

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

804 KAR 13:010

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(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation outlines the process for enforcement and administration of laws related to tobacco, nicotine and vapor products.

(b) The necessity of this administrative regulation:

KRS 438.305 to 438.350 impose penalties upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate their provisions, or the regulations of the department related to tobacco, nicotine, or vapor products. These statutes also mandate that the department enforce these penalties using an administrative hearing process in accordance with KRS Chapter 13B, and that the department collect and statistics relating to the illegal sale to persons under the age of twenty-one (21) of tobacco, alternative nicotine products, and vapor products and enforcement of KRS 438.305 to 438.350.

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

This administrative regulation outlines the process for enforcing the requirements of the statutes related to underage tobacco, nicotine and vapor product sales, how penalties are to be paid, and to whom the department will report data related to these enforcement efforts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in effective administration of the statute by outlining the process for citing violations, payment of fines related to violations, and the process to appeal those citations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment adds language in response to Senate Bill 100 of the 2025 Regular Session of the General Assembly. These changes relate to how clerks and retailers may be cited, and how they can pay their fines or appeal the citations administratively. It also updates the address for the Department of Agriculture for obtaining a copy of the required data reporting.

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

This amendment is necessary to address changes made to tobacco, nicotine and vapor administration and enforcement by Senate Bill 100 during the 2025 Regular Session of the General Assembly.

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

KRS 438.305 to 438.350 impose penalties upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate their provisions, or the regulations of the department

related to tobacco, nicotine, or vapor products. These statutes also mandate that the department enforce these penalties using an administrative hearing process in accordance with KRS Chapter 13B, and that the department collect and statistics relating to the illegal sale to persons under the age of twenty-one (21) of tobacco, alternative nicotine products, and vapor products and enforcement of KRS 438.305 to 438.350. This amendment updates the regulation to reflect the changes made in Senate Bill 100 from the Regular Session of the General Assembly.

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

ABC is tasked with enforcing the tobacco, nicotine and vapor laws as it relates to sales to minors and unauthorized vapor products and with approving or denying applications for licenses to sell tobacco, nicotine, and vapor products. The amendment outlines how those charged with violating these laws can appeal violation citations, revocations, and denials as well as how they can pay related fines.

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

It is estimated that there are approximately 7,000 retailers of tobacco, nicotine or vapor products in the Commonwealth of Kentucky. These businesses include gas stations, grocery stores, and standalone vape/tobacco businesses. This amendment could affect any number of these retailers and their clerks to the extent that this amendment updates them on how to pay fines for violations or how to appeal violation citations. Additionally, all of these retailers will need to apply for tobacco, nicotine, and vapor product licenses, and this regulation details how they may request a hearing if their application for licensure is denied.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The regulated businesses will be required to take no action because of this amendment.

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

This amendment does not impose costs on any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this amendment, a licensee who is charged with a violation will be afforded the benefit of a KRS Chapter 13B administrative hearing, should they elect to request one, whenever a tobacco, nicotine, or vapor product citation is issued.

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

(a) Initially: To implement and enforce the licensing and retail sales requirements contemplated by 2025 Ky. Acts Ch. 78 (SB 100), the department will be required to employ 20 additional staff members, resulting in an initial cost of \$2,750,000.00 and an annual

increased cost of \$2,250,000.00 to the department. A portion of those additional staff members will be dedicated to—and the costs associated with their hiring will be attributed to—executing the new enforcement procedures contemplated by this administrative regulation.

(b) On a continuing basis: See increased annual cost referenced above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of the licensing and retail sales requirements contemplated by 2025 Ky. Acts Ch. 78 (SB 100) will be funded through the collection of licensure fees and civil penalty fines.

(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: SB 100 established license fees and fines that will be necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation amendment does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation amendment provides the process for paying violation fines or appealing violation citations.