

**EDUCATION AND LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amended at ARRS Committee)**

**803 KAR 2:260. Appeal procedure.**

RELATES TO: KRS 338.091, 29 C.F.R. 2200.52, 2200.7, 2200.8, 2204.302, 2204.303, 2204.405, 2204.406, 5 U.S.C. 504(b)(1)(A), 601, 7 U.S.C. Chapter 38, 26 U.S.C. 501(a), 501(c)(3), 28 U.S.C. 2412

STATUTORY AUTHORITY: KRS 338.051, 338.061, 338.091

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chair to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes appeal procedures pertaining to occupational safety and health standards complaints and related actions .

Section 1. Definitions.

- (1) "Commissioner" is defined by KRS 338.015(7).
- (2) "Fees and other expenses" means reasonable expenses of expert witnesses; the reasonable cost of any study, analysis, engineering report, test, or project found by the court to be necessary for the preparation of the party's case; and reasonable attorney fees.
- (3) "Small business" or "small entity" means:
  - (a) An individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated; or
  - (b) Any owner of an unincorporated business or any, partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in Internal Revenue Code of 1986, 26 U.S.C., Section 501(c)(3), which is exempt from taxation under 26 U.S.C., Section 501(a), or a cooperative association as established in the Agricultural Marketing Act, 7 U.S.C. Chapter 38, may be a party regardless of the net worth of the organization or cooperative association. For purposes of 5 U.S.C. 504(a)(4), "party" also includes a "small entity."
- (4) "Small organization" or "small entity" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one (1) or more definitions of the term, as appropriate to the activities of the agency, and publishes the definition or definitions in the Federal Register.
- (5) "Party" is defined by 5 U.S.C. 551(3) and includes a small business, small organization, and small entity.

Section 2. Fees and Other Expenses; Qualification and Limits. The amount of fees awarded shall be based on prevailing market rates for the kind and quality of the services provided, except:

- (1) An expert witness shall not be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the commissioner; and

(2) Attorney fees shall not be awarded in excess of \$125 per hour unless the Franklin Circuit Court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

### Section 3. Complaint.

(1) A party seeking an award under KRS 338.091 shall file a complaint with the Franklin Circuit Court within thirty (30) days after the final disposition of the adversary adjudication.

(2) The complaint shall:

(a) Identify the party and the proceeding for which an award is sought;

(b) Show that the complainant has prevailed;

(c)

1. Identify the position of the commissioner that the party alleges was not substantially justified; or

2. If the party has not prevailed, show that the commissioner's demand was substantially in excess of the decision of the judge or commission and was unreasonable compared with that decision under the facts and circumstances of that case;

(d) Identify the commissioner's position or positions in the proceeding that the party alleges was or were not substantially justified or the commissioner's demand that is alleged to be excessive and unreasonable;

(e) Unless the party is an individual, state the number of employees of the complainant and briefly describe the type and purpose of its organization or business;

(f) Show that the party meets the definition of party, including adequate documentation of net worth, as established in 29 C.F.R. 2204.302;

(g) State the amount of fees and expenses for which an award is sought, as established in 5 U.S.C. 504(b)(1)(A), with adequate documentation as set forth in 29 C.F.R. 2204.303;

(h) Be signed by the complainant or an authorized officer, attorney, or agent of the complainant; and

(i) Contain or be accompanied by a written verification under penalty of perjury that the information provided in the complaint is true and correct.

(3) Each complainant except a qualified tax-exempt organization; cooperative association; or, in the case of a complaint for an award related to an allegedly excessive demand by the commissioner, a small entity, shall provide with its complaint, a detailed exhibit showing the net worth of the complainant as required by 29 C.F.R. 2204.301(c) when the proceeding was initiated.

(a) The exhibit may be in any form convenient to the complainant that provides full disclosure of the complainant's assets and liabilities and shall be sufficient to determine if the complainant qualifies as a party.

(b) The Franklin Circuit Court could require a complainant to file additional information to determine its eligibility for an award.

(4)

(a) Except as established in paragraph (b) of this subsection, the net worth exhibit shall be included in the public record of the proceeding.

(b) If a complainant objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure, the complainant shall request that the documents be filed under seal or otherwise be treated as confidential, pursuant to 29 C.F.R. 2200.8 and 29 C.F.R. 2200.52.

(5)

- (a) The complaint shall be accompanied by adequate documentation of the fees and other expenses incurred after the initiation of the adversary adjudication, including the reasonable cost of any study, analysis, engineering report, test, or project.
  - (b) A complainant seeking an increase in fees to account for inflation pursuant to 29 C.F.R. 2204.406 shall also include adequate documentation of the change in the consumer price index for the attorney or agent's locality.
  - (c) With respect to a claim for fees and expenses involving an excessive demand by the commissioner, the complaint shall be accompanied by adequate documentation of fees and expenses incurred after initiation of the adversary adjudication for which an award is sought attributable to the portion of the demand alleged to be excessive and unreasonable.
  - (d) A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the complaint, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the complainant or by any other person or entity for the services provided.
  - (e) The Franklin Circuit Court could require the complainant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.
- (6) Any complaint for an award, or any accompanying documentation related to a complaint shall be filed and served on all parties to the proceeding in accordance with 29 C.F.R. 2200.7 and 29 C.F.R. 2200.8, except as provided in 29 C.F.R. 2204.302(b) for confidential financial information.
- (7) Within twenty (20) days after service of a complaint, the commissioner shall file an answer to the complaint. Unless the commissioner requests an extension of time for filing or files a statement of intent to negotiate, failure to file an answer within the twenty (20) day period may be treated as a consent to the award requested
- (8)
- (a) If the commissioner and the complainant believe that the issues in the fee complaint can be settled, they may jointly file a statement of their intent to negotiate a settlement.
  - (b) The filing of this statement shall extend the time for filing an answer for an additional thirty (30) days.
  - (c) Further extensions could be granted by the Franklin Circuit Court upon request.
- (9)
- (a) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the commissioner's position.
  - (b) If the answer is based on any alleged facts not already in the record of the proceeding, the commissioner shall include with the answer either supporting affidavits or a request for further proceedings under 29 C.F.R. 2204.405.
- (10)
- (a) Within fifteen (15) days after service of an answer, the complainant may file a reply.
  - (b) If the reply is based on any alleged facts not already in the record of the proceeding, the complainant shall include with the reply, either supporting affidavits or a request for further proceedings under 29 C.F.R. 2204.405.
- (803 KAR 002:260. 52 Ky.R. 335, 744; eff. 2-3-2026.) COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

FILED WITH LRC: October 14, 2025

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