

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Public Health Protection and Safety

(Amended After Comments)

902 KAR 1:400. Administrative ~~conference~~hearings.

RELATES TO: KRS ~~15.111~~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, 217.125,~~[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, 211.025~~[EO 96-862]~~

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes ~~[allows]~~ an agency to enact administrative hearing procedures by ~~[through]~~ administrative regulation that supplement the provisions of KRS Chapter 13B. KRS 211.025 requires ~~[authorizes]~~ the cabinet to administer all provisions of law relating to public health and to enforce all public health laws and all administrative regulations of the secretary. This ~~[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 establishes ~~[is to establish, consistent with the requirements of KRS Chapter 13B,]~~ the procedures for requesting an administrative conference ~~[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. Notice of Enforcement.

(1) The Department for Public Health (DPH) shall provide the opportunity for an administrative conference to any regulated entity aggrieved by the issuance of a Notice of Enforcement (DFS-214).

(2) The Notice of Enforcement (DFS-214) shall be sent by:

(a) United States first-class mail to the registered permit holder or responsible party's last address on file;

(b) Electronic mail to the registered permit holder or responsible party's last electronic mail address on file; or

(c) Hand delivered or other means, as appropriate.

(3) The notice shall contain:

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

(b) The reasons for the action;

(c) The statutory or regulatory authority for the action; and

(d) The timeline required to submit a Request for Administrative Conference (DFS-212).

(4) Upon receipt of a Notice of Enforcement (DFS-214), the permit holder or responsible party may submit a Request for Administrative Conference (DFS-212) within ten (10) business days to the Department for Public Health or local health department of jurisdiction.

(5) Upon receipt of a request for a conference, the Department for Public Health or local health department of jurisdiction shall schedule an administrative conference and send a Notice of Administrative Conference (DFS-213).

(6) The Notice of Administrative Conference (DFS-213) shall:

- (a) Be sent to the permit holder or responsible party who requested a conference at least ten (10) business days prior to the conference; and
- (b) Include the date, time, and location of the administrative conference.

Section 2. ~~Notice of Enforcement for Food or Cosmetic Manufacturing Plant.~~

~~†(1)† The Department for Public Health shall provide the opportunity for an administrative conference to a food or cosmetic manufacturing plant aggrieved by the issuance of a Food or Cosmetic Plant Enforcement Notice (DFS-263), incorporated by reference in 902 KAR 45:160.†~~

~~†(2)† The Food or Cosmetic Plant Enforcement Notice (DFS-263) shall be sent by:†~~

~~†(a)† United States first-class mail to the registered permit holder or responsible party's last address on file;†~~

~~†(b)† Electronic mail to the registered permit holder or responsible party's last electronic mail address on file; or†~~

~~†(c)† Hand delivered or other means, as appropriate.†~~

~~†(3)† The notice shall contain:†~~

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

~~†(b)† The reasons for the action;†~~

~~†(c)† The statutory or regulatory authority for the action; and†~~

~~†(d)† The timeline required to submit a Request for Conference (DFS-267), incorporated by reference in 902 KAR 45:160.†~~

~~†(4)† Upon receipt of a Food or Cosmetic Plant Enforcement Notice (DFS-263), the permit holder or responsible party may submit a Request for Conference (DFS-267) within ten (10) business days to the Department for Public Health.†~~

~~†(5)† Upon receipt of a request for a conference, the Department for Public Health shall schedule an administrative conference and send a Food or Cosmetic Plant Notice of Administrative Conference (DFS-268).†~~

~~†(6)† The Food or Cosmetic Plant Notice of Administrative Conference (DFS-268) shall:†~~

~~†(a)† Be sent to the permit holder or responsible party who requested a conference at least ten (10) business days prior to the conference; and†~~

~~†(b)† Include the date, time, and location of the administrative conference.†~~

†Section 3.† Administrative Conference.

(1) The administrative conference shall be conducted by a representative of the Department for Public Health.

(2) The permit holder or responsible party may examine any evidence or information in the agency's possession to be used at the administrative conference at least five (5) days prior to the conference.

(3) The permit holder or responsible party may arrange an independent transcription of the administrative conference proceedings at its own expense.

(4) During the administrative conference, the permit holder or responsible party may:

(a) Be represented by counsel; and

(b) Present documentation in his or her favor.

(5) ~~†(3)†~~ The purpose of the administrative conference is to:

(a) Clarify the issues and positions ~~†position†~~ of the parties; and

(b) Attempt to resolve any dispute over the proposed action or action taken.

Section 3. ~~Section 4.~~ Administrative Conference Decision.

(1) Within ten (10) business ~~†working†~~ days of the conclusion of the administrative conference, the Department for Public Health representative shall:

- (a) Send a written decision to the director of the local health department of jurisdiction; and ~~or~~
- (b) Send a written decision to the permit holder or responsible party, with a copy to the appropriate program staff ~~+, when the notice of enforcement is issued directly by the Department for Public Health~~ .
- (2) The director of the local health department of jurisdiction or appropriate program staff shall forward a copy of the decision to the permit holder or responsible party within five
- (5) business days.
- (3) The decision shall:
 - (a) Be sent by:
 - 1. United States first-class mail to the registered permit holder or responsible party's last address on file; and
 - 2. Electronic mail to the registered permit holder or responsible party's last electronic mail address on file; and
 - (b) Contain the:
 - 1. Results of the administrative conference; and
 - 2. Permit holder or responsible party's right to appeal pursuant to KRS Chapter 13B.

Section 4. ~~+~~Section 5. ~~+~~ Appeals. The permit holder or responsible party may request a hearing within ten (10) days of receipt of the administrative conference decision by:

- (1)
 - (a) Mailing a request for a hearing to the Division of Public Health Protection and Safety, Department for Public Health, 275 E. Main Street, Mailstop HS1E-A, Frankfort, Kentucky 40621;
 - (b) ~~+(2)+~~ Faxing a request for a hearing to 502-564-9523; or
 - (c) ~~+(3)+~~ Emailing a request for hearing to environmentalappeals@ky.gov ~~+~~ CHFS.Listens@ky.gov ~~+~~ .
- (2) ~~+(4)+~~ Requests for a hearing shall be forwarded by the division to the Office of Administrative Hearings within the Department of Law in accordance with KRS 15.111(2)(g), within two (2) working days of receipt.

Section 5. ~~+~~Section 6. ~~+~~ 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. ~~+~~Section 7. ~~+~~ Material Incorporated by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Request for Administrative Conference (DFS-212)", 5/2026 ~~+~~4/2025~~+~~ edition;
 - (b) "Notice of Administrative Conference (DFS-213)", 5/2026 edition; and ~~+~~4/2025 edition; ~~+~~
 - (c) "Notice of Enforcement (DFS-214)", 5/2026 ~~+~~4/2025~~+~~ edition ~~+~~; and ~~+~~
 - ~~+(d)+~~ ~~"Food or Cosmetic Plant Notice of Administrative Conference (DFS-268)", 4/2025 edition~~ ~~+~~ .
- (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.
- (3) This material is also available online at ~~+~~ For forms listed in: ~~+~~
 - ~~+(a)+~~ ~~Subsections (1)(a)(c) of this section, see~~ ~~+~~
<https://chfs.ky.gov/agencies/dph/dafm/Pages/lhddocuments.aspx> ~~+~~; and ~~+~~
 - ~~+(b)+~~ ~~Subsection (1)(d) of this section, see~~ ~~+~~ ~~<https://www.chfs.ky.gov/agencies/dph/dphps/fsb/Pages/foodmanufacturing.aspx>~~ ~~+~~ .
~~[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.]~~

JOHN R. LANGFELD, MD, Commissioner
STEPHEN J. STACK, M.D., MBA. Secretary

APPROVED BY AGENCY: June 15, 2026
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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Subject Headings:Administrative Hearings, Local Health Departments, Public Health

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation outlines the procedures for administrative conferences conducted by the Department for Public Health.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to provide all regulated entities a right to due process in response to an action initiated by the Department for Public Health staff or its duly authorized agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 13B.170 allows an agency to provide administrative procedures through administrative regulation that supplement KRS Chapter 13B proceedings. KRS 211.025 authorizes the department to enforce all public health laws and regulations of the secretary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation ensures all those permitted or licensed by the department are afforded an opportunity to an administrative conference before aversive action is taken against the permit or license and protects their right to due process proceedings.

(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:

The amendment to this administrative regulation clarifies the notification requirements, updates the administrative conference procedures, ensures a conference decision is provided in a timely manner, and updates the material incorporated by reference. The amended after comments version clarifies that the request for a conference may be submitted to the department or the local health department, removes the newly added language regarding administrative conferences for food and cosmetic manufacturing plants as those requirements will be added to the applicable administrative regulation, removes the food and cosmetic plant related material incorporated by reference as this material will be incorporated by reference in the food manufacturing administrative regulation, and makes other changes necessary for KRS Chapter 13A compliance. The remaining material incorporated by reference has been amended to reflect suggested changes.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to ensure all those who are issued a permit or license from the department are aware of the process to request an administrative conference should they receive an enforcement notice. Upon further discussion with program staff and regulated entities it was determined that an administrative conference is not needed for enforcement actions against a

food or cosmetic manufacturing plant. Any enforcement actions will go directly to an administrative hearing under KRS Chapter 13B.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment to this administrative regulation protects permit holders' and licensees' due process rights when the department or its duly authorized agent has discovered a violation of the applicable administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment to this administrative regulation ensures a consistent process is followed by all programs that issue permits or licenses.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? The amendment to this administrative regulation implements the requirements of 2023 Ky. Acts ch. 124, sec. 4.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation impacts all entities issued a permit or license by the department. This includes hotels, motels, youth camps, food service establishments, tattoo artists and studio owners, body piercers and studio owners, and swimming pool operators. It also impacts all local health departments and state staff who are responsible for inspection and enforcement procedures to determine compliance with the applicable administrative regulation.

(5) Provide an analysis of how the entities identified in question (4) 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 question (4) will have to take to comply with this administrative regulation or amendment:

Local health department and state program staff will need to be aware of the revised forms and the timelines associated with the administrative conference procedures. Permit holders and licensees will need to be aware of the timelines required for requesting an administrative conference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

The amendment to this administrative regulation does not impact costs for the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

Permit holders and licensees will be assured consistent administrative conference proceedings.

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

(a) Initially:

This is an ongoing process procedure, there will be no initial cost to implement these changes.

(b) On a continuing basis:

Continuing costs to implement this administrative regulation include costs associated with staff who conduct the administrative conference. This will be absorbed as part of their salary.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:

State general fund dollars are the source of funding for the activities associated with implementing this administrative regulation.

(8) 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 the changes in this administrative regulation.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

There are no fees associated with this administrative regulation.

(10) TIERING: Is tiering applied?

Tiering is not applied as the requirements of this administrative regulation are applied equally to all regulated entities.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 13B.170 and 211.025.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact expenditures for the promulgating agency.

Revenues: This administrative regulation does not generate revenue for the promulgating agency.

Cost Savings: This administrative regulation does not result in cost savings for the promulgating agency.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no change in expenditures, revenues, or cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Affected local entities include local health departments.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact expenditures for the affected local entities.

Revenues: This administrative regulation does not generate revenue for the affected local entities.

Cost Savings: This administrative regulation does not result in cost savings for the affected local entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no change in expenditures, revenues, or cost savings in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Additional regulated entities include all entities issued a permit or a license from the Department for Public Health.

(a) Estimate the following for the first year:

Expenditures: Additional regulated entities may incur minimal cost associated with submitting a request for an administrative conference.

Revenues: This administrative regulation does not generate revenue for the additional regulated entities.

Cost Savings: This administrative regulation does not result in cost savings for the additional regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no change in expenditures, revenues, and cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The amendment to this administrative regulation will have minimal fiscal impact.

(b) Methodology and resources used to determine the fiscal impact:

The costs to implement this administrative regulation will be absorbed in the salary of the program staff person responsible for overseeing the administrative conference. On average, the department participates in 100 administrative conferences per year. The conference meeting may last between two to six hours. Staff that preside over the conference are responsible for writing the conference report, which can take up to five (5) days to complete.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This administrative regulation does not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

Not applicable.