

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 63:010. Fugitive emissions.

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

7 STATUTORY AUTHORITY: KRS 224.10-100(5)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the [~~re-~~  
9 ~~quires the Environmental and Public Protection]~~ Cabinet to promulgate[~~prescribe~~] administrative regu-  
10 lations for the prevention, abatement, and control of air pollution. This administrative regulation estab-  
11 lishes requirements[~~provides~~] for the control of fugitive emissions.

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

14 Section 2.] Definitions. Except as defined in this section, terms used in this administrative regu-  
15 lation [~~not defined herein~~] shall have the meaning given to them in 401 KAR 50:010.

16 (1) "Affected facility" means an apparatus, operation, or road which emits or may emit fugitive  
17 emissions [~~provided that the fugitive emissions from such facility are~~] not elsewhere subject to an opac-  
18 ity standard within the administrative regulations of the Division for Air Quality.

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

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

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

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

5           (6)~~(3)~~ "Open air" means the air outside buildings, structures, and equipment.

6           ~~[(4) "Classification date" means June 29, 1979.]~~

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

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

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

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

18           (c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of  
19 dusty materials, or the use of water sprays or other measures to suppress the dust emissions during han-  
20 dling. Adequate containment methods shall be employed during sandblasting or other similar opera-  
21 tions;

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

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

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

4 (2) A ~~Ne~~ person shall not cause, suffer, or allow ~~[permit the discharge of]~~ visible fugitive dust  
5 emissions beyond the lot line of the property on which the emissions originate, as determined by Refer-  
6 ence Method 22 of Appendix A in 40 C.F.R. Part 60, for:

7 (a) More than five (5) minutes of emission time during any sixty (60) minute observation peri-  
8 od; or

9 (b) More than twenty (20) minutes of emission time during any twenty-four (24) hour period.

10 (3) When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape  
11 from a building or equipment in such a manner and amount as to cause a nuisance or to violate any ad-  
12 ministrative regulation, the secretary may order that the building or equipment in which processing,  
13 handling, and storage are done be tightly closed and ventilated in such a way that all air and gases and  
14 air or gas-borne material leaving the building or equipment are treated by removal or destruction of air  
15 contaminants before discharge to the open air.

16 (4) The provisions of this section ~~[this administrative regulation]~~ shall not apply to agricultural  
17 practices, such as tilling of land or application of fertilizers, which take place on a farm. Agricultural  
18 practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be con-  
19 ducted in such a manner as to not create a nuisance to others residing in the area.

20 Section 4. Additional Requirements. In addition to the requirements of Section 3 of this admin-  
21 istrative regulation, the following shall apply:

22 (1) At all times when in motion, open bodied trucks, operating outside company property,  
23 transporting materials likely to become airborne shall be covered.

1           (2) ~~[Agricultural practices, such as tilling of land or application of fertilizers, which take place~~  
2 ~~on a farm shall be conducted in such a manner as to not create a nuisance to others residing in the area.~~

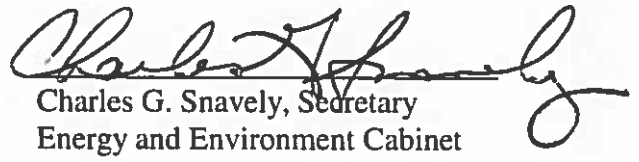
3 ~~Agricultural practices are not subject to the opacity standard.~~

4           (3) The provisions of Section 3(1) and (2) of this administrative regulation shall not be appli-  
5 cable to temporary blasting or construction operations.

6           (3) A person~~(4) No one~~ shall not cause, suffer, or allow earth or other material being trans-  
7 ported by truck or earth moving equipment to be deposited onto a paved street or roadway.

401 KAR 63:010 approved for filing.

10/29/2019  
Date

  
Charles G. Snavelly, Secretary  
Energy and Environment Cabinet

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on January 30, 2020 at 10:00 a.m. (Local Time) in Conference Room 214 at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 24, 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 <http://air.ky.gov/pages/publicnoticesandhearings.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 State Implementation Plan 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:

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 401 KAR 63:010

Contact Person: Lisa Jones

Phone: (502) 782-1288

Email: [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides for the control of fugitive emissions. Fugitive dust is dust that is not emitted from definable point sources. Sources include open fields, roadways and storage piles.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary because it controls fugitive dust from interfering with public health and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The air pollution controlled, prevented, and abated by this regulation is fugitive dust emissions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation establishes requirements for the control of fugitive emissions. This administrative regulation applies to any affected facility that emits or may emit fugitive emissions not elsewhere subject to an opacity standard within the Division for Air Quality regulations. This administrative regulation provides certainty by including a method of demonstrating compliance.

(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 proposed amendment to this administrative regulation will establish a compliance reference method, including a specified emission time and observation period, as defined by the administrative regulation, for emissions that go beyond the lot line of the property on which the emissions originate. The proposed amendment also provides clarifying language and format changes pursuant to KRS 13A.

(b) The necessity of the amendment to this administrative regulation:

The proposed amendment to this administrative regulation establishes criteria for compliance through use of EPA Reference Method 22 of Appendix A in 40 C.F.R. Part 60 ('Reference Method 22'). Use of the reference method will provide a standard measurement criteria for the visual determination of fugitive emissions.

(c) How the amendment conforms to the content of the authorizing statutes:  
The proposed amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing requirements for control of air pollution caused by fugitive emissions.

(d) How the amendment will assist in the effective administration of the statutes:  
EPA Reference Method 22 is a standardized compliance test and no certification is required for use. Cabinet inspectors and regulated entities will be able to use a standardized reference method to determine if the fugitive dust emissions are occurring at a specified emissions time and during a specified observation period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The number and type of entities affected by this administrative regulation depends on those entities that undertake activities that would cause or contribute to fugitive dust emissions. However, fugitive emissions subject to an opacity standard within the administrative regulations of the Division for Air Quality are excluded from compliance with this administrative regulation. Certain agricultural practices are excluded from the standards for fugitive emissions contained in Section 3 of the proposed administrative regulation. Temporary blasting or construction operations are also excluded from certain provisions of Section 3 of the proposed administrative regulation.

(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:

Regulated entities will have to control fugitive dust emissions by taking reasonable precautions to prevent particulate matter from becoming airborne. However, this requirement already exists and is not being amended.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost associated with the proposed amendment to this administrative regulation is variable based on the specific activity and type of material that is causing the fugitive dust emissions. The reasonable precautions listed in the proposed amendment are also expected to be of reasonable cost to an affected facility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance with standards set forth by the proposed administrative regulation will reduce impairment to public health and secondary costs of cleaning homes, vehicles, and other objects resulting from fugitive dust emissions from an affected facility.

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



trative regulation:

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The proposed amendment to this administrative regulation will not establish, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

No, tiering is not applicable because this regulation applies all requirements equally to all affected facilities.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 401 KAR 63:010

Contact Person: Lisa Jones

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Email: [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@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 State and local governments impacted by this administrative regulation depends on those entities that undertake activities that would cause or contribute to fugitive dust emissions. However, fugitive emissions subject to an opacity standard within the administrative regulations of the Division for Air Quality are excluded from compliance with this administrative regulation. Certain agricultural practices are excluded from the standards for fugitive emissions contained in Section 3 of the proposed administrative regulation. Temporary blasting or construction operations are also excluded from certain provisions of Section 3 of the proposed administrative regulation.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.  
KRS 224.10-100(5)
- (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?  
The proposed amendment to this administrative regulation will not generate revenue for the first 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 this administrative regulation will not generate revenue for subsequent years.
  - (c) How much will it cost to administer this program for the first year?  
The Division for Air Quality'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 Division for Air Quality'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 impact of the administrative regulation.

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

**Expenditures (+/-):**  
**Other Explanation:**

**There is no known effect on current expenditures.**  
**There is no further explanation.**

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 401 KAR 63:010

Contact Person: Lisa Jones

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1. Federal statute or regulation constituting the federal mandate.

The federal mandate for this administrative regulation is 42 U.S.C. 7407.

2. State compliance standards.

This administrative regulation establishes requirements for the control of fugitive emissions.

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

42 U.S.C. 7407 designates each state with the primary responsibility for assuring air quality within the entire geographic area of the state.

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

No, the administrative regulation does not impose stricter requirements or additional or different responsibilities than those required by 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.