902 KAR 1:400. Administrative hearings.

RELATES TO: KRS Chapter 13B, 211.180, 211.190, 211.210, 211.357, 211.360, 211.760, 211.844, 211.870, 211.925, 211.964, 212.170, 212.210, 212.230, 212.620, 212.627, 216.920, 217.075, 217.126, 217.809, 217.950, 217C.040, 217C.050, 219.031, 219.370, 223.070, 7 C.F.R. 246

STATUTORY AUTHORITY: KRS 13B.170, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health with the Cabinet for Health Services. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. The function of this administrative regulation is to establish, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the Department for Public Health in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. Scheduling the Conference. (1) The Department for Public Health shall provide the opportunity for a conference to any regulated entity aggrieved by any action of the Department for Public Health by issuing a notice of proposed action by letter or by use of Form DFS-214.

(2) The notice of action by the department shall contain:

(a) A description of the proposed action or action taken;

(b) The reasons for the action;

(c) The statutory or regulatory authority by which action is taken; and

(d) An explanation of the right to a conference if requested within ten (10) days of the date of mailing by letter or by use of Form DFS-212.

(e) Notice of conference time, date and place shall be made by letter to the requester's last known address or by use of Form DFS-213.

Section 2. Conference. (1) The conference shall be conducted by a representative of the agency taking the action.

(2) During the course of the conference, the appellant may:

(a) Be represented by counsel;

(b) Cross examine witnesses against him; and

(c) Present evidence in his favor.

(3) The purpose of the conference is to:

(a) Clarify the position of the parties; and

(b) To resolve any dispute over the pending action.

Section 3. Conference Report. (1) Within five (5) days of the conclusion of the conference, the agency representative shall issue a report to the administrative agency detailing any settlement of the action appealed.

(2) The report shall contain the appellant's further right to appeal pursuant to KRS Chapter 13B and a copy of the report shall be mailed to the appellant's last known address.

Section 4. Appeals. (1) The appellant may file an appeal with the Cabinet for Health Services within ten (10) days of receipt of the conference report by mailing a letter of appeal to the Commissioner for Public Health, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Upon receipt of an appeal, the commissioner shall set the date, time and place for the hearing requested.

(3) The notice of appeal hearing shall conform to KRS 13B.050;

(4) The appeal hearing shall be conducted by a hearing officer appointed by the secretary and in

accordance with KRS 13B.080, 13B.090, and 13B.110.

(5) An official record of the appeal hearing complying with KRS 13B.130 shall be retained by the Cabinet for Health Services.

(6) The secretary shall issue a final order complying with the requirements of KRS 13B.120.

Section 5. Nothing in this administrative regulation shall be construed to prevent the Department for Public Health from taking emergency action to protect the public health and safety under the provisions of KRS 13B.125.

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) DFS-212, revised 10/96;

(b) DFS-213, revised 8/96;

(c) DFS-214, revised 8/96.

(2) This material may be inspected, copied or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m. (23 Ky.R. 1829; 2521; eff. 11-20-1996; Crt eff. 10-15-2019.)