

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

804 KAR 13:025E

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(1) Provide a brief summary of:

(a) What this administrative regulation does:

This emergency administrative regulation provides privileges and restrictions of a provisional license which may be issued by the commissioner to applicants for a tobacco, nicotine, or vapor product license whose initial application was filed prior to the license being required on January 1, 2026, but is still pending initial determination on and after January 1, 2026.

(b) The necessity of this administrative regulation:

KRS 438.3061 requires a person, firm, or corporation operating as a retailer selling alternative nicotine products, tobacco products, or authorized nicotine vapor products to obtain a tobacco, nicotine, or vapor product license issued by the department. This requirement is effective on January 1, 2026. This emergency administrative regulation allows for the issuance of a provisional license for retailers whose initial application for a tobacco, nicotine, or vapor product license was filed prior to January 1, 2026, but is pending determination on and after January 1, 2026.

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

KRS 438.340 authorizes the department to promulgate administrative regulations as necessary to implement and carry out the provisions of KRS 438.305 to 438.350. KRS 438.3055 permits the department to promulgate administrative regulations that govern the sale and distribution of alternative nicotine products, tobacco products, and vapor products. This emergency administrative regulation provides the privileges and restrictions of a provisional license to allow retailers who have applied for licensure before January 1, 2026, to continue selling tobacco, alternative nicotine product, or authorized nicotine vapor products for a limited time until a determination on the application is made by the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation establishes a provisional license for applicants who have submitted an application for a tobacco, nicotine or vapor product license before January 1, 2026, that will allow these retailers to continue selling these products until the commissioner makes a determination on the application.

(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:

This is a new emergency administrative regulation.

(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. All businesses that want to sell tobacco, nicotine, or vapor products, must have a license to sell any of those products as of January 1, 2026. As of December 29, 2025, 3,362 licenses have been issued and 1,592 remain pending in various stages of process.

(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:

This emergency administrative regulation does not require the applicants to take any further action to be issued a provisional license.

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation 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): Entities wishing to sell tobacco, nicotine, or vapor products that have submitted an application for a license before January 1, 2026, will benefit from this regulation as it will allow them to continue selling tobacco products, alternative nicotine products, or authorized nicotine vapor products pending a determination on their application by the commissioner.

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

- (a) Initially: There is no specific cost associated with implementation of this particular regulation. However, 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.

(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 emergency administrative regulation.

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

(9) TIERING: Is tiering applied? The provisional license established by this emergency administrative regulation is only available to those retailers that have submitted an application for licensure before the statutory effective date of the licensure requirement.