

**CHAPTER 77****( HB 50 )**

AN ACT relating to administrative regulations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 13A.010 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative body" means each state board, bureau, cabinet, commission, department, authority, officer, or other entity, except the General Assembly and the Court of Justice, authorized by law to promulgate administrative regulations;
- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, and the amendment or repeal of an existing administrative regulation, but does not include:
  - (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;
  - (b) Declaratory rulings;
  - (c) Intradepartmental memoranda not in conflict with KRS 13A.130;
  - (d) Statements relating to acquisition of property for highway purposes and statements relating to the construction or maintenance of highways; or
  - (e) Rules, regulations, and policies of the governing boards of institutions that make up the postsecondary education system defined in KRS 164.001 pertaining to students attending or applicants to the institutions, to faculty and staff of the respective institutions, or to the control and maintenance of land and buildings occupied by the respective institutions;
- (3) "Adopted" means that an administrative regulation has become effective in accordance with the provisions of this chapter;
- (4) "Authorizing signature" means the signature of the head of the administrative body authorized by statute to promulgate administrative regulations;
- (5) "Commission" means the Legislative Research Commission;
- (6) "Effective" means that an administrative regulation has completed the legislative subcommittee review established by KRS 13A.290, 13A.330, and 13A.331;
- (7) "Federal mandate" means any federal constitutional, legislative, or executive law or order that requires or permits any administrative body to engage in regulatory activities that impose compliance standards, reporting requirements, recordkeeping, or similar responsibilities upon entities in the Commonwealth;
- (8) "Federal mandate comparison" means a written statement containing the information required by KRS 13A.245;
- (9) "Filed" or "promulgated" means that an administrative regulation, or other document required to be filed by this chapter, has been submitted to the Commission in accordance with this chapter;
- (10) "***Last effective date***" means the latter of:
  - (a) ***The most recent date an ordinary administrative regulation became effective, without including the date a technical amendment was made pursuant to subsection (10) of Section 2 of this Act or KRS 13A.2255(2) or 13A.312; or***

- (b) *The date a certification letter was filed with the regulations compiler for that administrative regulation pursuant to subsection (4) of Section 5 of this Act, if the letter stated that the administrative regulation shall remain in effect without amendment.*
- (11) "Local government" means and includes a city, county, urban-county, charter county, consolidated local government, special district, or a quasi-governmental body authorized by the Kentucky Revised Statutes or a local ordinance;
- ~~(12)~~~~(11)~~ "Proposed administrative regulation" means an administrative regulation that:
- (a) Has been filed by an administrative body; and
  - (b) Has not become effective or been withdrawn;
- ~~(13)~~~~(12)~~ "Regulatory impact analysis" means a written statement containing the provisions required by KRS 13A.240;
- ~~(14)~~~~(13)~~ "Small business" means a business entity, including its affiliates, that:
- (a) Is independently owned and operated; and
  - (b)
    1. Employs fewer than one hundred fifty (150) full-time employees or their equivalent; or
    2. Has gross annual sales of less than six million dollars (\$6,000,000);
- ~~(15)~~~~(14)~~ "Statement of consideration" means the document required by KRS 13A.280 in which the administrative body summarizes the comments received, its responses to those comments, and the action taken, if any, as a result of those comments and responses;
- ~~(16)~~~~(15)~~ "Subcommittee" means the Administrative Regulation Review Subcommittee, any other subcommittee of the Legislative Research Commission, an interim joint committee, or a House and Senate standing committee;
- ~~(17)~~~~(16)~~ "Tiering" means the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; and
- ~~(18)~~~~(17)~~ "Written comments" means comments submitted to the administrative body's contact person identified pursuant to KRS 13A.220(6)(d) via hand delivery, United States mail, e-mail, or facsimile and may include but is not limited to comments submitted internally from within the promulgating administrative body or from another administrative body.

➔Section 2. KRS 13A.040 is amended to read as follows:

The director of the Legislative Research Commission shall appoint an administrative regulations compiler who shall:

- (1) Receive administrative regulations, and other documents required to be filed by the provisions of this chapter, tendered for filing;
- (2) Stamp administrative regulations tendered for filing with the time and date of receipt;
- (3) Provide administrative and support services to the subcommittee;
- (4) Maintain a file of administrative regulations and other documents required to be filed by this chapter, for public inspection, with suitable indexes;
- (5) Maintain a file of ineffective administrative regulations;
- (6) Maintain a file of material incorporated by reference, including superseded or ineffective material incorporated by reference;
- (7) Prepare the Kentucky Administrative Regulations Service;
- (8) Upon request, certify copies of administrative regulations and other documents that have been filed with the regulations compiler;
- (9) Correct errors that do not change the substance of an administrative regulation, including, but not limited to, typographical errors, errors in format, and grammatical errors;
- (10) Change items in an administrative regulation in response to a specific written request for a technical amendment submitted by the administrative body if the regulations compiler determines that the requested changes do not affect the substance of the administrative regulation. Examples of technical amendments

include the address of the administrative body, citations to statutes or other administrative regulations if a format change within that statute or administrative regulation has changed the numbering or lettering of parts, or other changes in accordance with KRS 13A.312;

- (11) Refuse to accept for filing administrative regulations, and other documents required to be filed by this chapter, that do not conform to the drafting, formatting, or filing requirements established by the provisions of KRS 13A.190(4) to (10), 13A.220, 13A.222(1), (2), and (3), 13A.230, and 13A.280, and notify the administrative body in writing of the reasons for refusing to accept an administrative regulation for filing;
- (12) *Maintain a list of all administrative regulation numbers and the corresponding last effective date, based on the information included in the history line of each administrative regulation;* and
- (13)~~(12)~~ Perform other duties required by the Commission or by a subcommittee.

➔Section 3. KRS 13A.310 is amended to read as follows:

- (1) *Except as provided in Sections 4 and 5 of this Act*, an administrative regulation, once adopted, cannot be withdrawn but shall be repealed if it is desired that it no longer be effective.
- (2) *Except as provided in Sections 4 and 5 of this Act*, an administrative regulation, once adopted, cannot be suspended but shall be repealed if it is desired to suspend its effect.
- (3) (a) An administrative regulation shall be repealed only by the promulgation of an administrative regulation that:
1. Is titled "Repeal of (state number of administrative regulation to be repealed)";
  2. Contains the reasons for repeal in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph;
  3. Includes in the body of the administrative regulation, a citation to the number and title of the administrative regulation or regulations being repealed; and
  4. Meets the filing and formatting requirements of KRS 13A.220.
- (b) 1. Except as provided in subparagraph 2. of this paragraph, on the effective date of an administrative regulation that repeals an administrative regulation, determined in accordance with KRS 13A.330 or 13A.331, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
2. If the repealing administrative regulation specifies an effective date that is after the administrative regulation would become effective pursuant to KRS 13A.330 or 13A.331, the specified effective date shall be considered the effective date of the repealing administrative regulation. On the specified effective date, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation from the Kentucky Administrative Regulations Service.
- (c) An administrative body may repeal more than one (1) administrative regulation in an administrative regulation promulgated pursuant to paragraph (a) of this subsection if the administrative regulations being repealed are contained in the same chapter of the Kentucky Administrative Regulations Service.
- (4) (a) An ordinary administrative regulation may be withdrawn by the promulgating administrative body at any time prior to its adoption.
- (b) An ordinary administrative regulation that has been found deficient may be withdrawn by the promulgating administrative body at any time prior to receipt by the regulations compiler of the determination of the Governor made pursuant to KRS 13A.330 or 13A.331 or may be withdrawn by the Governor.
- (c) If an ordinary administrative regulation is withdrawn, the administrative body or the Governor shall inform the regulations compiler of the reasons for withdrawal in writing.
- (5) Once an ordinary administrative regulation is withdrawn, it shall not be reinstated, except by repromulgation as a totally new matter.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *An ordinary administrative regulation with a last effective date on or after July 1, 2012, shall expire seven (7) years after its last effective date, except as provided by the certification process in Section 5 of this Act.*
- (2) *An ordinary administrative regulation with a last effective date before July 1, 2012 shall expire on July 1, 2019, except as provided by the certification process in Section 5 of this Act.*
- (3) *For all administrative regulations that expire under this section or Section 5 of this Act, the regulations compiler shall:*
  - (a) *Delete them from the Kentucky Administrative Regulations Service;*
  - (b) *Add them to the list of ineffective administrative regulations; and*
  - (c) *Beginning on January 1, 2020, and at least once every six (6) months thereafter, publish a list of administrative regulations that have expired since the most recent previous list was published under this paragraph.*
- (4) *Within three (3) months of the effective date of this Act, and at least once every six (6) months thereafter, the regulations compiler shall publish a list of existing administrative regulations and their corresponding last effective dates.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 13A IS CREATED TO READ AS FOLLOWS:

- (1) *If an administrative body does not want an administrative regulation to expire under Section 4 of this Act, the administrative body shall:*
  - (a) *Review the administrative regulation in its entirety for compliance with the requirements of KRS Chapter 13A and current law governing the subject matter of the administrative regulation; and*
  - (b) *Prior to the expiration date, file a certification letter with the regulations compiler stating whether the administrative regulation shall be amended or remain in effect without amendment.*
- (2) *The certification letter shall be on the administrative body's official letterhead, in the format prescribed by the regulations compiler, and include the following information:*
  - (a) *The name of the administrative body;*
  - (b) *The number of the administrative regulation;*
  - (c) *The title of the administrative regulation;*
  - (d) *A statement that:*
    1. *The administrative body shall be amending the administrative regulation; or*
    2. *The administrative regulation shall remain in effect without amendment; and*
  - (e) *A brief statement in support of the decision.*
- (3)
  - (a) *If the certification letter was filed pursuant to subsection (1)(b) of this section, stating that the administrative regulation shall be amended, the administrative body shall file an amendment to the administrative regulation in accordance with KRS Chapter 13A within eighteen (18) months of the date the certification letter was filed.*
  - (b) *If the amendment was filed in accordance with paragraph (a) of this subsection:*
    1. *The administrative regulation shall not expire if it is continuing through the administrative regulations process; or*
    2. *The administrative regulation shall expire on the date the amendment is withdrawn or otherwise ceases going through the administrative regulations process.*
  - (c) *Once the amendment is effective, the regulations compiler shall update the last effective date for that administrative regulation to reflect the amendment's effective date.*
- (4) *If the certification letter was filed pursuant to subsection (1)(b) of this section, stating that the administrative regulation shall remain in effect without amendment, the regulations compiler shall:*
  - (a) *Update the administrative regulation's history line to state that a certification letter was received; and*
  - (b) *Change the last effective date of the administrative regulation to the date the certification letter was received.*

- (5) *If filed by the deadline established in KRS 13A.050(3), the regulations compiler shall publish in the Administrative Register of Kentucky each certification letter received:*
- (a) *In summary format; or*
  - (b) *In its entirety.*

**Signed by Governor March 21, 2017.**