cost;

1. A ~~tape~~ recording or written transcript of the public hearing; and

2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice. (1) The cabinet shall provide public notice of a public comment period and any scheduled public hearing on the cabinet's Web site[Cabinet website] at <https://eec.ky.gov>. This shall be the cabinet's consistent method of public notice.

~~(2) [by prominent publication in the newspaper having the largest general circulation in the area where a facility is applying for a permit.~~

~~(2) The newspaper publication may be a paid advertisement, legal notice, or other appropriate format as determined by the cabinet.~~

~~(3) The cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.~~

Section 5. Information Included in Public Notice. The public notice shall include ~~the following information~~:

(1) ~~The~~ contact name and address of the Energy and Environment[Environmental and Public Protection] Cabinet, Department ~~for~~[of] Environmental Protection, Division for Air Quality;

(2) ~~The~~ name and address of the permit applicant and, if different, the name and address of the facility;

(3) ~~A~~ brief description of the business conducted at the facility and the activity involved in the permit action;

(4) ~~A~~ brief description of the comment procedures, including how to request a public hearing;

(5) ~~The~~ date, time, and place of the public hearing, if one (1) has been scheduled;

(6) ~~The~~ end date of the public comment period;

(7) ~~The~~ end date of the U.S. EPA's review period;

(8) ~~A~~ reference to the dates of previous public notices relating to the permit;

(9) ~~A~~ description of any emission change involved in a permit revision;

(10) For permits subject to review under 401 KAR 51:017, ~~the~~ degree of increment consumption expected to occur; and

(11) ~~The~~ name, address, and telephone number where

interested persons may obtain ~~the following information~~:

(a) Copies of the draft permit or permit revision;

(b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and

(c) Other materials available to the cabinet that are relevant to the permit decision.

Section 6. Distribution of Public Notice. Copies of the public notice shall be distributed as established[specified] in this section.

(1) For permit actions[that are] subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states;

(d) All persons on the mailing list established[specified] in Section 7 of this administrative regulation; and

(e) The officials and agencies having authority over the area where the source will be located, as follows:

1. Local air pollution control agencies;

2. The chief executive of the city and county;

3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source, as established in 40 C.F.R. 51.165.

(2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office;

(c) Affected states; and

(d) All persons on the mailing list established[specified] in Section 7 of this administrative regulation.

(3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:

(a) The permit applicant;

(b) The administrator of the U.S. EPA, through the appropriate regional office; and

(c) All persons on the mailing list established[specified] in Section 7 of this administrative regulation.

Section 7. Mailing List. (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.

(2) The cabinet ~~shall~~ ~~may~~:

(a) Notify the public of the opportunity to be on the list on the cabinet's Web site[Cabinet website] at <https://eec.ky.gov> [through periodic publication in the public press, state-funded publications, or state law journals]; and

(b) Delete from the list persons who fail to respond to the cabinet's request to show continued interest in receiving notice.

Section 8. Public Inspection of Documents. (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:

(a) Permit application;

(b) Draft permit; and

(c) Supporting materials.

(2) The information shall be made available at:

(a) The ~~main office of the~~ Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and

(b) The Division for Air Quality Regional Office [Regional Office of the Division for Air Quality] having jurisdiction over the source; and

(c) ~~The local public library or office of the county clerk in the county or counties where the source is located~~.

(3) The draft permit shall also be posted, for the duration of the public comment period, on the cabinet's Web site[internet] at <https://eec.ky.gov> [For general permits, the information specified in

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subsection (1) of this section shall be made available in at least one (1) location of the cabinet's discretion].

Section 9. Affected States Review. Except as ~~established~~**provided** in subsection (3) of this section, for permit actions that require affected state review, the cabinet shall provide the draft permit or permit revision to affected states at the same time or before notice of the permit action is provided to the general public. (1) The cabinet may accept a recommendation made by an affected state if the recommendation:

(a) Is received during the public comment period ~~established~~**specified** in Section 2 of this administrative regulation;

(b) Is applicable to the permit action; and

(c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 ~~through~~**to** 65.

(2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:

(a) Gives the reason for not accepting the recommendation; and

(b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.

(3) For a minor permit revision at a major source, the cabinet shall:

(a) ~~Shall~~ Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and

(b) After submittal of a proposed minor permit revision to the U.S. EPA, ~~the cabinet~~:

1. ~~Shall~~ Notify the affected state and the U.S. EPA if a recommendation is not accepted; and

2. ~~Shall~~ Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review. (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:

(a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or

(b) Waives its right of review.

(2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.

(3) The cabinet shall provide the U.S. EPA with copies of the:

(a) Permit application, including attachments;

(b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;

(c) Proposed permit or proposed permit revision; and

(d) Final permit or final permit revision.

(4) ~~[On a case-by-case basis and]~~With prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.

(5) ~~[On a case-by-case basis and]~~With prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:

(a) The cabinet shall provide the U.S. EPA with:

1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and

2. All timely submitted public comments after the close of the public comment period;

(b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:

1. A substantial change is made in the permit or permit revision following the public comment period; or

2. The U.S. EPA files an objection to the permit or permit revision.

(c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.

(6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:

(a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;

(b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and

(c) Provide the permit applicant with a copy of the filed objection.

(7) After an objection is filed, the cabinet shall make the appropriate revisions and submit a new proposed permit or permit revision to the U.S. EPA within ninety (90) days after the objection is filed.

(8) If the cabinet does not submit a revised proposed permit or permit revision within ninety (90) days after an objection is filed, the U.S. EPA ~~will~~**may** issue or deny the permit.

(9) If the U.S. EPA does not object to the issuance of a permit, a citizen may petition the U.S. EPA to file an objection.

(a) The U.S. EPA ~~will~~**shall** file the citizen objection if the petition is:

1. Made within sixty (60) days following the end of the U.S. EPA's forty-five (45) day review period; and

2. Based only on objections raised with reasonable specificity during the public comment period, unless:

a. The petitioner can demonstrate that it was impractical to raise the objection within the public comment period, or

b. The grounds for objection arose after the end of the public comment period.

(b) If the U.S. EPA objects to a permit action as a result of a petition filed, the cabinet shall not issue the permit until the U.S. EPA objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the U.S. EPA objection.

(c) If the cabinet issues a permit or permit revision prior to receipt of a U.S. EPA objection:

1. The U.S. EPA ~~will~~**may** modify, terminate, or revoke the permit consistent with the procedures in 40 C.F.R. 70.7(g)(4) and (5);

2. The cabinet shall, upon receipt of the U.S. EPA objection, ~~then~~ issue a revised permit that satisfies the U.S. EPA objection; and

3. The source shall not be in violation for failing to submit a complete and timely application.

(10) To the extent possible, all information provided to the U.S. EPA shall be submitted in an electronic format that is compatible with the U.S. EPA's national database management system.

(11) The cabinet shall keep records of all information submitted to the U.S. EPA for a period of at least five (5) years.

(12)(a) If the cabinet is authorized by the source to submit confidential information to the U.S. EPA, a claim of confidentiality shall accompany the relevant information.

(b) If the cabinet is not authorized by the source to submit confidential information to the U.S. EPA, the source shall submit the confidential information directly to the U.S. EPA with a claim of confidentiality.

CONTACT PERSON: Matthew Dollar, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6468, fax (502) 564-4245, email matthew.dollar@ky.gov.

Administrative Register of Kentucky

July 1, 2020



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 15, 2020.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on July 8, 2020, at 1:00 p.m. in room 171 Capitol Annex. [ARRS Tentative Agenda - 1](#) [Online agenda updated as needed](#)

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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: Emergency regulations filed after 7/15/2019 are automatically set to expire 270 days from the date filed. The 270 days may be extended by one month, if comments were received. Emergency regulations expire upon the conclusion of the 270 days (or 270 days plus the number of days of the requested extension) or upon replacement by an ordinary regulation, whichever occurs first.

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APPENDIX D

Response to Comments

Response to Comments for Revision to 401 KAR 52:100

Key Comments

1. **Comment:** Kentucky's changes to 401 KAR 52:100 indicate that the Kentucky Division for Air Quality (KDAQ) has selected web site noticing as its "consistent noticing method." Please note that if website noticing is selected as the consistent noticing method, the public notice is required to be posted for the duration of the public comment period. See 40 CFR 51.165(i)(1), 51.166(q)(2)(iii), and 70.7(h)(1). KDAQ's regulatory revisions at 401 KAR 52:100 Section 4(1) require that public notice be given via electronic notice on the Cabinet website. The changes, however, do not require the public notice be posted for the duration of the public comment period. KDAQ should revise their rules to require that the public notice be posted on the Cabinet website for the duration of the public comment period.

(R. Scott Davis, U.S. EPA)

Response: For clarification, the posting to the Cabinet website includes the start and end dates of the public comment period (30 days).

2. **Comment:** The prevention of significant deterioration regulations at 40 CFR 51.166(q)(2)(viii) require that the reviewing authority notify the applicant in writing of the final determination and that they make such notification available for public inspection at the same location or on the same website where preconstruction information was made available. The EPA is aware that KDAQ makes the final determination (i.e. the proposed permit) available on their website via the searchable permit gateway; however, KDAQ's regulations at 401 KAR 52:100 do not appear to include provisions pursuant to 40 CFR 51.166(q)(2)(viii). KDAQ should revised their rules to include the provisions pursuant to 51.166(a)(2)(viii) or provide clarification as to how this requirement is met elsewhere in their regulations.

(R. Scott Davis, U.S. EPA)

Response: The requirements found in 40 CFR 51.166(a)(2)(viii) are found in 401 KAR 52:020 and the "Cabinet Provisions and Procedures for Issuing Title V Permits".

General Comments

3. **Comment:** The proposed regulatory text at 401 KAR 52:100 Section 8(3) states that "The draft permit shall also be posted, for the duration of the public comment period, on the internet..." The EPA recommends revising the regulatory text in Section 8(3) to state "The draft permit shall also be posted, for the duration of the public comment period, on the Cabinet website" for consistency throughout the regulation. See Sections 2(2)(a) and (b), 3(3)(a), 4(1), and 7(2)(a).

(R. Scott Davis, U.S. EPA)

Response: KDAQ agrees. This change was made as part of the Suggested Substitutes found in Appendix A.