

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:065. Reciprocal recognition.

RELATES TO: KRS 194A.005, 211.842-211.852, 211.990(4), 10 C.F.R. Part 150, 42 U.S.C. 2021(b)~~[150.20]~~

STATUTORY AUTHORITY: KRS 13B.170, 194A.050(1), ~~[211.090(3),]~~ 211.844

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, to qualify for the receipt of federal funds, and to cooperate with other state and federal agencies. KRS 211.844 requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

Section 1. Definitions.

- (1) "Agreement state" means a state that the United States Nuclear Regulatory Commission (NRC) or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(b) et seq.).
- (2) "Cabinet" is defined by KRS 194A.005(1).
- (3) "Licensee" means a person who holds:
 - (a) A specific license issued by the cabinet pursuant to 902 KAR 100:040, 902 KAR 100:185, and this administrative regulation;
 - (b) A specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state; or
 - (c) A general license pursuant to 902 KAR 100:050 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.

Section 2. Applicability. This administrative regulation shall apply to a licensee. The licensee shall comply with 10 C.F.R. Part 150 except as established in subsection (1) through (3) of this section.

- (1) The licensee shall not be subject to:
 - (a) 10 C.F.R. 150.3 Definitions: Foreign Obligations;
 - (b) 10 C.F.R. 150.4;
 - (c) 10 C.F.R. 150.5;
 - (d) 10 C.F.R. 150.7;
 - (e) 10 C.F.R. 150.10;
 - (f) 10 C.F.R. 150.14;
 - (g) 10 C.F.R. 150.15;
 - (h) 10 C.F.R. 150.15a;
 - (i) 10 C.F.R. 150.16;
 - (j) 10 C.F.R. 150.17;
 - (k) 10 C.F.R. 150.17a;
 - (l) 10 C.F.R. 150.19;
 - (m) 10 C.F.R. 150.21;
 - (n) 10 C.F.R. 150.30;

- (o) 10 C.F.R. 150.31;
- (p) 10 C.F.R. 150.32; and
- (q) 10 C.F.R. 150.33.

(2) Reference to the NRC, Commission, or an agreement state shall be deemed to reference the Cabinet for Health and Family Services, Department for Public Health, Radiation Health Branch, the NRC, or an agreement state.

(3) Notifications and reports required by 10 C.F.R. Part 150 shall be directed to the manager, Radiation Health Branch at:

- (a) 275 East Main Street, Mailstop HS1-C-A, Frankfort, Kentucky 40621;
- (b) (502) 564-1492: Facsimile;
- (c) (502) 564-3700: Telephone, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (d) (800) 225-2587: Telephone, for hours except those established in paragraph (c) of this subsection.

Section 3. The out-of-state licensee requesting reciprocity shall pay an annual fee in accordance with 902 KAR 100:012. [Reciprocal Recognition of Licenses.]

~~[(1)] [Subject to the provisions of 902 KAR Chapter 100, a person who holds a specific license from the United States Nuclear Regulatory Commission or an Agreement State, issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, shall be granted a general license to conduct the activities authorized in the licensing document within the Commonwealth of Kentucky, except in areas of exclusive federal jurisdiction, for a period of 180 days in a calendar year if:]~~

~~[(a)] [The licensing document does not limit the activity authorized by the document to specified installations or locations;]~~

~~[(b)]~~

~~[1.] [The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the activity. The notification shall include:]~~

~~[a.] [The date of arrival;]~~

~~[b.] [The duration of use;]~~

~~[c.] [Nature and scope of the use;]~~

~~[d.] [The company where the radioactive material is to be used;]~~

~~[e.] [The name of the person in charge of the activity to be conducted under the license;]~~

~~[f.] [The exact location and type of proposed possession within this state; and]~~

~~[g.] [A copy of the pertinent licensing document.]~~

~~[2.] [If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner.]~~

~~[3.] [The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;]~~

~~[(c)] [The out-of-state licensee complies with 902 KAR Chapter 100 and with the terms and conditions of his licensing document, except terms and conditions which may be inconsistent with 902 KAR Chapter 100;]~~

~~[(d)] [The out-of-state licensee supplies information as the cabinet may reasonably request;]~~

~~[(e)] [The licensee does not establish a permanent office in this state; and]~~

~~[(f)] [The out-of-state licensee does not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section, except by transfer to a person;]~~

~~{1.} [Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the material; or]~~
~~{2.} [Exempt from the requirements for a license for material specified in 902 KAR Chapter 100; and]~~
~~{(g)} [The out-of-state licensee pays an annual fee in accordance with 902 KAR 100:012.]~~
~~{(2)} [In addition to the provisions of subsection (1) of this section, a person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3)(a), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material within areas subject to the jurisdiction of the licensing body shall be granted a general license to install, transfer, demonstrate or service the device in the Commonwealth of Kentucky if:]~~
~~{(a)} [The person satisfies the requirements of 902 KAR Chapter 200;]~~
~~{(b)} [The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the person by the United States Nuclear Regulatory Commission or an Agreement State;]~~
~~{(c)} [The person assures that each label required to be affixed to the device, in accordance with administrative regulations of the authority which licensed the manufacture of the device, bears a statement that "removal of this label is prohibited";]~~
~~{(d)} [The holder of the specific license furnishes to a general licensee to whom he transfers a device, or on whose premises he installs a device, a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and]~~
~~{(e)} [The person files a report with the cabinet within thirty (30) days after the end of a calendar quarter in which a device is transferred to a person, or installed in a location, within the jurisdiction of the cabinet. A report shall identify a general licensee to whom the a device is transferred by:]~~
~~{1.} [Name and address;]~~
~~{2.} [The type of device transferred; and]~~
~~{3.} [The quantity and type of radioactive material contained in the device.]~~
~~{(3)} [The cabinet may withdraw, limit, or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or of a product distributed as authorized by a licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety and property.]~~

STEVEN STACK, M.D., Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 26, 2023
FILED WITH LRC: June 7, 2023 at 2:35 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2023, 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 August 14, 2023, 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 August 31, 2023. 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: Krista Quarles, Policy Analyst, 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:Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another agreement state.

(b) The necessity of this administrative regulation:

This administrative regulation identifies alternate licensing criteria for lower activities and specific uses of radioactive materials.

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

KRS 211.844 requires the cabinet to provide by administrative regulation the requirements for the licensing, use, and disposal of radioactive materials.

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

This administrative regulation allows businesses with a valid radioactive materials license to conduct activities in Kentucky.

(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 adopts by reference the applicable requirements of 10 C.F.R. Part 150.

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

As an agreement state with the Nuclear Regulatory Commission (NRC), Kentucky is required to have state regulations compatible with the regulations promulgated by NRC. This change will make the Radiation Health Branch (RHB) compatible with applicable requirements of 10 C.F.R. Part 150.

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

KRS 211.842(1) and (2) establish the cabinet as the radiation control agency of the State of Kentucky and authorize the cabinet to issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation.

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

The amendment to this administrative regulation ensures all licensees who have a general license for certain uses of radioactive material and specific devices containing radioactive material are in full compliance with state and federal requirements.

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

There are currently 118 licenses issued for certain uses of radioactive material and specific devices containing radioactive material.

(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 question (3) will have to take to comply with this administrative regulation or amendment:

No additional actions will be needed by the licensee to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is a minimal cost to the cabinet associated with updating references.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Adopting 10 C.F.R. Part 150 by reference will reduce the redundancy between state and federal requirements. This will reduce the time needed to research applicable regulations and make it easier for the licensee to review existing guidance documents.

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

(a) Initially:

This is an ongoing program, there are no initial costs to implement.

(b) On a continuing basis:

The amendment to this administrative regulation does not impact cost to the agency.

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

The Radiation Health Branch is funded through a mix of state general fund dollars and the various fees associated with issuing licenses.

(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 the amendment to this administrative regulation.

(8) 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.

(9) TIERING: Is tiering applied?

Tiering is not applied. The requirements of this administrative regulation are applied equally to all licensees.

FISCAL NOTE

(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?

The Radiation Health Branch within the Department for Public Health will be impacted by this administrative regulation.

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

KRS 194A.050(1) and 211.844.

(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 does not impact cost to the agency.

(d) How much will it cost to administer this program for subsequent years?

This administrative regulation does not impact cost to the agency.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation may result in minimal cost savings for the regulated entities. The amendment to this administrative regulation reduces the administrative burden of having to research and follow duplicative state and federal requirements.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will have no impact on cost for the regulated entities.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation will have no impact on cost for the regulated entities.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Atomic Energy Act of 1954, 42 U.S.C. 2021, as amended, and 10 C.F.R. Part 150.

(2) State compliance standards.

As an agreement state with the Nuclear Regulatory Commission, the state is required to have a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the state covered by the proposed agreement. The state is required to adopt compliance standards for the protection of the public health, safety, and environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose.

(3) Minimum or uniform standards contained in the federal mandate.

In accordance with 42 U.S.C. 2021(g), the Commission is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. Pursuant to 42 U.S.C. 2021(a) (3), the purpose of this standard is to promote orderly regulatory pattern between the Commission and state governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials.

(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.

Not applicable as there are no stricter standards, or additional or different responsibilities or requirements.