

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

**401 KAR 50:038. Air emissions fee.**

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, 224.20-130, 40 C.F.R. Part 70, 42 U.S.C. 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, 224.20-130, 40 C.F.R. Part 70, 42 U.S.C. 7401-7671q, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the ~~[Environmental and Public Protection]~~ Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the assessment of fees necessary to fund the state permit program as defined in Section 1(8) of this administrative regulation.

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

- (1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.
- (2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).
- (3) "Designated representative" means a responsible person authorized by the owners and 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.
- (4) "Emissions fee" means the amount of money assessed by the cabinet to fund the cost of administering the operating permit program.
- (5) "Fiscal year" means the period beginning July 1 and ending the following June 30.
- (6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 63:060.
- (7) "Kentucky emissions inventory system" or "KyEIS" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.
- (8) "Permit program" means the issuance and enforcement of permits for all sources subject to this administrative regulation.
  - (a) Permit program includes:
    1. The review of permit applications and exemptions;
    2. The issuance of permits to air pollution sources;
    3. Inspections of air pollution sources;
    4. Enforcement activities other than prosecutions in a court of law or administrative hearings;
    5. Air quality and emissions monitoring, including quality assurance;
    6. The preparation of generally applicable reports, plans, administrative regulations, and statutes;
    7. Responses to inquiries;
    8. Preparing inventories and tracking emissions;
    9. The preparation and maintenance of records, including computerized data bases;
    10. Air quality modeling, analyses, and demonstrations; and

11. Providing direct and indirect support through a small business technical assistance program.

(b) Permit program does not include:

1. The control of asbestos emissions from renovations or demolitions, or any activities required under the Asbestos Hazard Emergency Response Act (AHERA);
2. The issuance of permits or the enforcement of permit conditions required only by 401 KAR 63:020, 63:021, or 63:022, or any other applicable requirement, as defined in 401 KAR 52:001, that is not required to be federally enforceable; or
3. The control and enforcement of any activity not required to be permitted, and the enforcement of applicable requirements at any source not required to have a permit.

(9) "Responsible official" means one (1) 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 operation of a principal geographic unit of the agency; or

(d) For affected sources, if requested by the source, the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, particulate matter~~[PM]<sub>10</sub>~~, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 or 401 KAR 63:060 for which a standard applies, or a pollutant subject to a standard contained in Section 111 of the Act, from an air pollution source subject to this administrative regulation~~[-, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions]~~. Pollutants subject only to 42 USC 7412r (Section 112(r) of the Act), and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

## Section 2. Applicability.

(1) This administrative regulation shall apply to all major sources as defined in 401 KAR 52:001, and to the following minor sources unless a final rule exempting the minor source category from the permitting requirements of 42 USC 7661 through 7661f (Title V of the Act) has been published by the U.S. EPA:

- (a) Minor sources subject to a standard, federal regulation, or state administrative regulation promulgated pursuant to 42 USC 7411 or 7412 (Section 111 or 112 of the Act);
- (b) Minor sources required to have a permit pursuant to 42 USC 7470 through 7515 (Part C or D of Title I of the Act); and
- (c) Any other minor stationary source in a category required by the U.S. EPA to obtain a permit pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(2) This administrative regulation shall not apply to:

- (a) Mobile sources;
  - (b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;
  - (c) An electric utility unit exempted by 42 USC 7651g, unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or
  - (d) A substitute unit approved by the U.S. EPA pursuant to 42 USC 7651c, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation;~~[-]~~
- (3) A minor source with the only applicable requirement of 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, which is required for fire suppression purposes only as depicted in the source's permit when the survey is sent shall not be required to pay an emissions fee.

### Section 3. Fee Assessment.

- (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, the division for air quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this administrative regulation and shall provide written notification to the source of the amount of fee due. If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, it shall be assessed as a single subject emission.
- (2) Determining subject emissions. At least four (4) months but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. 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. Each day 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 subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.
- (3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination. If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error notification.
- (4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:
  - (a) For fiscal year 1995 the emissions fee shall be \$5,505,200, and for fiscal year 1996 the emissions fee shall be \$6,594,700. The cost per ton of the subject emissions shall be the emissions fee, minus \$150 times the number of sources subject to subsection (5)
  - (b) of this section, divided by the total number of tons of subject emissions from all sources subject to this administrative regulation which emit twenty-five (25) tons or more of subject emissions.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be \$6,594,700 adjusted annually using the method provided in 40 CFR 70.9(b)(2)(iv). The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this subsection.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation which emitted twenty-five (25) tons or more of subject emissions shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions, and subtracting from that amount any portion of unexpended emissions fees which are carried forward from the previous year in an amount proportional to that paid by the source during the previous year. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the fee invoice is mailed.

(b) A source subject to this administrative regulation which emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of \$150. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the fee invoice is mailed.

(c) The fee invoice shall be mailed to the permit holder of record as of the date the invoice is mailed, and the permit holder shall be responsible for payment.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and
2. Suspension of the source's permit until the fee is paid or until the cabinet has approved a schedule of payment.

Section 4. Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the permit program.

*REBECCA W. GOODMAN, Secretary*

APPROVED BY AGENCY: May 13, 2024

FILED WITH LRC: May 13, 2024 at 9:23 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on July 26, 2024, at 10:00 a.m. (Eastern time). Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2024, five workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing was received by that date, the hearing may be cancelled. Please note that registration is required to participate in this hearing. You must either email or mail your name and mailing address to the contact person listed below. Please put "Registration for 401 KAR 50:038 public hearing" as the subject line and state in the body of the message if you plan to speak during the hearing. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person. The hearing facility is accessible to person with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Cassandra Jobe, Program Planning & Administration Manager, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Phone (502) 782-6670, Email [Cassandra.Jobe@ky.gov](mailto:Cassandra.Jobe@ky.gov)

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person:**Cassandra Jobe, Manager

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation provides for the assessment of fees necessary to fund the Division for Air Quality's state permit program.

**(b) The necessity of this administrative regulation:**

This administrative regulation is necessary to provide for the assessment of fees needed to fund the state permit program and inventory the emissions of air pollution from Part 70 sources and minor sources in nonattainment and maintenance areas.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

KRS 224.20-050 authorizes the Cabinet to promulgate administrative regulations for the collection of fees necessary to administer the air quality program.

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

This administrative regulation will enable the Cabinet to continue to implement and enforce the air emission fees requirements established in 40 C.F.R. Part 70, in accordance with the Clean Air Act. The air emission fees are used solely for air permit program cost.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

This amendment amends two specific components. The first component removes the limit of the 4,000 ton limit per pollutant. The second component exempts a source from invoicing if the source's only applicable requirement is 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, which is required for fire suppression purposes. Remaining amendments are for cleanup purposes.

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

This amendment is necessary to not create a financial disincentive for fire suppression engines and safety for the individuals, businesses, sources, and organizations affected by this administrative regulation. The removal of the 4,000 ton cap is an incentive for sources that emit the most pollution to control emissions more effectively.

**(c) How the amendment conforms to the content of the authorizing statutes:**

The amendment conforms to the content of the authorizing statute by continuing to charge an emissions fee for air contaminant sources in accordance with 40 C.F.R. Part 70.

**(d) How the amendment will assist in the effective administration of the statutes:**

The regulation follows the general guidelines of 40 C.F.R. Part 70, this amendment does not assist the effective administration of the statutes more than the previous regulation. The new provisions will be enforced by the Cabinet.

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

This administrative regulation will impact all Part 70 sources that pay emission fees. For 2022 emissions, approximately 712 sources paid fees. The removal of the 4,000 ton cap will effectively lower the per ton cost for 708 sources. There are 4 sources that will see increases because they emit over the 4,000 ton fee, 3 electric generating units (EGUs) and 1 distillery. This administrative regulation will also impact sources with the only applicable requirement of 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, for fire suppression purposes. At this time, the Cabinet is aware of one source that would meet the exemption and would save the source approximately \$20,000. The Cabinet will retain delegation of authority for the implementation and enforcement of these requirements under 40 C.F.R. Part 70.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:**

Part 70 sources are already subjected to air emission fees. Part 70 sources that continue to be subject to the fee would see a decrease in the per ton emission fee. Any entity affected by the exemption would no longer pay an emission fee. The 4 sources that have more than 4,000 tons per pollutant would see an increase in their invoices.

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

The removal of the 4,000 ton cap would cost LGE-KU approximately \$782,000 more each year; TVA approximately \$1.3 Million more each year; and Big Rivers approximately \$73,000 more each year. The distillery with more than 4,000 tons is Jim Beam, but overall, they do not see an increase across all Jim Beam facilities. All other sources currently paying a fee would see a decrease either due to the exemption of fire pump engines, or the overall decrease in the per ton fee.

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

As a result of compliance, sources will continue to work with the Cabinet for implementation and enforcement of 40 C.F.R. Part 70 in Kentucky.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:**

The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially. The Cabinet's budget is set and the per ton fee is based off billable tons of emissions and the operating budget.

**(b) On a continuing basis:**

The Cabinet will not incur any additional continuing costs for the implementation of this administrative regulation on a continuing basis. The Cabinet's budget is set and the per ton fee is based off billable tons of emissions and the operating budget.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:**

The Cabinet's operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation. This includes the assessment of the emissions fee in accordance with this administrative regulation.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

There is not an increase in funding necessary to implement this administrative regulation. The Cabinet's budget is set and the per ton fee is based off billable tons of emissions and the operating budget. The amendment will increase billable tons by removing the 4,000 ton cap, which will decrease the per ton emission fee for all sources. The sources with the only applicable requirement of 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, which is required for fire suppression purposes would not pay a fee.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

This administrative regulation does not establish any new fees but does remove the 4,000 cap, which will increase the billable tons of emissions. This will lead to a per ton fee reduction for all sources. A source with the only applicable requirement of 40 C.F.R. Part 60, Subpart JJJJ, Subpart IIII, or 40 C.F.R. Part 63 Subpart ZZZZ, or any combination of those, which is required for fire suppression purposes would be exempt from air emission fees.

**(9) TIERING: Is tiering applied?**

Yes tiering is applied. This administrative regulation has tiering because sources emitting less than 25 tons pay \$150, not the per ton fee. While sources emitting 25 tons or more pay the per ton fee.



## **FEDERAL MANDATE ANALYSIS COMPARISON**

**(1) Federal statute or regulation constituting the federal mandate.**

U.S. EPA promulgated the federal regulations in 40 C.F.R. Part 70, pursuant to 42 U.S.C. 7401-7671q.

**(2) State compliance standards.**

This administrative regulation provides the assessment of air emission fees for major and select minor sources to fund the permit program.

**(3) Minimum or uniform standards contained in the federal mandate.**

40 C.F.R. Part 70 establishes the minimum requirements for states to adopt emissions fees for the administration of a permit program.

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

No stricter or additional or different requirements are imposed.

**(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**

There are no stricter standards or additional or different responsibilities or requirements.

## **FISCAL IMPACT STATEMENT**

**(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, 224.20-130, 40 C.F.R. Part 70, 42 U.S.C. 7401-7671q.

**(2) Identify the promulgating agency and any other affected state units, parts, or divisions:**

**(a) Estimate the following for the first year:**

**Expenditures:** There is no known effect on current expenditures for the Division for Air Quality.

**Revenues:** There is no known effect on current revenues for the Division for Air Quality.

**Cost Savings:** Any state entity that pays an emissions fee will see a reduction in the per ton fee with the removal of the 4,000 ton cap per pollutant, as the total number of billable tons will increase, resulting in an overall per ton reduction.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

The expenditures, revenues, and cost savings will not change in subsequent years.

**(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):**

Any local entities that pay the per ton fee will be impacted by the change in this administrative regulation and will likely see a decrease in the amount of emissions fee paid.

**(a) Estimate the following for the first year:**

**Expenditures:** There is no known effect on current expenditures.

**Revenues:** There is no known effect on current revenues.

**Cost Savings:** Any local entity that pays an emissions fee will see a reduction in the per ton fee with the removal of the 4,000 ton cap per pollutant.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

The expenditures, revenues, and cost savings will not change in subsequent years.

**(4) Identify additional regulated entities not listed in questions (2) or (3):**

**(a) Estimate the following for the first year:**

**Expenditures:** There will be an expenditure decrease for regulated entities (40 C.F.R. Part 70 sources) as the per ton emission fee decreases with the removal of the 4,000 per ton pollutant cap.

**Revenues:** There is no known effect on current revenues.

**Cost Savings:** Approximately 706 sources will see a reduction in overall fees as a result of the decrease in the per ton emission fee. 4 sources will see an increase, 3 utilities, and 1 distillery. However, the distillery will not see an overall increase in expenditures as other sources under the same ownership will see reductions due to the lower per ton emission fee.

**(b) How will expenditures, revenues, or cost savings differ in subsequent years?**

The expenditures, revenues, and cost savings will not change in subsequent years.

**(5) Provide a narrative to explain the:**

**(a) Fiscal impact of this administrative regulation:**

The Division for Air Quality has a budget that is set by statute as part of the enacted budget bill each biennium. The overall budget is not impacted by the amendment to this administrative regulation. Most Part 70 sources will see a decrease in the invoices received for emissions fee as a result of this amendment to this administrative regulation. There are 4 sources that will see an increase, three electric generating units (EGUs) and one distillery.

**(b) Methodology and resources used to determine the fiscal impact:**

The Division for Air Quality has a budget that is set by statute as part of the enacted budget bill each biennium. The Division surveys permitted air sources for emissions each year. The Division then calculates 'billable tons' of emissions from sources and a per ton emission fee is calculated by dividing the budget by the total billable tons. This per ton fee is then applied to each source's billable tons of emissions and an invoice is created for each source.

**(6) Explain:**

**(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)**

There are a total of 4 sources that will see an increase in billable tons, and thus an increase in invoices as part of the proposed amendment to this administrative regulation. LGE-KU will have an increase of approximately \$782,000 more each year; TVA approximately \$1.3 Million more each year; and Big Rivers approximately \$73,000 more each year. The distillery with more than 4,000 tons is Jim Beam, but overall, they do not see an increase across all Jim Beam sources, as the other sources see reductions of the fee. The remaining Part 70 sources will see a decrease in invoice totals due to the removal of the 4,000 ton cap and the subsequent reduction in the per ton emissions fee. Sources that see a reduction include small businesses.

**(b) The methodology and resources used to reach this conclusion:**

As discussed above, the Division surveys Part 70 sources each calendar year for the emissions from the previous calendar year. The Division then calculates billable tons. The Division's budget is divided by the billable tons to determine the per ton emissions fee. This fee is then applied to each source and an invoice is created based on the per ton fee and the source's billable tons for the previous calendar year. The Division's overall budget does not change and is set as part of the biennial budget process. This analysis was done based on the Division's budget and the billable tons for 2022 emissions from Part 70 sources.