



ANDY BESHEAR  
GOVERNOR

REBECCA W. GOODMAN  
SECRETARY

## ENERGY AND ENVIRONMENT CABINET

300 SOWER BOULEVARD  
FRANKFORT, KENTUCKY 40601  
TELEPHONE: 502-564-3350  
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October 15, 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 63:010. Fugitive emissions.**

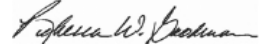
In accordance with 40 C.F.R. 51.102, the Cabinet made a copy of the proposed amended regulation available for public comment from November 6, 2019, until January 31, 2020. A copy of the amended administrative regulation is enclosed, and an electronic version of this submittal has been emailed directly to EPA Region 4.

The Cabinet requests to exempt from this request the sentence proposed in Section 3(4), "Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be conducted in such a manner as to not create a nuisance to others residing in the area." Although at the State level, that sentence is being moved from 4(2) to 3(4), for purposes of the SIP, it can be removed from 4(2) but not adopted it in its new position in 3(4).

The Cabinet appreciates your prompt response to this request. If you have any further questions or concerns about this submittal, please contact Ms. Melissa Duff, Director of the Division for Air Quality, at (502) 782-6597 or [Melissa.Duff@ky.gov](mailto:Melissa.Duff@ky.gov).

Ms. Mary Walker  
October 15, 2020  
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Sincerely,



Rebecca W. Goodman,  
Secretary

RWG/lcj  
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## **Executive Summary**

This SIP amendment includes one administrative regulation, which became effective on June 30, 2020.

### **401 KAR 63:010. Fugitive Emissions.**

This regulation was filed with the Legislative Research Commission on November 6, 2019. It was published in the December 1, 2019, *Administrative Register of Kentucky*. Public comments were accepted on the regulation through January 31, 2020. The Statement of Consideration was filed on February 14, 2020, and the regulation was not amended after comments.

The current SIP approved regulation for 401 KAR 63:010, *Fugitive Emissions* became effective on June 29, 1979. The regulation was approved to Kentucky's SIP on July 12, 1982, (47 FR 30059).

This action requests EPA to approve the effective administrative regulation to the Kentucky SIP as it became effective on June 30, 2020, with the exception of the sentence in Section 3(4), "Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be conducted in such a manner as to not create a nuisance to others residing in the area." Although at the State level, that sentence is being moved from 4(2) to 3(4), for purposes of the SIP, it can be removed from 4(2) but not adopted it in its new position in 3(4).

**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 October 15, 2020, and signed by Secretary Rebecca W. Goodman, the Governor's designee, requests EPA's approval of the SIP revision to amend 401 KAR 63:010, Fugitive Emissions.

- 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 63:010 be amended to the SIP. The regulation became effective on June 30, 2020. The effective date of the plan should be the date of the SIP revision submittal, October 15, 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 all 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 63:010 along with 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 Appendices B and C.

**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 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.**

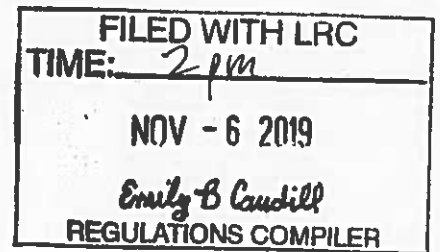
All comments received on the administrative regulation during the public comment period are included in Appendix C. EPA's comments on the SIP and the Cabinet's Response to Comments are included in Appendix D.

# **APPENDIX A**

Proposed Regulation, November 6, 2019  
Suggested Substitute, March 4, 2020  
401 KAR 63:010, effective June 30, 2020

**Proposed Regulation**  
**Filed with the Legislative Research Commission**  
**On November 6, 2019**





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.~~

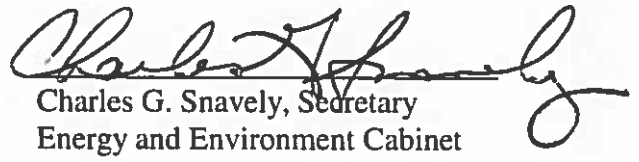
3 ~~Agricultural practices are not subject to the opacity standard.~~

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:

Lisa Jones, Environmental Scientist III  
Division for Air Quality  
300 Sower Boulevard, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Phone: (502) 782-1288  
Fax: (502) 564-4245  
E-mail: [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov)

## 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 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

Phone: (502) 782-1288

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

Phone: (502) 782-1288

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

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.

**Suggested Substitute**  
**Filed with the Legislative Research Commission**  
**On March 4, 2020**



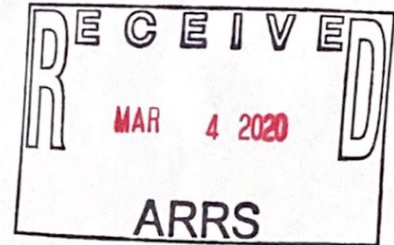
ANDY BESHEAR  
GOVERNOR

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



March 2, 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 63:010. Fugitive Emissions.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 401 KAR 63:010, the Energy and Environment Cabinet, Division for Air Quality, proposes the attached amendment to 401 KAR 63:010.

Sincerely,

Melissa K. Duff, Director  
Energy and Environment Cabinet  
Division for Air Quality  
300 Sower Blvd, 2<sup>nd</sup> Floor  
Frankfort, Kentucky 40601

**SUGGESTED SUBSTITUTE**  
**Final Version 2/26/2020 4:00 PM**

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

**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 ***established***~~*given to them*~~ in 401 KAR 50:010.

(1) "Affected facility" means an apparatus, operation, or road ~~that~~~~which~~ emits or ***could***~~*may*~~ emit fugitive emissions~~[provided that the fugitive emissions from such facility are]~~ not elsewhere subject to an opacity standard within ***401 KAR Chapters 50 through 68***~~*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.

~~(3) [(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.

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

~~(5) [(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 **by**~~(in)~~ Section 1(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, ***as***~~*when*~~ applicable~~[, but not be limited to the following]:~~

(a) Use, ***if***~~*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 ~~that~~**[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 ~~while~~**[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 ~~to~~ 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 (60) minute observation period; or

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

(3) ~~If~~**[When]** dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in ~~[such]~~ a manner and amount as to cause a nuisance or to violate any administrative regulation, the secretary may, **based on the cause, type, or amount of a fugitive emission,** order that the building or equipment in which processing, handling, and storage are done be tightly closed and ventilated in ~~[such]~~ a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

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

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the **requirements established in subsections (1) through (3) of this section**~~[following]~~ shall apply.~~[:]~~

(1) At all times ~~while~~**[when]** in motion, open bodied trucks, operating outside company property, transporting materials likely to become airborne shall be covered.

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

~~(3) The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.~~

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



**Regulation**

**401 KAR 63:010**

**Effective June 30, 2020**

## 401 KAR 63:010. Fugitive emissions.

RELATES TO: KRS 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 cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the control of fugitive emissions.

Section 1. Definitions. Except as defined in this section, terms used in this administrative regulation shall have the meaning established in 401 KAR 50:010.

(1) "Affected facility" means an apparatus, operation, or road that emits or could emit fugitive emissions not elsewhere subject to an opacity standard within 401 KAR Chapters 50 through 68.

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

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

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

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

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

Section 3. Standards for Fugitive Emissions. (1) A 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. Reasonable precautions shall include, as applicable:

(a) Use, if 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 that 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 while 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 to which earth or other material has been transported by trucking or earth moving equipment or erosion by water.

(2) A person shall not cause, suffer, or allow 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 (60) minute observation period; or

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

(3) If dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in a manner and amount as to cause a nuisance or to violate any adminis-

trative regulation, the secretary may, based on the cause, type, or amount of a fugitive emission, order that the building or equipment in which processing, handling, and storage are done be tightly closed and ventilated in a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

(4) The provisions of this section shall not apply to agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm. Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be conducted in a manner as to not create a nuisance to others residing in the area.

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the requirements established in subsections (1) through (3) of this section shall apply.

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

(2) The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.

(3) A person shall not cause, suffer, or allow earth or other material being transported by truck or earth moving equipment to be deposited onto a paved street or roadway. (5 Ky.R. 511; 6 Ky.R. 50; eff. 6-29-1979; TAm eff. 8-9-2007; Crt eff. 9-12-2018; TAm eff. 2-14-2019; 46 Ky.R. 1941, 2629; eff. 6-30-2020.)

# **APPENDIX B**

## **Public notice requirements**

DAQ website public notice  
Regulation public notice  
Letter to concerned citizens

## **Public Comments**

Calvert City Environmental Consortium  
The Gavilon Group, LLC  
Kentucky Association of Manufacturers/Chemical Industry Council  
(KAM/CIC)  
Utility Information Exchange of Kentucky (UIEK)

## **Statement of Consideration**

## **DAQ Website Public Notice**

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

The Kentucky Energy and Environment Cabinet 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 63:010. Fugitive emissions.**

The proposed amendment to this administrative regulation provides for the control of fugitive emissions. 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/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:** Lisa Jones, Regulation Development Section, Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601. The phone number is (502) 782-1288, and email address is [lisa.c.jones@ky.gov](mailto:lisa.c.jones@ky.gov).

## **Regulation Public Notice**

## 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:

Lisa Jones, Environmental Scientist III  
Division for Air Quality  
300 Sower Boulevard, 2<sup>nd</sup> Floor  
Frankfort, KY 40601  
Phone: (502) 782-1288  
Fax: (502) 564-4245  
E-mail: [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov)



## **Letter to Concerned Citizens**



MATTHEW G. BEVIN  
GOVERNOR

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

CHARLES G. SNAVELY  
SECRETARY

ANTHONY R. HATTON  
COMMISSIONER

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

November 8, 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 63:010. Fugitive Emissions.**

The Division filed the proposed administrative regulation with the Legislative Research Commission on November 6, 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:

Lisa Jones  
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 [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@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. Please contact me at (502) 782-1288, or by e-mail at [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov) if you have any questions or concerns.

Thank you,

A handwritten signature in cursive script that reads "Lisa Jones".

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

## **Public Comments**

January 3, 2020

Kentucky Division for Air Quality  
Program Planning and Administration Branch  
Ms. Lisa Jones  
300 Sower Boulevard  
Frankfort, KY 40601  
Email: [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov)

Re: Comments on Proposed Regulatory Amendments to 401 KAR 63:010

Dear Ms. Jones:

The Calvert City Environmental Consortium (the Consortium) is comprised of individuals and organizations that represent the regulated community in the Calvert City, KY area. The Consortium includes representatives from Arkema, Inc.; Ashland, Inc.; Calvert City Metals and Alloys; Carbide Industries LLC; City of Calvert City; Cymetech Corporation; Estron Chemical, Inc.; Evonik Corporation; Ingevity; Lubrizol Advanced Materials, Inc.; Phoenix Paper Wickliffe LLC; Sekisui SC; Vanderbilt Chemicals, LLC; Wacker Chemical Corporation; Waste Path Sanitary Landfill; and Westlake Vinyls, Inc.

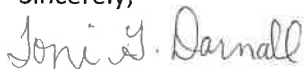
Thank you for the opportunity to submit comments on proposed regulatory amendments to 401 KAR 63:010. The regulatory impact analysis seems to use fugitive dust emissions and fugitive emissions interchangeably; however, the regulation appears to state that fugitive dust emissions are a subset of the fugitive emissions. The Consortium requests clarification on this.

For example, the Necessity, Function, and Conformity section states that "...This administrative regulation establishes requirements for the control of fugitive emissions." 401 KAR 63:010 Section 1(4), Definitions, defines fugitive emissions as "the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust." This definition of fugitive emissions is broader than "dust" which is the airborne matter for which "reasonable precautions" are required by 401 KAR 63:010 Section 3(1)(a-f). Furthermore, the regulatory impact analysis and tiering statement states several times that the air pollution controlled, prevented, and abated by this regulation is "fugitive dust emissions". If the intent of 401 KAR 63:010 is to regulate fugitive dust emissions, then the title of the regulation, Necessity, Function, and Conformity section, and other relevant sections should state this specifically to provide regulatory certainty.

Despite the ambiguity in terminology, the Consortium supports the intent of the proposed amendment.

The Calvert City Environmental Consortium appreciates the opportunity to submit these comments. Please contact me with questions at [tdarnall@westlake.com](mailto:tdarnall@westlake.com) or 270.395.3344.

Sincerely,



Toni G. Darnall  
Chair, Calvert City Environmental Consortium

cc: Environmental Consortium members



January 27, 2020

Lisa Jones, Environmental Scientist III  
Energy and Environment Cabinet  
Division for Air Quality, 211d Floor  
300 Sower Blvd.  
Frankfort, KY 40601

Subject:           Comments Regarding Proposed Revisions to 401 KAR 63:010t

Gavilon supports the proposed change to 401 KAR 63:010 Section 3(2). This modification, which is consistent with regulations in other states and relies on a method approved by the Environmental Protection Agency (EPA Method 22), provides a quantitative and consistent process for evaluating fugitive emissions. We believe the reliability in this method will help all parties understand, communicate, measure and comply with the state's fugitive dust requirements. We thank the Kentucky Division of Air Quality for their efforts on this proposal.

If you have any questions or require additional information, please contact me at 402-889-4070 [brian.wanzenried@gavilon.com](mailto:brian.wanzenried@gavilon.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Wanzenried', is written over a horizontal line.

Brian Wanzenried, P.E.  
Director of Environmental



January 3, 2020

**Via Electronic Mail - lisa.c.jones@ky.gov**

Lisa Jones, Environmental Scientist III  
Energy and Environment Cabinet  
Division for Air Quality, 2<sup>nd</sup> Floor  
300 Sower Blvd.  
Frankfort, KY 40601

RE: Comments Regarding Proposed Revisions to 401 KAR 63:010

Dear Ms. Jones:

Established in 1911, the Kentucky Association of Manufacturers ("KAM") is the Commonwealth's oldest industrial trade association. The Association's mission is to raise the prosperity of all Kentuckians by protecting and growing the Commonwealth's economic engine, manufacturing. KAM seeks to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to economic growth, and to increase understanding among policymakers, the media, and the general public about the importance of manufacturing to America's economic strength. KAM, in coordination with its Kentucky Chemical Industry Council ("CIC"), supports environmental programs that are based on sound science, consider cost-benefit relationships, and consider technical and economic feasibility. KAM and CIC appreciate the opportunity to submit the following comments regarding the Division for Air Quality's ("Division") proposed regulation referenced above.

KAM and CIC appreciate the Division's effort to provide a coordinated structure for compliance with fugitive emission standards in the Commonwealth. Existing regulations on the subject are ambiguous, inconsistently enforced, and not coordinated with one another. The current version of 401 KAR 63:010 contains a standard for visible fugitive dust emissions, which necessarily requires an observation period, but the regulation does not contain a reference method for that observation. However, 401 KAR 50:015 Section 1(1)(c)1.qq. specifically incorporates by reference 40 C.F.R. Part 60, Appendix A Method 22, which is the method for visual determinations of fugitive emissions. KAM and CIC fully support the Division's proposed amendment to 401 KAR 63:010 Section 3(2) to coordinate the two regulations and repair this regulatory disconnect.

Energy & Environment Cabinet  
January 3, 2020  
Page 2

Thank you for the opportunity to submit the foregoing comments. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Rusty Cress". The signature is written in a cursive style with a large, prominent "R" and "C".

Lloyd R. ("Rusty") Cress, Jr.

cc: Lee Lingo, KAM Executive Director  
Melissa Duff, Director, Division for Air Quality

January 28, 2020

*Via Electronic and U.S. Mail*

Lisa Jones  
Regulation Development Section  
Kentucky Division for Air Quality  
300 Sower Boulevard, 2<sup>nd</sup> Floor  
Frankfort, Kentucky 40601

RE: UIEK Comments -- Proposed Amendments to 401 KAR 63:010

Dear Ms. Jones:

This law firm serves as legal counsel to the Utility Information Exchange of Kentucky ("UIEK") and submits the enclosed comments on UIEK's behalf for the agency's consideration. As you know, UIEK is a voluntary organization consisting of representatives from the electric generating utilities in the Commonwealth of Kentucky. For more than 20 years, UIEK has provided input to regulatory authorities on key environmental issues affecting its member companies.

UIEK appreciates the efforts of the Division for Air Quality leadership and staff in maintaining reasonable regulations and revising regulations as needed to provide more clarity and certainty. UIEK looks forward to continuing to work with the Division on this pending proposal and others in the future.

Sincerely yours,



Carolyn M. Brown  
Counsel for UIEK

cc: Jerry Purvis, UIEK Chair



Proposed Amendments to 401 KAR 63:010 – Fugitive Emissions

Comments by the Utility Information Exchange of Kentucky

January 28, 2020

The Utility Information Exchange of Kentucky (“UIEK”) is a voluntary organization consisting of representatives from the electric generating utilities in the Commonwealth of Kentucky. For more than 20 years, UIEK has provided input to regulatory authorities on key environmental issues affecting its member companies.

UIEK fully supports responsible environmental regulations aimed at protecting public health and the environment in a cost-effective manner while also providing appropriate protection for the economic well-being of the communities served by members of UIEK. UIEK respectfully submits the following comments on the proposed amendments to 401 KAR 63:010 (“Proposed Revision”) in order to assist the agency in developing final revisions that are grounded in sound policy, designed to promote regulatory certainty, and are practicably enforceable.

Comments Regarding Proposed Revisions to 401 KAR 63:010 Fugitive Emissions

Comment No. 1: The agency proposes to add EPA Reference Method 22 of 40 CFR Part 60 Appendix A (“Method 22”) as the method of determination of the frequency of visible fugitive dust emissions that might cross the lot line of a property on which the emissions originate. UIEK supports the addition of Method 22 to provide a standard measurement criterion. This change will provide additional regulatory certainty.

However, Section 3(2) of the Proposed Revision would also add time periods for the evaluation of visible fugitive dust emissions that might cross the lot line of a property on which the emissions originate: (a) more than 5 minutes of emission time during any 1-hour observation period, or (b) more than 20 minutes of emission time during any 24-hour period. UIEK questions the practicality of performing an EPA Reference Method 22 over extended periods of time for emissions that are typically intermittent. As an example, if visible fugitive dust emissions were observed crossing a property line, time will be needed for a person who is trained in performing an EPA Reference Method 22 analysis to go to that location in order to properly document the event. Will the event still be occurring in that timeframe? If by chance visible fugitive dust emissions are still crossing a property line and observable by a person who is trained in performing an EPA Reference Method 22 analysis, how long must the trained observer conduct the analysis? Do they have to observe the area for an entire hour to be certain nothing passed over the property line for a total of five minutes (see Section 3(2)(a) of the Proposed Revision)? This is particularly a concern with proposed Section 3(2)(b). Must the person observe the area for 24 hours to determine whether there were 20 minutes of emissions? It is also unclear how 24-hour observations would be conducted in accordance with Method 22 at night. See Method 22, Section 11.1 (“For outdoor locations, select a position where the sunlight is not shining directly in the observer’s eyes.”) Based on the impracticality of performing these observations, UIEK requests the removal of the proposed time

period provision in Section 3(2)(b) [more than 20 minutes of emission time in any 24-hour period] as shown in the attached mark-up.

Comment No. 2: In conjunction with the questions and clarity needed regarding how to practically conduct a Method 22 observation over extended periods of time, UIEK requests the addition of language that would reduce the observation period if fugitive dust emissions are not being observed crossing a facility's property line. See Section 3(2)(a) of UIEK's attached edits of the Proposed Revision. This suggested language resembles the provisions of 40 CFR 60.45(b)(7) and 40 CFR 60.257(a)(1)(ii) which allow for a reduction of the observation period of EPA Method 9 performance testing.

Comment No. 3: UIEK suggests that the definition of "Fugitive emissions" (see Section 1(4) of UIEK's attached edits of the Proposed Revision) include the phrase "visible particulate matter" and that the phrase "of any air contaminant" be removed.

Comment No. 4: UIEK suggests the addition of the following sentence to Section 4(2) to clarify the applicability of the regulation during time periods when affected facilities do not have control of environmental conditions (e.g., high wind):

"The provisions of Section 3(2) of this administrative regulation shall not be applicable during exceptional meteorological events."

Comment No. 5: UIEK suggests that Section 4(3) be revised by adding the word "public" when describing paved streets or roadways. If earth or other material is deposited on facility roadways that are inside the property line, dust may be generated from the deposited material, but unless that dust crosses the property line the occurrence is not a compliance issue under 401 KAR 63:010. Therefore, focusing efforts on keeping facility material from being deposited on public, paved streets or roadways (i.e., beyond the property line) would be appropriate and prudent in this section of the rule.

UIEK Suggested Language Changes -- Proposed Revised 401 KAR 63:010  
(Changes noted on red font, bold and underlined or strike-through.)

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)

9 ~~quires the Environmental and Public Protection]~~ Cabinet to promulgate [~~prescribe~~] a  
10 ~~lationns~~ 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 visible particulate matter 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; [~~5~~] 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 [~~5~~, 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 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 bodies 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 ~~[No]~~ 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. **If, during the initial thirty (30) minutes of the observation period of a Method 22 of Appendix A**  
**in 40 C.F.R. Part 60, there are no visible fugitive dust emissions beyond the lot line of the property, then the**  
**observation period may be reduced from sixty (60) minutes to thirty (30) minutes.; 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. **The provisions of Section 3(2) of the**  
6           **administrative regulation shall not be applicable during exceptional meteorological events.**

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

15856019.4

## **Statement of Consideration**

FILED WITH LRC  
 TIME: 10am  
 FEB 14 2020  
 Emily B Caudill  
 REGULATIONS COMPILER

**STATEMENT OF CONSIDERATION  
 RELATING TO:**

**401 KAR 63:010**

**Not Amended After Comments**

**Energy and Environment Cabinet  
 Department for Environmental Protection  
 Division for Air Quality**

**I.** The public hearing on 401 KAR 63:010, scheduled for January 30, 2020, at 10:00 a.m. at 300 Sower Boulevard, Frankfort, Kentucky was canceled when the Division for Air Quality did not receive any written notice of intent to attend; however, written comments were received during the public comment period.

**II.** The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Toni G. Darnall, Chair	Calvert City Environmental Consortium
Brian Wanzenried, P.E., Director of Environmental	The Gavilon Group, LLC
Lloyd R. ("Rusty") Cress, Jr., Executive Director	Kentucky Association of Manufacturers/Chemical Industry Council (KAM/CIC)
Carolyn M. Brown, Counsel	Utility Information Exchange of Kentucky (UIEK)

**III.** The following people from the promulgating administrative body responded to the written comments:

Name and Title

Cassandra Jobe, Environmental Control Supervisor  
 Lisa Jones, Environmental Scientist III

**IV. Summary of Comments and Responses**

**(1) Subject Matter: Applicability**

**(a) Comment: Toni Darnell, Calvert City Environmental Consortium**

"The regulatory impact analysis seems to use fugitive dust emissions and fugitive emissions interchangeably; however, the regulation appears to state that fugitive dust emissions are a subset of the fugitive emissions. The Consortium requests clarification



on this. For example, the Necessity, Function, and Conformity section states that ‘...This administrative regulation establishes requirements for the control of fugitive emissions.’ 401 KAR 63:010 Section 1(4), Definitions, defines fugitive emissions as ‘the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.’ The definition of fugitive emissions is broader than ‘dust’ which is the airborne matter for which ‘reasonable precautions’ are required by 401 KAR 63:010 Section 3(1)(a-f). Furthermore, the regulatory impact analysis and tiering statement states several times that the air pollution controlled, prevented, and abated by this regulation is ‘fugitive dust emissions’. If the intent of 401 KAR 63:010 is to regulate fugitive dust emissions, then the title of the regulation, Necessity, Function, and Conformity section, and other relevant sections should state this specifically to provide regulatory certainty. Despite the ambiguity in terminology, the Consortium supports the intent of the proposed amendment.”

**(b) Response:**

The Cabinet acknowledges the comment. The definition of “fugitive emissions” means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment. This definition includes emissions of any air contaminant not limited to particulate matter. The Reference Method 22 of Appendix A in 40 C.F.R. Part 60, is applicable to visible emissions that are particulate matter, however, the administrative regulation as a whole applies to fugitive emissions generally if emitted from an affected facility as defined by Section 1(1). The Regulatory Impact Analysis and Tiering Statement speak specifically to the changes included in the proposed amendment, which are specific to fugitive dust emissions. No changes have been made to the proposed administrative regulation based on this comment.

**(2) Subject Matter: Use of Reference Method 22 of Appendix A in 40 C.F.R. Part 60**

**(a) Comment: Brian Wanzenried, Gavilon**

“Gavilon supports the proposed change to 401 KAR 63:010 Section 3(2). This modification, which is consistent with regulations in other states and relies on a method approved by the Environmental Protection Agency (EPA Method 22), provides a quantitative and consistent process for evaluating fugitive emissions. We believe the reliability in this method will help all parties understand, communicate, measure and comply with the state’s fugitive dust requirements.”

**(b) Response:**

The Cabinet acknowledges the comment. No changes have been made to the proposed administrative regulation based on this comment.

**(3) Subject Matter: Use of Reference Method 22 of Appendix A in 40 C.F.R. Part 60**

**(a) Comment: Rusty Cress, KAM/CIC**

“KAM and CIC appreciate the Division’s effort to provide a coordinated structure for compliance with fugitive emission standards in the Commonwealth. Existing

regulations on the subject are ambiguous, inconsistently enforced, and not coordinated with one another. The current version of 401 KAR 63:010 contains a standard for visible fugitive dust emissions, which necessarily requires an observation period, but the regulation does not contain a reference method for that observation. However, 401 KAR 50:015 Section 1(1)(c)1. qq. specifically incorporates by reference 40 C.F.R. Part 60, Appendix A Method 22, which is the method for visual determinations of fugitive emissions. KAM and CIC fully support the Division's proposed amendment to 401 KAR 63:010 Section 3(2) to coordinate the two regulations and repair this regulatory disconnect."

**(b) Response:**

The Cabinet acknowledges the comment. No changes have been made to the proposed administrative regulation based on this comment.

**(4) Subject Matter: Addition of Reference Method 22 of Appendix A in 40 C.F.R. Part 60**

**(a) Comment: Carolyn Brown, UIEK**

"UIEK supports the addition of Method 22 to provide a standard measurement criterion. This change will provide additional regulatory certainty."

**(b) Response:**

The Cabinet acknowledges the comment. No changes have been made to the proposed administrative regulation based on this comment.

**(5) Subject Matter: Observation period**

**(a) Comment: Carolyn Brown, UIEK**

"UIEK questions the practicality of performing an EPA Reference Method 22 over extended periods of time for emissions that are typically intermittent. As an example, if visible fugitive dust emissions were observed crossing a property line, time will be needed for a person who is trained in performing an EPA Reference Method 22 analysis to go to that location in order to properly document the event. Will the event still be occurring in that timeframe? If by chance visible fugitive dust emissions are still crossing a property line and observable by a person who is trained in performing an EPA Reference Method 22 analysis, how long must the trained observer conduct the analysis? Do they have to observe the area for an entire hour to be certain nothing passed over the property line for a total of five minutes (see Section 3(2)(a) of the Proposed Revision)? This is particularly a concern with proposed Section 3(2)(b). Must the person observe the area for 24 hours to determine whether there were 20 minutes of emissions? It is also unclear how 24-hour observations would be conducted in accordance with Method 22 at night. See Method 22, Section 11.1 ('For outdoor locations, select a position where the sunlight is not shining directly in the observer's eyes.') Based on the impracticality of performing these observations, UIEK requests the removal of the proposed time period provision in Section 3(2)(b) [more than 20 minutes of emission time in any 24-hour period]".

**(b) Response:**

The Cabinet does not concur with the comment. Reference Method 22 of Appendix A in 40 C.F.R. Part 60, is the most appropriate compliance demonstration available. The reference method addresses the use of artificial light and the protocol for 24-hour observation periods and breaks required for the observer. In addition, air quality operating permits include compliance demonstration and monitoring requirements that are facility specific. No changes have been made to the proposed administrative regulation based on this comment.

**(6) Subject Matter: Reduction of observation period.**

**(a) Comment: Carolyn Brown, UIEK**

“UIEK requests the addition of language that would reduce the observation period if fugitive dust emissions are not being observed crossing a facility's property line.” “This suggested language resembles the provisions of 40 CFR 60.45(b)(7) and 40 CFR 60.257(a)(1)(ii) which allow for a reduction of the observation period of EPA Method 9 performance testing.”

**(b) Response:**

The Cabinet does not concur with the comment. The observation period included in proposed administrative regulation and the use of Reference Method 22 of Appendix A in 40 C.F.R. Part 60, are appropriate. No changes have been made to the proposed administrative regulation based on this comment.

**(7) Subject Matter: Definition of “Fugitive emissions.”**

**(a) Comment: Carolyn Brown, UIEK**

“UIEK suggests that the definition of ‘Fugitive emissions’ [...] include the phrase ‘visible particulate matter’ and that the phrase ‘of any air contaminant’ be removed.”

**(b) Response:**

The Cabinet does not concur. The definition of “fugitive emissions” means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment. This definition includes emissions of any air contaminant not limited to particulate matter. The Reference Method 22 of Appendix A in 40 C.F.R. Part 60, is applicable to visible emissions that are particulate matter, however, the administrative regulation as a whole applies to fugitive emissions generally if emitted from an affected facility as defined by Section 1(1). No changes have been made to the proposed administrative regulation based on this comment.

**(8) Subject Matter: Exceptional Meteorological Events**

**(a) Comment: Carolyn Brown, UIEK**

“UIEK suggests the addition of the following sentence to Section 4(2) to clarify the applicability of the regulation during time periods when affected facilities do not have control of environmental conditions (e.g., high wind): ‘The provisions of Section 3(2)

of this administrative regulation shall not be applicable during exceptional meteorological events.’”

**(b) Response:**

The Cabinet does not concur. The reasonable precautions listed apply at all times and is more protective of human health and the environment than the language proposed in the comment. No changes have been made to the proposed administrative regulation based on this comment.

**(9) Subject Matter: Addition of the word “public” when describing paved streets or roadways**

**(a) Comment: Carolyn Brown, UIEK**

“UIEK suggests that Section 4(3) be revised by adding the word ‘public’ when describing paved streets or roadways. If earth or other material is deposited on facility roadways that are inside the property line, dust may be generated from the deposited material, but unless that dust crosses the property line the occurrence is not a compliance issue under 401 KAR 63:010. Therefore, focusing efforts on keeping facility material from being deposited on public, paved streets or roadways (i.e., beyond the property line) would be appropriate and prudent in this section of the rule.”

**(b) Response:**

The Cabinet does not concur. The addition of the word “public” is inappropriate as the standards for fugitive emissions pursuant to Section 3(1) of the proposed administrative regulation applies to all paved streets or roadways. The addition of “public” would improperly exclude private paved streets or roadways that do not lie within the facility’s property boundary. No changes have been made to the proposed administrative regulation based on this comment.

**V. Summary of Action Taken by Promulgating Administrative Body**

The public hearing on this administrative regulation was canceled; however, written comments were received. The Division for Air Quality responded to the comment and will not be amending the administrative regulation.

## **APPENDIX C**

*Administrative Register of Kentucky, December 1, 2019*

*Administrative Register of Kentucky, April 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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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

(60) minute observation period; or

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

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

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

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the following shall apply:

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

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

(3) The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.

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

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 29, 2019

FILED WITH LRC: November 6, 2019 at 2 p.m.

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: Lisa Jones, Environmental Scientist III, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-1288, fax (502) 564-4245, email [Lisa.C.Jones@ky.gov](mailto:Lisa.C.Jones@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Jones

(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 administrative 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

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

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

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.

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board  
(Amendment)

**501 KAR 1:040. [Conducting] Parole revocation hearing procedures[hearings].**

RELATES TO: KRS 439.315, 439.330(1)(e), 439.3406, 439.341, 439.346, 439.390, 439.430, 439.440, 532.043, 532.400

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole, the probable cause hearing, and the issuance of parole violation warrants.

Section 1. Definitions.

(1) "Board" means the Kentucky Parole Board established in KRS 439.320.

(2) "Fact finder" means the person or entity that determines the facts at a hearing and includes the administrative law judge or the Parole Board depending on which conducts the hearing and issues findings of fact.

(2) "Parole" means parole and other forms of supervision treated like parole in that the Parole Board has the authority to revoke supervision.

(3) "Probable cause hearing" means a hearing before an administrative law judge to determine if there is probable cause that a parole violation has occurred.

Section 2. Notice of Probable Cause Hearing. Charges of a parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of the probable cause hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence to be presented at the hearing;

(c) Witnesses upon whose statements revocation is based if

*Administrative Register of*  
**Kentucky April 1, 2020**



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, March 13, 2020.

### MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on April 13, 2020, at 1:00 p.m. in room 149 Capitol Annex.

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None

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or the United State Department of Agriculture upon[when] written notice being[is also] provided to the OSV.

Section 3. Any entity distributing BVD-PI diagnostic tests shall request approval from the OSV, and shall maintain records for at least five (5) years after the sale, and shall make these records available to the Office of the State Veterinarian upon demand.

Section 4. ~~Disease-producing[No disease producing]~~ organisms shall not be sold in or shipped to the Commonwealth of Kentucky unless the buyer or recipient is a licensed veterinarian, pharmacist, or entity authorized under Kentucky Revised Statutes to receive, hold, and sell biologics.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE  
Office of the State Veterinarian  
(As Amended at ARRS, March 9, 2020)

302 KAR 22:080. Feed restrictions.

RELATES TO: KRS 257.020, 257.990(1)(a)

STATUTORY AUTHORITY: KRS 257.020(3), 257.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.600 requires the Department of Agriculture to promulgate administrative regulations governing the feeding of untreated garbage to swine to prevent the transmission of disease. KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. This administrative regulation prohibits the feeding of treated or untreated garbage to swine to prevent the transmission of viral, bacterial, and parasitical diseases to people and animals.

Section 1. ~~Definition.[Feeding Garbage to Swine Prohibited. A person shall not feed treated or untreated garbage to swine.]~~ "Garbage" means:

- (1) All animal and vegetable waste resulting from the handling, preparation, consuming, and cooking of food;
- (2) Unconsumed food in all public and private establishments and residences; and
- (3) The offal and carcasses of dead animals, poultry, and fish or parts thereof.

Section 2. Feeding Garbage to Swine Prohibited. A person shall not feed treated or untreated garbage to swine.

**Section 3.** Penalties. The department may file an action in the court of jurisdiction to seek injunctive relief for a violation of this administrative regulation. Each day upon which a violation occurs shall constitute a separate violation.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division for Air Quality  
(As Amended at ARRS, March 9, 2020)

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 established[given to them] in 401 KAR 50:010.~~

~~(1) "Affected facility" means an apparatus, operation, or road that[which] emits or could[may] emit fugitive emissions[provided that the fugitive emissions from such facility are] not elsewhere subject to an opacity standard within 401 KAR Chapters 50 through 68[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.~~

~~(3)[(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.~~

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

~~(5)[(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 by[in] Section 1 (1) of this administrative regulation.~~

Section 3. Standards for Fugitive Emissions. (1) A[~~Ne~~] 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, as[when] applicable[, but not be limited to the following]:

(a) Use, if[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 that[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 while[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 to which earth or other material has been transported [~~thereto~~] by trucking or earth moving equipment or erosion by water.

(2) A[~~Ne~~] 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 (60) minute observation period; or

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

(3) If[When] dust, fumes, gases, mist, odoriferous matter, vapors, or any combination thereof escape from a building or equipment in [~~such~~]a manner and amount as to cause a nuisance or to violate

any administrative regulation, the secretary may, based on the cause, type, or amount of a fugitive emission, order that the building or equipment in which processing, handling, and storage are done be tightly closed and ventilated in [such]a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

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

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the requirements established in subsections (1) through (3) of this section~~[following]~~ shall apply.;

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

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

(3)~~] The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.~~

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

CONTACT PERSON: Lisa Jones, Environmental Scientist III, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-1288, fax (502) 564-4245, email Lisa.C.Jones@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky State Corrections Commission  
(As Amended at ARRS, March 9, 2020)**

**500 KAR 10:001. Definitions for 500[501] KAR Chapter 10.**

RELATES TO: KRS 196.700 - 196.736~~[196.740]~~  
STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702

and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.~~[The Kentucky State Corrections Commission shall award grants for]~~~~[make grants to assist local jurisdictions in]~~~~[the implementation and operation of community corrections programs.]~~ This administrative regulation defines the terms to be used in 500 KAR Chapter 10.

Section 1. Definitions.

(1) "Administrator" means the person designated to manage the information involved with the grants awarded under KRS 196.710 and assist the Kentucky State Corrections Commission with its duties.

(2) "Board" means the community corrections board specified in KRS 196.725 or the alternate board described in KRS 196.710(3) approved by the commission to act in the place of a community corrections board. ~~[board specified in KRS 196.725;]~~

(3) "Cabinet" is defined by KRS 196.010(1).

(4) "Commission" is defined by KRS 196.700(1).

(5) "Community corrections program plan" or "program plan" is defined by KRS 196.700(3).

(6) "Department" is defined by KRS 196.010(3). [

(2) "Cabinet" means the Justice Cabinet.

(3) "Commission" means the Kentucky State Corrections Commission.

(4) "Department" means the Department of Corrections.]

~~(7)(6)](5) "Eligible applicant" means any local government agency or combination of agencies, private nonprofit, or charitable organization that[whø] has an established a community corrections board.~~

~~(8)(7)](6) "Grant funds" means funds awarded by the commission in accordance with KRS 196.710 for implementing a community corrections[for implementing a] program plan. [~~

~~(8)(7)] ["Program plan" means a written plan describing the proposed community-based correctional programs to be offered in a judicial district, for the purpose of diverting felony][felon] [offenders from prison.]~~

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET  
Kentucky State Corrections Commission  
(As Amended at ARRS, March 9, 2020)**

**500 KAR 10:020. Administration and application procedure for community corrections grant program.**

RELATES TO: KRS 196.700 - 196.736~~[196.740]~~  
STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation establishes[provides]~~[is necessary to provide]~~ the application process and administrative procedures for the community corrections grant programs ~~[enacted by the General Assembly]~~ [in KRS 196.710].

Section 1. Application Process. (1) The administrator~~[director]~~ shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by sending~~[mailing]~~ notices to each county government and judicial circuit.

(2) The grant program requirements may be reviewed in full at the Justice and Public Safety Cabinet website under the Grants Management Branch and Kentucky State Corrections Commission grants.

(3) An applicant shall:

(a) Develop a community corrections program plan in compliance with KRS 196.720;

(b) Have:

1. A community corrections board established and functioning pursuant to KRS 196.725; or

2. An alternate board as described in KRS 196.710(3). If an applicant seeks to operate its community corrections program with oversight by an alternate board instead of a community corrections board pursuant to KRS 196.710(3), it shall operate under the following requirements in KRS 196.725:

a. The board shall provide direction and assistance to the community corrections program in the design, implementation and evaluation of the community corrections program plan;

b. The board members~~[member]~~ shall not receive



*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.

**NOTE:** Due to a formatting error, the July 2020 edition of the *Administrative Register of Kentucky* was missing underlining throughout the Register. This publication is intended to replace the prior version in its entirety.

### 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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# **APPENDIX D**

Response to EPA Comments

## **Response to EPA Comments**

## RESPONSE TO EPA COMMENTS FOR THE REVISION TO 401 KAR 63:010

### General comments:

**1. Comment:** 401 KAR 63:010 Section 3(2): The changes to this paragraph appear to provide certainty by including a timeframe during which the restriction on visible emissions applies and a standardized method of demonstrating compliance. However, further explanation is needed to support the change from a complete prohibition to a somewhat more limited prohibition of visible fugitive dust emissions beyond the lot line of the property on which the emissions originate. Please provide a non-interference demonstration pursuant to section 110(l) of the Clean Air Act, 42 U.S.C. § 7410(l), including an analysis of the potential impact of the proposed amendment on attainment or maintenance of the National Ambient Air Quality Standards and reasonable further progress. (R. Scott Davis, U.S. EPA)

**Response:** A non-interference demonstration pursuant to section 110(l) of the Clean Air Act, 42 U.S.C. § 7410(l), including an analysis of the potential impact of the proposed amendment on attainment or maintenance of the National Ambient Air Quality Standards and reasonable further progress, is not required as the fugitive emission standard has not been made less stringent. The standard at issue remains, “A person shall not cause or permit the discharge of visible fugitive dust emissions beyond the lot line of property on which the emissions originate.” The addition of the use of Method 22, a narrowly tailored provision, addresses how the standard is implemented by the Division and does not lessen stringency of the standard used to attain or maintain the National Ambient Air Quality Standards and reasonable further progress.

Further, because the standard at issue herein applies to excess emissions, removing this provision will not reduce emissions and therefore, would not result in an environmental or public health or welfare benefit.

**2. Comment:** Section 3(4) is revised to include a nuisance provision that may not be appropriate for the SIP. This provision is currently SIP-approved in Section 4(2) and is being combined with Section 3(4) in this proposed revision. The EPA is available for further discussion on this. (R. Scott Davis, U.S. EPA)

**Response:** The Division agrees. The Division has specifically requested that the provision in Section 3(4) not be included in this request for approval as described herein in the Executive Summary and Cover Letter.

### Other Comments:

**3. Comment:** It appears that Rule 401 KAR 63:010 has changed in several ministerial and minor ways since it was last submitted to the EPA for approval. Certain of these changes are not reflected in the redline/strikeout provided in this prehearing package. Please include the additional changes made in the final package for the EPA’s inclusion into the SIP. For example, the Natural Resources and Environmental Protection Cabinet has been revised in title as the Energy and Environment Cabinet. (R. Scott Davis, U.S. EPA)

**Response:** Since EPA’s approval of the regulation into the SIP, there have been no substantive changes to the administrative regulation. Ministerial changes are reflected by original (non-underlined) and strike-through language on the initially filed regulation and included herein, in Appendix A.