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REGULATIONS COMPILER

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division for Air Quality

(Amendment)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 50-53, 60-63, 70-78, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet [~~Environmental and Public Protection Cabinet~~] to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(3) "Actual emissions" is defined by 40 C.F.R. 51.166(b)(21). [~~means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.~~]

(4) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected state" [~~states"~~] means a state [~~states~~] that:

(a) Borders [~~Border~~] Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Is [~~Are~~] situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined by [~~in~~] KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined by [~~in~~] KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(12) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet. [~~means a method of sampling and analyzing for an air pollutant that is not a reference method or~~

~~equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.~~]

(13) "Ambient air" is defined by 40 C.F.R. 50.1(e). [~~means that portion of the atmosphere, external to buildings, to which the general public has access.~~]

(14) "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.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected 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.

(17) "Cabinet" is defined by KRS 224.01-010(9). [~~in KRS 224.01-010.~~]

(18) "Capital expenditure" is defined by [~~in~~] 40 C.F.R. 60.2.

(19) "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.

(20) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(21) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(22) "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.

(23) "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.

(24) "Designated representative" means a person authorized by the owner or operator [~~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 in accordance with 40 C.F.R. 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. In matters relating to the acid rain portion of a Title V permit, the term "responsible official", as defined in this section, means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source that: [~~which:~~]

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Does [~~Shall~~] not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.

[~~(28) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.~~

~~(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.~~

~~(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.~~]

(31) "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet. [~~means a method of sampling and analyzing for an air pollutant, that 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.~~]

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means an item specified in this subsection as it applies to an emission unit at a source subject to 40 C.F.R. Part 70, including a requirement promulgated or approved by the U.S. EPA in conjunction with the permit issuance but which has future-effective compliance dates.

(a) A standard or requirement in the SIP that implements the relevant requirements of the Act, including a revision to that plan promulgated at 40 C.F.R. Part 52;

(b) A term or condition of a preconstruction permit issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) A standard or requirement of the Acid Rain Program;

(f) A requirement established pursuant to 42 U.S.C. 7414(a)(3) or 7661c(b) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for a temporary source permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for a tank vessel adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.

[~~(34) "Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. 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 C.F.R. Part 52;~~

~~(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;~~

~~(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;~~

~~(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;~~

~~(e) Standards or requirements of the Acid Rain Program;~~

~~(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;~~

~~(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);~~

~~(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);~~

~~(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and~~

~~(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.~~]

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made; or [~~made.~~]

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas; petroleum; coal; wood; [~~gas, petroleum, coal, wood,~~] or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" is defined by 40 C.F.R. 70.2. For purposes of chapter 52, "subject to regulation" is defined by this administrative regulation. [~~means a stationary~~

~~source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:~~

~~(a) For HAPs:~~

~~1. Is located within a contiguous area;~~

~~2. Is under common control;~~

~~3. Includes all fugitive HAP emissions in determining if the source is major; and~~

~~4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:~~

~~a. Oil or gas exploration or production wells and the associated equipment; or~~

~~b. Pipeline compressors or pump stations; and~~

~~(b) For regulated air pollutants other than HAPs:~~

~~1. Is located on one (1) or more contiguous or adjacent properties;~~

~~2. Is under common control;~~

~~3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and~~

~~4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:~~

~~a. Coal cleaning plants (with thermal dryers);~~

~~b. Kraft pulp mills;~~

~~c. Portland cement plants;~~

~~d. Primary zinc smelters;~~

~~e. Iron and steel mills;~~

~~f. Primary aluminum ore reduction plants;~~

~~g. Primary copper smelters;~~

~~h. Municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~i. Hydrofluoric, sulfuric, or nitric acid plants;~~

~~j. Petroleum refineries;~~

~~k. Lime plants;~~

~~l. Phosphate rock processing plants;~~

~~m. Coke oven batteries;~~

~~n. Sulfur recovery plants;~~

~~o. Carbon black plants (furnace process);~~

~~p. Primary lead smelters;~~

~~q. Fuel conversion plants;~~

~~r. Sintering plants;~~

~~s. Secondary metal production plants;~~

~~t. Chemical process plants;~~

~~u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;~~

~~v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;~~

~~w. Taconite ore processing plants;~~

~~x. Glass fiber processing plants;~~

~~y. Charcoal production plants;~~

~~z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or~~

~~aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).~~]

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;

2. Twenty-five (25) tons per year or more of combined HAPs; or

3. A lesser quantity that the U.S. EPA establishes in a final rulemaking; or

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious.

(47) "Malfunction" is defined by 40 C.F.R 60.2. [~~means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.~~]

(48) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the [~~one (1) hour~~] national ambient air quality standard for ozone [~~in 401 KAR 51:010~~].

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the [~~one (1) hour~~] national ambient air quality standard for ozone [~~in 401 KAR 51:010~~].

(51)(a) "Modification" is defined by 40 C.F.R 60.2.

(b) Exceptions to the definition of "modification" are listed in 40 C.F.R 60.14(e). For purposes of this definition, "administrator" means the cabinet. [~~means any physical change in, or a change in the method of operation of, an affected facility that:~~

~~(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and~~

~~(b) Is not solely:~~

~~1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category;~~

~~2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;~~

~~3. An increase in the hours of operation;~~

~~4. Use of an alternative fuel or raw material if, prior to the date a 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.~~

~~5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);~~

~~6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial;~~ ~~or~~

~~7. The relocation or change in ownership of a source.~~]

(52) "Modification under Title I of the Act" means a change at a facility that constitutes [~~would constitute~~] a modification under 42 U.S.C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" is defined by 40 C.F.R. 60.2. [~~means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.~~]

(54) "Owner or operator" is defined by 40 C.F.R. 60.2. [~~means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.~~]

(55) "Person" is defined by KRS 224.01-010(17). [~~means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.~~]

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design in which: [~~where:~~]

(a) 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 is [~~shall be~~] treated as part of its design if the limitation is enforceable as a practical matter; and

(b) This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for a forty-five (45) day review period.

(58) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) 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

(b) It is technologically and economically feasible to meet the applicable requirements in 401 KAR Chapters 50 to 65. [~~68.~~]

(59) "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40

C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411;

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "Responsible official" is defined by 40 C.F.R. 70.2. [~~means:~~

~~(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 $25,000,000 (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 (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.~~]

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does 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.

(64) "Shutdown" means the cessation of an operation.

(65) "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard promulgated in 401 KAR Chapters 50 to 65 [~~the~~

~~administrative regulations of the Division for Air Quality~~] or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(67) "Start-up" or "startup" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, that [~~which~~] has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant.

(72) "Subject to regulation" is defined by 40 C.F.R. 70.2 for the Title V program.

(73) [~~(72)~~] "Title V permit" means a permit issued under Kentucky's Title V program. [~~pursuant to 401 KAR 52:020 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.~~]

(74) [~~(73)~~] "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(75) [~~(74)~~] "Total suspended particulates" or "TSP" is defined by 40 C.F.R. 51.100(ss). [~~means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.~~]

(76) [~~(75)~~] "tpy" means ton per year.

(77) [~~(76)~~] "U.S. EPA" means the U.S. Environmental Protection Agency.

(78) [~~(77)~~] "Volatile organic compound" or "VOC" is defined by [~~in~~] 40 C.F.R. 51.100(s).

(79) [~~(78)~~] "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.

7/14/10

Date

Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2010, at 2:00 p.m. (local time) in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on August 31, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, ext. 4428, fax (502) 564-4666, and electronic mail Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 52:001
Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 52.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is given in KRS 224.10-100(5), which provides the cabinet the authority, power, and duty to prevent and control air pollution. KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 52.

(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 revises definitions to reflect amendments made to the New Source Review (NSR) program at the federal level. The *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* (Tailoring Rule), published as a final rule on June 3, 2010, amends and creates definitions that significantly impact the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The amendments are to the definitions for "Regulated NSR pollutant", which includes greenhouse gases (GHGs) as a regulated NSR pollutant under the Clean Air Act; "Major source", which includes air pollutants subject to regulation; and the inclusion of a definition for "Subject to regulation", which includes the greenhouse gas emission thresholds to trigger PSD and Title V permitting.

(b) The necessity of the amendment to this administrative regulation:
The definition amendments are necessary at the state level to ensure consistency between state and federal programs. The Tailoring Rule establishes January 2, 2011, as the trigger date for GHGs to become regulated. If Kentucky's State Implementation Plan (SIP) is not revised by

that date to include these requirements, the SIP will be found deficient, and the U.S. EPA will have authority to issue a Federal Implementation Plan (FIP). Serious consequences of a FIP include loss of PSD and Title V program approvals and loss of federal highway funds. EPA clearly states their intent in the preamble to the final rule, "For any state that lacks the ability to issue PSD or Title V permits for GHG emissions sources consistent with the final rule, we [EPA] intend to undertake a separate action to call for revisions to these programs. We [EPA] also intend to move quickly to impose a FIP for PSD through 40 CFR 52.21, and use our federal Title V authority to ensure that GHG sources will be permitted consistent with the final rule." This amendment also clarifies that small businesses will not be regulated solely because of their greenhouse gas emissions by tailoring the threshold limits.

(c) **How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100(26) requires the cabinet to issue regulations that are no more stringent than federal requirements. This amendment maintains consistency with corresponding federal definitions affecting Kentucky's PSD and Title V permitting programs.

(d) **How the amendment will assist in the effective administration of statutes:** This amendment will provide clear and consistent definitions of terms used in 401 KAR Chapter 52 to prevent and control air pollution.

(3) **List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** Any facility with the capacity to emit greenhouse gases at or above the thresholds specified in the GHG Tailoring Rule, which changes to 401 KAR 52:001 incorporate, would be affected by the changes to this regulation. This includes PSD and Title V sources of greenhouse gas emissions but does not affect smaller emitters of greenhouse gases. EPA has estimated that without the Tailoring Rule there would be 82,000 permitting actions nationwide per year necessary to address greenhouse gas emissions, but with the implementation of the rule that number is reduced to 1,600 nationwide. The Division for Air Quality has estimated this regulation change to affect 30 – 40 permitting actions per year in Kentucky. If these amendments are not made, the U.S. EPA will find Kentucky's SIP deficient and exercise their authority to issue a construction ban to prevent the construction or modification of a major emitting facility (pursuant to CAA §167) until a FIP is issued.

(4) **Provide an assessment 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:** Changes to the current regulation will include the regulation of greenhouse gas emissions. For those sources emitting at or above the major source threshold for greenhouse gas emissions, new permits will have to be issued.

(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: Sources permitted under the Title V program will have to submit a permit application identifying and reporting the emissions but there will be no new requirements or standards imposed on the source. Sources permitted under the PSD program will have to submit a permit application including Best Available Control Technology (BACT) review for greenhouse gas emissions.

(b) **In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** There are no emission fees associated with the regulation of greenhouse gas emissions. For those sources that must provide a BACT analysis, there is the additional cost to meet the requirements of the BACT determination. Additionally, sources required to obtain a new permit will have the expense of completing a permit application. EPA has estimated that a Title V permit application for greenhouse gas sources would cost each source, on average, between $23,200 and $46,400.

(c) **As a result of compliance, what benefits will accrue to the entities identified in question (3):** These major sources will remain in compliance with state and federal regulations.

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

(a) **Initially:** The inclusion of greenhouse gases in stationary source permits will require the Division for Air Quality to expand staff to review the increased permit load and inspect changes made to sources as a result of this regulation.

(b) **On a continuing basis:** The cabinet must maintain the additional staff in order to handle the increase in permit issuance. EPA has estimated that a Title V permit application for greenhouse gas sources would cost a permitting authority, on average, between $9,844 and $19,688 to process each source permit.

(6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Any additional expense incurred by the Division for Air Quality to regulate greenhouse gas emissions would be paid for through Title V emission fees. The cabinet is not requesting additional general funds for the implementation and enforcement of the 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.** The cabinet is not requesting additional general funds for the implementation of this administrative regulation. However, Title V emission fees may be impacted by the implementation of this administrative regulation.

(8) **State whether or not this administrative regulation established any fees or directly or indirectly increased any fees.** This administrative regulation does

not establish fees, but as stated above in (7), Title V emission fees may be impacted.

(9) **TIERING: Is tiering applied?** Yes. The Tailoring Rule amends the threshold of greenhouse gas emission levels subject to regulation. This tiering revision was necessary to prevent small businesses and individuals from becoming subject to permitting requirements solely due to greenhouse gas emissions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. **Federal statute or regulation constituting the federal mandate.** As a SIP-approved state for the PSD program under 40 CFR 51.166, recent changes in the federal PSD/NSR and Title V programs make it necessary to revise the regulation in order to maintain federal approvability. Failure to do so will result in a Federal Implementation Plan.

2. **State compliance standards**. The state compliance standards are found in KRS 224.10-100(5).

3. **Minimum or uniform standards contained in the federal mandate**. Changes in the federal definitions for this program necessitate changes in the state definitions.

4. **Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?** No.

5. **Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements**. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 52:001
Contact person: Laura Lund, Environmental Technologist II

1. **Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?** Yes.

2. **What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** This administrative regulation impacts the Division for Air Quality as the applicability of other administrative regulations is altered. Any state or local government that emits greenhouse gases in the thresholds subject to the PSD or Title V permitting programs would be required to obtain a permit from the Division for Air Quality.

3. **Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** KRS 224.10-100(5), (26); 42 U.S.C. 7401, 7410, 7471, 7607; 40 CFR 51.166.

4. **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(b) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(c) **How much will it cost to administer this program for the first year?** The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 – 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

(d) **How much will it cost to administer this program for subsequent years?** The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 – 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.