

401 KAR 50:045. Performance tests.

RELATES TO: KRS 224.10-100(5), (22), (23), (30), 224.20-110(1)

STATUTORY AUTHORITY: KRS 224.10-100(5), (22), (23), (30)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the Environmental and Public Protection Cabinet to provide for the prevention, abatement, and control of air pollution, and KRS 224.10-100(3) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes requirements for performance tests.

Section 1. The cabinet may require the owner or operator of an affected facility to sample emissions in accordance with methods approved by the cabinet or the U.S. EPA. All tests shall be made under the direction of persons qualified by training or experience in the field of air pollution control.

Section 2. Pretest Requirements.

- (1) A source required to conduct a performance test shall submit a completed Compliance Test Protocol form, DEP form 6028, or a test protocol a source has developed for submission to other regulatory agencies, in a format approved by the cabinet, to the cabinet's Division for Air Quality a minimum of sixty (60) days prior to the scheduled test date.
- (2) The cabinet shall review the Compliance Test Protocol submittal for approvability and determine the need for a pretest meeting with the source.
- (3) If a pretest meeting is held:
 - (a) The source shall resolve with the division all testing and process issues; and
 - (b) The division's approval shall be in writing and sent to the source.
- (4) The source shall not deviate from the approved pretest protocol without the division's prior approval.

Section 3. The cabinet may conduct tests of emissions of air contaminants from any source.

Section 4. Test Methods and Exceptions.

- (1) Performance tests required by this or any other administrative regulation in 401 KAR Chapters 50-68 for affected facilities that are subject to a standard of performance promulgated under 40 C.F.R. 60 or 40 C.F.R. 61, incorporated by reference in 401 KAR 57:002 and 60:005, shall be conducted, and data shall be reduced, in accordance with the reference methods and procedures contained in each applicable administrative 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. EPA approve the use of an equivalent method;
 - (c) The cabinet and the U.S. EPA approve the use of an alternative method, the results of which they have determined to be adequate for indicating whether a specific source is in compliance; or
 - (d) The cabinet and the U.S. EPA waive the requirement for performance tests for affected facilities for which a standard of performance has been promulgated under 40 C.F.R. 60 or 40 C.F.R. 61 because the owner or operator of an affected facility has demonstrated to the cabinet's and the U.S. EPA's satisfaction that the affected facility is in compliance with the applicable standard.
- (2) Performance tests required by this or any other administrative regulation in 401 KAR Chapters 50-68 for affected facilities that are subject to a standard promulgated under 40 C.F.R. 63, incorporated by reference in 401 KAR 63:002, shall be conducted, and data shall be reduced, in accordance with the reference methods and procedures contained in 40 C.F.R. 63.7 unless:

- (a) The cabinet specifies or approves the use of a reference method with minor changes in methodology pursuant to 40 C.F.R. 63.90(a);
 - (b) The cabinet and the U.S. EPA approve the use of an equivalent method;
 - (c) The cabinet and the U.S. EPA approve the use of an alternative method that provides results adequate for indicating whether a specific source is in compliance; or
 - (d) The cabinet and the U.S. EPA waive the requirement for performance test for affected facilities for which a standard has been promulgated under 40 C.F.R. 63 because the owner or operator of an affected facility has demonstrated to the cabinet's and the U.S. EPA's satisfaction that the affected facility is in compliance with the applicable standard.
- (3) Performance tests required by this or any other administrative regulation in 401 KAR Chapters 50-68 for affected facilities that are not subject to a standard promulgated under 40 C.F.R. 60, 40 C.F.R. 61, or 40 C.F.R. 63 shall be conducted, and data shall be reduced, in accordance with the methods and procedures contained in each applicable administrative regulation unless:
- (a) The cabinet specifies or approves minor changes in methodology;
 - (b) The cabinet specifies or approves the use of an alternative method that provides results 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;
 - a. The cabinet shall determine the validity of an economic burden waiver request based on proof presented by the affected facility; and
 - b. The determination of an extreme economic burden shall be made on the basis of whether meeting the compliance standards would produce serious hardship without equal or greater benefit to the public and environment.

Section 5. Test Conditions.

- (1) In order to demonstrate that a source is capable of complying with a standard at all times, a performance test shall be conducted under normal conditions that are representative of the source's operations and create the highest rate of emissions. The Division for Air Quality may waive this requirement on a case-by-case basis if the source demonstrates to the cabinet's satisfaction that the source is in compliance with all applicable requirements.
- (2) If the maximum production rate represents a source's highest emissions rate and a performance test is conducted at less than the maximum production rate, a source shall be limited to a production rate of no greater than 110 percent of the average production rate during the performance tests.
- (3) A source that becomes capable of operating at a higher production rate than the production rate demonstrated during a prior performance test shall conduct another performance test at the higher rate to demonstrate the source's ability to comply with emissions limitations.

Section 6. The owner or operator shall:

- (1) Permit the cabinet to conduct performance tests at a reasonable time;
- (2) Operate the facility, for the purpose of the performance tests, under conditions specified by the cabinet based on representative performance for the affected facility; and
- (3) Provide the cabinet with records necessary to determine representative performance.

Section 7.

(1) The owner or operator of an affected facility subject to 40 C.F.R. Part 60 or 40 C.F.R. Part 61 testing requirements shall provide the cabinet thirty (30) calendar days prior notice of the performance test to afford the cabinet the opportunity to have an observer present.

(2) The owner or operator of an affected facility subject to 40 C.F.R. Part 63 testing requirements shall provide the cabinet sixty (60) calendar days prior notice of the performance test.

(3) If a facility is unable to conduct a performance test as scheduled, the owner or operator shall notify the cabinet as soon as practicable to reschedule the test. A delay in conducting a performance test shall not relieve an owner or operator of a facility from any legal responsibility for demonstrating compliance.

Section 8. 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 platforms.

(3) Safe access to sampling platforms; and.

(4) Utilities for sampling and testing equipment.

Section 9. Sampling Runs.

(1) 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 administrative regulation. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three (3) runs shall apply.

(2)

(a) Once performance testing has begun, a person conducting the testing shall not halt a sampling run except due to:

1. Forced shutdown;

2. Failure of an irreplaceable portion of the sample train;

3. Extreme meteorological conditions; or

4. Unforeseen circumstances beyond the owner's or operator's control.

(b) The person conducting the testing shall not halt a sampling run for the purpose of making adjustments to the parameters of the performance test.

(3) If a sample is accidentally lost or one (1) of the three (3) runs must be discontinued for a purpose in accordance with subsection (2)(a) of this section, compliance may, upon the cabinet's approval, be determined using the arithmetic mean of the results of the two (2) other runs.

Section 10. Incorporation by Reference.

(1) "Compliance Test Protocol," DEP form 6028, January 15, 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division for Air Quality, 300 Sower Boulevard, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(5 Ky.R. 360; eff. 6-6-1979; 31 Ky.R. 1726; 1988; 32 Ky.R. 61; eff. 7-13-2005; TAm eff. 5-20-2010; TAm eff. 7-8-2016; Crt eff. 11-21-2018.)