

401 KAR 50:005. General application.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13,082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides guidelines by which all regulations of Title 401, Chapters 50 to 65, are to be understood.

Section 1. General Application of Regulations and Standards. Regulations of the department shall be construed and applied in light of the considerations set forth hereinafter which shall guide the department in the issuance, modification, and revocation of permits.

- (1) In the absence of any standard specified in these regulations, all air contaminant sources shall as a minimum apply such control procedures as are reasonable, available, and practical.
- (2) Nothing in these regulations is intended to permit any practice which is in violation of any statute, ordinance, or regulation.
- (3) These regulations shall be construed as complementary to each other, and to such other regulations as have been adopted or shall be adopted by the department. If any provision of these regulations as have been adopted or shall be adopted by the department. If any provision of these regulations or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or application of any other part of these regulations, and to this end each provision of these regulations, and the various applications thereof are declared to be severable.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980 DEC 24, 1980 JUL 12, 1982	45 FR 6092 45 FR 84999 47 FR 30059

401 KAR 50:010. Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.01-010, 224.01-100, 224.20-100, 224.20-110, 224.20-120; 40 CFR, Chapter I; Appendices A through K to 40 CFR 50; 40 CFR 5 1: 100(s); 40 CFR 53; 40 CFR 60; Appendices A and B to 40 CFR 60; Appendix B to 40 CFR 61; 42 USC 7410; 42 USC 741t(a)(8)

STATUTORY AUTHORITY: KRS 13A.222(4)(e); 224.10-100

NECESSITY AND FUNCTION: KRS224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the defining of terms to be used in Title 401, Chapters 50 to 65.

Section 1. Definitions. All terms not defined in this regulation or in subsequent regulations shall have the meaning given them in KRS 224.01-010 or by commonly accepted usage. As used in the regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

- (1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.
- (2) "Air contaminant" has the meaning given it in KRS 224.01-010.
- (3) "Air pollutant" means an air contaminant.
- (4) "Air pollution" has the meaning given it in KRS 224.01-010.
- (5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.
- (6) "Alteration" means:
 - (a) The installation or replacement of air pollution control equipment at a source;
 - (b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.
- (7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.
- (8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- (9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
- (10) "Cabinet" has the meaning given it in KRS 224.01-010.
- (11) "Capital expenditure" means an expenditure for a physical or operational

change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this regulation, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

- (12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.
- (13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.
- (14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.
- (15) "Continuous monitoring system" means the total equipment, required under the applicable regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.
- (16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.
- (17) "District" has the meaning given it in KRS 224.01-100.
- (18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.
- (19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
- (20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.
- (21) "Existing source" means a source which is not a new source.
- (22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.
- (23) "Fixed capital cost" means the capital needed to provide all the depreciable components.
- (24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.
- (25) "Fugitive emissions" means the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.
- (26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

- (27) "Incineration" means the process of igniting and burning solid, semi-solid, liquid, or gaseous combustible wastes.
- (28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.
- (29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.
- (30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.
- (31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.
- (32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.
- (33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:
- (a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;
 - (b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;
 - (c) An increase in the hours of operation;
 - (d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;
 - (e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;
 - (f) The relocation or change in ownership of an existing facility.
- (34) "Monitoring device" means the total equipment, required in applicable regulations, used to measure and record (if applicable) process parameters.
- (35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

- (36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.
- (37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
- (38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.
- (39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.
- (40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.
- (41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.
- (42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.
- (43) "PM₁₀ emissions", means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.
- (44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.
- (45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:
- (a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;
 - (b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;
 - (c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

- (d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.
- (46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific regulation or chapter.
- (47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.
- (48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
- (49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.
- (50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.
- (51) "Shutdown" means the cessation of an operation.
- (52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.
- (53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.
- (54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the regulations of the Division for Air Quality.
- (55) "Standard conditions:"
(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);
(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.
- (56) "Start-up" means the setting in operation of an affected facility.
- (57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410.
- (58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

- (59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.
- (60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.
- (61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.
- (62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reaction. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC23); trichlorotrifluoroethane (CFC- 1 13); dichlorotetrafluoroethane (CFC-1 14); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotriflouride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:
- (a) Cyclic, branched, or linear, completely fluorinated alkanes;
 - (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
 - (c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
 - (d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S.EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations.

The abbreviations used in the regulations of Title 401, Chapters 50 to 65, shall have the following meanings:

AOAC - Association of Official Analytical Chemists;
ANSI - American National Standards Institute;
ASTM - American Society for Testing and Materials;
BOD - Biochemical oxidant demand;
BTU - British Thermal Unit;
°C - Degree Celsius (centigrade);
Cal - calorie;
cfm - cubic feet per minute;
CFR - Code of Federal Regulations;
CH₄ - methane;
CO - Carbon monoxide;
CO₂- Carbon dioxide;
COD - Chemical oxidant demand;
dscf - dry cubic feet at standard conditions;
dscm - dry cubic meter at standard conditions;

°F - Degree Fahrenheit;
ft - feet;
g - gram;
gal - gallon;
gr - grain;
hr - hour;
HCl - Hydrochloric acid;
Hg - mercury;
HF - Hydrogen fluoride;
H₂O - water;
H₂S - Hydrogen sulfide;
H₂SO₄ - Sulfuric acid;
in - inch;
J - joule;
KAR - Kentucky Administrative Regulations;
kg - kilogram;
KRS - Kentucky Revised Statutes;
L - liter;
lb - pound;
m - meter;
m³- cubic meter;
min - minute;
mg - milligram;
MJ - megajoules;
MM - million;
mm - millimeter;
mo - month;
Ng - nanograms;
N₂- Nitrogen;
NO - Nitric oxide;
N₂O - Nitrogen dioxide;
NO_x - Nitrogen oxides;
oz - ounce;
O₂ - oxygen;
O₃ - ozone;
ppb - parts per billion;
ppm - parts per million;
ppm (w/w) - parts per million (weight by weight);
µg - microgram;
psia - pounds per square inch absolute;
psig - pounds per square inch gage;
S - at standard conditions;
sec - second;
SIP - State implementation plan;
SO₂ - Sulfur dioxide;
sq - square;
TAPPI - Technical Association of the Pulp and Paper Industry;
TSP - Total suspended particulates;
TSS - Total suspended solids;
U.S. EPA - United States Environmental Protection Agency;
UTM - Universal Transverse Mercator;
VOC - Volatile organic compound;
yd - yard;

Section 3. 401 KAR 50:047 definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

- (1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.
- (2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.
- (3) "Capture efficiency" means the weight per unit time of volatile

organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.

- (4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.
- (5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.
- (6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e. $1 - ((\text{VOC exiting}) / (\text{VOC entering}))$.
- (7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.
- (8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.
- (9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.
- (10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.
- (11) "PTE" means a permanent total enclosure which contains a process that emits VOC and meets the specifications given in Procedure T.
- (12) "TTE" means a temporary total enclosure which is built around a process that emits VOC and meets the specifications given in Procedure T.
- (13) "BE" means a building or room enclosure that contains a process that emits VOC. If a BE is to serve as a PTE or TTE, the appropriate requirements given in Procedure T shall be met.
- (14) "Procedure F.1" means Procedure F.1 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.
- (15) "Procedure F.2" means Procedure F.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.
- (16) "Procedure G.2" means Procedure G.2 in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.
- (17) "Procedure L" means Procedure L in "VOM Measurement Techniques for Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.
- (18) "Procedure T" means Procedure T in "VOM Measurement Techniques for

Capture Efficiency," which has been incorporated by reference in Section 5 of this regulation.

Section 4. Reference Material.

- (1) Incorporation by reference. The following documents are incorporated by reference:
 - (a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service, and
 - (b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.
- (2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8:00 a.m. to 4:30 p.m., local time.
 - (a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;
 - (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41101, (606) 325-8569;
 - (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;
 - (d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-641 1;
 - (e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;
 - (f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and
 - (g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

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		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059
1st Revision	DEC 09, 1982	DEC 04, 1986	51 FR 43472
2nd Revision	DEC 29, 1986	NOV 28, 1989	54 FR 48887
3rd Revision	JUL 07, 1988	FEB 07, 1990	55 FR 4169
4th Revision	OCT 20, 1992	JUN 23, 1994	59 FR 32343
5th Revision	MAY 04, 1995	JUN 13, 1995	60 FR 31087
6th Revision	JUN 19, 1996	JAN 21, 1997	62 FR 2915

401 KAR 50:012. General application.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.10-100, 224.20-120, 40 CFR 60.14, 42 USC 7401 et. seq., 42 USC 7408, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224. 10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This regulation provides guidelines by which all regulations of Title 401, Chapters 50 to 65, are to be understood.

Section 1. General Application of Regulations and Standards. Regulations of the cabinet shall be construed and applied according to Subsections (1) through (6) of this section, which shall guide the cabinet in the issuance, modification, and revocation of permits.

- (1) All major sources of VOCs located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010, shall install and use control technology which is reasonable and available.
 - (a) The determination of reasonably control technology shall be approved by the cabinet and shall be based upon:
 1. A Control Techniques Guidelines Document issued by the U.S. EPA promulgated in regulatory form by the cabinet, or
 2. If no Control Techniques Guidelines Document is appropriate, the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The cabinet may require technology that has been applied to similar, but not necessarily identical source categories.
 - (b) For those reasonably available control technology determinations not based on a control techniques guideline document, the cabinet shall:
 1. Hold a public hearing on the determination.
 2. Submit the determination to the U.S. EPA for approval.
 - (c) For these determinations, that portion of a source with facilities uncontrolled by reasonably available control technology which emit VOCs that sum to 100 tpy or greater shall be considered a major source.
- (2) In the absence of a standard specified in these regulations, all air contaminant sources shall as a minimum apply control procedures that are reasonable, available, and practical.
- (3) Nothing in these regulations is intended to permit a practice which is in violation of a statute, ordinance, or regulation.
- (4) These regulations shall be complementary to each other, and to other regulations adopted by the cabinet. If a provision of these regulations or the application thereof to a person or circumstance is held to be invalid, the invalidity shall not affect other provisions or application of another part of these regulations and to this end each provision of these regulations, and the various implications thereof are declared to be severable.
- (5) Except as provided by 401 KAR 50:055, nothing in these regulations shall allow a source to remove control equipment or discontinue procedures previously required in a nonattainment area to achieve the national

ambient air quality standards until a State Implementation Plan containing different requirements has been approved by the U.S. EPA.

- (6) For the purpose of applying the definition of modification, an increase in the amount of an air pollutant shall be determined as in 40 CFR 60.14.

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401 KAR 50:015. Documents incorporated by reference.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.320, 224.330, 224.340

PURSUANT TO: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the incorporation by reference of documents referred to within these regulations.

Section 1. Code of Federal Regulations.

- (1) The following documents from the "Code of Federal Regulations" which are in effect as of October 1, 1987, are incorporated herein by reference:
- (a) 40 CFR 50:
 - 1. Appendix A: Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
 - 2. Appendix B: Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High Volume Method).
 - 3. Appendix C: Measurement Principle and Calibration Procedure for the Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).
 - 4. Appendix D: Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.
 - 5. Appendix E: Reference Method for the Determination of Hydrocarbons Corrected for Methane.
 - 6. Appendix F: Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).
 - 7. Appendix G: Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.
 - 8. Appendix H: Interpretation of the National Ambient Air quality Standards for Ozone.
 - 9. Appendix J: Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.
 - 10. Appendix K: Interpretation of the National Ambient Air Quality Standards for Particulate Matter.
 - (b) 40 CFR 58: Appendix B: Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.
 - (c) 40 CFR 60:
 - 1. Appendix A: Reference Methods:
 - a. Method 1 - Sample and Velocity Traverses for Stationary Sources.
 - b. Method 2 - Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube).
 - c. Method 2A - Direct Measurement of Gas volume through Pipes and Small Ducts.
 - d. Method 2B - Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators.

- e. Method 3 - Gas Analysis for Carbon Dioxide, Oxygen, Excess Air, and dry molecular weight.
- f. Method 3A - determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental analyzer procedure).
- g. Method 4 - Determination of moisture content in stack gases.
- h. Method 5 - Determination of particulate emissions from stationary sources.
- i. Method 5A - determination of particulate emissions from the asphalt processing and asphalt roofing industry.
- j. Method 5B - Determination of Nonsulfuric Acid Particulate Matter from Stationary Sources.
- k. Method 5D - determination of particulate matter emissions from positive pressure fabric filters.
- l. Method 5E - determination of particulate emissions from the wool Fiberglass insulation manufacturing industry.
- m. Method 5F - Determination of Nonsulfate Particulate Matter from Stationary Sources.
- n. Method 6 - determination of sulfur dioxide emissions from stationary sources.
- o. Method 6A - Determination of sulfur dioxide, moisture, and carbon dioxide emissions from fossil fuel combustion sources.
- p. Method 6B - determination of sulfur dioxide and carbon dioxide daily average emissions from fossil fuel combustion sources.
- q. Method 6C - determination of sulfur dioxide emissions from stationary sources (instrumental analyzer procedure).
- r. Method 7 - Determination of nitrogen oxide emissions from stationary sources.
- s. Method 7A - Determination of nitrogen oxide emissions from stationary sources -- ion chromatographic method.
- t. Method 7B - determination of nitrogen oxide emissions from stationary sources (ultraviolet spectrophotometry).
- u. Method 7C - determination of nitrogen oxide emissions from stationary sources -- alkaline - permanganate/colorimetric method.
- v. Method 7D - Determination of nitrogen oxide emissions from stationary sources -- alkaline - permanganate/ion chromatographic method.
- w. Method 7E - Determination of nitrogen oxides emissions from stationary sources (instrumental analyzer procedure).
- x. Method 8 - determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources.

- y. Method 9 - visual determination of the opacity of emissions from stationary sources.
- z. Method 10 - determination of carbon monoxide emissions from stationary sources.
- aa. Method 10A - Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum refineries.
- bb. Method 11 - determination of hydrogen sulfide content of fuel gas streams in petroleum refineries.
- cc. Method 12 - determination of inorganic lead emissions from stationary sources.
- dd. Method 13A - determination of total fluoride emissions from stationary sources - SPADNS zirconium lake method.
- ee. Method 13 B - determination of total fluoride emissions from stationary sources - specific ion electrode method.
- ff. Method 14 - determination of fluoride emissions from potroom roof monitors of primary aluminum plants.
- gg. Method 15 - determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources.
- hh. Method 15A - determination of Total Reduced Sulfur Emissions from Sulfur Recovery Plants in Petroleum Refineries.
- ii. Method 16 - semicontinuous determination of sulfur emissions from stationary sources.
- jj. Method 16A - determination of total reduced sulfur emissions from stationary sources (impinger technique).
- kk. Method 16B - determination of Total Reduced sulfur emissions from Stationary sources.
- ll. Method 17 - determination of particulate emissions from stationary sources (instack filtration method).
- mm. Method 18 - measurement of gaseous organic compound emissions by gas chromatography.
- nn. Method 19 - determination of sulfur dioxide removal efficiency and particulate, sulfur dioxide and nitrogen oxides emissions rates from electric utility steam generators.
- oo. Method 20 - determination of nitrogen oxides, sulfur dioxide, and diluent emissions from stationary gas turbines.
- pp. Method 21 - determination of volatile organic compounds leaks.
- qq. Method 22 - visual determination of fugitive emissions from material processing sources.
- rr. Method 24 - determination of volatile matter content, water content, density, volume solids, and weight

- solids of surface coatings.
 - ss. Method 24A - determination of volatile matter content and density of printing inks and related coatings.
 - tt. Method 25 - determination of total gaseous nonmethane organic emissions as carbon.
 - uu. Method 25 A - determination of total gaseous organic concentration using a flame ionization analyzer.
 - vv. Method 25B - determination of total gaseous organic concentration using a nondispersive infrared analyzer.
 - ww. Method 27 - determination of vapor tightness of gasoline delivery tank using pressure-vacuum test.
2. Appendix B: Performance specifications:
- a. Performance specification 1 - specifications and test procedures for opacity continuous emission monitoring systems in stationary sources.
 - b. Performance specification 2 - specifications and test procedures for sulfur dioxide and nitric oxides continuous emission monitoring systems in stationary sources.
 - c. Performance specification 3 - specifications and test procedures for oxygen and carbon dioxide continuous emission monitoring systems in stationary sources.
 - d. Performance specification 4 - specifications and test procedures for carbon monoxide continuous emission monitoring systems in stationary sources.
 - e. Performance specification 5 - specifications and test procedures for TRS continuous emission monitoring systems in stationary sources.
3. Appendix C: Determination of emission rate change.
4. Appendix F: Quality Assurance Procedure 1 - Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination.
- (d) 40 CFR 61:
1. Appendix B: Test Methods:
- a. Method 101 - determination of particulate and gaseous mercury emissions from chlor-alkali plants (air streams).
 - b. Method 101A - determination of particulate and gaseous mercury emissions from sewage sludge incinerators.
 - c. Method 102 - determination of particulate and gaseous mercury emissions from chlor-alkali plants (hydrogen streams).
 - d. Method 103 - beryllium screening method.
 - e. Method 104 - reference method for determination of beryllium emissions from stationary sources.
 - f. Method 105 - method for determination of mercury in wastewater treatment plant sewage sludges.
 - g. Method 106 - determination of vinyl chloride from stationary sources.

- h. Method 107 - determination of vinyl chloride content of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.
 - i. Method 107 A - determination of vinyl chloride content of solvents, resin-solvent solution, polyvinyl chloride resin, resin slurry, wet resin, and latex samples.
 - j. Method 108 - determination of particulate and gaseous arsenic emissions.
 - k. Method 108A - determination of particulate and gaseous arsenic emissions.
 - l. Method 111 - determination of polonium - 210 emissions from stationary sources.
2. Appendix C: Quality assurance procedures:
- a. Procedure 1 - determination of adequate chromatographic peak resolution.
 - b. Procedure 2 - procedures for field auditing GC analysis.

(2) Copies may be obtained from: Office of the Federal Register, National Archives and Records Service, 8th and Pennsylvania Avenue, NW, Washington, D.C. 20408; Phone (202) 523-5215.

Section 2. Association of Official Analytical Chemists. The following document from the Association of official analytical chemists is incorporated herein by reference.

- (1) Method 9 - Spectrophotometric Molybdovanadophosphate from "Official Method of Analysis" of the association of official analytic chemists, 11th edition.
- (2) Copies may be obtained from: Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, D.C. 20014; Phone (202)245-1191.

Section 3. American Society for Testing and Materials. The following documents from the appropriate "Book of ASTM Standards" in which the standard appears from the American Society for Testing and Materials are incorporated herein by reference:

- (1) ASTM Standards:
 - (a) A 99-66(71) standard specification for ferromanganese.
 - (b) A 100-69(74) standard specification for ferrosilicon.
 - (c) A 101-73 standard specification for ferrochromium.
 - (d) A 482-66(71) standard specification for ferrochrome- silicon.
 - (e) A 483-64(74) standard specification for silicomanganese.
 - (f) A 495-64(70) standard specification for calcium-silicon and calcium-manganese-silicon.
 - (g) D 86-82 standard method for distillation of petroleum products.
 - (h) D 240-76 standard test method for heat of combustion of liquid hydrocarbon fuels by bomb calorimeter.

- (i) D 322-67(77) Standard test method for gasoline diluent in used gasoline engine oils by distillation.
- (j) D 323-82 Standard Specifications for Fuel Oils.
- (k) D 388-82 standard specification for classification by coals by rank.
- (l) D 396-84 Standard Specifications for Fuel Oils.
- (m) D 737-75 standard test method for air permeability of textile fabrics.
- (n) D 1072-80 standard method for total sulfur in fuel gases.
- (o) D 1137-53(75) standard method for analysis of natural gases and related types of gaseous mixtures by the mass spectrometer.
- (p) D 1475-60(80) standard test method for density of paint, varnish, lacquer, and related products.
- (q) D 1644-75 standard test methods for nonvolatile content of varnishes.
- (r) D 1826-64(75) standard test method for calorific value of gases in natural gas range by continuous recording calorimeter.
- (s) D 1945-64(73) standard method for analysis of natural gas by gas chromatography.
- (t) D 1946-67(72) standard method for analysis of reformed gas by gas chromatography.
- (u) D 2015-66(72) standard test method for gross calorific value of solid fuel by the adiabatic bomb calorimeter.
- (v) D 2265-83 Standard test method for aromatics in light naphthas and aviation gasolines by gas chromatography.
- (w) D 2369-73 standard test method for volatile content of paints.
- (x) D 2382-83 standard test method for heat of combustion of hydrocarbon fuels by bomb calorimeter (high-precision method).
- (y) D 2504-83 standard test method for noncondensable gases in C₃ and lighter hydrocarbon products by gas chromatography.
- (z) D 2584j-68(79) standard test method for ignition loss of cured reinforced resins.
- (aa) D 2880-78 standard specification for gas turbine fuel oils.
- (bb) D 2879-83 standard test method for vapor pressure- temperature relationship and initial decomposition temperatures of liquids by isoteniscope.
- (cc) D 3031-81 standard test method for total sulfur in natural gas by hydrogenation.
- (dd) D 3176-74 standard method for ultimate analysis of coal and coke.
- (ee) D 3178-73 standard test methods for carbon and hydrogen in the analysis sample of coal and coke.
- (ff) D 3246-81 standard method for sulfur in petroleum gas by oxidative microcoulometry.
- (gg) D 3421-80 Test Method for Trace Nitrogen in Liquid Petroleum

Hydrocarbons.

- (hh) D 4084-82 Standard method for analysis of hydrogen sulfide in gaseous fuels (lead acetate reaction rate method).
 - (ii) E 123-78 Standard specification for apparatus for determination of water by distillation.
 - (jj) E 168-67(77) standard recommended practices for general techniques of infrared quantitative analysis.
 - (kk) E 169-63(81) standard recommended practices for general techniques of ultraviolet quantitative analysis.
 - (ll) E 260-73 Standard recommended practice for general gas chromatography procedures.
- (2) Copies may be obtained from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; Phone (215) 299-5400.

Section 4. Technical Association of the Pulp and Paper Industry. The following document from the Technical Association of the Pulp and Paper Industry (TAPPI) is incorporated herein by reference:

- (1) T624 os-68--Analysis of Soda and Sulfate - White and Green Liquors. This reference is also numbered ANSI P3.6-1970 (American National Standards Institute)
- (2) Copies may be obtained from: TAPPI, 1 Dunwoody Park, Atlanta, GA 30341.

Section 5. Environmental Protection Agency. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

- (1) (a) Guideline on Air Quality Models (Revised), EPA-450/2-78-027R, OAQPS No. 1.2-080R, July, 1986, and Supplement A to the Guideline on Air Quality Models (Revised), July 1987.
 - (b) Workbook for Comparison of Air Quality Models, EPA-450/2-78-028a, OAQPS No. 1.2-097, May, 1978.
 - (c) Control of volatile organic compound leaks from petroleum refinery equipment, Appendix B, EPA-450/2-78-036, OAQPS No. 1.2-111, June, 1978.
 - (d) Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051, OAQPS No. 1.2-119, December, 1978.
 - (e) Control of Hydrocarbons from Tank Truck Gasoline Loading terminals, EPA-450/2-77-026, OAQPS No. 1.2-082, October, 1977.
 - (f) Guidelines for use of fluid modeling to determine good engineering practice stack height, EPA 450/4-81-003, PB 82-145327, July, 1981.
 - (g) Guidelines for fluid modeling of atmospheric diffusion, EPA-600/8-81-009, PB 81-201410, April, 1981.
- (2) Copies may be obtained from: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22161.

Section 6. American Association of State Highway and Transportation Officials.

The following document from the American Association of State Highway and Transportation Officials (AASHTO) is incorporated herein by reference:

- (1) AASHTO T 59-78 standard method of test for testing emulsified asphalt.
- (2) Copies may be obtained from: American Association of State Highway and Transportation Officials, 444 N. Capital Avenue, Washington, D.C. 20001.

Section 7. Federal Test Method Standard. The following document from the Federal Test Standard is incorporated herein by reference:

- (1) Federal Test Method Standard No. 141a, Method 4082.1, "Water in Paints and Varnishes (Karl Fischer Titration Method)."
- (2) Single copies may be obtained from:
 - (a) General Services Administration Regional Offices; or
 - (b) Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 8. Kentucky Division of Air Pollution. The following documents from the Kentucky Division of Air Pollution are incorporated herein by reference:

- (1)
 - (a) Kentucky Method 50: Kentucky division of Air Pollution Control Reference Method 50, "Determination of Total Particulate Emissions from Stationary Sources."
 - (b) Kentucky Method 90: Kentucky Division of Air Pollution Control Reference Method 90, "Determination of total gaseous organic emissions from stationary sources."
 - (c) Kentucky Method 91: Kentucky division of air pollution control reference method 91, "Alternate test method for the determination of total gaseous organic emissions from stationary sources."
 - (d) Kentucky Method 95: Kentucky Division of Air Pollution Control Reference Method 95, "Determination of Gasoline Vapor Emissions from Bulk Terminals."
 - (e) Kentucky Method 130: Kentucky Division of Air Pollution Control Reference Method 130, "Determination of Gaseous Fluoride Emissions from Stationary Sources."
 - (f) Kentucky Method 150(F-1): Kentucky Division of Air Pollution Control Reference Method 150(F-1), "Visual Determination of Intermittent Opacity Emissions from Stationary sources."
- (2) Copies may be obtained from: Division of Air Pollution, Technical Services Branch, Department for Environmental Protection, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601.

Section 9. American National Standards Institute. The following document from the American National Standards Institutes is incorporated herein by reference:

- (1) Voluntary Product Standard PS 59-73 - Prefinished Hardboard Paneling. The reference is also numbered ANSI A135.5-1973 (American National Standards Institute).
- (2) Copies may be obtained from: American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 10. American Public Health Association. The following document from the American Public Health Association, American Water Works Association and

Water Pollution Control Federation is incorporated herein by reference:

- (1) Standard Methods for the Examination of Water and Wastewater, 15th Edition, 1980:
 - (a) Method 209A. Total Residue Dried at 103-105C.
 - (b) Method 209C. Total Filterable Residue Dried at 103-105C.
- (2) Copies may be obtained from: American Public Health Association, 1015 Fifteenth Street, N.W., Washington, D.C. 20005.

Section 11. American Petroleum Institute. The following document from the American Petroleum Institute is incorporated herein by reference:

- (1) API Publication 2517, Evaporation Loss from External Floating Roof Tanks, Second Edition, February 1980.
- (2) Copies may be purchased from: American Petroleum Institute, 1220 L Street N. W., Washington, D.C. 20005.

Section 12. Availability. Copies of the material incorporated by reference in this regulation shall be available for public review at the following offices of the Division of Air Pollution Control:

- (1) Director's Office, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 4060, (502) 564-3382;
- (2) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41101, (606) 325-8569;
- (3) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky 42101, (502) 842-8131;
- (4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;
- (5) Hazard Regional Office, 233 Birch St., Hazard, Kentucky 41701, (606) 439-2391;
- (6) Owensboro Regional Office, 31 West Second Street, Owensboro, Kentucky 423-1, (502) 686-3304; and
- (7) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

Effective Date: April 14, 1988

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059
1st Revision	SEP 19, 1986	MAY 04, 1989	54 FR 19169
2nd Revision	MAR 23, 1987	APR 08, 1988	53 FR 11655
3rd Revision	FEB 09, 1989	NOV 09, 1989	54 FR 47077
4th Revision	JUL 07, 1988	FEB 07, 1990	55 FR 4169

401 KAR 50:020. Air quality control regions.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the designation and classification of air quality control regions.

Section 1. Designation of Air Quality Control Regions. Air quality control regions designated by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 107 of the Clean Air Act as amended are listed in this section. The air quality control regions consist of the territorial area encompassed by the boundaries of the designated jurisdictions herein geographically located within the outermost boundaries of the area so delimited.

- (1) Appalachian Intrastate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Bell, Breathitt, Clay, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Rockcastle, Whitley, Wolfe.
- (2) Bluegrass Intrastate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Anderson, Bourbon, Boyle, Clark, Estill, Fayette, Franklin, Garrard, Harrison, Jessamine, Lincoln, Madison, Mercer, Nicholas, Powell, Scott, Woodford.
- (3) Evansville (Indiana) Owensboro - Henderson (Kentucky) Interstate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Daviess, Hancock, Henderson, McLean, Ohio, Union, Webster.
- (4) Huntington (west Virginia) - Ashland (Kentucky) - Portsmouth- Ironton (Ohio) Interstate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Bath, Boyd, Bracken, Carter, Elliott, Fleming, Greenup, Lawrence, Lewis, Mason, Menifee, Montgomery, Morgan, Robertson, Rowan.
- (5) Louisville Interstate Air Quality Control Region. In the Commonwealth of Kentucky the following county: Jefferson.
- (6) Metropolitan Cincinnati (Ohio) Interstate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Boone, Campbell, Carroll, Gallatin, Grant, Kenton, Owen, Pendleton.
- (7) North Central Kentucky Intrastate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Breckinridge, Bullitt, Grayson, Hardin, Henry, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble, Washington.
- (8) Paducah (Kentucky) - Cairo (Illinois) Interstate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, Muhlenberg, Todd, Trigg.
- (9) South Central Kentucky Intrastate Air Quality Control Region. In the Commonwealth of Kentucky the following counties: Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, McCreary, Metcalfe, Monroe, Pulaski, Russell, Simpson, Taylor, Warren, Wayne.

Section 2. Classification of Air Quality Control Regions. The priority

classifications of air quality control regions shall be as in Appendix A to this regulation. This priority system was established by the regulations of the U.S. Environmental Protection Agency.

[SIP Compilation Table After Appendix]

APPENDIX A TO 401 KAR 50:020

Priority Classification to Air Quality Control Regions with Respect to
 Particulates, Sulfur Oxides*, Carbon Monoxide, Nitrogen Dioxide and
 Photochemical Oxidants (and Hydrocarbons)

Photochemical Region(No.) (Hydrocarbons)	Particulate Matter	Sulfur Oxides*	Carbon Monoxide	Nitrogen Dioxide	Oxidants
Louisville (078)	I	I	III	III	I
Cincinnati (079)	I	II	III	III	I
Paducah-Cairo (072)	I	II	III	III	III
Huntington- Ashland(103)	I	III	III	III	III
Evansville- Henderson(077)	I	II	III	III	III
Bluegrass(102)	II	III	III	III	III
Appalachian(101)	II	III	III	III	III
North Central (104)	II	III	III	III	III
South Central (105)	III	III	III	III	III

* Refer to 401 KAR 50:025 for the county classification system.

Effective Date: June 6, 1979.

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980 DEC 24, 1980 JUL 12, 1982	45 FR 6092 45 FR 84999 47 FR 30059

401 KAR 50:025. Classification of counties.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.82, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the classification of counties with respect to various pollutants.

Section 1. Counties in the Commonwealth of Kentucky shall be classified with respect to sulfur dioxide as follows:

- (1) Class I: Jefferson County;
- (2) Class IA: McCracken County;
- (3) Class II: Bell County, Clark County, Woodford County;
- (3) Class III: Pulaski County;
- (4) Class IV: Webster County, Hancock County;
- (5) Class IVA: Muhlenberg County;
- (6) Class V: All other counties not specifically listed within this section;
- (7) Class VA: Boyd County.

Effective Date: June 01, 1983

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
1st Revision	JUN 15, 1983	APR 02, 1996	61 FR 14489

401 KAR 50:030. Registration of sources.

DEPARTMENT FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.033

NECESSITY AND FUNCTION: KRS 224.033 requires the Department for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for the registration of sources.

Section 1. Persons engaged in the operation of sources shall, upon request by the department, register such sources or discharges which may result from their operation in accordance with the provisions of this regulation.

Section 2. The department may require from such person reports containing information relating to said sources and air contaminants emitted by each into the atmosphere.

Section 3. Registration and reporting of air contaminant sources and their related discharges shall be upon forms provided by the department.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980 DEC 24, 1980 JUL 12, 1982	45 FR 6092 45 FR 84999 47 FR 30059

401 KAR 50:032. Prohibitory rule for hot mix asphalt plants.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.10-100, 224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661-7661f

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes operational limits for hot mix asphalt plants that do not hold a Title V or conditional major permit pursuant to 40 CFR Part 70 and 401 KAR 50:035.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given them in 401 KAR 50: 010, unless the context clearly indicates otherwise.

- (1) "Conditional major permit" means a permit issued to the owner or operator of a source that limits the source's PTE below the major source thresholds specified in 401 KAR 50:035, Section 1(23).
- (2) "Batch mix plant" means a facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.
- (3) "Drum mix plant" means a facility that produces hot mix asphalt by heating, drying and mixing the aggregate with asphalt cement in one operation.
- (4) "Hot mix asphalt plant" means a facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. Stationary plants and portable plants shall be treated as separate sources unless two (2) or more plants are located on one (1) or more contiguous or adjacent properties and under common control of the same person or persons under common control.
- (5) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 401 KAR 50:035 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995, (60 FR 57186) and made effective on December 14, 1995.
- (6) "PTE" or "Potential to emit" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design. A physical or operational limit on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limit is enforceable as a practical matter, as defined in 401 KAR 50:035, Section 1(15).
- (7) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Section 2. Applicability.

- (1) This administrative regulation applies to owners and operators of hot mix asphalt plants:
 - (a) Whose PTE, absent the operational limits contained in Section 3 of this administrative regulation, would exceed one (1) or more of the major source thresholds defined in 401 KAR 50:035, Section

1(23);

- (b) That do not hold a Part 70 or conditional major permit; and
 - (c) That operate in compliance with 401 KAR 59:010, or 401 KAR 61:020, whichever is applicable.
- (2) Compliance with this administrative regulation shall exempt a source from the requirement to obtain a Part 70 permit (unless otherwise required to do so by the U.S. EPA) or a conditional major permit, but shall not exempt a source from the requirement to obtain a state origin permit, or to revise or renew an existing permit, if required to do so pursuant to 401 KAR 50:035.
- (3) Compliance with this administrative regulation shall not relieve a source from the requirement to comply with all applicable requirements, including rate-based limits or other terms and conditions stated in a permit issued by the cabinet.
- (4) A source may obtain a Part 70 or conditional major permit in lieu of complying with this administrative regulation.

Section 3. Operational Limits. Owners and operators of sources subject to this administrative regulation shall comply with the following operational limits and fuel usage requirements:

- (1) Batch mix plants shall not produce more than 360,000 tons of asphalt during a consecutive twelve (12) month period;
- (2) Drum mix plants shall not produce more than 500,000 tons of asphalt during a consecutive twelve (12) month period; and
- (3) A hot mix asphalt plant shall not use waste oil as fuel in the production of asphalt unless it has been recycled and meets the following specifications:
 - (a) It does not contain more than:
 - 1. Five (5) ppm of arsenic;
 - 2. Two (2) ppm of cadmium;
 - 3. Ten (10) ppm of chromium;
 - 4. 100 ppbn of lead;
 - 5. 1000 ppm of total halogens; and
 - (b) It has a minimum flash point of 100 degrees F.

Section 4. Recordkeeping Requirements. The owner or operator of a source subject to this administrative regulation shall maintain monthly logs of asphalt production and fuel usage.

- (1) The production log shall show in tons the amount of asphalt produced:
 - (a) Each month; and
 - (b) In a rolling twelve (12) month period, by adding the monthly total to the previous eleven (11) months.
- (2) The fuel usage log shall show the type and amount of fuels used each month.
 - (a) Gaseous fuels shall be identified as natural (NAT), liquid propane gas (LPG), or liquid butane gas (LBG); and fuel usage shall be expressed in cubic feet or gallons.
 - (b) Fuel oils shall be identified by number (i.e., #2, #4, etc.) and fuel usage shall be expressed in gallons. Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.

- (3) All logs and MSDS sheets shall be kept on site for five (5) years from the date of last entry and shall be made available, upon request, for inspection by the cabinet or the U.S. EPA.

Effective Date: April 13, 1998

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	APR 29, 1998	MAR 10, 2000	65 FR 12948

401 KAR 50:035. Permits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: 401 KAR Chapters 50 through 65; KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120; 40 CFR Parts 51, 52, 60, 70, 72, 73, 75, 76, 77, and 78; 42 USC 7401-7671q, July 21, 1992 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation combines construction and operating permits into one permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

- (1) "Acid Rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 40 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 76, 77, and 78. 40 CFR Parts 72, 73, 75, 76, 77, and 78 are incorporated by reference in Section 11 of this administrative regulation.
- (2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by P.L. 101-549 (November 15, 1990).
- (3) "Administrative permit amendment" means a revision to a permit that:
 - (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;
 - (c) Requires more frequent monitoring or reporting by the permittee;
 - (d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;
 - (e) Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.
- (4) "Affected source" means a source that includes one (1) or more affected units.
- (5) "Affected states" means those states:
 - (a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation, or
 - (b) That are within fifty (50) miles of the proposed permitted source.
- (6) "Affected unit" means a unit that is subject to the Acid Rain program.
- (7) "Applicable requirement" means a federally enforceable requirement or a

state-origin requirement or standard.

- (8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).
- (9) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.
- (10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.
- (11) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the Acid Rain program, means the "designated representative."
- (12) "Draft permit" means the version of a permit which the cabinet offers for the applicable public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.
- (13) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (14) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 29, 1993.
- (15) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the Acid Rain program.
- (16) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 29, 1993, or a source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.
- (17) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.
- (18) "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:
 - (a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;
 - (b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42

USC 7401 through 7515 (Title I of the Act).

- (c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section II 1 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration.
 - (d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act).
 - (e) Standards or requirements of the Acid Rain program.
 - (f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.
 - (g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).
 - (h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).
 - (i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).
 - (j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.
- (19) "Final permit" means:
- (a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.
 - (b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.
- (20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (21) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.
- (22) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping, (i.e., all have the same two-digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21), which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.
- (a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061, made effective November 29, 1993, or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated

equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources.

- (b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one of the following categories:
1. Coal cleaning plants (with thermal dryers);
 2. Kraft pulp mills;
 3. Portland cement plants;
 4. Primary zinc smelters;
 5. Iron and steel mills;
 6. Primary aluminum ore reduction plants;
 7. Primary copper smelters;
 8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
 9. Hydrofluoric, sulfuric, or nitric acid plants;
 10. Petroleum refineries;
 11. Lime plants;
 12. Phosphate rock processing plants;
 13. Coke oven batteries;
 14. Sulfur recovery plants;
 15. Carbon black plants (furnace process);
 16. Primary lead smelters;
 17. Fuel conversion plant;
 18. Sintering plants;
 19. Secondary metal production plants;
 20. Chemical process plants;
 21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
 22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
 23. Taconite ore processing plants;
 24. Glass fiber processing plants;
 25. Charcoal production plants;
 26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
 27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).
- (c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:
1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;'
 2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
 3. For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM10.

- (23) "Minor source" means a stationary source that is required- to obtain a permit pursuant to this administrative regulation and that is not a major source.
- (24) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.
- (25) "Phase 11" means the Acid Rain program period beginning January 1, 2000, and continuing thereafter.
- (26) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the Acid Rain program.
- (27) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
- (28) "Regulated air pollutant" means the following:
- (a) For sources subject to 40 CFR Part 70:
 1. Nitrogen oxides;
 2. Volatile organic compounds;
 3. A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);
 4. A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);
 5. A Class I or Class 11 substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); and
 - (b) For state origin requirements:
 1. A pollutant for which a state ambient air quality standard has been promulgated in 401 KAR 53:010; and
 2. A pollutant listed in, 401 KAR 63:021, made effective November 11, 1986, or 401 KAR 63:022, made effective November 11, 1986.
- (29) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) of this administrative regulation.
- (30) "Responsible official" means one of the following:
- (a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 2. The delegation of authority to the representative is

approved in advance by the cabinet;

- (b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
 - (c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or
 - (d) For the acid rain portion of a permit for an affected source, the designated representative.
- (31) "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
 - (32) "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.
 - (33) "State Implementation Plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.
 - (34) "State-origin permit" means a permit that contains only state-origin requirements, or that contains federally enforceable requirements but is not required by the U.S. EPA to be a federally enforceable permit.
 - (35) "State-origin requirement" means an applicable requirement that is not mandated by 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.
 - (36) "Stationary source" means a building, structure, affected facility, or installation that permits or may emit a regulated air pollutant.
 - (37) "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.
 - (38) "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

- (1) A source shall be exempt from this administrative regulation if:
 - (a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or
 - (b) The source is a minor source that;
 - 1. Emits or has the potential to emit less than twenty-five (25) tons per year of a regulated air pollutant, except as provided in subparagraphs 2. and 3. of this paragraph, or a lesser amount if specified in an applicable requirement; and
 - 2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and
 - 3. Is not subject to a requirement in 40 CFR Parts 60, 61, or-

4. Is not required by the U.S. EPA to obtain a permit.
- (2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirements. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.
 - (a) An asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987;
 - (b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA;
 - (c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;
 - (d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;
 - (e) Vehicles used for the transport of passengers or freight; and
 - (f) Publicly owned roads.
 - (3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria:
 - (a) The activity shall be included in the permit application with a request that the activity be exempt from permitting;
 - (b) The activity shall not be subject to an applicable requirement;
 - (c) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject;
 - (d) The activity shall have a potential to emit of less than five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.
 - (e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) and less than five (5) tpy of any combination of hazardous air pollutants, or a lesser amount if specified by the U.S. EPA;
 - (f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.
 - (g) The activity shall not be the incineration of medical waste.
 - (4) The cabinet shall maintain an updated list of those activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request.
 - (5) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision.
 - (a) Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010, if the

increase does not subject the source to an applicable requirement.

1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.
 2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.
- (b) After the issuance of a draft permit, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

Section 3. Permit Applications.

- (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.
 - (a) Timely applications.
 1. Existing major sources.
 - a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation.
 - b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) of this administrative regulation.
 2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) and Section 5(2)(b) of this administrative regulation.
 3. Existing minor sources required to have a state origin permit. An existing source that is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin permits pursuant to Section 5(1)(c) of this administrative regulation.
 4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source receives a permit for the entire source, if a timely and complete application is filed, shall file an application

using Form DEP 7007 to obtain a permit for the proposed change prior to commencing construction or modification. The applications for these sources shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

5. A source constructing, reconstructing, altering or modifying after November 29, 1993, shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, alteration, or modification, except as provided in subparagraph 4. of this paragraph and Section 6 of this administrative regulation. The cabinet shall process these applications pursuant to Section 5(3) of this administrative regulation.
6. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.
7. For permit renewal, an application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) of this administrative regulation.
8. Applications for initial Phase II Acid Rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.
2. The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete.
3. If, while processing an application that has been determined or deemed to be complete, the cabinet determines that additional information is necessary, it may require the information in writing and set a reasonable deadline for response.
4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall no be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

- (2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a

permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

- (3) Standard application form and required information.
- (a) Applications for permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.
 - (b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.
 - (c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through 0) below:
 - (d) The application shall provide the following emissions related information:
 - 1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in Section 2 of this administrative regulation. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.
 - a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.
 - b. For minor sources required to obtain a permit, all applicable requirements for the emissions units that cause the source to be subject to 40 CFR Part 70 shall be identified in the permit application. The cabinet may identify the applicable requirements for other minor sources prior to determining completeness of the application pursuant to subsection (1)(b) of this section.
 - c. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(22)(b).
 - 2. Identification and description of all points of emissions described in subparagraph 1. of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.
 - 3. Emissions rates in tons per year and in terms necessary to

establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent needed to determine or limit emissions.
 5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.
 7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.
 8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.
- (e) The application shall identify the following air pollution control requirements, except as provided in subparagraph (d)1.b. of this paragraph:
1. Citation and description of all applicable requirements, and
 2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.
- (f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.
- (g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.
- (h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)0) of this administrative regulation.
- (i) The application shall provide a compliance plan containing the following:
1. A description of the compliance status of the source for all applicable requirements as follows:
 - a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.
 - b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.
 2. A compliance schedule as follows:
 - a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

- b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.
 - 3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.
 - 4. In Phase II of the Acid Rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the Acid Rain portion of a compliance plan for an affected source, except as provided in the Acid Rain program for the schedule and method the source will use to achieve compliance with the Acid Rain emissions limitations.
- (j) The application shall identify requirements for compliance certification, including the following:
- 1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;
 - 2. A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;
 - 3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and
 - 4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.
- (4) Certification by Responsible Official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(30) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content.

- (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:
 - (a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:
 - 1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;
 3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable.
 4. For major sources all applicable requirements for emissions units;
 5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and
 6. Fugitive emissions from a source subject to 40 CFR Part 70 shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22)(b) of this administrative regulation.
 7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.
- (b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.
- (c) Monitoring and related record keeping and reporting requirements.
1. Each permit shall contain the following monitoring requirements:
 - a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);
 - b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of record keeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3. of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Record keeping provisions may be sufficient to meet the requirements of this sentence; and
 - c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.
 2. Each permit shall incorporate the following recordkeeping requirements, if applicable:
 - a. Records of required monitoring information that

- include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurements;
 - ii. The dates analyses were performed;
 - iii. The company or entity that performed the analyses;
 - iv. The analytical techniques or methods used;
 - v. The results of analyses; and
 - vi. The operating conditions at the time of sampling or measurement;
 - b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
3. Each permit shall incorporate the following reporting requirements, if applicable:
- a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.
 - b. Prompt reporting of deviations from permit requirements, including those attributed to upset conditions, the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements.
- (d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the Acid Rain program.
- 1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the Acid Rain program if the increases do not require a permit revision in another applicable requirement.
 - 2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use allowances in defense of noncompliance with an applicable requirement.
 - 3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 of this administrative regulation.
- (e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.
- (f) Provisions stating the following:
- 1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable

permits, is also a violation of 42 USC 7401 through 7671q (The Act) and is grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.
 3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.
 4. The permit shall not convey property rights or exclusive privileges.
 5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.
- (g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.
- (h) Emissions Trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
- (i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:
1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;
 2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and
 3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.
- (j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. The terms and conditions:
1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;
 2. Shall extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.
 4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.
- (2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin requirements, shall be enforceable by the U.S. EPA and citizens.
- (3) Compliance requirements. All permits shall contain the following elements for compliance:
- (a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.
 - (b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:
 1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;
 2. Have access to and copy, at reasonable times, any records required by the permit:
 - a. During normal office hours, and
 - b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and
 3. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:
 - a. During all hours of operation at the source,
 - b. For sources operated intermittently, during all hours of operation at the source and the hours between 8:00 am and 4:30 pm, Monday through Friday, excluding holidays, and
 - c. During an emergency.
 4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:
 - a. During all hours of operation at the source,
 - b. For sources operated intermittently, during all hours of operation at the source and the hours between 8:00 am and 4:30 pm, Monday through Friday, excluding holidays, and
 - c. During an emergency.
- (c) A schedule of compliance as required in Section 3(3)(i)2 of this

administrative regulation.

- (d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:
 - 1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and
 - 2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.
 - (e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
 - 1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);
 - 2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
 - 3. A requirement that the compliance certification include the following:
 - a. The identification of each term or condition of the permit that is the basis of the certification;
 - b. The compliance status;
 - c. Whether compliance was continuous or intermittent;
 - d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and
 - e. Other facts as the cabinet may require to determine the compliance status of the source;
 - 4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain permits pursuant to 40 CFR Part 70, as well as to the cabinet; and
 - 5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 42 USC 7504(b) (Sections 114(a)(3) and 504(b) of the Act),
 - (f) A specific condition, for a constructing, reconstructing, altering, or modifying source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.
 - (g) Other provisions required by the cabinet.
- (4) General permits.
- (a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar

sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the Acid Rain program.

- (b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.
- (5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:
 - (a) Conditions that will assure compliance with all applicable requirements at all authorized locations;
 - (b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and
 - (c) Conditions that assure compliance with all other provisions of this administrative regulation.
- (6) Permit shield.
 - (a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:
 - 1. The applicable requirements are included and are specifically identified in the permit; or
 - 2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
 - (b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.
 - (c) Nothing in this subsection or in a permit shall alter or affect the following:
 - 1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;
 - 2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the Acid Rain program; or
 4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).
- (7) Emergency provision.
- (a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.
 - (b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 1. An emergency occurred and the permittee can identify the cause of the emergency;
 2. The permitted facility was at the time being properly operated;
 3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3.b. of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.
 - (c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.
 - (d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. A person shall not construct, reconstruct, alter, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to November 29, 1993, may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

- (1) Processing applications from existing sources for permits covering the entire source.
 - (a) An existing major source proposing to accept permit limitations to become a synthetic minor or conditional major source. Applications received from sources submitted pursuant to Section 3(1)(a)1.a. of this administrative regulation shall be processed as follows:
 1. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete pursuant to Section 3(1)(b) of this administrative regulation. The cabinet shall submit the draft permit to the U.S. EPA and provide notice of the draft permit:
 - a. For public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70; or
 - b. For public review pursuant to Section 7 if the source

is not required to obtain a permit pursuant to 40 CFR Part 70.

2. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public and affected state review requirements in Sections 7 and 8 of this administrative regulation is complete.
 3. If a proposed permit is issued:
 - a. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.
 - b. The proposed permit shall be the final permit, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.
 4. Final permit. The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.
 5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.
 6. An existing source shall follow the applicable procedures in subparagraphs 1. through 4. of this paragraph unless the existing permit limits are deemed federally enforceable by the U.S. EPA.
- (b) All other existing sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. Applications received from existing sources pursuant to Section 3(1)(a)1.b. and 2. of this administrative regulation shall be processed as follows:
1. Draft permit. The cabinet shall issue or deny a draft permit:
 - a. During the first two (2) years after the classification date for 60% of the initial round of applications from existing sources that emit at least 80% of the emissions in the KyEIS.
 - b. Within sixty (60) days after the application is deemed complete for minor sources, permit renewals, and for sources that become subject to a requirement to obtain a federally enforceable permit after the classification date.
 2. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.
 3. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
 4. Final permit. The cabinet shall issue or deny a final permit:
 - a. For One-fifth (115) of the initial round of applications from existing major sources each year for five (5) years after the classification date.
 - b. Within eighteen (18) months after the application is

deemed complete, for minor sources and for sources becoming subject to a requirement to obtain a federally enforceable permit after the classification date.

- c. Within six (6) months after receiving a complete application, for permit renewals.
5. The source shall operate in compliance with the existing permit, authorization to operate, or an order of the cabinet until the final permit is issued or denied.
- (c) Existing minor sources required to obtain a state origin permit. Applications received from sources submitted pursuant to Section 3(1)(a)3. shall be processed as follows:
1. The cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.
 2. The source shall operate in compliance with the existing permit, authorization to operate, or order of the cabinet until a final permit is issued or denied.
- (2) Processing applications from existing sources proposing to construct, reconstruct, alter, or modify an affected facility at the source, submitted pursuant to Section 3(1)(a)4. of this administrative regulation.
- (a) Proposed changes that are subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements.
1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 prior to the date the source submits an application for a federally enforceable permit for the entire source shall be processed as follows:
 - a. Preliminary determination. The cabinet shall make a preliminary determination within sixty (60) days after the application is deemed complete if the change should be approved, approved with conditions or disapproved. The cabinet shall submit the preliminary determination to the U.S.EPA and shall provide notice for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.
 - b. Final determination. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA, public, and affected state review is completed. The cabinet shall notify the applicant in writing of the final determination. If a permit is issued, the cabinet shall make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.
 - c. The source shall construct and operate in compliance with the permit issued in subparagraph 1.b. of this paragraph until a final permit for the entire source is issued or denied, except that the owner or operator shall not construct a change that is subject to 40 CFR 51.166 and 401 KAR 51:017 until thirty (30) days after receiving notice of the final determination.
 - d. The permit issued pursuant to subparagraph 1.b. of this paragraph shall be incorporated into the application or permit for the entire source as an

administrative amendment.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility that is subject to 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 after the source submits an application for a federally enforceable permit for the entire source shall be processed as follows:
 - a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.
 - b. The application for the proposed change shall be processed pursuant subparagraph 1. of this paragraph.
- (b) Sources proposing changes that are not subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements.
1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits an application for a permit covering the entire source shall be processed as follows:
 - a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection 1(a) of this section.
 - b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.
 - c. A permit issued pursuant to this subparagraph shall be incorporated into the sources's application for a permit for the entire source.
 2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits an application for a permit covering the entire source shall be processed as follows:
 - a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.
 - b. Draft permit. The cabinet shall issue or deny a draft permit, for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection 1(a) of this section.
 - c. The cabinet shall process a draft permit issued pursuant to subparagraph 2.b. of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this

administrative regulation.

- (3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modification of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(l)(a)5. of this administrative regulation shall be processed as follows:
- (a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:
1. Constructing or reconstructing sources that are subject to New Source Review for Major Sources or Prevention of Significant Deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:
 - a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.
 - b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR part 70.
 - c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty (60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.
 - d. If the source is not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:
 - i. The source shall construct and operate in compliance with the proposed permit until a final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.
 - ii. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and
 - iii. The cabinet shall issue or deny a final permit within eighteen (18) months after the

application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:
 - a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.
 - b. Public, EPA, and affected state review.
 - i. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.
 - ii. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.
 - c. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.
 - d. If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:
 - i. The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.
 - ii. Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.
3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.
 - (b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.
- (4) Compliance demonstration. A source that is constructing, reconstructing, altering, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

- (a) A source which is operating to demonstrate compliance shall not be considered to have commenced operation.
 - (b) If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.
- (5) If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision. The source's authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation.
- (6) General Requirements. For a source that is constructing, reconstructing, altering, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.
- (7) Permit duration and renewal. (a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years.
- (b) Permit renewal.
- 1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a) of this administrative regulation.
 - 2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.
 - 3. If a timely and complete application for a permit renewal is submitted pursuant to Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.
 - 4. If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings.

- (1) Administrative permit amendment procedures. An administrative permit

amendment may be made by the cabinet pursuant to the following:

- (a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.
 - (b) For federally enforceable permits the cabinet shall submit a copy of the revised permit to the U.S. EPA.
 - (c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
 - (d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.
 - (e) Administrative permit amendments for the Acid Rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act).
- (2) Permit Revisions. Except as provided in the Acid Rain Program, the procedures for revising a permit shall be as follows:
- (a) Minor permit revision procedures.
 1. Minor permit revision procedures shall be used for permit revisions that:
 - a. Do not violate an applicable requirement;
 - b. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
 - c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:
 - i. A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act); and
 - ii. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);
 - e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and
 - f. Are not required to be processed as a significant permit revision.
 2. Notwithstanding this paragraph and paragraph (b)1. of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives,

marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:
 - a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;
 - b. The source's suggested draft permit;
 - c. Certification, by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and
 - d. For federally enforceable permits completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.
4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.
5. Timetable for issuance.
 - a. The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15)-days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:
 - i. Issue the minor permit revision as proposed;
 - ii. Deny the minor permit revision application;
 - iii. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or
 - iv. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.
 - b. For state-origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:
 - i. Issue the minor permit revision as proposed;
 - ii. Deny the minor permit revision application; or

- iii. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.
 6. The Source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5.a. through c. of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.
 7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.
- (b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.
1. Criteria. Group processing shall be used only for permit revisions that:
 - a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and
 - b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable emissions provided in the definition of "major source" in Section 1(22) of this administrative regulation, or five (5) tons per year, whichever is least.
 2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:
 - a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.
 - b. The source's suggested draft permit revision.
 - c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.
 - d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1.b. of this paragraph.

- e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.
 - f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.
3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1.b. of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.
 4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)5. of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection(2)(a)5a. through d. of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.
 5. The source's ability to make a change. Subsection (2)(a)6. of this section shall apply to permit revisions eligible for group processing.
 6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.
- (c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.
1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or record keeping permit terms or conditions, shall be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.
 2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.
- (d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also

be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 through 7651o (Title IV of the Act);
 2. The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions;
 3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:
 - a. A brief description of the change within the Permitted facility,
 - b. The date on which the change will occur,
 - c. Any change in emissions, and
 - d. Any permit term or condition that is no longer applicable as a result of the change.
 4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.
 5. The change shall be incorporated into the permit at renewal.
- (3) Reopening for cause.
- (a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:
 1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7)(b)3. of this administrative regulation.
 2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the Acid Rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;
 3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
 4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet

makes a similar determination.

- (b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.
 - (c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.
- (4) Reopenings for cause by the U.S. EPA. (a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.
- (b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.
 - (c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.
 - (d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.
 - (e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. These procedures shall apply only to federally enforceable permits and to state-origin permits that become federally enforceable as a result of the permit action to be taken.

- (1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:
 - (a) Issuance of a draft permit;
 - (b) Intended denial of a permit application;
 - (c) Issuance of a draft significant permit revision;
 - (d) Issuance of a draft general permit;
 - (e) Issuance of a permit renewal;
 - (f) Scheduling of a public hearing pursuant to subsection (7) of this section; and
- (2) The cabinet shall provide public notice by prominent advertisement in

the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

- (3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:
- (a) The applicant;
 - (b) For sources subject to 401 KAR 51-017, officials and agencies having authority over the locations where the source will be located, as follows:
 - 1. The Administrator of the U.S. EPA through the appropriate regional office;
 - 2. Local air pollution control agencies;
 - 3. The chief executive of the city and county;
 - 4. Any comprehensive regional land use planning agency; and
 - 5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;
 - (c) Affected states; and
 - (d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.
- (4) Public notice and the notice for those on the mailing list shall include the following minimum information:
- (a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality;
 - (b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;
 - (c) A brief description of the business conducted at the facility or activity involved in the permit action;
 - (d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:
 - 1. Copies of the draft permit;
 - 2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and
 - 3. All other materials available to the cabinet that are relevant to the permit decision;
 - (e) A brief description of the comment procedures, including, the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

- (f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.
- (5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.
- (6) Public comment.
 - (a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.
 - (b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.
 - (c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.
- (7) Public Hearings.
 - (a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.
 - (b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.
 - (c) The cabinet shall give notice of a public hearing at least thirty (30) days- in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:
 - 1. Reference to the dates of previous public notices relating to the permit;
 - 2. Date, time, and place of the hearing; and
 - 3. A brief description of applicable rules and procedures for the hearing.
 - (d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.
 - (e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements

in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

- (f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.
- (8) Public Record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.
- (9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.
- (10) The following actions shall be exempt from this section:
 - (a) Permit revisions qualifying for minor permit revision procedures, including group processing;
 - (b) Administrative permit amendments; and

Section 8. This section is not approved into the State Implementation Plan (SIP).

Section 9. This section is not approved into the State Implementation Plan (SIP).

Section 10. Emissions Statement Certification. The cabinet shall provide annually to each source subject to this administrative regulation a written copy of the KyEIS containing the most recent information appropriate to that source.

- (1) Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its actual emissions. Failure of the cabinet to notify a source pursuant to this subsection shall not relieve the source from the obligation to submit an emissions statement.
- (2) The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information.
- (3) Each date past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the actual emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

Section 11. This section was not approved into the State Implementation Plan (SIP).

Effective Date: September 28, 1994

Date Submitted to EPA	Date Approved by EPA	Federal Register
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Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059
1st Revision	JUL 07, 1988	FEB 07, 1990	55 FR 4169
2nd Revision	DEC 29, 1994	MAY 02, 1995	60 FR 21445
3rd Revision	DEC 29, 1994	SEP 27, 1995	60 FR 49775

401 KAR 50:040. Air quality models.

Cabinet FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

RELATES TO: KRS Chapter 224

PURSUANT TO: KRS 13.082, 224.003

NECESSITY AND FUNCTION: KRS 224.033 requires the Cabinet for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation specifies general provisions for the use of air quality models.

Section 1. Air Quality Models.

- (1) All estimates of ambient concentrations required under the regulations of the Division of Air Pollution shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models" (OAQPS 1.2-080, U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards).
- (2) Where an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted subject to the approval of the cabinet.
- (3) If the source is subject to 401 KAR 51:015, a substitution or modification of a model shall be subject to public comment procedures in accordance with 401 KAR 50:035, Section 3(3), and such substitution or modification of a model must be approved in writing by the cabinet and the U.S. Environmental Protection Agency.
- (4) Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards) shall be used to determine the comparability of air quality models.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059

401 KAR 50:042. Good engineering practice stack height.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Cabinet for Environmental Protection
Division of Air Pollution

Relates to: KRS 224.320, 224.330, 224.340

Pursuant to: KRS 224.033

Necessity and Function: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement and control of air pollution. This regulation defines good engineering practice stack height which shall be used in establishing emissions limitations.

Section 1. Applicability. The provisions of this regulation shall apply to all stacks or all dispersion techniques commenced on or after the classification date defined below, or to those stack heights in existence, or dispersion techniques implemented before the classification date, where pollutants are being emitted from such stacks or using such techniques by stationary sources which were constructed or reconstructed or for which major modifications were carried out on or after the classification date.

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the meaning given them in 401 KAR 50:010, 401 KAR 51:017, or 401 KAR 51:052.

- (1) "Emission limitation" and "emission standard" mean requirements established by the cabinet or the U.S. EPA which limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (2) "Stack" means any point in a source designed to emit air pollutants into the atmosphere, including a pipe or duct but not including flares.
- (3) "A stack in existence" means that the owner or operator had:
 - (a) Begun, or caused to begin, a continuous program of physical on-site construction of a stack; or
 - (b) Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of a stack to be completed in a reasonable time.
- (4) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
 - (a) Using that portion of a stack which exceeds good engineering practice stack height;
 - (b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - (c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack; or other selective handling of exhaust gas streams so as to increase the exhaust plume rise, but does not include:
 1. The re-heating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
 2. The merging of exhaust gas streams where:
 - a. The source owner or operator demonstrates that the

facility was originally designed and constructed with such merged gas streams;

- b. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or
 - c. Before July 8, 1985, such merging is part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in quantity of pollutants actually emitted prior to the merging, the cabinet shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the cabinet shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
- 3. Smoke management in agricultural or silvicultural prescribed burning programs;
 - 4. Episodic restrictions on residential wood burning and open burning; or
 - 5. Techniques which increase final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
- (5) "Good engineering practice (GEP) stack height" means the greater of:
- (a) Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;
 - (b)
 - 1. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under the regulations of the Division of Air Pollution, good engineering practice stack height is two and five-tenths (2.5) multiplied by the height of nearby structure(s) measured from the ground-level elevation at the base of the stack ($H_g = 2.5H$), provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limit;
 - 2. For all other stacks, good engineering practice stack height shall be determined by the following equation, provided that the cabinet or the U.S. EPA may require the use of a field study or fluid model to verify GEP stack height for the source:

$$H_g = H + 1.5L$$

where:

H_g = GEP stack height measured from the ground-level

elevation at the base of the stack.

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack.

L = lesser dimension (height or projected width) of nearby structure(s); or

- (c) 1. The height demonstrated by a fluid model or a field study approved by the cabinet or the U.S. EPA, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.
2. The fluid model study shall be conducted in accordance with guidelines published by the U.S. EPA in "Guidelines for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height," July 1981, U.S. EPA Office of Air Quality Planning and Standards, EPA-450/4-81-003; and "Guideline for Fluid Modeling of atmospheric Diffusion," April 1981, U.S. EPA Environmental Sciences Research Laboratory, EPA-600/8-81-009, filed by reference in 401 KAR 50:015.
- (6) "Nearby" as used in subsection (5) of this section is defined for a specific structure or terrain feature; and means:
- (a) For purposes of applying the equations provided in subsection (5)(b) of this section, that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than eight-tenths (0.8) km (five-tenths (0.5) mile); and
- (b) For conducting demonstrations under subsection (5)(c) of this section, not greater than eight-tenths (0.8) km (five-tenths (0.5) mile) except that the portion of a terrain feature may be considered to be nearby if it falls within a distance of up to ten (10) times the maximum height (H_t) of the feature, not to exceed two (2) miles if such feature achieves a height (H_t) eight-tenths (0.8) km from the stack that is at least forty (40) percent of the GEP stack height determined by the equations provided in subsection (5)(b)2 of this section or twenty-six (26) meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.
- (7) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under subsection (5)(c) of this section and means:
- (a) For sources seeking credit for stack height exceeding that established under subsection (5)(b) of this section, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to 401 KAR 51:017, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used

in making demonstrations under subsections (5)(c) of this section shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the cabinet, an alternative emission rate shall be established in consultation with the source owner or operator;

- (b) For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsection (5)(b) of this section; either:
 - 1. A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in paragraph (a) of this subsection, except that the emission rate specified by any applicable State Implementation Plan (or, in the absence of such a limit, the actual emission rate) shall be used; or
 - 2. The actual presence of a local nuisance caused by the existing stack as determined by the cabinet.
- (c) For sources seeking credit after January 12, 1979, for a stack height determined under subsection (5)(b) of this section where the cabinet requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subsections (5)(b) of this section, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least forty (40) percent in excess of the maximum concentration experienced in the absences of such downwash, wakes, or eddy effects.

(8) "Classification date" means January 1, 1971.

Section 3. Emissions limitations. No stack height in excess of GEP height, nor any other dispersion techniques, shall be used to determine the emissions limitations required for control of any air pollutant regulated by the cabinet or the U.S. EPA. This regulation does not in any manner restrict the actual physical stack height of any source.

Section 4. Public Notice. Before submitting to the U.S. EPA a new or revised emission limitation that is based on GEP stack height that exceeds the stack height allowed by Section 2(5)(a) or (b) of this regulation, the cabinet shall notify the public of the availability of the demonstration study and shall provide opportunity for public hearing on it.

Effective Date: June 10, 1986

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg:	JUL 15, 1986	SEP 04, 1987	52 FR 33592

401 KAR 50:045. Performance tests.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Bureau of Environmental Protection
Division of Air Pollution

Relates to: KRS Chapter 224

Pursuant to: KRS 13.082, 224.033

Necessity and Function: KRS 224.033 requires the Cabinet for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation establishes requirements for performance tests.

Section 1. The cabinet may require the owner or operator of any affected facility to sample emissions in accordance with such methods as the cabinet shall prescribe. All tests shall be made under the direction of persons qualified by training and/or experience in the field of air pollution.

Section 2. The cabinet may conduct tests of emissions of air contaminants from any source.

Section 3. Test methods and exceptions.

- (1) Performance tests required hereunder or by any other regulation of the Division of Air Pollution for affected facilities which are subject to a standard of performance promulgated under 40 CFR 60 or 40 CFR 61, filed by reference in 401 KAR 50:015, shall be conducted, and data shall be reduced, in accordance with the reference methods and procedures contained in each applicable regulation unless:
 - (a) The cabinet specifies or approves the use of a reference method with minor changes in methodology;
 - (b) The cabinet and the U.S. Environmental Protection Agency approve the use of an equivalent method;
 - (c) The cabinet and the U.S. Environmental Protection Agency approve the use of an alternative method the results of which it has determined to be adequate for indicating whether a specific source is in compliance; or
 - (d) The cabinet and the U.S. Environmental Protection Agency waive the requirement for performance test for affected facilities for which a standard of performance has been promulgated under 40 CFR 60 or 40 CFR 61 because the owner or operator of such affected facility has demonstrated to the cabinet's and the U.S. Environmental Protection Agency's satisfaction that the affected facility is in compliance with the applicable standard.
- (2) Performance tests required hereunder or by any other regulation of the division of Air Pollution for affected facilities which are not subject to a standard of performance promulgated under 40 CFR 60 or 40 CFR 61 shall be conducted, and data shall be reduced, in accordance with the methods and procedures contained in each applicable regulation unless:
 - (a) the cabinet specifies or approves minor changes in methodology;
 - (b) the cabinet specifies or approves the use of some other method the results of which it has determined to be adequate for indicating whether a specific source is in compliance; or
 - (c) The cabinet waives the requirement for performance tests because the owner or operator of the affected facility has demonstrated to the cabinet's satisfaction that:
 1. The affected facility is in compliance with the applicable standard; or
 2. In the case of an existing affected facility, the test cannot be performed by a source due to physical plant

limitations or extreme economic burden. The burden of proof for an alleged "economic burden" is to be borne by the source.

Section 4. The owner or operator shall permit the cabinet to conduct performance tests at any reasonable time, shall cause the affected facility to be operated for purposes of such tests under such conditions as the cabinet may specify based on representative performance of the affected facility, and shall make available to the cabinet such records as may be necessary to determine such performance.

Section 5. The owner or operator of an affected facility shall provide the cabinet ten (10) working days prior notice of the performance test to afford the cabinet the opportunity to have an observer present.

Section 6. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

- (1) Sampling ports adequate for test methods applicable to such facility;
- (2) safe sampling platform(s).
- (3) safe access to sampling platform(s).
- (4) Utilities for sampling and testing equipment.

Section 7. Each performance test shall consist of three (3) separate runs using the applicable test method. Each run shall be conducted for such time and under such conditions specified in the applicable regulation. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three (3) runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one (1) of the three (3) runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the cabinet's approval, be determined using the arithmetic mean of the results of the two (2) other runs.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059

401 KAR 50:047. Test procedures for capture efficiency.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 42 USC 7401 et. seq., 42 USC 7408, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state to implement standards for national primary and secondary ambient air quality. This regulation provides capture efficiency test procedures for volatile organic compounds.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

- (1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.
- (2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.
- (3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs, expressed as a percentage.
- (4) "Capture efficiency protocol" means a method for determining capture efficiency.
- (5) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.
- (6) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.
- (7) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.

Section 2. Applicability. This regulation shall apply to all regulated VOC emitting processes employing a control system which are located in an ozone nonattainment area except marginal.

Section 3. Testing Protocols.

- (1) If a determination of capture efficiency is required in order to comply with an administrative regulation in 401 KAR Chapters 50 through 63, the owner or operator of an affected facility shall submit a proposed capture efficiency protocol to the cabinet.
- (2) The cabinet shall approve the use of a proposed capture efficiency protocol if it determines that the proposed capture efficiency protocol accurately describes the capture efficiency that will be achieved at the affected facility.
- (3) The cabinet shall not approve a proposed capture efficiency protocol that violates a protocol mandated by the U.S. EPA.

Effective Date: June 24, 1992

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	OCT 20, 1992	JUN 23, 1994	59 FR 32343

401 KAR 50:050. Monitoring.

Cabinet FOR NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
Bureau of Environmental Protection
Division of Air Pollution

Relates to: KRS Chapter 224

Pursuant to: KRS 13.082, 224.033

Necessity and Function: KRS 224.033 requires the Cabinet for Natural resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation establishes requirements for stack gas monitoring, ambient air monitoring, and recording and reporting requirements as related to monitoring data.

Section 1. Monitoring, Records, and Reporting. The cabinet may require the owner or operator of any affected facility to install, use, and maintain stack gas and ambient air monitoring equipment in accordance with such methods as the cabinet shall prescribe, establish and maintain records of same and make periodic emission reports at intervals prescribed by the cabinet. Requirements for specific affected facilities are contained in applicable regulations.

Section 2. Ambient Air Monitoring. Persons owning or operating any affected facility for which a standard is prescribed in the regulations of the Division of Air Pollution when required by the cabinet shall install, use, and maintain ambient air monitoring equipment in accordance with the provisions of 401 KAR 53:010, Section 2, and shall make periodic ambient air monitoring reports at intervals prescribed by the cabinet.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059

401 KAR 50:055. General compliance requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

Relates to: KRS Chapter 224

Pursuant to: KRS 13.082, 224.033

Necessity and Function: KRS 224.033 requires the Cabinet for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation establishes requirements for compliance during shutdown and malfunctions; establishes requirements for demonstrating compliance with standards; establishes requirements for compliance when a source is relocated within the Commonwealth of Kentucky; and other general compliance requirements.

Section 1. Emissions during Shutdown and Malfunction.

- (1) Emissions which, due to shutdown or malfunctions, temporarily exceed the standard set forth by the cabinet shall be deemed in violation of such standards unless the requirements of this section are satisfied and the determinations specified in subsection (4) of this section are made.
- (2) When emissions during any planned shutdown and ensuing startup will exceed the standards, the owner or operator of the source shall notify the director or his designee no later than three (3) days before the planned shutdown. However, if the shutdown is necessitated by events which the owner or operator could not reasonable have foreseen three (3) days before the shutdown, then such notification shall be given immediately following the decision to shutdown. The notice shall be in writing and shall specify the name of the air contaminant source, its location, the address and telephone number of the person responsible for the source, the reasons for and duration of the proposed shutdown, the date and time for the action, the physical and chemical composition, rate and concentration of the emissions during such shutdown and ensuing startup, the basis for determination that such shutdown is necessary, and the measures which will be taken to minimize the extent and duration of the emissions during such shutdown and ensuing startup.
- (3) When emissions due to malfunctions, unplanned shutdowns or ensuing start-ups are or may be in excess of the standards, the owner or operator shall notify the director by telephone as promptly as possible, and shall cause written notice when requested by the director to be sent to the director. Such notice shall specify the name of the source, its location, the address and telephone number of the person responsible for the source, the nature and cause of the malfunctions, or unplanned shutdown, the date and time when the malfunction was first observed, the expected duration, the nature of the action to be taken to correct the malfunction, and an estimate of the physical and chemical composition, rate and concentration of the emission.
- (4) A source shall be relieved from compliance with the standards set forth by the cabinet if the director determines, upon a showing by the owner or operator of the source, that:
 - (a) The malfunction or shutdown and ensuing startup did not result from the failure by the owner or operator of the source to operate and maintain properly the equipment;

- (b) All reasonable steps were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the standards, including the use of off shift labor and overtime if necessary;
 - (c) All reasonable steps were taken to minimize the emissions and their effect on air quality resulting from the occurrence.
 - (d) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and
 - (e) The malfunction or shutdown and ensuing startup was not caused entirely or in part by poor maintenance, careless operation or any other preventable upset conditions or equipment breakdown.
- (5) The director shall notify the owner or operator of the source of the determination made under this section no later than sixty (60) days after the date that all information required by this section has been submitted.

Section 2. Compliance with Standards and Maintenance Requirements.

- (1) An owner or operator of any affected facility subject to any standard within the regulations of the Division of Air Pollution shall:
- (a) in the case of a new source, demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility;
 - (b) in the case of an existing source, demonstrate compliance with the applicable standard before or on the date that final compliance is required by the applicable compliance schedule unless otherwise specified by regulation; and
 - (c) Maintain the affected facility in compliance with all applicable standards at all times subsequent to the date that compliance is demonstrated.
- (2) Compliance with standards in the regulations of the Division of Air Pollution shall be demonstrated as follows:
- (a) By performance tests as specified in the applicable regulation and according to the requirements and exceptions provided in 401 KAR 50:045.
 - (b) By methods other than performance tests as provided for by the applicable regulation.
 - (c) By methods acceptable to the cabinet if the applicable regulation does not specify a performance test or other method of determining compliance.
- (3) Compliance with opacity standards in the regulations of the Division of Air Pollution shall be determined by Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as may be provided for by regulation for a specific category of sources. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The results of continuous monitoring by transmissionmeter

which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation), performance specification as required by the cabinet, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.

- (4) The opacity standards set forth in this regulation shall apply at all times except during periods of startup, shutdown, and as otherwise provided in the applicable standard.
- (5) At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the cabinet which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- (6) Adjustment of opacity standards for emissions from a stack or control device:
 - (a) An owner or operator of an affected facility may request the cabinet to determine opacity of emissions from the affected facility during the initial performance tests. Fugitive emissions are not subject to the provisions of this subsection.
 - (b) Upon receipt from such owner or operator of the written report of the results of the performance tests, the cabinet will make a finding concerning compliance with opacity and other applicable standards. If the cabinet finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted, but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the cabinet shall notify the owner or operator and advise him that he may petition the cabinet within ten (10) days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.
 - (c) The cabinet will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the cabinet; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.
 - (d) The cabinet will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.

Section 3. Shutdown and Relocation.

- (1) Any affected facility commencing operations after a shutdown for six (6) months shall demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after commencing operations.
- (2) Any source located within the Commonwealth of Kentucky and moved to another location involving a change of address shall be subject to applicable regulations at the new location or to regulations which were applicable at the original location, whichever is more stringent.

Section 4. Circumvention. No owner or operator subject to the provisions of the regulations of the Division of Air Pollution shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

Section 5. Prohibition of Air Pollution. No person shall permit or cause air pollution as defined in 401 KAR 50:010 in violation of regulations promulgated by the cabinet.

[SIP Compilation Table After Appendix]

APPENDIX A TO 401 KAR 50:055

Determination of source allowable emission rate

$$F = \frac{\sum_{i=1}^N E_i}{N}$$

Where:

F = source allowable emission rate in pounds per hour of a particular pollutant.

E_i = allowable emission rate contained in applicable standard of performance for the ith process or affected facility in pounds of that pollutant per hour at rated capacity.

N = total number of processes, operations, or affected facilities for which individual emission limitations apply pursuant to Title 401, Chapters 59 and 61 for the same or comparable pollutant.

Effective Date: September 22, 1982

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	SEP 18, 1980	45 FR 62163
		DEC 24, 1980	45 FR 84999
1st Revision	DEC 9, 1982	DEC 04, 1986	51 FR 43472
		MAY 04, 1989	54 FR 19169

401 KAR 50:060. Enforcement.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

Relates to: KRS 224.033(5), (18), (19), (22), (23), (26), 224.081, 224.083, 224.330.
Pursuant to: KRS 13.082, 224.033

Necessity and Function: KRS 224.033 requires the Cabinet for Natural Resources and Environmental Protection to prescribe regulations for the prevention, abatement and control of air pollution. This regulation provides for enforcement of the terms and conditions of permits and compliance schedules.

Section 1. Permits and compliance schedules subject to conditions. Permits and compliance schedules issued under these regulations shall be subject to such terms and conditions set forth in the permit or compliance schedule as the cabinet may deem necessary to insure compliance with all applicable standards. Such terms and conditions may include, but shall not be limited to, the maintenance and production for inspection of records relating to operation which may cause or contribute to air pollution including periodic source or stack sampling, or periodic ambient air monitoring.

Section 2. Permit Revocation. The cabinet may revoke any permit issued under these regulations if the permittee:

- (1) Willfully makes material misstatements in the permit application or any amendments thereto;
- (2) Fails to comply with the terms or conditions of the permit;
- (3) Fails to comply with any emission standards applicable to an affected facility included in the permit;
- (4) Causes emissions from the source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standards contained in Title 401, Chapter 53, of these regulations or result in an exceedance of any allowable increase over baseline concentrations contained in Title 401, Chapter 51, of these regulations;
- (5) Fails to report construction, modification, alteration, or reconstruction of an affected facility.

Section 3. Compliance Schedule Revocation. The cabinet may revoke a compliance schedule issued under these regulations if the owner or operator of the source or any other person acting on his behalf:

- (1) willfully makes material misstatements in the application for the compliance schedule or in any communications relied upon by the cabinet in issuing the compliance schedule;
- (2) Fails to comply with the terms and conditions of the compliance schedule, including but not limited to any increment dates and any interim emission standards;
- (3) Fails to report construction, modification, alteration or reconstruction of the affected facilities.

Section 4. Suspensions, modifications, violation of regulations subject to penalties.

- (1) The grounds for revocation of permits and compliance schedules listed in Sections 2 and 3 are declared to be violations of these regulations and are subject to the penalties and all other relief contained in KRS 224.994.
- (2) The cabinet may order appropriate modifications to any permit or compliance schedule whenever it appears that the conditions of the permit or compliance schedule will not be sufficient to meet all of the standards and requirements contained in these regulations, including but not limited to Title 401, Chapters 51, 57, 59 and 61.
- (3) The cabinet may suspend under such conditions and for such period of time as the cabinet may prescribe any permit or compliance schedule for any of the grounds for revocation contained in Sections 2 and 3 or for any other violations of these regulations.

Section 5. Administrative Hearing Procedures.

- (1) Whenever the cabinet has reason to believe that a violation of any of the provisions of KRS Chapter 224 or these regulations has occurred it shall issue and serve upon the person complained against a written notice of the provision of KRS Chapter 224 or the rule or regulation alleged to have been violated and the facts alleged to constitute the violation thereof and shall require the person so complained against to answer the charges set out in the notice at a hearing before the cabinet. Nothing herein shall prevent the cabinet from seeking all appropriate relief in circuit court.
- (2) Any person not previously heard in connection with the issuance of any order or the making of any determination, including but not limited to the issuance, denial, modification, or revocation of any permit, by which he considers himself aggrieved may file with the cabinet a petition alleging that such order or determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefor, and demand a hearing. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein and shall schedule a hearing before the cabinet. The right to demand such a hearing shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the order or determination, or could reasonably have had such notice.
- (3) The cabinet shall schedule a hearing before the cabinet not less than twenty-one(21) days after notice of such a hearing is served upon the parties, unless the person complained against waives in writing the twenty-one (21) day period. The notice of hearing shall include a statement of the time, place, and nature of the hearing; the legal authority for the hearing; reference to the statutes and regulations involved; and a short statement of the reason for the granting of the hearing.
- (4) Prior to the formal hearing, and upon seven (7) days written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a pre- hearing conference to

consider simplification of the issues, admissions of fact and documents which will avoid unnecessary proof, limitations of the number of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the pre-hearing conference by stipulation, agreed settlement, consent order, or default for non-appearance.

- (5) (a) Any party to a hearing may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. A hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practice.
- (b) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their own affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.
- (c) It will be within the hearing officer's discretion to require transcripts or to set up other procedures for taking evidence, including but not limited to the use of mechanical recording devices for recording the testimony. The record of such hearing, consisting of all pleadings, motions, rulings, documentary and physical evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections and rulings thereon, proposed findings and recommended order and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.035. The cabinet may cause the mechanical recording of the testimony to be transcribed. When certified as true and correct copy of the testimony by the hearing officer, the transcript shall constitute the official transcript of the evidence.
- (d) The hearing officer shall within thirty (30) days of the closing of the hearing record make a report and a recommended order to the secretary. The order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the

secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within exceptions to the recommended order. The secretary shall consider the report and recommended order and exceptions. The secretary may remand to the hearing officer the matter for further deliberation, adopt the opinion of the hearing officer as the cabinet's or issue his own written order based on the report and recommended order. The secretary shall act within twenty (20) days of the deadline for filing exceptions, unless extensions of time have been granted to the hearing officer, pursuant to paragraph (e) of this subsection.

- (e) After completion of the hearing and filing of exceptions, the cabinet shall notify the parties in writing, certified mail, return receipt requested, of the final decision of the cabinet. If any extension of time is granted by the secretary for a hearing officer to complete his report, the cabinet shall notify all parties at the time of the granting of the extension. Parties shall have seven (7) days to file exceptions to the report and recommended order if such an extension is granted.
- (f) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.
- (g) A final order of the cabinet shall be based on the preponderance of the evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.
- (h) There shall be no ex-parte communications between a hearing officer and parties to the action.
- (i) Any person aggrieved by a final order of the cabinet may have recourse to the courts as set forth in KRS 224.085.

Effective Date: June 6, 1979

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 29, 1979	JAN 25, 1980	45 FR 6092
		DEC 24, 1980	45 FR 84999
		JUL 12, 1982	47 FR 30059

401 KAR 50:065. Conformity of general federal actions.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110; 42 U.S.C. 7401 to 7671p; 40 CFR 51.850 to 51.860

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110; 42 U.S.C. 7506(c); 40 CFR 51.850 to 51.860

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation provides for determining the conformity of general federal actions to the State Implementation Plan (SIP). 40 CFR 51.850 to 51.860 require that the applicable federal agencies implement the conformity determination in consultation with agencies of the Commonwealth of Kentucky.

Section 1. Definitions. As used in 40 CFR 51.850 to 51.860, the following terms shall be defined as provided in this section.

- (1) "Local air quality agency" means an air pollution control district created pursuant to KRS Chapters 77 and 224.
- (2) "State air quality agency" means the Natural Resources and Environmental Protection Cabinet.

Section 2.

- (1) 40 CFR 51.850 to 51.860, (40 CFR 51, Subpart W), Determining Conformity of General Federal Actions to State or Federal Implementation Plans, as published in the *Federal Register*, 58 FR 63247, November 30, 1993, is incorporated by reference.
- (2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8:00 a.m. to 4:30 p.m.:
 - (a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601-1403, (502) 573-3382;
 - (b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 920-2067;
 - (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;
 - (d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;
 - (e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;
 - (f) London Regional Office, 85 State Police Road, Regional State Office Building, Room 345, London, Kentucky, 40741-9008, (606) 878-0157;
 - (g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite

700, Owensboro, Kentucky, 42303, (502) 686-3304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

- (3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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