

**STATEMENT OF EMERGENCY
902 KAR 2:211E**

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency.

This emergency administrative regulation differs from the previously filed emergency administrative regulation on this same subject, 902 KAR 2:210E, in multiple ways. (1) In Section 2(2), a requirement was added to require a person to cover their nose and mouth with a face covering if the person is inside, or waiting in line to enter, any gym, fitness studio, or any other indoor exercise or sports facility, including while actively engaged in exercise. (2) In Section 2(3)(a), an exemption was added to exempt from the requirement to wear a face covering a child who is younger than first grade while in attendance at a child care facility. (3) In Section 2(3)(c), a clarification was made that a person who is deaf or hard of hearing is exempt from wearing a face covering when the person is actively communicating. (4) In Section 2(3)(j), an exemption was added for a person who is exempt from wearing a face covering under guidance provided by the Kentucky High School Athletics Association or under guidance for athletic activities at an institution of higher education. (5) Section 2(3) will no longer include exemptions from wearing face coverings for a person actively engaged in exercise in a gym or indoor facility or for a person actively participating in athletic practice, scrimmage, or competition permitted under separate Healthy at Work requirements or guidance. (6) The citation form required by Section 3 of this administrative regulation has been incorporated by reference. (7) Changes were made to comply with the drafting and formatting requirements of KRS Chapter 13A.

ERIC C. FRIEDLANDER, Secretary
ANDY BESHEAR, Governor

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology
(New Emergency Administrative Regulation)**

902 KAR 2:211E. Covering the Face in Response to Declared National or State Public Health Emergency.

EFFECTIVE: January 5, 2021

RELATES TO: KRS 39A.180, 211.180(1), 214.010, 214.645, 333.130

STATUTORY AUTHORITY: KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.020 requires the Cabinet for Health and Family Services to take action, promulgate, adopt, and enforce rules and regulations it deems efficient in preventing the introduction or spread of infectious or contagious disease within this state. KRS 211.025 requires the cabinet to perform actions reasonable neces-

sary to protect and improve the health of the people. KRS 211.180(1) requires the cabinet to enforce administrative regulations to control communicable diseases. This administrative regulation establishes requirements for face covering in response to a declared national or state public health emergency.

Section 1. Definition.

“Face covering” means a material that covers the nose and mouth and that:

- (1)(a) Is secured to the head with ties, straps, or loops over the ears; or
- (b) Is wrapped around the lower face;
- (2) May be made of a variety of materials, including cotton, silk, or linen;
- (3) Shall have two (2) or more layers; and
- (4) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

Section 2. Scope of Covering the Face in Response to Declared National or State Public Health Emergency. (1) The provisions of this administrative regulation shall apply to members of the public in Kentucky. Existing sector-specific requirements mandating face coverings for employees of entities in the Commonwealth remain in effect and are available online at: <https://healthyatwork.ky.gov>.

(2) Except as provided by subsection (3) of this section, each person in Kentucky shall cover their nose and mouth with a face covering if the person:

- (a) Is inside, or waiting in line to enter, any:
 1. Retail establishment;
 2. Grocery store;
 3. Pharmacy;
 4. Hair salon or barbershop;
 5. Nail salon or spa;
 6. Tattoo parlor;
 7. Child care facility;
 8. Restaurant or bar, if not seated and consuming food or beverage;
 9. Gym, fitness studio, or any other indoor exercise or sports facility, including while actively engaged in exercise;
 10. Health care setting; or
 11. Other indoor public space in which it is difficult to maintain a physical distance of at least six (6) feet from all individuals who are not members of that person’s household;
 - (b)
 1. Is waiting for or riding on public transportation or paratransit;
 2. Is riding in a taxi, private car service, or ride-sharing vehicle; or
 3. Is driving a vehicle described in subparagraph 1. or 2. of this paragraph while a customer is present; or
 - (c) Is in an outdoor public space in which the person cannot maintain a physical distance of six (6) feet from all individuals who are not members of the person’s household and is not otherwise covered by previously issued guidance.
- (3) A person shall be exempt from wearing a face covering if the person is:
- (a)
 1. Except as provided in subparagraph 2. of this paragraph, a child who is age 5 or younger; or
 2. A child who is younger than first grade while in attendance at a child care facility;
 - (b) A person with disability, or a physical or mental impairment, that prevents the person from safely wearing a face covering;

(c) Deaf or hard of hearing and is actively communicating, or the person is actively communicating with a person who is deaf or hard of hearing, if the individual is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;

(d) Engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to the employee's health or safety;

(e) Seated and actively consuming food or drink at a restaurant, bar, or other establishment that offers food or beverage service;

(f) Obtaining a service that requires temporary removal of the face covering in order to perform or receive the service;

(g) Required to temporarily remove the face covering to confirm the person's identity or for security or screening purposes;

(h)1. Giving a speech or broadcast to an audience; and

2. Able to maintain a safe distance of six (6) feet from all individuals who are not members of the person's household;

(i) In a swimming pool, lake, or other body of water;

(j) Exempt from wearing a face covering under guidance provided by the Kentucky High School Athletics Association or under guidance for athletic activities at an institution of higher education; or

(k) Engaged in a lawful activity for which federal or state law prohibits wearing of a face covering.

Section 3. Non-Compliance. (1)(a) The requirements of this administrative regulation that pertain to a business or other public-facing entity shall be enforced by the Labor Cabinet, the Department for Public Health, another state regulatory agency, and each local health department.

(b) The requirements of this administrative regulation that pertain to an individual shall be enforced by state and local law enforcement authorities, as required by KRS 39A.180.

(2)(a) A person who violates this administrative regulation by failing to wear a face covering as required by Section 2(2) of this administrative regulation and who is not exempt pursuant to Section 2(3) of this administrative regulation shall be given a warning for the first offense and shall be fined:

1. Twenty-five (25) dollars for the second offense;

2. Fifty (50) dollars for the third offense;

3. Seventy-five (75) dollars for the fourth offense; and

4. \$100 for each subsequent offense.

(b) If a person attempts to enter a public-facing entity or mode of transportation listed in Section 2(2) of this administrative regulation while failing to wear a face covering and not subject to any of the listed exemptions in Section 2(3) of this administrative regulation, the person shall be denied access to that public-facing entity or mode of transportation.

(c) If a person is already on the premises and violates this administrative regulation by removing a face covering, the person shall be denied services and asked to leave the premises, and may be subject to other applicable civil and criminal penalties.

(3) Any owner, operator, or employer of a business or other public-facing entity who violates this administrative regulation by permitting an individual on the premises who is not wearing a face covering and who is not subject to any exemption shall be fined at the rates listed in subsection (2)(a) of this section. The business may also be subject to an order requiring immediate closure.

(4) A local health department shall issue a COVID-19 Face Covering Citation for non-compliance with an applicable executive order and this administrative regulation.

Section 4. Effective Date. (1) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

- (a) Expiration of the time period established by KRS 13A.190; or
- (b) Withdrawn in accordance with KRS 13A.190(12).

(2) The Cabinet for Health and Family Services shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

Section 5. Reference. Guidance on how to make a face covering at home is available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.

Section 6. Incorporation by Reference. (1) "COVID-19 Face Covering Citation", January 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 4, 2020

FILED WITH LRC: January 5, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by March 15, 2021, 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 attends virtually will be given an opportunity to comment on the proposed administrative regulation. 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 this proposed administrative regulation until March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: person Julie Brooks or Donna Little

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the wearing of face coverings at specific events and locations in the Commonwealth of Kentucky to prevent the spread of COVID-19 during the declared national or state public health emergency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the health and safety of the citizens of the Commonwealth during the current national or state public health emergency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050, 194A.010, KRS 194A.025, KRS 211.025 and KRS 214.020 authorize the Cabinet for Health and Family Services to take action to protect the health and welfare of the citizens of the Commonwealth and to adopt administrative regulations and to take other action to prevent the spread of disease in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will prevent the spread of COVID-19 in the Commonwealth and will protect the health and welfare of the citizens of the Commonwealth during the declared national and state public health emergency.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a statewide administrative regulation that could potentially affect the entire population of the Commonwealth. This administrative regulation also impacts all Kentucky businesses, organizations and governments.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will be required to wear face coverings in certain places and venues to prevent the spread of COVID-19. A business or other public-facing entity shall not permit an individual on the premises who is not wearing a face covering and who is not subject to any exemption.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs of this administrative regulation is unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, the health and welfare of the citizens of the Commonwealth will be protected during the current declared national and state public health emergency. Compliance with this administrative regulation will prevent the spread of COVID-19.

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

(a) Initially: There is no costs to implement this administrative regulation initially.

(b) On a continuing basis: There will be no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(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: An increase in fees or funding is not needed to implement 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.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation as Section 2(3) of this administrative regulation establishes a number of exemptions to the general requirements in Section 2(2) of this administrative regulation regarding mandatory face coverings.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. 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 will impact the Cabinet for Health and Family Services, and all state or local governments that are public-facing or that regulate businesses or public-facing entities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 211.190(1), 214.020

3. 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.

(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.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have no impact on costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have no impact on costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: