

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

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

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

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

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

Section 2. Public Comment Period.

- (1) For permit actions that require public review, the cabinet shall:
 - (a) Provide a minimum of thirty (30) days for public comment; and
 - (b) Prepare a response to the comments received during the comment period.
- (2) The comment period shall:
 - (a) Begin on the date the public notice is posted on the cabinet's Web site at <https://eec.ky.gov>; and
 - (b) End thirty (30) days after the date the public notice is posted on the cabinet's Web site at <https://eec.ky.gov>.
- (3) The cabinet shall consider:
 - (a) All written comments received during the public comment period;
 - (b) Comments received in alternate format to accommodate persons with disabilities; and
 - (c) The permit applicant's written response concerning the public comments, if received not later than ten (10) days after the close of the public comment period.
- (4) The cabinet shall keep a record of the commentors and issues raised during the public comment period and shall make this record available, upon request, to the public and the U.S. EPA.

Section 3. Public Hearing.

- (1) A public hearing shall be held if the cabinet determines that:
 - (a) On the basis of written requests received, material issues have been raised concerning the terms and conditions of the permit; or
 - (b) The permit action is of significant interest to the public.
- (2) A request for a public hearing shall not require an extension of the public comment period. The cabinet may allow additional time after the close of a public hearing for public hearing participants to submit comments in writing.
- (3) If a public hearing is held, the cabinet shall:
 - (a) Provide public notice on the cabinet's Web site at <https://eec.ky.gov>, at least thirty (30) days prior to the scheduled public hearing date; and
 - (b) Designate a presiding officer, who shall be responsible for the scheduling and orderly conduct of the public hearing.
- (4) Any person may submit statements or data during the public hearing concerning the permit action.
- (5) The cabinet may:
 - (a) Set reasonable limits on the time allowed for oral statements; and
 - (b) Require that statements be submitted in writing.

(6) The cabinet shall:

- (a) Consider all comments received at the public hearing, including comments received in alternate format to accommodate persons with disabilities;
- (b) Keep a record of the participants and issues raised at the public hearing and make this record available, upon request, to the public and the U.S. EPA; and
- (c) Make available to the public at a reasonable reproduction cost;
 - 1. A recording or written transcript of the public hearing; and
 - 2. If requested, a written transcript in large type or Braille.

Section 4. Public Notice.

- (1) The cabinet shall provide public notice of a public comment period and any scheduled public hearing on the cabinet's Web site at <https://eec.ky.gov>. This shall be the cabinet's consistent method of public notice.
- (2) The cabinet may provide additional notice to the public through other methods, including newspapers, newsletters, and press releases.

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

- (1) The contact name and address of the Energy and Environment Cabinet, Department for Environmental Protection, Division for Air Quality;
- (2) The name and address of the permit applicant and, if different, the name and address of the facility;
- (3) A brief description of the business conducted at the facility and the activity involved in the permit action;
- (4) A brief description of the comment procedures, including how to request a public hearing;
- (5) The date, time, and place of the public hearing, if one (1) has been scheduled;
- (6) The end date of the public comment period;
- (7) The end date of the U.S. EPA's review period;
- (8) A reference to the dates of previous public notices relating to the permit;
- (9) A description of any emission change involved in a permit revision;
- (10) For permits subject to review under 401 KAR 51:017, the degree of increment consumption expected to occur; and
- (11) The name, address, and telephone number where interested persons may obtain:
 - (a) Copies of the draft permit or permit revision;
 - (b) Relevant supporting material, including permit applications, permits, compliance plans, and monitoring and compliance certification reports, except for confidential business information pursuant to 40 C.F.R. Part 2 and 400 KAR 1:060; and
 - (c) Other materials available to the cabinet that are relevant to the permit decision.

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

- (1) For permit actions subject to review under 401 KAR 51:017 or 51:052, the public notice shall be sent to:
 - (a) The permit applicant;
 - (b) The administrator of the U.S. EPA, through the appropriate regional office;
 - (c) Affected states;
 - (d) All persons on the mailing list established in Section 7 of this administrative regulation; and
 - (e) The officials and agencies having authority over the area where the source will be located, as follows:
 - 1. Local air pollution control agencies;
 - 2. The chief executive of the city and county;
 - 3. Any comprehensive regional land use planning agency; and

4. Federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source, as established in 40 C.F.R. 51.165.
- (2) For permit actions at a major source that are not subject to review under 401 KAR 51:017 or 401 KAR 51:052, the public notice shall be sent to:
- (a) The permit applicant;
 - (b) The administrator of the U.S. EPA, through the appropriate regional office;
 - (c) Affected states; and
 - (d) All persons on the mailing list established in Section 7 of this administrative regulation.
- (3) For permit actions at a synthetic minor or conditional major source, notice shall be sent to:
- (a) The permit applicant;
 - (b) The administrator of the U.S. EPA, through the appropriate regional office; and
 - (c) All persons on the mailing list established in Section 7 of this administrative regulation.

Section 7. Mailing List.

- (1) The cabinet shall compile and maintain a mailing list of persons who request to be notified of permit actions.
- (2) The cabinet shall:
- (a) Notify the public of the opportunity to be on the list on the cabinet's Web site at <https://eec.ky.gov>; and
 - (b) Delete from the list persons who fail to respond to the cabinet's request to show continued interest in receiving notice.

Section 8. Public Inspection of Documents.

- (1) During the public comment period, the cabinet shall make available for public inspection all information, except that which is confidential, contained in the:
- (a) Permit application;
 - (b) Draft permit; and
 - (c) Supporting materials.
- (2) The information shall be made available at:
- (a) The Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601; and
 - (b) The Division for Air Quality Regional Office having jurisdiction over the source.
- (3) The draft permit shall also be posted, for the duration of the public comment period, on the cabinet's Web site at <https://eec.ky.gov>.

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

- (1) The cabinet may accept a recommendation made by an affected state if the recommendation:
- (a) Is received during the public comment period established in Section 2 of this administrative regulation;
 - (b) Is applicable to the permit action; and
 - (c) Does not conflict with the requirements of Kentucky Revised Statutes or 401 KAR Chapters 50 through 65.
- (2) If the cabinet does not accept a recommendation made by an affected state, the cabinet shall provide a written notice to the affected state and the U.S. EPA that:
- (a) Gives the reason for not accepting the recommendation; and

- (b) Is submitted to the state no later than the date the proposed permit is submitted to the U.S. EPA.
- (3) For a minor permit revision at a major source, the cabinet shall:
 - (a) Provide notice to affected states with a brief description of the requested revision within five (5) workdays after a complete permit application is received; and
 - (b) After submittal of a proposed minor permit revision to the U.S. EPA:
 - 1. Notify the affected state and the U.S. EPA if a recommendation is not accepted; and
 - 2. Provide the reason for not accepting the recommendation.

Section 10. U.S. EPA Review.

- (1) For permit actions that require U.S. EPA review, the cabinet shall not issue a final permit, permit revision, or permit renewal until the U.S. EPA:
 - (a) Has had an opportunity to review and comment on the permit action and has not objected to issuance of the permit within the forty-five (45) day period for an objection; or
 - (b) Waives its right of review.
- (2) The cabinet shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, and shall send the statement to the U.S. EPA and to any other person who requests it.
- (3) The cabinet shall provide the U.S. EPA with copies of the:
 - (a) Permit application, including attachments;
 - (b) Other permit-related information such as public comments, settlements, and decisions from permit appeals;
 - (c) Proposed permit or proposed permit revision; and
 - (d) Final permit or final permit revision.
- (4) With prior U.S. EPA approval, the cabinet may submit a summary form and the relevant portion of the permit application and compliance plan in lieu of the complete application and compliance plan.
- (5) With prior U.S. EPA approval, the cabinet may submit the draft permit or permit revision in lieu of a proposed permit or permit revision. For these submittals:
 - (a) The cabinet shall provide the U.S. EPA with:
 - 1. The permit application, draft permit or permit revision, and supporting information no later than the first day of the public comment period; and
 - 2. All timely submitted public comments after the close of the public comment period;
 - (b) The draft permit shall become the final permit or permit revision at the end of the U.S. EPA's forty-five (45) day review, unless:
 - 1. A substantial change is made in the permit or permit revision following the public comment period; or
 - 2. The U.S. EPA files an objection to the permit or permit revision.
 - (c) If a substantial change is made in the draft permit or permit revision, the cabinet shall make appropriate revisions and submit a proposed permit or permit revision to the U.S. EPA for another forty-five (45) day review period.
- (6) If the U.S. EPA objects to the issuance of a permit or permit revision, the U.S. EPA shall:
 - (a) File a statement of objection, in writing, within forty-five (45) days after receiving the permit or permit revision and supporting information;
 - (b) Include in the statement the reasons for the objection and a description of the permit changes needed to resolve the objection; and
 - (c) Provide the permit applicant with a copy of the filed objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12)

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

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

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