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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. Snavelly, 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:

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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

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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.

