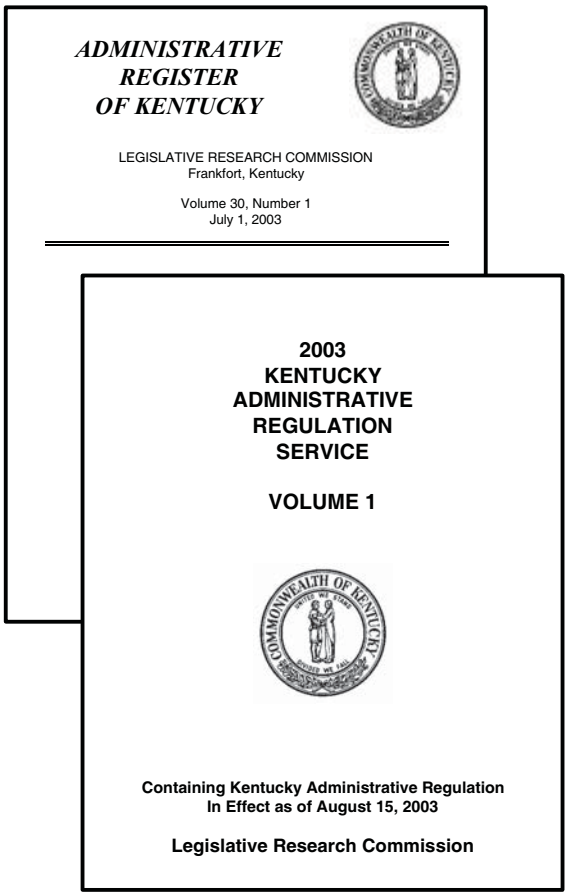
INFORMATIONAL BULLETIN 118

KENTUCKY ADMINISTRATIVE REGULATIONS



Legislative Research Commission
Frankfort, Kentucky

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FOREWORD

This manual is a guide to the correct form and filing procedure for the promulgation of administrative regulations. It provides information on the drafting and filing of administrative regulations, the review procedures established by KRS Chapter 13A, and other information pertinent to the promulgation of administrative regulations.

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The Capitol
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SECTION 1. ADMINISTRATIVE REGULATION REVIEW PROCESS

A summary of the process for promulgating an administrative regulation is set forth in this section. Additional information for each topic is provided in the related section in this informational bulletin.

(1) Prior Hearings [KRS 13A.160]

If a statute other than KRS Chapter 13A requires that a hearing be held before an administrative regulation is filed, the administrative body shall notify the Compiler at least 45 days prior to the date of the hearing of the time, date, place, and subject of the hearing. This notice shall be published in the Administrative Register.

(2) Ordinary Administrative Regulation [Various sections of KRS Chapter 13A]

(1) If the ordinary administrative regulation is filed by noon on the 15th of the month, it shall be published in the next month's Administrative Register. If the 15th falls on a Saturday, Sunday, or holiday, the deadline shall be by noon on the preceding workday. The Administrative Register is published on the 1st day of the month.

(2) The ordinary administrative regulation shall contain information as to the date, time, and place of the scheduled public hearing and the deadline for submitting written comments during the public comment period and shall be published in the Administrative Register.

(3) Public Hearing [KRS 13A.270]

(1) A public hearing shall be scheduled for the ordinary administrative regulation.

(a) The public hearing is scheduled no sooner than the 21st day nor later than the last workday of the month in which the administrative regulation is published.

(b) The hearing shall be held if any member of the public requests the hearing at least 5 working days prior to the date of the hearing.

(c) The administrative body shall notify the Compiler, by phone and letter, if the hearing will be held or canceled.

(2) If the public hearing is canceled and no written comments are received, the administrative regulation shall be considered at the next meeting of the ARRS. A letter of cancellation is the only required filing.

(3) If the public hearing is held or written comments are received, the administrative body shall submit a letter to the Compiler stating that the public hearing will be held or that written comments were received and that an SOC shall be filed.

(4) Public Comment Period [KRS 13A.270]

(1) A public comment period shall be provided for each ordinary administrative regulation.

(2) The administrative body shall accept written comments regarding the administrative regulation for a period of thirty (30) days following publication of the administrative regulation in the Administrative Register.

(3) The administrative body shall notify the Compiler, by phone and letter, if written comments were received or were not received during the public comment period.

(4) If the public hearing is canceled and no written comments are received, the administrative regulation shall be considered at the next meeting of the ARRS. A letter of cancellation is the only required filing.

(5) If the public hearing is held or written comments are received, the administrative body shall submit a letter to the Compiler stating that the public hearing was held or that written comments were received and that an SOC shall be filed.

(5) Statement of Consideration (SOC) [KRS 13A.270, 13A.280]

(1) The administrative body shall file an SOC (which includes a summary of comments and responses) by noon on the 15th calendar day following the last date of the comment period. If the 15th falls on a Saturday, Sunday, or holiday, the deadline shall be by noon on the preceding workday.

(a) If a large number of comments were received, an administrative body may extend the deadline for filing an SOC by 30 calendar days.

(b) A request to extend the deadline for filing the SOC must be submitted by the administrative body by noon on the original deadline for filing the SOC.

(c) If the administrative body has filed a request to extend the deadline for filing the SOC, the SOC shall be filed no later than the 45th day following the last day of the comment period.

(2) If the administrative regulation is not amended as a result of comments received, only the SOC is filed.

(a) If the SOC for an administrative regulation not amended after hearing is filed at least 15 working days prior to the next meeting of the ARRS, the administrative regulation shall remain on that agenda.

(b) If the SOC is not filed at least 15 working days prior to the next meeting of the ARRS, the administrative regulation shall not remain on that agenda, but shall be deferred to the following meeting.

(3) If the administrative regulation is amended as a result of comments received, both the administrative regulation showing the amendments made and accompanied by all required attachments and the SOC shall be filed together.

(a) The SOC is attached to the back of the amended administrative regulation.

(b) If the amended administrative regulation and SOC are filed by the 15th of the month, the administrative regulation shall be published in the next Administrative Register and shall be on the next agenda of the ARRS.

(c) If the amended administrative regulation and SOC are filed after the 15th of the month, the administrative regulation will not be published in the next Administrative Register, but in the following Administrative Register. The administrative regulation will not be on the next agenda, but shall be on the following agenda.

(6) Administrative Regulation Review Subcommittee (ARRS) [KRS 13A.020, 13A.030, 13A.290, 13A.320, 13A.330, 13A.331]

(1) The ARRS shall review an administrative regulation within 45 calendar days of publication or within 60 calendar days of receipt of an SOC.

(2) The ARRS may:

(a) Review the administrative regulation as filed;

(b) Approve an amendment to an administrative regulation and review the administrative regulation as amended; or

(c) Find the administrative regulation deficient (stating that the administrative regulation does not comply with statutory requirements or legislative intent).

(3) The ARRS submits its findings in a report to the Legislative Research Commission (LRC).

(4) If an administrative regulation is found deficient, the ARRS transmits to the Governor:

(a) A copy of its finding of deficiency; and

(b) A request that the Governor determine whether the administrative regulation shall:

1. Be withdrawn;

2. Be withdrawn and amended to conform to the finding of deficiency; or

3. Become effective notwithstanding the finding of deficiency.

(7) Second Reviewing Subcommittee [KRS 13A.290, 13A.330, 13A.331]

(1) The LRC refers the administrative regulation to the appropriate legislative subcommittee for a second review.

(2) The second reviewing subcommittee has the same powers of review as the ARRS.

(3) If the second reviewing subcommittee meets to review an administrative regulation, it shall complete its review within 30 calendar days from the date the administrative regulation was referred to it.

(4) The second reviewing subcommittee submits its findings in a report to the LRC.

(8) Effective Date of Administrative Regulation [KRS 13A.330, 13A.331]

(1) If the administrative regulation is not found deficient, it becomes effective on:

(a) Adjournment of the second reviewing subcommittee's meeting, as long as that meeting is held within the 30-day deadline; or

(b) The 30th day following referral if the second reviewing subcommittee does not meet in that time period.

(2) If the administrative regulation is found deficient, it becomes effective after:

(a) The second reviewing subcommittee:

1. Considers the administrative regulation; or

2. Fails to consider the administrative regulation; and

(b) The Compiler has received the Governor's determination that the administrative regulation become effective notwithstanding the finding of deficiency.

(9) Emergency Administrative Regulation [KRS 13A.190]

(1) An emergency administrative regulation becomes effective as soon as it is received in the Compiler's office.

(2) An emergency administrative regulation shall include a “Statement of Emergency” signed by the Governor and the head of the promulgating administrative body.

(3) An emergency administrative regulation shall expire 170 calendar days following publication in the Administrative Register or when it is replaced by an ordinary administrative regulation. If the emergency administrative regulation is filed by noon on the 15th of the month, it shall be published in the next month's Administrative Register. If the 15th falls on a Saturday, Sunday, or holiday, the deadline shall be by noon on the preceding workday. The Administrative Register is published on the 1st day of the month.

(4) If an emergency administrative regulation is being replaced by an ordinary administrative regulation:

(a) The ordinary administrative regulation must be filed at the same time as the emergency administrative regulation; and

(b) A public hearing and public comment period shall not be required on the emergency administrative regulation (a public hearing will be held on the ordinary administrative regulation that is filed to replace the emergency administrative regulation).

(5) If an emergency administrative regulation is not being replaced by an ordinary:

(a) An ordinary administrative regulation is not required; and

(b) A public hearing and public comment period must be scheduled on the emergency (see information under (3) Public Hearing and (4) Public Comment Period of this section).

(6) An emergency administrative regulation shall be placed on the agenda of the ARRS for the month following publication.

SECTION 2. KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE AND ADMINISTRATIVE REGISTER

(1) The Kentucky Administrative Regulations Service

The Kentucky Administrative Regulations Service consists of several softbound books containing all administrative regulations in effect as of August 15 of the year of publication. It also includes all emergency administrative regulations in effect as of July 15 of the year of publication.

The Kentucky Administrative Regulations Service is available by subscription to any member of the public. Subscription rates will depend on the number of volumes required and the cost of printing. The publication date is August 15 of each year; however, the Service is generally not mailed until the middle of September due to time involved in printing.

The last volume of each year's Service contains 3 indexes:

(1) KRS Reference. The KRS Reference index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO paragraph of each administrative regulation published in the Service.

(2) Subject Index. The Subject Index is a general index of administrative regulations published in the Service and is mainly broken down by agency.

(3) Administrative Regulations Not Printed in Volumes. This index is a list of administrative regulations that are no longer in effect. An administrative regulation will appear in this index if it has been repealed, recodified, or has expired.

Kentucky administrative regulations shall be codified according to the following system and shall be cited by Title, Chapter, and Administrative Regulation Number, as follows:

TITLE	CHAPTER	ADMINISTRATIVE REGULATION NUMBER
103 KAR	25:	131
Cabinet, Department, Board, or Agency	Department, Division, or Major Function	Specific Administrative Regulation

(2) The Administrative Register

The Administrative Register of Kentucky is the monthly supplement for the Kentucky Administrative Regulations Service. A year's subscription to the Administrative Register is available to all members of the public and includes the Administrative Registers published from July of one year through June of the next year.

Material in the Administrative Register is cited by volume number and page number. The volume number is the number of years since the Administrative Register was first published. The first Administrative Register was published in 1974. Therefore, the July 2002 through June 2003 issues of the Administrative Register constitute Volume 29. Page numbering starts with page 1 in the July issue and runs consecutively through the June issue.

Cite the volume number and page number on which an administrative regulation was published in the Administrative Register in one of the following formats:

Volume 2, Kentucky Register, page 318; or

2 Ky.R. 318

The second format of the citation is preferred.

The Administrative Register is published the first of each month and contains filings made with the Compiler by noon on the 15th of the previous month.

Each issue of the Administrative Register contains the following information:

(1) Tentative agenda for the ARRS' next meeting;

(2) Summary of the administrative regulation review procedure;

(3) Emergency administrative regulations;

(4) Amendments to administrative regulations made at legislative subcommittee meetings;

(5) Amendments to administrative regulations made due to comments received during public hearings and during the public comment periods;

(6) Proposed amendments to existing administrative regulations;

(7) Proposed new administrative regulations;

(8) Minutes of the ARRS meeting;

(9) Action taken at legislative subcommittee meetings; and

(10) Locator index, KRS index, and subject index. (See discussion of indexes below.)

Forms required to be filed with administrative regulations (public hearings, regulatory impact analysis, tiering statement, federal mandate, and fiscal note on local government) are published immediately following the administrative regulation.

The Administrative Register contains 3 indexes:

(1) Locator Index. The Locator Index lists all administrative regulations published in that particular year of publication of the Administrative Register. It also lists the page number on which each administrative regulation is published; the effective date of the administrative regulation; and other action — such as recodification, repeal, or withdrawal — which may affect the administrative regulation.

(2) KRS Index. The KRS Index is a cross-reference of statutes to which each administrative regulation relates. These statute numbers are derived from the RELATES TO paragraph of each administrative regulation published in the current year of the Administrative Register.

(3) General Index. The General Index is an alphabetical index of administrative regulations published in the current year of the Administrative Register and is mainly broken down by agency.

(3) Correction of Errors in Administrative Register

KRS 13A.050(2)(c) provides that within 5 workdays of the publication of an administrative regulation in the Administrative Register, an administrative body shall:

(1) Review the text and accompanying statements of the administrative regulation as published; and

(2) Notify the Compiler in writing of errors.

If errors are found, the administrative regulation may be reprinted in the next publication of the Administrative Register.

SECTION 3. EMERGENCY ADMINISTRATIVE REGULATION

KRS 13A.190(1) defines an emergency administrative regulation as one that is temporary in nature and must be placed into effect immediately to:

(1) Meet an imminent threat to the public health, safety, or welfare;

(2) Prevent a loss of federal or state funds;

(3) Meet a deadline for the promulgation of an administrative regulation that is established by state law or federal law or regulation; or

(4) Protect human health and the environment.

An emergency administrative regulation shall not be filed for a period of 9 months after it was first filed, and an emergency administrative regulation identical to or substantially similar to a previously-filed emergency administrative regulation shall not be promulgated [KRS 13A.190(4)].

If an emergency administrative regulation governing the same subject matter of an emergency administrative regulation filed within the previous 9 months is filed, it shall contain a detailed explanation of the manner in which it differs from the previously filed emergency in its statement of emergency [KRS 13A.190(5)].

If an amendment to an existing administrative regulation is filed as an emergency administrative regulation and the amendment is intended to be permanent, the administrative body shall file an amendment to the ordinary administrative regulation to replace the emergency administrative regulation.

(1) Filing an Emergency Administrative Regulation

(a) When Replaced by an Ordinary Administrative Regulation

KRS 13A.190(8)(b) requires that if an emergency administrative regulation will be replaced by an ordinary administrative regulation, the ordinary administrative regulation shall be filed at the same time as the emergency administrative regulation.

An emergency administrative regulation becomes effective immediately upon filing with the Compiler [KRS 13A.190(2)].

A public hearing is not scheduled for an emergency administrative regulation that is going to be replaced by an ordinary administrative regulation. The public hearing is on the ordinary administrative regulation that will replace the emergency administrative regulation [KRS 13A.190(8)(b)2.].

If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the emergency administrative regulation can only be filed when the ordinary administrative regulation is filed.

In addition to the statement of emergency and the body of the emergency administrative regulation, the emergency administrative regulation shall include the:

(1) Authorizing signature of the administrative body promulgating the administrative regulation;

(2) Regulatory impact analysis;

(3) Tiering statement;

(4) Federal mandate comparison, if applicable;

(5) Fiscal note, if applicable;

(6) Summary of material incorporated by reference, if applicable; and

(7) Other forms or documents required by KRS Chapter 13A [KRS 13A.190(7)(b)].

These documents shall be attached to the back of the emergency administrative regulation.

(b) When Not Replaced by an Ordinary Administrative Regulation

An administrative body that promulgates an emergency administrative regulation that will not be replaced by an ordinary administrative regulation is required to schedule a public hearing and public comment period [KRS 13A.190(8)(a)]. The public hearing and public comment period shall be conducted as required by KRS 13A.270 for an ordinary administrative regulation.

KRS 13A.190(6)(d) provides that if an emergency administrative regulation will not be replaced by an ordinary administrative regulation, the statement of emergency shall include the reasons the emergency will not be replaced.

The emergency administrative regulation shall include the:

(1) Authorizing signature of the administrative body promulgating the administrative regulation;

(2) Public hearing and public comment period information required by KRS 13A.270(2);

(3) Regulatory impact analysis;

(4) Tiering statement;

(5) Federal mandate comparison, if applicable;

(6) Fiscal note, if applicable;

(7) Summary of material incorporated by reference, if applicable; and

(8) Other forms or documents required by KRS Chapter 13A [KRS 13A.190(7)(b), (8)(a)].

These documents shall be attached to the back of the emergency administrative regulation.

(2) Statement of Emergency

(a) Contents

An emergency administrative regulation shall contain a statement of:

(1) The nature of the emergency;

(2) The reasons an ordinary administrative regulation is not sufficient;

(3) Whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation;

(4) If not replaced by an ordinary administrative regulation, the reasons therefor; and

(5) If applicable, the explanation of the manner in which the current emergency administrative regulation differs from an emergency administrative regulation filed in the previous 9 months [KRS 13A.190(6)(a)-(e)].

KRS 13A.190(7)(a) provides that the statement of emergency shall be attached to the front of the original and each of the 5 copies of an emergency administrative regulation.

KRS 13A.190(10) provides that, prior to filing with the LRC, an emergency administrative regulation shall be:

(1) Signed by the head of the administrative body; and

(2) Countersigned by the Governor.

These signatures shall be on the statement of emergency, which shall be attached to the front of the emergency administrative regulation.

(b) Format

The statement of emergency shall have a 2-inch top margin. The number of the emergency administrative regulation shall be typed directly below the heading, "Statement of Emergency."

If an emergency administrative regulation is going to be filed on an existing ordinary administrative regulation, the emergency shall have the same number as the ordinary followed by an "E." If an emergency administrative regulation is filed and there is no existing ordinary administrative regulation, the promulgating agency must obtain a new number from the Compiler [KRS 13A.190(9)].

If the emergency administrative regulation will be replaced by an ordinary administrative regulation, the format shall be as follows:

STATEMENT OF EMERGENCY
[Emergency Administrative Regulation Number]

(1) Nature of the emergency.
(2) The reasons an ordinary administrative regulation is not sufficient.
(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on [date].

_____
[NAME], Governor

_____
[HEAD OF ADMINISTRATIVE BODY, Title]

If the emergency administrative regulation will not be replaced by an ordinary administrative regulation, the format shall be as follows:

STATEMENT OF EMERGENCY
[Emergency Administrative Regulation Number]

(1) Nature of the emergency.
(2) The reasons an ordinary administrative regulation is not sufficient.
(3) An ordinary administrative regulation will not be filed with the Regulations Compiler because [reason ordinary will not be filed].

_____
[NAME], Governor

_____
[HEAD OF ADMINISTRATIVE BODY, Title]

If an emergency administrative regulation is filed within nine months of a previously filed emergency, the format shall be as follows:

STATEMENT OF EMERGENCY
[Emergency Administrative Regulation Number]

(1) Nature of the emergency.
(2) The reasons an ordinary administrative regulation is not sufficient.
(3) State the specific differences between this emergency administrative regulation and the one that was filed within the previous 9 months. State the date on which the previous emergency administrative regulation was filed.
(4) State whether or not this emergency administrative regulation will be replaced by an ordinary administrative regulation (see previous examples).

_____
[NAME], Governor

_____
[HEAD OF ADMINISTRATIVE BODY, Title]

(3) Publication of Emergency Administrative Regulation

If an emergency administrative regulation is filed by noon on the 15th of the month, it will be published in the next month's Administrative Register. If the 15th falls on a Saturday, Sunday, or holiday, the deadline shall be by noon on the preceding workday.

If an emergency administrative regulation is filed after noon on the 15th of the month, it will be published in the Administrative Register following the next month's deadline for publication of administrative regulations [KRS 13A.190(2)].

(4) Effective Date and Expiration of Emergency Administrative Regulation

KRS 13A.190(2) provides that an emergency administrative regulation is effective immediately upon filing with the Compiler. It does not become effective when it is signed by the Governor.

KRS 13A.190(3)(a) provides that an emergency administrative regulation shall expire on the earliest of:

(1) 170 days after the date of publication in the Administrative Register; or

(2) When the ordinary administrative regulation, which replaces the emergency administrative regulation, is adopted.

An emergency administrative regulation shall also expire:

(1) When it is withdrawn [KRS 13A.190(12)(a)]; or

(2) On the date an ordinary administrative regulation filed to replace the emergency administrative regulation is withdrawn [KRS 13A.190(11)(a)].

KRS 13A.190(11)(b) provides that if an administrative body withdraws an ordinary administrative regulation that was filed to replace an emergency administrative regulation, it shall notify the Compiler in writing of the reasons for withdrawal.

KRS 13A.190(12)(c) provides that if an emergency administrative regulation is withdrawn, an administrative body shall notify the Compiler in writing of the reasons for withdrawal.

KRS 13A.190(12)(b) provides that an ordinary administrative regulation filed to replace an emergency administrative regulation shall not expire upon the withdrawal of the emergency administrative regulation. If an administrative body wants the ordinary administrative regulation to expire, it shall also withdraw the ordinary administrative regulation. It shall inform the Compiler that it is withdrawing the ordinary administrative regulation as well as the emergency administrative regulation.

(5) Renewal of Emergency Administrative Regulation

KRS 13A.190(4) provides that an administrative body shall not:

(1) File an emergency administrative regulation for a period of 9 months after it has been initially filed; or

(2) Promulgate an emergency administrative regulation that is identical to or substantially the same as one previously filed.

If an emergency administrative regulation governs the same subject matter governed by an emergency administrative regulation filed within the previous 9 months, the statement of emergency shall contain a detailed explanation of the differences between the two emergency administrative regulations [KRS 13A.190(5)].

(6) Review of Emergency Administrative Regulation

KRS 13A.190(13) provides that a subcommittee may review an emergency administrative regulation and may recommend to the Governor that the administrative regulation be withdrawn.

Because an emergency administrative regulation is effective upon filing, it cannot be amended at a legislative subcommittee meeting.

SECTION 4. ORDINARY ADMINISTRATIVE REGULATION

(1) Format of Administrative Regulation and Required Forms

(a) Body of Administrative Regulation

An administrative body shall file the original and 5 copies of an administrative regulation, including the signature page, public hearing and public comment period information, regulatory impact analysis with tiering statement, fiscal note on local government (if applicable), federal mandate comparison (if applicable), and summary of material incorporated by reference (if applicable), with the Compiler [KRS 13A.220(1), 13A.230(1)].

The original and each copy of an administrative regulation, and all attachments, shall be stapled in the top left corner and grouped together [KRS 13A.220(2)]. An electronic version of the administrative regulation shall be filed with the Compiler at the same time the original and 5 copies are filed. The electronic version may either be e-mailed to the Compiler or be contained on a disk [KRS 13A.220(1)(b)].

An amendment to an administrative regulation shall not be made on a reproduced copy of the administrative regulation, but shall be a typed original [KRS 13A.220(3)]. It is recommended that the administrative body contact the Compiler for the official version of an administrative regulation that the administrative body wishes to amend.

An administrative regulation shall be typewritten on white paper, size 8 1/2 inches by 11 inches, and shall be double-spaced, starting with the first typed line of the first page through the last line of the body of the administrative regulation. There is no requirement that the signature page, public hearing notice, and other required forms be double-spaced.

The first page of the administrative regulation shall have a 2-inch top margin. It is recommended that subsequent pages have 1-inch top, bottom, and side margins.

The administrative regulation shall be typed in a 12-point font approved by the Compiler. The typed lines on each page shall be numbered, with the first line on each page starting with line number 1. The line number shall be in the left margin.

Pages shall be numbered sequentially, including the signature page, the public hearing notice, and all required forms. The page numbers shall be centered in the bottom margin of each page.

Copies of the administrative regulation may be mechanically reproduced [KRS 13A.220(4)(a)].

The first typed lines on the first page shall consist of the names of the cabinet, department, and division of the administrative body, followed by the designation of the type of administrative regulation being filed. If it is a new administrative regulation, the designation shall be "(New Administrative Regulation)." If it is an amendment to an existing administrative regulation, the designation shall be "(Amendment)." If it is a repealer administrative regulation (one that is repealing an existing administrative regulation), the designation shall be "(Repealer)." If it is an administrative regulation that has been amended after a public hearing or due to comments received during the public comment period, the designation shall be "(Amended After Comments)". Similarly emergency administrative regulations shall be designated as "(New Emergency Administrative Regulation)", "(Emergency Amendment)", or "(Emergency Repealer)", whichever is applicable [KRS 13A.220(4)(c)].

A new administrative regulation shall have no underlining, brackets, or strike-throughs [KRS 13A.222(1)]. In an amendment to an existing administrative regulation, new language to be added shall be underlined. Language to be deleted shall be bracketed and struck-through. If new language is replacing language, the new language shall be placed in front of the language to be deleted [KRS 13A.222(2)].

The amendment of an administrative regulation shall not be done by reference to a section of the administrative regulation. The full text of the administrative regulation to be amended shall be filed with LRC [KRS 13A.222(3)(a)].

A section in an administrative regulation shall not be reserved for future use [KRS 13A.222(3)(b)].

An administrative regulation shall be typed in the following format:

[2-inch margin]

CABINET

Department, Board, Commission

Division

(Type of Administrative Regulation - See KRS 13A.220(4)(c))

KAR ##:###. Title of administrative regulation [KRS 13A.220(4)(d)].

RELATES TO: (Insert KRS, C.F.R., U.S.C., etc., to which administrative regulation relates) [KRS 13A.220(4)(e)]

STATUTORY AUTHORITY: (insert KRS, C.F.R., U.S.C., etc., which give administrative body authority to promulgate this administrative regulation) [KRS 13A.220(4)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: This paragraph shall contain a brief statement setting forth the necessity for promulgating the administrative regulation and a summary of the functions intended to be implemented by the administrative regulation [KRS 13A.220(4)(f)]. If the administrative regulation is more stringent or otherwise differs from a federal law or regulation governing the subject matter, this paragraph shall also include a detailed statement that sets out the manner in which, and the reasons, the administrative regulation is more stringent than or otherwise differs from the federal law or regulation [KRS 13A.220(4)(f), 13A.245(2)(b)].

Section 1. Definitions.

(1) “Administrative regulation” is defined by KRS 13A.010(2).

(2) “Definition” means a one (1) sentence statement regarding the meaning of a word not defined in the Kentucky Revised Statutes.

Section 2. Format. There shall always be a Section 1 to an administrative regulation. Additional sections shall be numbered as Section 2, Section 3, etc.

(1) This is a subsection. If the section has one (1) subsection, there shall also be a second subsection.

(2) An administrative regulation may be subdivided into sections, subsections, paragraphs, subparagraphs, clauses, and subclauses as follows:

(a) This is a paragraph.

(b) If the subsection has one (1) paragraph, there shall also be a second paragraph.

1. This is a subparagraph.

2. If the paragraph has one (1) subparagraph, there shall also be a second subparagraph.

a. This is a clause.

b. If the subparagraph has one (1) clause, there shall also be a second clause.

(i) This is a subclause (and is the lowest subdivision level in an administrative regulation).

(ii) If the clause has one (1) subclause, there shall also be a second subclause.

(3)(a) The administrative regulation shall be printed on white paper, eight and one-half (8 ½) by eleven (11) inches.

(b) The administrative regulation shall have one (1) inch margins except for the first page, which shall have a two (2) inch top margin for the Regulation Compiler's stamp.

(c) The body of the administrative regulation shall be double-spaced. The information contained at the top of the first page may be double-spaced.

(d) The pages of an administrative regulation shall be numbered.

(e) The lines of each page shall be numbered.

Section 3. Underlining, Bracketing, and Strike-throughs. (1) A new administrative

1 regulation shall not include any underlining, brackets, or strike-throughs.

2 (2) A proposed amended administrative regulation shall:

3 (a) Underline proposed new material; and

4 (b) Bracket and strike through material to be deleted.

5 Section 4. This is an example of new material to be inserted.

6 Section 5. This is an example [~~a sample~~] of an existing administrative regulation that is

7 amended.

8 Section 6. Incorporation by Reference. (1) The following material is incorporated by

9 reference:

10 (a) "Name and edition date of first item incorporated"; and

11 (b) "Name and edition date of second item incorporated."

12 (2) This material may be inspected, copied, or obtained, subject to applicable copyright

13 law, at (name of agency, full address), Monday through Friday, 8 a.m. to 4:30 p.m.

(b) Signature Page

1. Required Signature

An administrative regulation shall be signed and dated by the official or head of the administrative body authorized to promulgate the administrative regulation [KRS 13A.220(6)(b)]. This shall appear on a signature page, which shall begin on the page following the body of the administrative regulation.

The format for the signature and date shall be as follows:

_____	_____
Date	[Name, Title] [Agency]

2. Prior Approval or Review

If an administrative regulation is required to be reviewed by an entity other than the promulgating administrative body prior to its filing, the administrative regulation shall contain a dated, signed statement that it has been reviewed or approved by that entity [KRS 13A.120(3), 13A.220(6)(a)].

The date of the statement is the date the person or administrative body with authority to review or approve the administrative regulation completed its review or approval. If the administrative regulation is approved, a comment is necessary only if the entity feels it is necessary. If the administrative regulation is not approved, a copy of the recommendations or reasons for disapproval shall be attached.

This statement may be on a separate page attached to the back of the administrative regulation or may be on the signature page in a format as follows:

> This is to certify that the [title of person signing; cabinet, department, or division] has [reviewed or approved] this administrative regulation, prior to its filing by the [name of administrative body filing administrative regulation] with the Legislative Research Commission as required by KRS [statute requiring prior approval or review].
>
> _____ _____
> Date [Name, Title]
> [Agency]

(c) Public Hearing and Public Comment Period Information

An administrative body shall schedule a public hearing and public comment period to receive written or oral comments on a proposed administrative regulation [KRS 13A.270(1)(a), (c)].

The public hearing shall not be held before the 21st day nor later than the last workday of the month in which the administrative regulation is published in the Administrative Register [KRS 13A.270(1)(b)].

The administrative body shall accept written comments regarding the administrative regulation for a period of 30 days following its publication in the Administrative Register. If the 30th day of the comment period falls on a Saturday, Sunday, or holiday, the last day of the comment period shall be the workday following the Saturday, Sunday, or holiday [KRS 13A.270(1)(c)].

KRS 13A.220(6)(c), (d) provides that the public hearing and public comment period notice and the name, position, address, telephone number, and facsimile number of the contact person shall be placed immediately after the required signature. It is recommended that this information begin on the page following the signature page.

The format for the public hearing information shall be as follows (and continued on next page):

> PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on (month, day, year) at (time) at (location of public hearing). Individuals interested in being heard at this hearing shall notify this agency in writing by (month, day, year) five 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 wishes to be heard 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 the proposed administrative regulation. Written comments shall be accepted until (date). Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
>
> CONTACT PERSON: name, position, administrative body, address, city, state, zip code, telephone number, and facsimile number.

(d) Regulatory Impact Analysis and Tiering Statement

KRS 13A.240(1) requires that an administrative body submit the original and 5 copies of a regulatory impact analysis for every administrative regulation filed with the Compiler.

KRS 13A.210(1) requires that an administrative body submit a written statement explaining why tiering was or was not used.

The following form shall be used for the regulatory impact analysis and tiering statement:

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #:
Contact person:

(1) Provide a brief summary of:
(a) What this administrative regulation does:
(b) The necessity of this administrative regulation:
(c) How this administrative regulation conforms to the content of the authorizing statutes:
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

(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:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:

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

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially:
(b) On a continuing basis:

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

(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:

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

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

(e) Federal Mandate Analysis

KRS 13A.245(1)(a) requires that an administrative body submit a federal mandate analysis when an administrative regulation is promulgated or amended in response to a federal mandate.

The following form shall be used for the federal mandate analysis:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #:

Contact person:

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

(f) Fiscal Note on Local Government

KRS 13A.250(1) provides that an administrative regulation shall contain a fiscal note if it relates to any:

(1) Aspect of local government; or

(2) Service provided by local government.

The requirements for a fiscal note are listed in KRS 13A.250(2).

The following form shall be used for the Fiscal Note on Local Government:

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #:

Contact person:

Phone Number:

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_____ No_____ If yes, complete questions 2 to 4. If no, you do not need to file this form.
2. State what unit, part, or division of local government this administrative regulation will affect.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(g) Summary of Material Incorporated by Reference

A detailed summary of the material incorporated by reference shall be attached to the back of an administrative regulation.

The summary shall provide detail sufficient to identify the subject matter to which it pertains and shall include:

(1) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material, and the manner in which they are affected;

(2) A citation of the specific state or federal statutes or regulations authorizing or requiring the procedure or policy found in the material incorporated by reference; and

(3) The total number of pages incorporated by reference [KRS 13A.2251(3)].

If the administrative regulation amends material previously incorporated by reference, the summary shall also list the pages on which changes have been made and provide a detailed summary of the changes and their effect [KRS 13A.2255(2)].

If the administrative regulation does not amend material previously incorporated by reference, a new summary is not required.

(2) Material Incorporated by Reference

(a) Initial Filing

One copy of the material incorporated by reference shall be filed with the Compiler when the administrative regulation is filed [KRS 13A.2251(4)(a)].

If a code or uniform standard is incorporated by reference or adopted with or without changes, a copy of the code or uniform standard shall be filed with the Compiler [KRS 13A.2245(2)(a)].

The material shall be placed in a binder. On the binder cover and on the first page of the material, the administrative body shall write, stamp, or type the number of the administrative regulation to which the material pertains, the date on which it is filed, and the citation of each item that is included in the binder. The "date on which it is filed" means the date on which the administrative regulation is filed with the Compiler. If more than one document is incorporated by reference in an administrative regulation, all documents incorporated may be included in one binder, and the "citation of each item" shall include a listing of all material included in that binder [KRS 13A.2251(4)(b)].

If the same material is incorporated by reference in more than one administrative regulation, and all of the administrative regulations that incorporate that material are filed at the same time, then the administrative body may file only one copy of the incorporated material. In this case, the numbers of the administrative regulations in which the material is incorporated by reference shall be written, stamped, or typed on the front binder cover and the first page of the material [KRS 13A.2251(4)(c)].

(b) Amendment of Previously Incorporated Material

If material previously incorporated by reference is being amended, the administrative body shall file with the administrative regulation:

(1) The page or pages of the material incorporated, indicating the changes that have been made by bracketing, striking through, and underlining;

(2) An entire new document in which the amendments have been incorporated into the existing language; and

(3) A summary listing the pages upon which changes have been made, and a detailed summary of the changes and their effect [KRS 13A.2255].

The page or pages indicating changes and the entire new document shall be placed in binders as specified in (2)(a) of this section. The pages being amended may be placed in the same binder as the entire new document by using some type of divider to separate the amended pages from the new pages.

The page or pages being amended may be labeled as the "dirty" copy, and the entire new document may be labeled as the "clean" copy.

(c) Format for Adopting Federal Regulation

A copy of a federal regulation being adopted without change shall be submitted in a binder with the administrative regulation [KRS 13A.2267(4)]. The binder shall comply with the requirements listed in (2)(a) of this section.

A summary of the federal regulation adopted without change shall be attached to the back of the administrative regulation [KRS 13A.2267(5)].

(3) Mailing to Interested Individuals

If an individual is interested in receiving an ordinary administrative regulation after it is filed with LRC, the promulgating administrative body shall provide to that individual a form requesting a copy of the administrative regulation and all attachments. This form shall be completed and returned to the promulgating administrative body. It shall be valid for a period of four (4) years from the date it is filed with the agency or until the person submits a written request to be removed from the notification list, whichever occurs first [KRS 13A.270(3)(a)]. KRS Chapter 13A does not restrict the number of subject matters or administrative regulations of which an individual may request to be notified.

A copy of the administrative regulation as filed, and all attachments required by KRS 13A.230 shall be mailed to every person who has filed the form requesting to be notified of an administrative body's filing of an administrative regulation. The administrative regulation shall be mailed within 5 working days after it is filed and shall be accompanied by a cover letter requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation [KRS 13A.270(3)(b)].

A person who previously filed the form required by KRS 13A.015(4) to receive copies of a notice of intent shall be deemed to have fulfilled this requirement for requesting copies of an administrative regulation [2003 Ky. Acts ch. 89, sec. 22].

The agency may include on the form a place for the person to waive the mailing of the administrative regulation and to instead receive the copy via an electronic transmission to a specified email address. This waiver of the mailing-requirement shall be totally voluntary for the individual.

The format of this request form may be as follows:

CABINET
DEPARTMENT OR BOARD, AS APPLICABLE
DIVISION, IF APPLICABLE
Street Address
City, State, Zip Code

REQUEST FOR NOTIFICATION OF ADMINISTRATIVE REGULATION FILING

Please list subject matters of administrative regulations for which you wish to receive a copy of the administrative regulation and all attachments required by KRS 13A.230:

SUBJECT MATTER	SUBJECT MATTER

Name: _____
Address _____
_____
_____
Association or Administrative Body, if applicable

OPTIONAL: I wish to waive the requirement that I receive a paper copy of these administrative regulations through the United States Postal Service. Instead, please email them to me at this email address: _____.

_____ _____
Date Signature

PLEASE MAIL THIS FORM TO THE ADDRESS ABOVE

SECTION 5. PUBLIC HEARING AND PUBLIC COMMENT PERIOD PROCEDURES

This section relates only to the public hearing and public comment period relating to an ordinary administrative regulation that:

(1) Has been filed with LRC;

(2) Has been published in the Administrative Register; and

(3) Is governed by KRS 13A.270 and 13A.280.

(1) Required Public Hearing and Public Comment Period

KRS 13A.270(1)(a) provides that a public hearing shall be held following publication of an administrative regulation in the Administrative Register. KRS 13A.270(1)(b) provides that the public hearing shall not be held before the 21st day or later than the last workday of the month in which the administrative regulation is published in the Administrative Register. The Administrative Register is published on the first of each month. The earliest the public hearing can be scheduled is the 21st day of the month in which the administrative regulation is published, and the latest it can be scheduled is the last workday of the month in which the administrative regulation is published.

KRS 13A.270(1)(c) requires the administrative body to accept written comments regarding the administrative regulation for a period of 30 days following the publication of the administrative regulation in the Administrative Register. If the 30th day falls on a Saturday, Sunday, or holiday, the last day of the comment period shall be the workday following the Saturday, Sunday, or holiday.

KRS 13A.270(4) provides that members of the public who wish to be heard at the public hearing shall notify the administrative body in writing not less than 5 workdays before the scheduled date of the public hearing.

KRS 13A.270(6)(a) requires an administrative body to:

(1) Hold a public hearing if it has received a notification in writing that a person wishes to appear and testify at the public hearing; and

(2) Notify the Compiler by telephone and letter that the public hearing will be held.

KRS 13A.270(6)(b) requires an administrative body to notify the Compiler by telephone and letter that written comments have been received upon receipt of the written comments.

KRS 13A.270(2) requires that the following information be provided in the public hearing and public comment period notice:

(1) The place, time, and date of the scheduled public hearing;

(2) The manner in which the public shall submit notification of its intent to attend the public hearing and written comments;

(3) The deadline for submitting notice that the public wishes to attend the public hearing, which is no later than 5 workdays prior to the scheduled public hearing date;

(4) The deadline for submitting written comments regarding the administrative regulation; and

(5) The name, title, agency, address, and telephone and facsimile numbers of the person to whom notification and comments are to be submitted.

See the format for the public hearing notice in Section 4(1)(c) of this bulletin.

(2) Cancellation of Public Hearing

An administrative body may cancel a public hearing if it has not received a written notice of intent to attend the public hearing at least 5 workdays prior to the public hearing.

If an administrative body has canceled the public hearing and has not received any written comments, it shall not file an SOC. If it has canceled the public hearing, but has received written

comments, it shall file the SOC. Either way, notice of the cancellation of the public hearing shall be given to the Compiler by telephone and letter [KRS 13A.270(5)(a)].

The format for the letter of cancellation shall be as follows:

[Name], Regulations Compiler Legislative Research Commission Room 29, State Capitol Annex Frankfort, KY 40601 Dear [Name]: The [name of administrative body] has not received a written request to attend the public hearing on [administrative regulation number(s)]. Therefore, pursuant to KRS 13A.270(5)(a), the public hearing scheduled on [date] has been canceled.

(3) Holding of Public Hearing

If an administrative body has received a written notice of intent to attend the public hearing, KRS 13A.270(6)(a) requires that the administrative body notify the Compiler, by telephone and by letter, that the public hearing will be held.

The format for the notification letter that the public hearing will be held is as follows:

[Name], Regulations Compiler Legislative Research Commission Room 29, State Capitol Frankfort, KY 40601 Dear [Name]: The [name of administrative body] has received a written request to attend the public hearing on [cite administrative regulation(s)]. Therefore, pursuant to KRS 13A.270(6)(a), the public hearing scheduled on [date] will be held. Pursuant to KRS 13A.280(2), (3), and (4), a Statement of Consideration will be filed no later than noon eastern time, on [date].

An administrative body is not required to conduct a separate public hearing for each administrative regulation it has filed with LRC. It may consider more than one administrative regulation as a group at one public hearing [KRS 13A.270(8)].

An administrative body shall provide a fair and reasonable opportunity to testify at the hearing to each interested party. A written transcript of the public hearing is required only if an administrative body receives a written request for a transcript, in which case the person requesting the transcript shall pay for it. A recording of the hearing may be made in lieu of a transcript [KRS 13A.270(7)].

(4) Public Comment Period – Notification Regarding Comments

The administrative body shall notify the Compiler by telephone and letter whether written comments are received by the close of the last day of the public comment period.

If written comments are not received, the format for the letter shall be as follows:

[Name], Regulations Compiler Legislative Research Commission Room 29, State Capitol Annex Frankfort, Kentucky 40601 Dear [Name]: The [name of administrative body] has not received any written comments on [administrative regulation number(s)]. The [name of administrative body] [did, did not] hold the public hearing on [administrative regulation(s)]. Therefore, pursuant to KRS 13A.280(1), (2), a Statement of Consideration [will, will not] be filed.

If written comments are received, the format for the letter shall be as follows:

[Name], Regulations Compiler Legislative Research Commission Room 29, State Capitol Annex Frankfort, Kentucky 40601 Dear [Name]: The [name of administrative body] has received written comments on [administrative regulation number(s)]. Pursuant to KRS 13A.280(2), (3), and (4), a Statement of Consideration will be filed no later than noon, eastern time, on [date].

(5) Statement of Consideration (SOC)

(a) Filing Deadline

An administrative body shall consider all written and oral comments it has received at the public hearing and through the end of the public comment period. This consideration shall be summarized in the SOC [KRS 13A.280(1)].

If the public hearing is canceled and administrative body personnel meet with parties interested in or affected by the administrative regulation during the public comment period, the administrative body shall file an SOC.

The SOC shall be filed with the Compiler on or before noon, eastern time, on the 15th day following the last day of the comment period [KRS 13A.280(2)(a)]. Failure to file the SOC in a timely manner shall result in the withdrawal of the administrative regulation [KRS 13A.315(1)(b)].

(b) Extension of Filing Deadline

If a significant number of comments were received at the public hearing or during the public comment period, the administrative body may extend the deadline for filing the SOC for up to 30 days from the original filing deadline. The administrative body shall notify the Compiler in writing of this extension. The notification shall be received on or before noon of the original filing deadline (the 15th day following the last day of the comment period [KRS 13A.280(2)(b)].

If the deadline is extended, the SOC is due by 12 noon, eastern time, no later than 45 days following the last day of the comment period. Failure to file the SOC in a timely manner shall result in the withdrawal of the administrative regulation [KRS 13A.315(1)(b)].

(c) SOC for Administrative Regulation Not Amended After Comments

If an administrative regulation is not amended due to comments received at the public hearing or during the comment period, the administrative body shall file the original and 5 copies of an SOC with the Compiler [KRS 13A.280(4)(a)].

If the SOC for an administrative regulation not amended after comments is not forwarded to the Compiler at least 15 working days prior to the next meeting of the ARRS, the administrative regulation shall be automatically deferred to the next regularly scheduled meeting of the ARRS [KRS 13A.280(4(b)].

(d) SOC for Administrative Regulation Amended After Comments

If an administrative regulation is amended as a result of the hearing or due to comments received, the administrative body shall file the original and 5 copies of the administrative regulation as amended and the SOC with the Compiler. The administrative regulation as amended shall be published in the Administrative Register prior to review by the ARRS [KRS 13A.280(3), (6)].

(e) Copies of SOC

An administrative body shall provide a copy of the SOC to any person who attended the public hearing or submitted comments, if so requested [KRS 13A.280(7)].

(6) SOC Format

The SOC shall be typewritten on white paper, 8 1/2 inches by 11 inches. Copies of the SOC may be mechanically reproduced [KRS 13A.280(5)(a)].

The SOC shall have a 2-inch top margin [KRS 13A.280(5)(b)].

The SOC shall have a heading as follows:

STATEMENT OF CONSIDERATION RELATING TO (REGULATION NUMBER)
"Not Amended After Comments" or "Amended After Comments" (whichever applies).

This heading shall be centered [KRS 13A.280(5)(c)].

If administrative regulations were considered as a group at one public hearing, the administrative body may file one SOC for the group of administrative regulations. The heading shall include a list of each administrative regulation considered [KRS 13A.280(5)(h)].

Following the heading, the SOC shall provide the following information:

(1) A statement setting out the date, time, and place of the hearing, and whether the hearing was held or canceled;

(2) A list of those either attending the hearing or submitting comments, and the organization, agency, or other entity represented, if applicable; and

(3) The name and title of representatives from the administrative body who either attended the hearing or responded to the comments [KRS 13A.280(5)(d)].

The SOC shall include a summary of comments received and the response of the administrative body to each comment. Each comment shall be summarized in a separate numbered paragraph and shall include the name and organization of the person making the comments. If more than one person made the comment, the comment may be summarized once, listing the names of all persons who made the comment. The response by the administrative body shall be included in a separate numbered paragraph below the comment paragraph [KRS 13A.280(5)(e)].

If one SOC is filed for a group of administrative regulations that were considered at the same public hearing, and a comment was made that relates to more than one of the administrative regulations considered, the summary shall include the number of each administrative regulation to which the comment applies [KRS 13A.280(5)(h)].

An administrative body shall summarize the SOC and the action it has taken as a result of the comments. This summary shall follow the summary of comments and responses [KRS 13A.280(5)(f)].

The "action taken" shall consist of:

(1) A series of separate paragraphs stating the specific amendments, including section and subsection, to the administrative regulation; or

(2) A statement that there were no amendments.

(a) Format if Public Hearing Was Held

The format for an SOC when the public hearing was held is as follows:

STATEMENT OF CONSIDERATION RELATING TO ### KAR ##:###
Not Amended After Comments or Amended After Comments

(l) A public hearing on ### KAR ##:### was held on [date of public hearing] at [time of public hearing] at [address of public hearing, including room number, street, city, and zip code].

(2) The following people attended this public hearing or submitted written comments:
Name and Title Agency/Organization/Entity/Other
(Add more lines if necessary.)

(3) The following people from the promulgating administrative body attended this public hearing or responded to the written comments:
Name and Title
(Add more lines if necessary.)

Summary of Comments and Responses

(1) Subject Matter:
(a) Comment:
(b) Response:

(2) Subject Matter:
(a) Comment:
(b) Response:

Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

(b) Format if Public Hearing Was Not Held, but Comments Were Received

The format for an SOC when the public hearing was canceled, but comments were received during the comment period, is as follows:

STATEMENT OF CONSIDERATION RELATING TO ### KAR ##:###
Not Amended After Comments or Amended After Comments

(l) The public hearing on ### KAR ##:###, scheduled for [date of public hearing] at [time of public hearing] was canceled. However, written comments were received during the public comment period.

(2) The following people submitted written comments:
Name and Title Agency/Organization/Entity/Other
(Add more lines if necessary.)

(3) The following people from the promulgating administrative body responded to the written or oral comments:
Name and Title
(Add more lines if necessary.)

Summary of Comments and Responses

(1) Subject Matter:
(a) Comment:
(b) Response:
(2) Subject Matter:
(a) Comment:
(b) Response:

Summary of Statement of Consideration and
Action Taken by Promulgating Administrative Body

(7) Format for Administrative Regulation Amended After Comments

If an administrative regulation is amended as a result of the public hearing or comments received, an administrative body shall forward the original and five (5) copies of the following material to the Compiler by noon on the 15th day following the last day of the public comment period:

(1) The administrative regulation, indicating amendments in its original wording that are a result of the public hearing or any comments received by the administrative body;

(2) The following attachments:

(a) The regulatory impact analysis and tiering statement;

(b) The federal mandate comparison, if applicable;

(c) The fiscal note on local government, if applicable; and

(d) Summary of material incorporated by reference, if applicable; and

(3) The SOC [KRS 13A.280(3)].

The SOC shall be attached to the back of the original and each copy of the administrative regulation, following all of the required forms. The pages of the SOC do not have to be numbered sequentially with the administrative regulation and all attachments.

An administrative regulation that is amended as a result of comments received shall be published in the Administrative Register [KRS 13A.280(6)].

SECTION 6. SUBSEQUENT AMENDMENT OF ADMINISTRATIVE REGULATION

KRS 13A.125 establishes the requirements for the amendment of an administrative regulation that has:

(1) Been filed with LRC; and

(2) Not been adopted.

(1) General

KRS 13A.125 provides that if a new administrative regulation or an amendment to an existing administrative regulation has been filed with LRC, but has not been adopted, an administrative body shall not file:

(1) Another amendment to the existing administrative regulation; or

(2) An amendment to the new administrative regulation.

(2) Exceptions

KRS 13A.125(1), (2), (3), and (4) provide that an administrative body may file subsequent amendments if:

(1) Failure to file subsequent amendments would result in:

(a) A loss of:

1. Accreditation;

2. Federal funds; or

3. State funds; or

(b) The imposition of another state or federal penalty;

(2) Immediate implementation is required by a:

(a) Court decision;

(b) Federal mandate; or

(c) State mandate;

(3) Conditions warrant the filing of an emergency administration regulation; or

(4) The amendments are made:

(a) After the public hearing or public comment period as provided by KRS 13A.280; or

(b) At a legislative subcommittee meeting during which the administrative regulation is being reviewed as provided by KRS 13A.290.

SECTION 7. LRC STAFF REVIEW

(1) Initial Staff Review

The initial staff review is an in-house function performed by LRC staff and is not a requirement established in KRS Chapter 13A. This review does not delay the review process.

After an administrative regulation has been filed with LRC, the Compiler will forward it to LRC staff for review.

The initial staff review of an administrative regulation is made by a staff person of:

(1) An interim joint committee (during the interim between sessions); or

(2) The standing committees of the Senate and House (during a session).

The staff person may contact the contact person designated by an administrative body to discuss questions raised by his or her review.

If an administrative regulation is amended after the public hearing or because of written or oral comments received as provided in KRS 13A.280, it is reviewed a second time by LRC staff.

The initial staff review is forwarded by the Compiler to the:

(1) Staff of the ARRS; and

(2) Members of the ARRS.

If the initial staff review raised questions relating to the administrative regulation, the Committee Staff Administrator of the ARRS will notify the contact person that questions have been raised. The notification will instruct the contact person to discuss questions raised with the ARRS staff member named in the notification.

The initial staff review is not binding on members of any legislative subcommittee or on the ARRS staff.

(2) Review by ARRS Staff

ARRS staff review all administrative regulations prior to ARRS consideration. This review includes the administrative regulation, all material filed with the administrative regulation, relevant statutory and case law (both federal and state), and the initial staff review.

In the review of an administrative regulation, ARRS staff will include suggested amendments to:

(1) Comply with changes recommended by the Compiler relating to division or renumbering of the administrative regulation pursuant to KRS 13A.220(5);

(2) Conform to other requirements established in KRS Chapter 13A; and

(3) Comply with applicable federal or state statutory or case law.

Members of the public, administrative body personnel, and persons representing regulated entities may submit additional material or comments. Additional information should be submitted to the ARRS in care of the Compiler.

ARRS staff will discuss with the contact person questions raised and will inform the members of the ARRS of their conclusions.

SECTION 8. ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE (ARRS)

(1) ARRS Members

Members of the ARRS review the:
(1) Administrative regulation, including required attachments;
(2) Initial staff review;
(3) Comments prepared by ARRS staff; and
(4) Any other relevant material, including information and comments submitted by the public, administrative body personnel, and persons representing regulated entities.

Members of the ARRS are not bound by staff reviews.

An administrative body shall provide additional information to the ARRS upon request [KRS 13A.030(3)].

(2) ARRS Meetings

(a) Notice

The ARRS shall review an administrative regulation within:
(a) 45 days after publication in the Administrative Register; or
(b) 60 days of the receipt of the SOC required by KRS 13A.280 [KRS 13A.290(1)].

A meeting of the ARRS shall be open to the public. A notice of the time, date, and place of the meeting shall be published in the Administrative Register [KRS 13A.290(2), (3)].

Members of the public, administrative body personnel, and persons representing regulated entities may attend an ARRS meeting. They may appear before the ARRS to testify; offer written or oral comments; or request that an administrative regulation be amended, withdrawn, approved, deferred, or found deficient.

(b) Persons Required to Attend

A representative of the promulgating administrative body shall be present at the ARRS meeting to explain the administrative regulation, answer related questions, and agree to amendments proposed at the ARRS meeting [KRS 13A.290(4)].

The administrative regulation shall be deferred to the next regularly scheduled meeting of the ARRS if the representative does not have the authority to amend the administrative regulation or is not present [KRS 13A.290(4)].

(c) Deferral of Administrative Regulation

An administrative regulation may be deferred at the request of either the administrative body or the ARRS. KRS 13A.300(1) provides that a request to defer made by an administrative body requires the consent of the ARRS. KRS 13A.300(2) provides that a request to defer made by the ARRS requires the consent of the administrative body.

If an administrative regulation is deferred, it shall:
(1) Be placed on the agenda for the next regularly scheduled meeting of the ARRS; and
(2) Not require repromulgation or refiling [KRS 13A.300(3)].

(3) Duties and Authority of the ARRS

The ARRS shall review a new or amended administrative regulation for compliance with KRS Chapter 13A and other applicable statutes. The ARRS may also review existing administrative regulations [KRS 13A.030(1)(a), (b)].

The ARRS may conduct a continuous study regarding needed legislative changes, make recommendations for statutory changes, and conduct other studies relating to administrative regulations [KRS 13A.030(1)(a), (c), (d)].

In its review of an administrative regulation, the ARRS may make a nonbinding determination that an administrative regulation is deficient because it:

(1) Is wrongfully promulgated;

(2) Appears to be in conflict with an existing statute;

(3) Appears to have no statutory authority for its promulgation;

(4) Appears to impose stricter or more burdensome state requirements than required by a federal mandate without reasonable justification;

(5) Fails to tier when applicable;

(6) Exceeds the authority of the administrative body; or

(7) Appears to be deficient in any other manner [KRS 13A.030(2)(a)].

In addition, the ARRS may make a nonbinding determination that an administrative regulation:

(1) Is needed to implement an existing statute; or

(2) Should be amended or repealed [KRS 13A.030(2)(b), (c)].

(4) Amendments at ARRS Meetings

KRS 13A.320(1)(a) provides that:

(1) An administrative body may amend an administrative regulation at an ARRS meeting if the ARRS consents; and

(2) The ARRS may amend an administrative regulation at the ARRS meeting if the administrative body consents.

KRS 13A.320(1)(b) provides that an administrative regulation shall not be amended at the ARRS meeting unless the amendment concerns an issue relating to the administrative regulation that was:

(1) Considered at the public hearing or raised pursuant to comments received by the administrative body at the public hearing or during the public comment period; or

(2) Raised by the ARRS.

An administrative regulation that is amended at an ARRS meeting may be adopted as amended. It is not required to be resubmitted or refiled [KRS 13A.320(1)(c)].

Subsequent to its adoption, an administrative regulation that is amended at the ARRS meeting is published in the Administrative Register as amended unless the amendments:

(1) Relate only to format and drafting requirements of KRS 13A.220(5) and 13A.222(4)(b), (c), (i), (j), and (k); and

(2) Do not alter the intent, meaning, conditions, standards, or other requirements of the administrative regulation [KRS 13A.320(1)(d)].

If the amendments meet the requirements established in KRS 13A.320(1)(d), the Compiler shall publish a notice in the Administrative Register that the administrative regulation was amended only to comply with the format and drafting requirements of KRS Chapter 13A [KRS 13A.320(1)(e)].

The notice required by KRS 13A.320(1)(e) shall be a part of the ARRS report.

(a) Proposed by Administrative Body

KRS 13A.320(1)(a) provides that an administrative body may amend an administrative regulation at an ARRS meeting if the ARRS consents.

An amendment proposed by an administrative body shall be contained in a letter to the ARRS and approved by the head of the administrative body [KRS 13A.320(2)(a),(b)].

The letter shall:

(1) Identify the administrative body;

(2) State the number and title of the administrative regulation;

(3) Be dated;

(4) Be filed with the Compiler at least 5 workdays prior to the meeting of the ARRS; and

(5) Comply with the format requirements of KRS 13A.320(2)(c) and (d) [KRS 13A.320(2)(b)].

KRS 13A.320(3) requires that an administrative body submit 20 copies of an amendment to the Compiler prior to the ARRS meeting at which the amendment will be considered.

KRS 13A.320(2)(c) and (d) establish the format for amendments offered at an ARRS meeting.

On separate lines, the amendment shall be identified by the number of the:

(1) Page;

(2) Section, subsection, paragraph, subparagraph, clause, or subclause, as appropriate; and

(3) Line [KRS 13A.320(2)(c)].

If a word or phrase is to be deleted, the amendment shall identify the word or phrase to be deleted and state that it is to be deleted. If a word or phrase will be replaced by another word or phrase, the amendment shall specify the word or phrase that will be deleted and specify the word or phrase that is to be inserted [KRS 13A.320(2)(d)1.].

New language to be inserted shall be underlined, and the amendment shall state that it is to be inserted [KRS 13A.320(2)(d)2.].

If the language to be inserted or deleted consists of four or fewer words, the words to be inserted or deleted shall be placed between quotation marks. If the language to be inserted or deleted consists of more than four words, the words shall be indented and not placed between quotation marks [KRS 13A.320(2)(d)3.].

If a section, subsection, paragraph, subparagraph, clause, or subclause is to be deleted in its entirety, the amendment shall identify it and state that it is deleted in its entirety [KRS 13A.320(2)(d)4.].

The format for the letter and amendment proposed by the administrative body shall be as follows:

[Date]

[Name], Co-chair
[Name], Co-chair
Administrative Regulation Review Subcommittee
c/o [Name], Regulations Compiler
Room 29, Capitol Annex
Frankfort, KY 40601

Re: [Administrative Regulation Number]

Dear [Names of Co-chairs]:

The [name of administrative body] requests that the attached amendments be made to ### KAR ##:###.

Sincerely,

[Name, Title]
[Administrative Body]

Amendments for ### KAR ##:###

Page 3
Section 4(2)
Line 8
After "language in administrative regulation", insert "language to be inserted".
Delete "language to be deleted".

Page 3
Section 4(3)
Line 9
After "regulation", insert the following:
in accordance with KRS Chapter 13A
Delete the following:
which establishes formatting and drafting requirements

Page 7
Section 8(2)
Lines 15 through 21
Delete Section 8(2) in its entirety.

Page 7
Section 8(3)
Line 22
Before "(3) The sentence", insert "(2)".
Delete "(3)".

Page 9
Section 9(2)
Lines 15 through 18
After "(2)", insert the following:
Language to be inserted shall be placed here.
Delete the language in Section 9(2) in its entirety.

(b) Proposed by ARRS

KRS 13A.320(1)(a) provides that the ARRS may amend an administrative regulation at an ARRS meeting if the administrative body consents.

After the initial staff and ARRS staff reviews, suggested amendments may be forwarded to the administrative body.

If the administrative body consents to the suggested amendments, it shall submit a letter to the ARRS containing the same information required for an amendment initiated by the administrative body.

The format for the letter agreeing to amendments proposed by the ARRS shall be as follows on the next page:

[Date]

[Name], Co-chair
[Name], Co-chair
Administrative Regulation Review Subcommittee
c/o [Name], Regulations Compiler
Room 29, Capitol Annex
Frankfort, KY 40601

Re: [Administrative Regulation Number]

Dear [Names of Co-chairs]:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by ### KAR ##:###, the [name of administrative body] proposes the attached amendment to ### KAR ##:###.

Sincerely,

[Name, Title]
[Administrative Body]

NOTE: Attach proposed amendment in format established in (4)(a) on a separate sheet of paper.

(5) ARRS Report to LRC

KRS 13A.290(5) provides that after the ARRS meeting, the ARRS shall forward its findings, recommendations, or other comments it deems appropriate, in writing to LRC. The ARRS' findings shall be:

(1) Sent to the administrative body; and
(2) Published in the Administrative Register.

SECTION 9. APPROPRIATE JURISDICTIONAL LEGISLATIVE SUBCOMMITTEE REVIEW

(1) LRC Referral and Consideration by a Legislative Subcommittee

KRS 13A.290(6)(a) provides that LRC shall assign the administrative regulations reviewed at the ARRS to a legislative subcommittee of appropriate jurisdiction. A legislative subcommittee of appropriate jurisdiction is:

(1) An interim joint committee with jurisdiction over the subject matter (during the interim between sessions); or

(2) Senate and House standing committees of appropriate jurisdiction over the subject matter, meeting either jointly or separately (during a regular session) [KRS 13A.290(6)(a)1. and 2.].

KRS 13A.290(7) authorizes the legislative subcommittee to hold a public meeting to review the assigned administrative regulations within 30 days of the assignment. If the 30th day falls on a Saturday, Sunday, or holiday, the deadline for the legislative subcommittee review shall be the workday following the Saturday, Sunday, or holiday.

The legislative subcommittee may also review an existing administrative regulation and make a determination as provided by KRS 13A.030(2) and (3) [KRS 13A.290(7)].

(2) Legislative Subcommittee Meetings

(a) Notice

A legislative subcommittee to which an administrative regulation is assigned shall notify the Compiler:

(1) Of the date, time, and place of the meeting at which it will consider the administrative regulation; or

(2) That it will not meet to consider the administrative regulation [KRS 13A.290(6)(b)].

KRS 13A.290(7) requires that a notice of the date, time, and place of the legislative subcommittee's meeting be placed in the legislative calendar.

(b) Review

Members of a legislative subcommittee review the:

(1) Administrative regulation, including required attachments;

(2) Initial staff review;

(3) Comments prepared by ARRS staff;

(4) Amendments made at the ARRS meeting; and

(5) Any other relevant material, including information and comments submitted by the public, administrative body personnel, and persons representing regulated entities.

Members of the legislative subcommittee are not bound by staff reviews.

An administrative body shall provide additional information to the legislative subcommittee upon request [KRS 13A.030(3), 13A.290(7), (8)].

In its review of an administrative regulation, the legislative subcommittee may make a nonbinding determination that an administrative regulation is deficient because it:

(1) Is wrongfully promulgated;

(2) Appears to be in conflict with an existing statute;

(3) Appears to have no statutory authority for its promulgation;

(4) Appears to impose stricter or more burdensome state requirements than required by a federal mandate, without reasonable justification;

(5) Fails to tier when applicable;

(6) Exceeds the authority of the administrative body; or

(7) Appears to be deficient in any other manner [KRS 13A.030(2)(a), 13A.290(7), (8)].

In addition, the legislative subcommittee may make a nonbinding determination that an administrative regulation:

(1) Is needed to implement an existing statute; or

(2) Should be amended or repealed [KRS 13A.030(2)(b), (c), 13A.290(7), (8)].

A representative of the promulgating administrative body shall be present at the legislative subcommittee meeting to explain the administrative regulation, answer related questions, and agree to amendments proposed at the legislative subcommittee meeting [KRS 13A.290(4)].

The administrative regulation shall be deferred to the next regularly scheduled meeting of the legislative subcommittee if the representative does not have the authority to amend the administrative regulation or is not present [KRS 13A.290(4)].

The administrative regulation assigned to a legislative subcommittee may undergo an additional review by staff of the legislative subcommittee.

Members of the public, administrative body personnel, and persons representing regulated entities may attend a legislative subcommittee meeting. They may appear before it to testify; offer written or oral comments; or request that an administrative regulation be amended, withdrawn, approved, deferred or found deficient .

(3) Authority of Legislative Subcommittee

KRS 13A.290(8) grants a legislative subcommittee to which an administrative regulation is assigned for review by LRC the same authority granted to the ARRS.

KRS 13A.290(9) requires that, during a session of the General Assembly, standing committees of the Senate and House must agree with each other in order to amend an administrative regulation or find an administrative regulation deficient. If the standing committees meet jointly, KRS 13A.290(9)(b) requires a majority of Senate members voting and a majority of House members voting in order to take action.

A legislative subcommittee is not bound by the determination of the ARRS. For example, even if the ARRS determined that an administrative regulation complied with statutory authority, a legislative subcommittee may determine that it exceeds statutory authority.

(4) Amendments at Legislative Subcommittee Meetings

Amendments made at a legislative subcommittee meeting shall meet the same requirements as amendments made at the ARRS meeting. See "(4) Amendments at ARRS Meetings" in "Section 8. Administrative Regulation Review Subcommittee (ARRS)."

(5) Legislative Subcommittee Notification of Compiler and Report to LRC

The legislative subcommittee shall inform the Compiler of its findings, recommendations, or other action taken regarding an administrative regulation upon adjournment of the meeting at which it was considered [KRS 13A.290(10)(a)].

KRS 13A.290(10)(b) provides that following its meeting, the legislative subcommittee shall forward its findings, recommendations, and other comments, in writing to LRC. The legislative subcommittee's findings shall be:

(1) Sent to the administrative body; and

(2) Published in the Administrative Register.

SECTION 10. EFFECTIVE DATE

(1) Administrative Regulation Not Found Deficient

(a) During the Interim

During the interim between regular sessions of the General Assembly, the second legislative subcommittee review is conducted by an interim joint committee consisting of members of the House and the Senate [KRS 13A.290(6)(a)1.].

1. Second Subcommittee Reviews Administrative Regulation

An administrative regulation that has not been found deficient by the ARRS or the second legislative subcommittee shall be considered as adopted and shall become effective on adjournment of the second legislative subcommittee's meeting if that subcommittee:

(1) Meets within 30 days of assignment of the administrative regulation;

(2) Has a quorum;

(3) Includes the administrative regulation on its agenda; and

(4)(a) Considers the administrative regulation; or

(b) Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation [KRS 13A.330(1)(a)].

2. Second Subcommittee Does Not Review Administrative Regulation

An administrative regulation shall become effective 30 days after it has been assigned to the second legislative subcommittee, if that subcommittee does not:

(1) Meet to review it within 30 days of the assignment; or

(2) Place it on the agenda of a meeting held within 30 days of the assignment [KRS 13A.330(1)(b)].

(b) During a Regular Session of the General Assembly

During a regular session of the General Assembly, the second legislative subcommittee review is conducted by two standing committees — the Senate standing committee and the House standing committee. These standing committees may meet jointly or separately, but both must meet and agree in order to take any action other than reviewing an administrative regulation [KRS 13A.290(6)(a)2., (9)].

1. Both Standing Committees Review Administrative Regulation, Meeting Separately

An administrative regulation that has not been found deficient by the ARRS or both standing committees shall be considered as adopted and shall become effective on adjournment of the second standing committee's meeting if both standing committees:

(1) Meet within 30 days of assignment of the administrative regulation;

(2) Have a quorum;

(3) Include the administrative regulation on their agenda;

(4)(a) Consider the administrative regulation; or

(b) Fail to consider the administrative regulation and fail to agree to defer its consideration of the administrative regulation; and

(5) If applicable, agree to amend the administrative regulation [KRS 13A.331(1)(a)].

2. Both Standing Committees Review Administrative Regulation, Meeting Jointly

An administrative regulation that has not been found deficient by the ARRS or both standing committees shall be considered as adopted and shall become effective on adjournment of the standing committees' joint meeting if the joint committee:

(1) Meets within 30 days of assignment of the administrative regulation;

(2) Has a quorum;

(3) Includes the administrative regulation on its agenda; and

(4)(a) Considers the administrative regulation; or

(b) Fails to consider the administrative regulation and fails to agree to defer its consideration of the administrative regulation [KRS 13A.331(1)(b)].

3. Standing Committee Does Not Review Administrative Regulation

An administrative regulation shall become effective 30 days after it has been assigned to the standing committees if either standing committee does not:

(1) Meet to review it within 30 days of the assignment; or

(2) Place it on the agenda of a meeting held within 30 days of the assignment [KRS 13A.331(1)(c)].

(2) Administrative Regulation Found Deficient

(a) During the Interim

If an administrative regulation has been found deficient by either the ARRS or a legislative subcommittee, the subcommittee that found it deficient shall transmit to the Governor:

(1) A copy of its finding of deficiency and other appropriate findings, recommendations, or comments; and

(2) A request that the Governor determine if the administrative regulation shall:

(a) Be withdrawn;

(b) Be withdrawn and amended to conform to the finding of deficiency; or

(c) Become effective notwithstanding the finding of deficiency [KRS 13A.330(2)].

A copy of the transmittal to the Governor shall be sent to the Compiler [KRS 13A.330(3)].

The Governor shall transmit his determination to LRC and the Compiler [KRS 13A.330(4)].

An administrative regulation that has been found deficient during an interim shall be considered as adopted and become effective after:

(1) A legislative subcommittee to which the administrative regulation was assigned has:

(a) Considered the administrative regulation; or

(b) Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or

(c) Failed to meet within 30 days of the assignment; and

(2) The Compiler has received the Governor's determination that the administrative regulation become effective notwithstanding the finding of deficiency [KRS 13A.330(5)(a)].

(b) During a Regular Session of the General Assembly

If an administrative regulation has been found deficient by the ARRS, or by both standing committees meeting separately, or by the standing committees meeting jointly, then the subcommittee, standing committees meeting jointly, or both standing committees meeting separately shall transmit to the Governor:

(1) A copy of the finding of deficiency and other appropriate findings, recommendations, or comments; and

(2) A request that the Governor determine if the administrative regulation shall:

(a) Be withdrawn;
(b) Be withdrawn and amended to conform to the finding of deficiency; or
(c) Become effective notwithstanding the finding of deficiency [KRS 13A.331(2)].
A copy of the transmittal to the Governor shall be sent to the Compiler [KRS 13A.331(3)].
The Governor shall transmit his determination to LRC and the Compiler [KRS 13A.331(4)].
An administrative regulation that has been found deficient during a regular session of the General Assembly shall be considered as adopted and become effective after:
(1) The standing committees to which the administrative regulation was assigned have:
(a) Considered the administrative regulation;
(b) Failed to consider the administrative regulation and failed to agree to defer its consideration of the administrative regulation; or
(c) Failed to meet within 30 days of the assignment; and
(2) The Compiler has received the Governor's determination that the administrative regulation become effective notwithstanding the finding of deficiency [KRS 13A.331(5)(a)].

(c) Effective Date if Subcommittee Determines Administrative Regulation Is No Longer Deficient

1. During the Interim

An administrative regulation that has been found deficient by the ARRS or a legislative subcommittee shall become effective if:
(1) The legislative subcommittee that found it deficient subsequently determines that it is not deficient; and
(2) The Governor's determination has not been received by the Compiler [KRS 13A.330(5)(b)].

2. During a Regular Session of the General Assembly

An administrative regulation that has been found deficient by the ARRS, by both standing committees meeting separately, or by both standing committees meeting jointly shall become effective if:
(1) The ARRS, or both standing committees meeting separately, or both standing committees meeting jointly subsequently determine that the administrative regulation is not deficient; and
(2) The Governor's determination has not been received by the Compiler [KRS 13A.331(5)(b)].

SECTION 11. REPEAL OF AN ADMINISTRATIVE REGULATION

(1) General Provisions

KRS 13A.310(1) provides that once an administrative regulation is adopted, it shall not be withdrawn. If an administrative body no longer wants an administrative regulation to be effective, it shall repeal it. KRS 13A.310(2) provides that once adopted, an administrative regulation shall not be suspended. If an administrative body wants to suspend the effect of an administrative regulation, it shall repeal it.

An administrative regulation shall not be repealed by amending another administrative regulation to provide for its repeal.

If an administrative regulation is no longer required, a new administrative regulation shall be promulgated by the administrative body for the sole purpose of repealing it. The administrative body shall call the Compiler for a new number for the repealer administrative regulation.

An administrative regulation that repeals an administrative regulation shall contain the following elements:

(1) The title of the repealer administrative regulation shall be: "Repeal of [state number of administrative regulation to be repealed]." [KRS 13A.310(3)(a)1.].

(2) The RELATES TO paragraph shall contain the statute numbers to which the administrative regulation to be repealed relates. If an amendment to a statute causes the necessity of repealing an existing administrative regulation, this paragraph shall cite that statute.

(3) The STATUTORY AUTHORITY paragraph shall contain the statute that gives the administrative body the authority to promulgate administrative regulations.

(4) The NECESSITY, FUNCTION, AND CONFORMITY paragraph shall contain the reasons the administrative regulation is being repealed [KRS 13A.310(3)(a)2.].

(5) The body of the administrative regulation shall contain a citation to the number and title of the administrative regulation being repealed [KRS 13A.310(3)(a)3.].

(6) The administrative regulation shall meet the filing and formatting requirements of KRS 13A.220 [KRS 13A.310(3)(a)4.].

Since the only purpose of the repealer administrative regulation is to repeal an existing administrative regulation, once the existing administrative regulation is repealed, the repealer administrative regulation is no longer necessary. On the effective date of the repealer administrative regulation, the Compiler shall delete the repealed administrative regulation and the repealer administrative regulation from the Kentucky Administrative Regulations Service [KRS 13A.310(3)(b)].

An administrative body may repeal more than one administrative regulation in a repealer administrative regulation if the administrative regulations to be repealed are in the same chapter of the Kentucky Administrative Regulations Service [KRS 13A.310(3)(c)].

The signatures, public hearing information, and forms required to be filed with an ordinary administrative regulation are required to be filed with a repealer administrative regulation.

(2) Format for Repealer Administrative Regulation

The format for the body of a repealer administrative regulation shall be as follows:

CABINET

Department

Division

(Repealer) or (Emergency Repealer)

KAR ##:###. Repeal of ### KAR ##:###. or ### KAR ##:### E. Repeal of ### KAR ##: ###.

RELATES TO: KRS [999.999]

STATUTORY AUTHORITY: KRS [999.999]

NECESSITY, FUNCTION, AND CONFORMITY: State reasons it is necessary to repeal the existing administrative regulation.

Section 1. ### KAR ##:###, [Title of administrative regulation], is hereby repealed.

or

Section 1. The following administrative regulations are hereby repealed:

(1) ### KAR ##:###, [Title of administrative regulation]; and

(2) ### KAR ##:###, [Title of administrative regulation].

SECTION 12. WITHDRAWAL OF AN ADMINISTRATIVE REGULATION

(1) General Provisions

An administrative body may withdraw an administrative regulation at any time prior to its adoption. The administrative body that promulgated the administrative regulation shall inform the Compiler in writing of its reasons for the withdrawal [KRS 13A.310(4)].

If an administrative regulation is withdrawn, it shall not be reinstated except by repromulgation as a totally new matter [KRS 13A.310(5)].

If a new administrative regulation is filed, published, and subsequently withdrawn, the number used for that new administrative regulation may not be used again. If the administrative body wishes to reinstate the subject matter that was contained in the withdrawn administrative regulation, another new administrative regulation number shall be obtained from the Compiler.

If an amendment to an existing administrative regulation is filed and subsequently withdrawn, the administrative regulation as it existed prior to the proposed amendment remains in effect. The administrative body cannot reinstate the withdrawn amendment except by promulgating another amendment to the existing administrative regulation.

An administrative regulation that has been adopted (and is, therefore, effective) shall not be withdrawn or suspended. If an administrative body desires that an effective administrative regulation no longer be effective, it shall repeal the administrative regulation [KRS 13A.310(1), (2)].

(2) Mandatory Withdrawal

An administrative regulation filed with LRC shall be withdrawn and shall not be reviewed by a legislative subcommittee if:

(1) It has not been reviewed or approved by an official or administrative body with authority to review or approve;

(2) An item is not filed on or before a deadline specified by KRS Chapter 13A; or

(3) The administrative body fails to comply with any provision of KRS Chapter 13A governing the filing of administrative regulations, public hearings, and the SOC [KRS 13A.315(1)].

(3) Withdrawal of Deficient Administrative Regulation Upon Governor's Determination

An administrative body shall notify the Compiler in writing and by phone that an administrative regulation is withdrawn when:

(1) The administrative regulation has been found deficient by a legislative subcommittee; and

(2) The Governor determines that the deficient administrative regulation shall be withdrawn [KRS 13A.315(3)(a), (b)].

The letter to the Compiler withdrawing a deficient administrative regulation shall read as follows:

"Pursuant to KRS 13A.330(2)(b) or 13A.331(2)(b), the Governor has determined that (administrative regulation number and title) shall be (withdrawn, or withdrawn and amended to conform to the finding of deficiency, as applicable). The (name of promulgating administrative body) withdraws (administrative regulation number and title)" [KRS 13A.315(3)(c)].

(4) Effect of Withdrawal of Emergency Administrative Regulation

If an emergency administrative regulation is withdrawn, it shall expire on the date it is withdrawn [KRS 13A.190(12)(a)].

If an ordinary administrative regulation that was filed to replace an emergency administrative regulation is withdrawn, the emergency administrative regulation shall expire on the date the ordinary administrative regulation is withdrawn [KRS 13A.190(11)(a)].

An administrative body shall notify the Compiler in writing of the reasons for the withdrawal of an ordinary or emergency administrative regulation [KRS 13A.190(11)(b), (12)(c), 13A.310(4)].

If an emergency administrative regulation is withdrawn, the ordinary administrative regulation filed to replace the emergency administrative regulation shall not be considered withdrawn or expired unless the administrative body also withdraws the ordinary administrative regulation [KRS 13A.190(12)(b)].

SECTION 13. REGULATIONS COMPILER

The Compiler is appointed by the director of LRC and performs the following duties:

(1) Receives administrative regulations and other documents required to be filed by KRS Chapter 13A;

(2) Stamps administrative regulations and other required documents with the time and date of receipt;

(3) Provides administrative and support services to the ARRS;

(4) Maintains a file of administrative regulations and other required documents for public inspection, with suitable indexes;

(5) Maintains a file of administrative regulations that are no longer in effect;

(6) Maintains copies of material incorporated by reference;

(7) Prepares the Kentucky Administrative Regulations Service, which includes the monthly Administrative Register and the annual bound volumes of all administrative regulations in effect as of a certain date;

(8) Upon request, certifies copies of administrative regulations and other documents that have been filed with the Compiler;

(9) Corrects errors that do not change the substance of the administrative regulation, including typographical, formatting, and grammatical errors;

(10) Refuses to accept for filing administrative regulations and other required documents that do not conform to the drafting, formatting, or filing requirements established by KRS Chapter 13A and notifies an administrative body in writing of the reasons for refusal; and

(11) Performs other duties required by LRC or a legislative subcommittee [KRS 13A.040].

The Compiler maintains a library that contains:

(1) Existing administrative regulations;

(2) Repealed administrative regulations;

(3) Administrative regulations that have expired due to a finding of deficiency by a legislative subcommittee;

(4) Administrative regulations that have expired due to the repeal of a statute that authorized their promulgation;

(5) Emergency administrative regulations;

(6) Proposed (new) administrative regulations;

(7) Proposed amendments to existing administrative regulations;

(8) Original copies of all documents filed with administrative regulations;

(9) Material incorporated by reference in administrative regulations;

(10) Original copies of all material submitted to legislative subcommittees that relate to administrative regulations;

(11) Minutes of the ARRS meetings;

(12) Correspondence of the ARRS;

(13) Reports to LRC filed by legislative subcommittees reviewing administrative regulations;

(14) Certifications required by KRS Chapter 13A and certifications generated by legal actions relating to administrative regulations;

(15) Other reports, studies, letters, and memoranda of the ARRS; and

(16) Material relating to action by the General Assembly on administrative regulations.

SECTION 14. TRANSFER OF AUTHORITY

KRS 13A.312 establishes procedures that apply when authority over a subject matter is transferred from one administrative body to another by statute or executive order.

If legislation is enacted or an executive order is issued that transfers authority over a subject matter from one administrative body to another administrative body, the existing administrative regulations governing that subject matter are not automatically transferred.

The administrative body from which authority was transferred shall repeal the existing administrative regulations [KRS 13A.312(1)(a)].

The administrative body that has been granted authority over the subject matter shall promulgate new administrative regulations governing the subject matter [KRS 13A.312(1)(b)].

The administrative body required to repeal existing administrative regulations shall file the repealer administrative regulation at the same time that the administrative body to which authority was transferred files new administrative regulations governing the subject matter [KRS 13A.312(2)].

Administrative regulations that are repealed pursuant to the transfer of authority shall be repealed in accordance with KRS 13A.310(3) [KRS 13A.312(3)].

SECTION 15. DEADLINES

(1) General [KRS 13A.150; 13A.315(1)(b)]

If KRS Chapter 13A requires that an item be filed by a specified date, the item shall be filed on or before noon, eastern time, on that specified date [KRS 13A.150(1)].

If the specified date for an item to be filed falls on a Saturday, Sunday, or holiday, the item shall be filed on or before noon, eastern time, on the workday immediately preceding the specified date [KRS 13A.150(2)].

An administrative regulation shall be withdrawn and shall not be reviewed by a legislative subcommittee if an item is not filed on or before a deadline specified by KRS Chapter 13A [KRS 13A.315(1)(b)].

(2) Hearings Required by Statute Other Than KRS Chapter 13A [KRS 13A.160]

If a statute other than KRS Chapter 13A requires that a hearing be held prior to the filing of an administrative regulation, the administrative body shall notify the Compiler not less than 45 days prior to the date of that hearing of the time, date, place, and subject of the hearing. The Compiler shall place that notice in the Administrative Register.

(3) Publication in Administrative Register [KRS 13A.050(3)]

Proposed administrative regulations (including emergencies, new ordinary administrative regulations, and amendments, both new and amended after comments) shall be filed by noon on the 15th day of the month in order to be published in the next month's Administrative Register.

(4) Filing of Emergency Administrative Regulation (KRS 13A.190(8)]

If an emergency administrative regulation will be replaced by an ordinary administrative regulation, the emergency administrative regulation shall be filed at the same time as the ordinary administrative regulation that will replace the emergency. If an emergency administrative regulation will not be replaced by an ordinary administrative regulation, the emergency may be filed at any time during regular business hours.

(5) Notice on Fee Information [KRS 13A.255(1)]

If an administrative regulation establishes or increases fees, within 5 working days of the filing of the administrative regulation, the administrative body shall mail the notice required by KRS 13A.255(2) containing an explanation of the fee or increase to each state association, organization, or other body affected by the administrative regulation.

(6) Mailing Administrative Regulation to Individuals [KRS 13A.270(3)(b)]

The administrative body shall mail a copy of the administrative regulation as filed, and all attachments required by KRS 13A.230, to every person who has filed the form requesting to be notified of an administrative body's filing of an administrative regulation, including those who previously requested notification when a Notice of Intent was filed. The administrative regulation shall be mailed

within 5 working days after it is filed and shall be accompanied by a cover letter requesting that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation [KRS 13A.270(3)(b)].

(7) Ordinary Public Hearing and Public Comment Period

(a) Request to Attend Ordinary Public Hearing [KRS 13A.270(2)(c)]

If a person wishes to attend the ordinary administrative regulation public hearing, he or she shall notify the administrative body promulgating the administrative regulation at least 5 working days prior to the public hearing that he or she wishes to attend.

(b) Letter on Status of Ordinary Public Hearing [KRS 13A.270(5), (6)]

An administrative body shall immediately notify the Compiler in writing and by telephone whether the public hearing will be held or canceled.

(c) Letter on Status of Public Comment Period [KRS 13A.270(5), (6)]

An administrative body shall immediately notify the Compiler in writing and by telephone whether written comments have been received.

If written comments are received, the notification shall be sent immediately upon receipt of the written comments [KRS 13A.270(6)(b)].

If written comments are not received, the notification shall be sent to the Compiler the day following the last day of the public comment period [KRS 13A.270(5)(b)]. This will enable the administrative body to give consideration to any comments received before the close of business that day.

(d) Filing of Ordinary SOC [KRS 13A.280(2)]

The SOC for an ordinary administrative regulation shall be filed on or before noon, eastern time, 15 calendar days following the last day of the public comment period.

(e) Extending Deadline for Filing SOC [KRS 13A.280(2)(b)]

If an administrative body has received a significant number of comments, it may extend its deadline for filing the SOC up to 30 days by notifying the Compiler in writing on or before noon of the 15th calendar day following the last day of the public comment period. The SOC is then due on or before noon of the final day of the extension, which would be no later than 45 days following the last day of the public comment period. For example, if the extension is for 10 days, the SOC would be due on the 25th day following the last day of the public comment period (original 15 days plus 10 extended days).

(f) SOC, Not Amended After Comments , ARRS Review [KRS 13A.280(4)(b)]

If an administrative regulation is not amended after public hearing or due to comments received and the SOC is filed at least 15 working days prior to the next meeting of the ARRS, the administrative regulation may remain on the agenda for that meeting.

If the SOC, Not Amended After Comments , is not received at least 15 working days prior to the meeting, it shall be deferred.

(8) ARRS Review

(a) Amendments at ARRS Meeting Initiated by Administrative Body

An amendment to be made at the ARRS meeting, which is initiated by an administrative body, shall be filed with the Compiler at least 5 workdays prior to that meeting [KRS 13A.320(2)(b)4.].

(b) Review by ARRS

An administrative regulation shall be reviewed by the ARRS within 45 calendar days of publication in the Administrative Register, or within 60 calendar days of receipt of the SOC [KRS 13A.290(1)].

(9) Review by Second Legislative Subcommittee [KRS 13A.290(7)]

After review by the ARRS, an administrative regulation shall be referred to a subcommittee of appropriate jurisdiction for a second review. The second legislative subcommittee has 30 calendar days in which to review the administrative regulation. If the administrative regulation is not reviewed in that 30 day period, the administrative regulation shall become effective without a second review at the end of the 30 day period.

SECTION 16. DRAFTING REQUIREMENTS

(1) General Provisions

(a) Division of Subject Matter of Administrative Regulation

KRS 13A.221(1) provides that an administrative body shall divide the general subject matter of its administrative regulations into topics. A separate administrative regulation shall be promulgated for each topic.

For example, an administrative regulation shall not contain every topic relating to the Food Stamp Program. Administrative regulations governing the Food Stamp Program shall be broken down into topics such as eligibility requirements and fair hearings. If a topic contains a great number of subtopics, an administrative body may wish to break it down into several topics placed in separate administrative regulations.

When an administrative regulation is amended, KRS 13A.221(3) provides that it shall be amended to comply with the requirements of KRS Chapter 13A, which would include the requirements for separate topical administrative regulations in KRS 13A.221(1).

(b) Language

KRS 13A.222 establishes format and drafting rules for administrative regulations.

KRS 13A.222(4) contains explicit instructions governing the words and phrases that may be used in an administrative regulation.

KRS 13A.222(4)(a) requires that an administrative body use plain and unambiguous words easily understood by laymen. The administrative body shall avoid ambiguous, indefinite, or superfluous words and phrases.

KRS 13A.222(4)(b) requires that a duty, obligation or prohibition be expressed by "shall" or "shall not," and a discretionary power be expressed by "may." It specifically prohibits the use of "should," "could," or "must." To express future tense, the word "shall" should not be used.

KRS 13A.222(4)(c) prohibits the separation of alternatives with a slash and the use of contractions. It also requires the word "and" to establish that a number of items are all required and the word "or" to establish that all of a number of items are not required. Additionally, KRS 13A.222(4)(c) prohibits the use of "said," "hereinabove," "whatsoever," or similar words of reference or emphasis and it prohibits use of the word "such" if an article may be used instead.

While an administrative regulation must comply with applicable federal statutes or regulations, it must also comply with state statutes, including the provisions of KRS Chapter 13A. State administrative bodies may not substitute the format or language of federal regulations for the format or language prescribed by KRS Chapter 13A. State administrative bodies may not justify the use of words or phrases prohibited by KRS 13A.222(4) because the words or phrases are used in a federal regulation.

For example, federal regulations use "must." KRS 13A.222(4)(b) provides that a duty or obligation shall be expressed by "shall," and prohibits the use of "must" to express a duty or obligation. Since the intent of a federal regulation that uses "must" is to express a duty or obligation, there should be no objection to or problem with the use of "shall" in order to comply with the state statute.

KRS 13A.222(4)(k) provides a list of prohibited words and phrases:

Do Not Use:	Use:
And/or	"and" for a conjunctive "or" for a disjunctive
Any and all	either word
As provided in this administrative regulation	--
At the time	when
And the same hereby is	is
Either directly or indirectly	--
Except where otherwise provided	state specific exemption
Final and conclusive	final
Full force and effect	force or effect
In the event that; In case	if
Is authorized; Is empowered	may
Is defined and shall be construed to mean	means
Is hereby required to	shall
It shall be lawful	may
Latin words	Don't use unless medical or scientific terminology
Null and void and of no effect	void
Order and direct	either word
Provision of law	law
Until such time as	until
Whenever	if

The drafter of an administrative regulation should comply with the drafting requirements of KRS 13A.222. When an administrative regulation is amended, existing language should be reviewed and amended to conform with the drafting requirements of KRS 13A.222. If an administrative regulation does not comply with the drafting requirements of KRS 13A.222, a legislative subcommittee can find it deficient.

KRS 13A.222(4)(h) requires the same arrangement and form of expression throughout an administrative regulation, unless the meaning requires variation.

KRS 13A.222(4)(i) requires the use of "if" or "except" rather than "provided that" or "provided, however." Conditions shall be expressed by "if" rather than "when" or "where."

KRS 13A.222(4)(j) addresses gender-specific language and the use of plurals. Gender-neutral and singular language should be used whenever possible. For example, use "an applicant" not "every applicant" or "all applicants."

Use of a slash is prohibited in regard to pronouns (for example, "he/she" or "his/her"). Use of both pronouns (for example, "he or she," "his or her," "him or her") is acceptable on a limited basis.

(2) Items in an Administrative Regulation

(a) RELATES TO Paragraph

KRS 13A.220(4)(e) requires the RELATES TO paragraph to include citations to all statutes and other enactments, including branch budget bills or executive orders, to which the administrative regulation relates or which are affected by the administrative regulation.

Only the sections of a KRS chapter that relate to the specific subject matter of the administrative regulation shall be cited in the RELATES TO paragraph. Citations should be as specific as possible in accordance with KRS 13A.222(4)(l) through (p).

A KRS chapter is cited only if every section of the KRS chapter relates to the subject matter of the administrative regulation.

The RELATES TO paragraph should not include citations to KRS Chapter 13A or to other administrative regulations.

(b) STATUTORY AUTHORITY Paragraph

KRS 13A.220(4)(e) requires the STATUTORY AUTHORITY paragraph to include a list of the specific statutes and other enactments that authorize or require promulgation of the administrative regulation.

The statutory authority that an administrative body should cite in the STATUTORY AUTHORITY paragraph is the statute that:

(1) Grants an administrative body the authority to promulgate administrative regulations;

(2) Grants an administrative body the authority to promulgate administrative regulations governing a specific subject matter; or

(3) Grants authority to or requires an administrative body to implement a program or statute or to perform a duty.

Statutory authority includes:

(1) A federal or state statute;

(2) A federal regulation or other federal directive;

(3) A federal or state court decision;

(4) An executive order; and

(5) The biennial budget, the final budget memorandum, or another appropriation act.

Only the specific sections of a KRS Chapter that grant statutory authority to regulate the subject matter of an administrative regulation are cited in the STATUTORY AUTHORITY paragraph.

The specific section, subsection, and paragraph granting regulatory authority over the specific subject matter of the administrative regulation shall be cited in accordance with KRS 13A.220(4)(l) through (p).

(c) NECESSITY, FUNCTION, AND CONFORMITY Paragraph

KRS 13A.220(4)(f) provides that the NECESSITY, FUNCTION, AND CONFORMITY paragraph shall:

(1) State the necessity for promulgation of the administrative regulation;

(2) Summarize the functions the administrative body intends to implement; and

(3) If applicable, include the statement required by KRS 13A.245(2)(b).

The statute that an administrative body shall include in the NECESSITY, FUNCTION, AND CONFORMITY paragraph is the statute that relates to the specific subject matter of the administrative regulation.

Specific reference should be made to the:

(1) Statute that requires the promulgation of administrative regulations governing the subject matter of this administrative regulation; and

(2) Specific subject matter governed or function implemented by this administrative regulation.

KRS 13A.245(2)(a) provides that an administrative regulation shall conform to a federal law or regulation governing a subject matter if the administrative body is:

(1) Not required by federal law or regulation to promulgate an administrative regulation to comply with a federal law or regulation; and

(2) Required or authorized by state law to promulgate an administrative regulation governing the subject matter.

KRS 13A.245(2)(b) provides that if the administrative regulation is different from or more stringent than the federal law or regulation governing the subject matter, the NECESSITY, FUNCTION, AND

CONFORMITY paragraph of the administrative regulation shall contain a statement explaining how and why the administrative regulation is more stringent than or differs from the federal law or regulation.

The format for the NECESSITY, FUNCTION, AND CONFORMITY paragraph is as follows:

NECESSITY, FUNCTION, AND CONFORMITY: KRS [section, subsection, etc., as applicable] [requires or authorizes] [name of administrative body] to [state what is required or authorized]. [Citation of applicable federal law or regulation] does not require Kentucky to comply with its provisions. This administrative regulation establishes [briefly describe what the administrative regulation as a whole does]. [If KRS 13A.245(2)(b) applies, add the following sentence, otherwise stop here.] This administrative regulation establishes requirements that [state: (1) the manner in which the administrative regulation differs from, or is more stringent than, the federal law or regulation; and (2) the reasons for the different or more stringent requirements].

Example:

A statute grants an administrative body the authority to promulgate administrative regulations governing the licensure of a profession.

Another statute in the KRS Chapter governing the administrative body grants the administrative body the authority to establish continuing education requirements of licensees under its jurisdiction.

In the NECESSITY, FUNCTION, AND CONFORMITY paragraph, the administrative body shall state:

> KRS XXX.XXX authorizes the Board to establish continuing education requirements. This administrative regulation establishes continuing education requirements for Board licensees.

(d) Definitions

KRS 13A.222(4)(d) and (e) establish the requirements governing definitions in an administrative regulation.

KRS 13A.222(4)(e) provides that if a word is used in its ordinary sense, it shall not be defined in an administrative regulation. A word shall be defined only:

(1) If it is used in a sense other than its dictionary meaning;

(2) If one of several dictionary meanings is used;

(3) To avoid repetition of a phrase (e.g., an acronym); or

(4) To limit or extend the provisions of an administrative regulation (e.g., to limit "nurse" to "licensed practical nurse").

KRS 13A.222(4)(f) requires that a word shall be used instead of a phrase that has the same meaning as the word.

KRS 13A.222(4)(d) provides that if a word is defined in the Kentucky Revised Statutes, it shall not be duplicated in an administrative regulation. The administrative regulation shall contain a reference to the chapter and section of the KRS in which the definition appears.

KRS 13A.222(4)(e) provides that if a definition is used in an administrative regulation, it shall be placed in:

(1) The first section of an administrative regulation; or

(2) A separate administrative regulation.

If an administrative body places definitions in a separate administrative regulation, that administrative regulation shall be the first administrative regulation of a specific chapter of the KARs. The "Definitions" administrative regulation shall only apply to the administrative regulations in that chapter. It shall be titled "Definitions for ### KAR Chapter ##" and shall contain the number of the title and chapter of the KARs to which the definitions apply.

A definition section shall contain only definitions and shall be titled "Definitions." It shall not contain any other material. The definitions contained in the "Definitions" section shall govern only the terms in that administrative regulation.

Definitions shall be placed in alphabetical order. If amending an existing administrative regulation that includes definitions, and the definitions are not in alphabetical order, the amendment should include placing the definitions in alphabetical order.

If a word is defined, place the word in quotations, followed by the word "means." After the word "means," state the definition. The definition section shall contain only definitions. Other items, information, requirements, standards, and conditions shall be contained in:

(1) Other sections of the administrative regulation; or

(2) Another administrative regulation, if there is a separate definitions administrative regulation.

Each subsection of a definitions section shall contain one definition. Do not include other subject matter in a definitions section.

If a federal statute or regulation requires a particular definition, the definition shall be worded as required by KRS 13A.222(4)(e).

(3) Material Incorporated by Reference

(a) Language in Administrative Regulation

The following information shall be contained in the last section of an administrative regulation that incorporates material by reference:

(1) Title and Edition. "Title" means the title of the material incorporated by reference. "Edition" means the version of the material being incorporated by reference at the time the administrative regulation is promulgated. The title and edition shall be placed in quotation marks [KRS 13A.2251(1)(a)].

The edition is the date:

(a) On which the administrative body established the specific form and content of the material incorporated by reference in an administrative regulation; or

(b) Of publication by the entity that published the material.

The edition is simply a notice to the public and regulated entities of the latest edition of material incorporated by reference. It is a notice that only the version of the material incorporated by reference that bears that date is intended.

(2) Public Notice. The administrative regulation shall state how the material incorporated by reference may be obtained. This information shall include a statement that the material can be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the promulgating administrative body. Addresses and office hours of main and branch offices shall be included [KRS 13A.2251(1)(b), (c)].

KRS 13A.2251(2) establishes the specific format for the incorporation by reference section.

KRS 13A.2251(2) requires that the section incorporating material by reference be titled "Incorporation by Reference" and that:

(1) If only one item is incorporated by reference, the first subsection shall state: "("Name and edition date of material incorporated") is incorporated by reference."

(2) If more than one item is incorporated by reference, the first subsection shall state: "The following material is incorporated by reference:

(a) ("Name and edition date of first item incorporated"); and

(b) ("Name and edition date of second item incorporated")."

(3) The second subsection shall state: "This material may be inspected, copied, or obtained, subject to applicable copyright law, at (name of agency, full address), Monday through Friday, 8:00 a.m. to 4:30 p.m."

(b) Summary of Material Incorporated by Reference

A detailed summary of the material incorporated by reference shall be attached to the back of an administrative regulation. The summary is not incorporated into the administrative regulation. It is a separate document attached to the back of the administrative regulation. The summary shall provide detail sufficient to identify the subject matter to which it pertains and shall include:

(1) Relevant programs, statutes, funds, rights, duties, and procedures affected by the material and the manner in which they are affected;

(2) Citation of applicable state or federal statutes or regulations authorizing or requiring the policy or procedure in the material; and

(3) The total number of pages that the promulgating administrative body has incorporated by reference [KRS 13A.2251(3)].

(c) Summary of Amended Material

If previously incorporated material is being amended, a detailed summary of the changes and their effect shall be attached to the back of the administrative regulation. The summary is not incorporated into the administrative regulation. It is a separate document attached to the back of the administrative regulation. The summary shall include:

(1) A list of the pages on which changes have been made; and

(2) A detailed summary of the changes and their effect [KRS 13A.2255].

SECTION 17. FORMAT CHECKLIST FOR FILING

(1) Ordinary Administrative Regulation

? Typewritten on white paper, 8 1/2 inches by 11 inches.

? First page has a 2-inch top margin.

? Typed in 12-point font.

? Administrative regulation is double-spaced, starting with the first line of the first page through the last line of the body of the administrative regulation (this does not include attached forms). There is no extra spacing in-between the lines. Strictly double-space the entire administrative regulation.

? Lines are numbered on each page of the body of the administrative regulation, beginning with line number 1 on the first typed line of each page.

? Pages of administrative regulation and all attached documents are numbered sequentially, and page numbers are centered in the bottom margin of each page.

? If the ordinary administrative regulation is an amendment, language to be deleted shall be bracketed and struck through; new language shall be underlined. If existing language is being replaced by new language, new language shall precede language to be deleted.

? If the ordinary administrative regulation is new, no strike-throughs, brackets, or underlining are used.

? Starting with the first line on the first page, the cabinet, department, and division are listed on separate double-spaced lines.

? "(Amendment)," "(New Administrative Regulation)," "(Amended After Comments)," "(Repealer)," "(New Emergency Administrative Regulation)," "(Emergency Amendment)," or "(Emergency Repealer)" is listed below the cabinet, department, and division on the next double-spaced line.

? Number and title of administrative regulation is below notation cited above on the next double-spaced line.

? "RELATES TO" and appropriate statutes, etc., appear on the next double-spaced line below number and title.

? "STATUTORY AUTHORITY" and appropriate statutes, etc., appear on the next double-spaced line below the RELATES TO paragraph.

? "NECESSITY, FUNCTION, AND CONFORMITY" paragraph appears on the next double-spaced line following the STATUTORY AUTHORITY paragraph. Use complete sentences.

? Body of administrative regulation, with appropriate numbering of section, subsection, paragraph, subparagraph, clause, and subclause, follows the NECESSITY, FUNCTION, AND CONFORMITY paragraph.

? Start a new page for the signature and date lines.

? Blank line for signature of official or head of the administrative body, with name and title typed beneath the blank line and a blank line for date signed provided.

? Public hearing and public comment period information follows signatures; start a new page for the public hearing and public comment period information.

? Name, title, address, telephone number, and fax number of contact person included with public hearing information.

? Regulatory impact analysis follows public hearing information. Regulatory impact analysis shall start on a new page.

? Last question on regulatory impact analysis shall be the tiering information. Explain why tiering was or was not used. Do not use "NA," "N/A," "None," or "Not applicable."

? Federal mandate analysis, if applicable, follows regulatory impact analysis. Federal mandate analysis shall start on a new page.

? Fiscal note, if applicable, follows federal mandate. Fiscal note shall start on a new page.

? Summary of reference material, if material is incorporated by reference in administrative regulation, follows fiscal note. Summary shall start on a new page.

? File original and 5 copies of administrative regulation, and all attachments, with the Compiler.

? Original and each copy are stapled individually in top left corner.

? Send electronic copy, either on disk or by e-mail, to the Compiler before or at the same time the administrative regulation is filed.

? If the administrative regulation establishes or increases fees, within 5 working days following the filing of the administrative regulation, mail the notice required by KRS 13A.255(1) to each state association, organization, or other body representing a person or entity affected by the administrative regulation.

? If a form is on file with the agency requesting notification, the agency shall send a copy of the administrative regulation to the person within 5 working days following the filing. The notice may contain a provision for the person to request that the copy be sent electronically. This applies to those persons who currently have a form on file with the agency wishing to be notified of an NOI as well as persons who file this form in the future.

(2) Ordinary Administrative Regulation Public Hearing, Public Comment Period, and SOC

? Send letter to the Compiler either canceling hearing or stating that hearing will be held; letter should note that it is an "Ordinary Administrative Regulation" public hearing and include each administrative regulation number to which the letter pertains.

? Send letter to the Compiler stating whether written comments have been received during the public comment period; letter should include each administrative regulation number to which the letter pertains.

? SOC is filed by noon within 15 calendar days following the last day of the public comment period, unless extended.

? If administrative regulation is not amended after comments, administrative body shall file original and 5 copies of SOC.

? If administrative regulation is amended after comments, SOC shall be stapled behind the administrative regulation and all other required attachments. Original and 5 copies of administrative regulation amended after comments and SOC shall be filed.

? 4th section shall include a summary of the statement and action taken by the administrative body.

? Typewritten on white paper, 8 1/2 inches by 11 inches.

? First page has a 2-inch top margin.

? Typed in 12-point font.

? Heading of SOC shall be centered and shall read as follows: "STATEMENT OF CONSIDERATION RELATING TO" followed by the number of the administrative regulation, the name of the promulgating administrative body, and "Not Amended After Comments" or "Amended After Comments," whichever is applicable.

? If hearing is held or comments received, 1st section shall include a statement that the hearing was held and the date, time, and place of hearing. If hearing has not been held, but comments have been received, 1st section shall include a statement that the hearing was not held, but written comments were received.

? 2nd section shall include a list of those attending the hearing or who have submitted written comments and the organization, agency, or other entity represented.

? 2nd section shall also include the name and title of the representative of the promulgating administrative body.

? 3rd section shall include a summary of each comment made, with a response to each comment in a separate paragraph. Each comment shall be summarized in a separate numbered paragraph, consisting of two subsections: 1st subsection (a) is labeled "Comment" and identifies the name and organization of the person making the comment, and summarizes the comment. 2nd subsection (b) is labeled "Response" and contains the response of the promulgating agency to the comment.

? 4th section shall include a summary of the statement and action taken by the administrative body. The action taken by the body shall include a list of changes made to the administrative regulation, including page number, line number, section number, and actual amendment made.

? If several administrative regulations were considered at one public hearing, one SOC may be filed for that public hearing, including comments made on all administrative regulations considered.

(3) Emergency Administrative Regulation

(a) Statement of Emergency

? The ordinary administrative regulation is filed at the same time as the emergency administrative regulation, if emergency administrative regulation is to be replaced by an ordinary.

? The ordinary administrative regulation is filed separate from the emergency administrative regulation (in other words, is not stapled with the emergency administrative regulation).

? Statement of Emergency shall be attached to the front of the emergency administrative regulation.

? "STATEMENT OF EMERGENCY" centered two inches from top of page.

? Administrative regulation number followed by an "E" centered on line below "STATEMENT OF EMERGENCY."

? Body of Statement of Emergency, including why emergency is necessary; why ordinary is not sufficient; whether or not emergency will be replaced by ordinary; if emergency not being replaced, the reasons therefor and, if applicable, why emergency is being filed if it was filed in the previous 9 months.

? Governor's signature, including the Governor's name typed directly below signature line, and date it was signed by the Governor.

? Signature of the head of the administrative body, with name and title typed directly below signature line, and date it was signed (same person who signs after body of administrative regulation).

(b) Body of Emergency Administrative Regulation

? Same format requirements for ordinary administrative regulation **except**:

? "E" is placed after the number of the emergency (for example, ### KAR ##:###E).

? No public hearing and public comment period is scheduled **unless** the emergency is not being replaced by an ordinary; in this case, public hearing and public comment period information is included.

? All required forms (regulatory impact analysis, federal mandate, fiscal note, summary of material incorporated by reference) are attached.

? File original and 5 copies of Statement of Emergency and emergency administrative regulation with the Compiler.

? Original and each copy stapled individually in top left corner.

? Electronic copy, either on disk or by e-mail, to the Compiler before or at the same time the administrative regulation is filed.

(4) Material Incorporated By Reference

? Conditions, duties, obligations, and requirements do not appear only in material incorporated by reference. They are established in the body of the administrative regulation.

? The last section of the administrative regulation incorporates material by reference. This section shall be titled "Incorporation by Reference."

? If one item is incorporated, the first subsection of the section incorporating material by reference states: "(Name and edition date of material incorporated) is incorporated by reference."

? If more than one item is incorporated by reference, the first subsection of the section incorporating material by reference states: "The following material is incorporated by reference: (a) (Name and edition date of first item incorporated by reference); and (b) (Name and edition date of second item incorporated by reference)."

? The second subsection of the section incorporating material by reference states: "This material may be inspected, copied, or obtained, subject to applicable copyright law, at (Name of agency, full address), Monday through Friday, 8:00 a.m. to 4:30 p.m."

? "Summary of Material Incorporated by Reference" is attached to the administrative regulation (behind regulatory impact analysis, federal mandate, and fiscal note); include total number of pages incorporated and description of material.

? If new material, one copy of material incorporated by reference placed in a binder that will stand on a shelf; on front of binder and on first page of material incorporated by reference, write, stamp, or type number of administrative regulation and date on which it is filed with Compiler's office.

? If amending material previously incorporated, "Summary of Material" listing pages on which changes have been made and detailed summary of changes attached to the back of the administrative regulation.

? If amending material, one "clean" copy of entire document being incorporated placed in a binder with number and date written, stamped, or typed on front of binder and on first page of material.

? If amending material, one "dirty" copy of pages being amended, with changes being shown by brackets, strike-throughs, and underlines, placed in a binder with number and date written, stamped, or typed on front of binder and on first page of material.

? Incorporation by reference complies with KRS 13A.224, 13A.2245, 13A.2251, 13A.2255, 13A.2261, 13A.2264, and 13A.2267.

(5) Drafting

(a) Definitions

? Definitions are either contained in the first section of the administrative regulation or in the first administrative regulation in a chapter of administrative regulations that is titled "Definitions for ### KAR Chapter #".

? Definitions are in alphabetical order.

? Definitions format: “Section 1. Definitions. (1) [“Word defined”] means…”

? Definition does not establish conditions, requirements, or duties. Definition is only a definition.

? Definition does not repeat or summarize a definition established in KRS.

? Definition is required and is used in the administrative regulation or chapter of administrative regulations.

(b) Prohibited Words and Phrases

? Administrative regulation does not contain words or phrases prohibited by KRS 13A.222 (for example, “can,” “should,” “would,” “his/her,” “(s)” to designate singular or plural, “/” to indicate “and” or “or,” etc.).

? Administrative regulation contains required words (for example, “shall” to express duty or obligation and “may” to express discretionary power).

? Gender-neutral language and singular forms should be used whenever possible (for example, “an applicant” not “every applicant” or “all applicants”). Use of a slash is prohibited in regard to pronouns (for example, “he/she” or “his/her”). Use of both pronouns (for example, “he or she,” “his or her,” “him or her”) is acceptable on a limited basis.

? Contractions shall not be used.

? Confusing, superfluous, or vague words or phrases are not used (for example, “in the case of,” “in the event of,” “including but not limited to,” etc.).

(c) Citations

? Citations of statutes, executive orders, appropriations acts, and federal regulations are in the format specified by KRS 13A.222(4)(l), (m), (n), and (p).

(d) Content

? Administrative regulation does not repeat or summarize statutory language.

? Administrative regulation complies with KRS 13A.221 — administrative regulation relates to specific subject matter, not broad topic.

? Administrative regulation is broken down into appropriate sections, subsections, paragraphs, and subparagraphs.

? Language of administrative regulation is plain, unambiguous, and can be easily understood by laymen.

SECTION 18. ACRONYMS

ARRS	Administrative Regulation Review Subcommittee
KAR	Kentucky Administrative Regulation
KRS	Kentucky Revised Statute
LRC	Legislative Research Commission
SOC	Statement of Consideration