

1 PUBLIC PROTECTION CABINET

2 Department of Alcoholic Beverage Control

3 (Amended After Comments)

4 804 KAR 13:010. Tobacco enforcement and administration.

5 RELATES TO: KRS Chapter 13B, 438.305 to 438.350~~[438.310, 1996 GA SB 137, EO 1996-619]~~

6 STATUTORY AUTHORITY: KRS 438.340, 438.305~~[, EO 96-619]~~

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 438.305~~[0]~~ to 438.350 impose penalties
8 upon tobacco, nicotine, and vapor product retailers, wholesalers, and manufacturers who violate
9 relevant statutory provisions or the department's administrative regulations related to tobacco,
10 nicotine, or vapor products. These statutes also mandate that the department enforce penalties
11 using an administrative hearing process in accordance with KRS Chapter 13B, and that the
12 department collect and report~~[requires a seller of tobacco products to obtain proof of the age of a~~
13 ~~prospective buyer recipient of tobacco products if he has reason to believe the prospective buyer~~
14 ~~or recipient is under eighteen (18) years old; requires the establishment of the types of~~
15 ~~documentation accepted as proof of age, notification of the employees of a seller of tobacco~~
16 ~~products of the requirements of SB 137, administrative proceedings in the enforcement of SB 137,~~
17 ~~and the collection of]~~ statistics relating to the illegal sale to persons under the age of twenty-one
18 (21)~~[minors]~~ of tobacco products, alternative nicotine products, and vapor products, and the
19 enforcement of KRS 438.305 to 438.350~~[SB 137]~~. Specifically, KRS 438.340 authorizes the
20 department to promulgate administrative regulations necessary to implement and carry out the

1 provisions of KRS 438.305 to 438.350, and KRS 438.3055 requires the department to carry out
2 the enforcement provisions of KRS 438.305 to 438.350, including the promulgation of
3 administrative regulations that govern the sale and distribution of alternative nicotine products,
4 tobacco products, and vapor products.

5 Section 1. Definitions. (1) "Department" is defined in KRS 438.305(5)[means the Department of
6 Alcoholic Beverage Control].

7 (2) "License" means a tobacco, nicotine, or vapor product license.

8 Section 2. Administration. The department shall be the administrative agency for hearing
9 violations of KRS 438.305 to 438.350[438.340].

10 Section 3. Requests for Hearing [~~Enforcement.~~

11 ~~(1) The department shall record and investigate complaints relating to violations of KRS 438.305~~
12 ~~to 438.340.~~

13 ~~(2) The department shall prepare an annual survey from data obtained from the annual inspection~~
14 ~~directed by KRS 438.330(1). The survey shall be prepared to determine the existing level of~~
15 ~~tobacco sales to minors. A copy of the report shall be submitted to the Office of Agriculture.~~

16 ~~(3) The result of the annual survey may be inspected, copied or obtained at the office of the~~
17 ~~Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky~~
18 ~~40601, 8 a.m. to 4:30 p.m., Monday through Friday, excepting state holidays.~~

19 ~~Section 4. Procedures].~~

20 ~~(1) [A person found to be violation of KRS 438.305 to 438.340 may be cited by the department.~~
21 ~~Any administrative citation shall conform to the requirements of KRS Chapter 13B.~~

22 ~~(2)]A person or business receiving an administrative citation pursuant to KRS 438.305 to 438.350,~~
23 ~~a revocation of their license pursuant to KRS 438.3069, or a denial of their application for a license~~

1 pursuant to KRS 438.3067[438.340], may request an administrative hearing on the matter, to be
2 conducted by the department in accordance with KRS Chapter 13B[~~to contest the allegation in~~
3 ~~the citation. The department may, in its discretion, employ one (1) or more hearing officers to~~
4 ~~conduct the administrative hearings. All administrative hearings shall be governed by KRS~~
5 ~~Chapter 13B].~~

6 (2) A request for hearing to contest the following shall be made in writing by the person or
7 business receiving the administrative citation, revocation, or denial, or their attorney, within
8 thirty (30) days of receipt:

9 (a) An administrative citation for a violation of KRS 438.305 to 438.350;

10 (b) A license revocation pursuant to KRS 438.3069; or

11 (c) A license application denial pursuant to KRS 438.3067.

12 (3) A request for a hearing shall include:

13 (a) A copy of the administrative citation, notice of revocation, or notice of denial;

14 (b) The name, address, and contact information of the person or business that received
15 the administrative citation, revocation, or denial; and

16 (c) The name, address, and contact information of their agent for service, if that differs
17 from the information provided pursuant to paragraph (b) of this subsection.

18 (4) A request for a hearing shall be mailed to the Department of Alcoholic Beverage Control,
19 ATTN: Tobacco Hearing Request, 500 Mero Street, Frankfort, Kentucky 40601, or emailed to
20 the department at abc.legal@ky.gov.

21 (5) Upon receipt of a timely request for hearing, the department shall refer the matter to an
22 administrative hearing officer for adjudication in accordance with KRS Chapter 13B.

1 (6) If a request for hearing is not made within thirty (30) days of receipt of an administrative
2 citation, revocation, or denial, the opportunity for a hearing shall be deemed to have been waived
3 and the disciplinary action imposed shall thereby be deemed effective.

4 Section 4. Prepayment of Fines.~~[(3)]~~ A fine imposed~~[levied]~~ pursuant to an administrative citation
5 shall be prepayable within thirty (30) days of issuance of the administrative citation. A person not
6 wishing to contest the allegations in the citation may resolve the charge by making a payment in
7 the amount set forth in the administrative citation through any of the following methods:

8 (1) M~~[m]~~ailing or otherwise submitting a cashier's check, certified check, business check, or
9 money order~~[in the amount set forth in the citation,]~~ payable to the Kentucky State Treasurer, to
10 the Kentucky Department of Alcoholic Beverage Control, 500 Mero Street, Frankfort, Kentucky,
11 40601~~[hearing agency name and address set forth in the citation; or~~

12 (2) M~~[m]~~aking an electronic Tobacco Citation Payment on the department's online payment portal
13 at <https://abcportal.ky.gov/BELLEExternal>.

14 Section 5. License Surrender. A tobacco, nicotine, or vapor product licensee and its employees
15 shall not evade imposition of penalties or a finding of culpability for violations alleged in a citation
16 by surrender or expiration of its license. The department shall retain the authority to enforce
17 relevant provisions and penalties of KRS 438.305 to 438.350 against any individual or business
18 entity who is under investigation for or charged with a violation of those statutes, even if the
19 individual's or business entity's tobacco, nicotine, or vapor product license has been surrendered
20 or has expired by operation of law.

21 Section 6.~~[(4)]~~ Disposition of Records and Evidence~~[juvenile records]~~. (1) The department shall
22 preserve the confidentiality of all juvenile records by maintaining a separate filing system~~[, under~~
23 ~~lock and key,]~~ with access limited to the parties and their legal counsel. The department shall

1 maintain statistical summaries of case information, including date of buy, geographical location of
2 buy, name and address of retail seller, date of purchase, date of birth and gender of underage buyer,
3 and disposition of case. Statistical summaries relating to underage buyers shall not identify the
4 underage buyer by name.

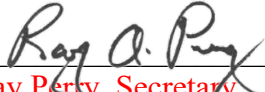
5 (2[5]) Physical property[evidence] seized as contraband property, as defined by KRS
6 438.305(4), in the course of investigations of administrative violations of KRS 438.305 to
7 438.350[438.340] shall be maintained by the department in a secured evidentiary storage facility
8 and destroyed after the administrative matter is resolved, unless it is found that the evidence was
9 not used in violation of the law, in which case the property[evidence] will be returned to its owner.

10 (3) The disposition of contraband property and evidence shall not occur until all appeals
11 associated with the administrative matter have been exhausted.

APPROVED:



Scotty Tracy, Commissioner
Department of Alcoholic Beverage Control



Ray Perry, Secretary
Public Protection Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

804 KAR 13:010

Contact Person: Joshua Newton

Phone: 502-782-0770

Email: Joshua.Newton@ky.gov

(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) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, 2025 Ky. Acts Ch. 78 (SB 100)

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

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

FISCAL IMPACT STATEMENT

804 KAR 13:010

Contact Person: Joshua Newton

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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS Chapter 13B, KRS 438.3055, 438.3067, 438.3069, 438.310, 438.312, 438.313, 438.316

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: This administrative regulation is expressly authorized by KRS 438.340 and Senate Bill 100 of the 2025 Kentucky General Assembly.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control is the promulgating agency. No other state units, parts or divisions are affected by this regulation amendment.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a): N/A

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation will have no effect on any local entities.

(b) Estimate the following for each affected local entity identified in (4)(a):N/A

1. Expenditures:

For the first year: None

For subsequent years: None

2. Revenues:

For the first year: None

For subsequent years: None

3. Cost Savings:

For the first year: None

For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): No other entities will be affected by this regulation. This regulation will have no effect on any other regulated entities.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
 - For the first year: None
 - For subsequent years: None
2. Revenues:
 - For the first year: None
 - For subsequent years: None
3. Cost Savings:
 - For the first year: None
 - For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: This regulation has no fiscal impact as it only provides the process for paying fines or appealing citations.

(b) Methodology and resources used to reach this conclusion: The only methodology used to reach this conclusion is that the amendment imposes no new action on any regulated body.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): This regulation is anticipated to have a major economic impact. 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) The methodology and resources used to reach this conclusion: The only methodology used to reach this conclusion is that the regulation amendment imposes no new action on any regulated body.

FEDERAL MANDATE ANALYSIS COMPARISON

804 KAR 13:010

Contact Person: Joshua Newton

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

(2) State compliance standards. N/A

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

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF CONSIDERATION RELATING TO
804 KAR 13:010 – “Tobacco enforcement and administration.”
804 KAR 13:020 – “Tobacco, nicotine, or vapor product license application forms.”
804 KAR 13:030 – “Causes for denial of tobacco, nicotine, or vapor product license.”

Public Protection Cabinet
Department of Alcoholic Beverage Control
(Amended After Comments)

I. On Thursday, January 22, 2026, at 9:00 a.m., the Department of Alcoholic Beverage Control (“the Department” or “ABC”) held a public hearing on the proposed amendment to administrative regulation 804 KAR 13:010, entitled “Tobacco enforcement and administration.”; and proposed administrative regulations 804 KAR 13:020, entitled “Tobacco, nicotine, or vapor product license application forms.”; and 804 KAR 13:030, entitled “Causes for denial of tobacco, nicotine, or vapor product license.”

The meeting was held at 500 Mero Street, Frankfort, KY 40601 and was open to the public. ABC received public comments on each of these administrative regulations at the public hearing and received written comments on each of these administrative regulations during the public comment period. The public comment period began when these administrative regulations were filed with the Regulations Compiler on October 31, 2025, and ended at 11:59 p.m. on January 31, 2026.

II. The following individual(s) or group(s) submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Brian Clark	Executive Director, Kentucky Petroleum Marketers Association (KPMA)
Shannon Stiglitz	Senior Vice President of Government Affairs, Kentucky Retail Federation (KRF)
Tod Griffin	Executive Director, Kentucky Grocers and Convenience Store Association

III. The following individual(s) submitted comments at the public hearing:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
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Shannon Baker Director, Advocacy, KY & TN, American Lung Association (ALA)

Kristin Jimison Mid-Atlantic Regional Advocacy Director, Campaign for Tobacco-Free Kids (CTFK)

IV. The following individual(s) from the promulgating administrative body responded to the written and public comments:

Name and Title

Joshua Newton General Counsel, Department of Alcoholic Beverage Control

V. Summary of Comments and Responses

Agency Statement

From November 1, 2025, through March 5, 2026, the Department received 5,600 applications for tobacco, nicotine, or vapor product licensure. The vast majority of applications were received prior to January 1, 2026. Only 351 applications—approximately 6%—were received after January 1, 2026. Of these 5,600 applications, the Department denied only 52—fewer than 1% of applications—and issued 5,415 licenses (a positive determination rate of more than 96% on all submitted applications). Only 125 submitted applications—approximately 2%—remain pending. The vast majority of license determinations were made in less than 72 hours from submission.

Regardless, the Administrative Regulations Review Subcommittee (ARRS) voted on February 9, 2026, to find 804 KAR 13:020E and 804 KAR 13:030E deficient in order to “give the industry more time.” In addition, a bill, 26 RS SB 65, has been introduced in the Senate to affirm that deficiency designation. ARRS further voted to find 804 KAR 13:020 and 804 KAR 13:030 deficient on March 9, 2026. On March 10, 2026, 26 RS SB 65 was amended to include the affirmations of deficiency determinations for 804 KAR 13:020 and 13:030.

The contention that more time is needed to ensure industry compliance is belied by the statistics outlined above. New application submissions have slowed to a trickle. Moreover, codifying a deficiency finding for the application form regulation cuts off the path to licensure without changing the fact that KRS 438.3061(1) now requires all retailers in Kentucky to be licensed to sell TNVPs.

Nevertheless, the legislature also introduced 26 RS SB 245 in the 2026 session. If passed, that bill may require additional changes to the regulations addressed within this Statement of Consideration. ABC will timely pursue any other amendments that are ultimately made necessary by any forthcoming revisions to the law.

(1) Subject Matter: January 1, 2026 deadline for licensure

(a) **Comment:** Shannon Stiglitz, Tod Griffin and Brian Clark commented that 2025 Ky. Acts Ch. 78 (SB 100) did not require tobacco retailers to be licensed by January 1, 2026, and stated that ABC had imposed an artificial deadline. Alternatively, they commented that ABC could have “grandfathered in” alcoholic beverage retail licensees. Ms. Stiglitz and Mr. Griffin commented that ABC could have continued enforcing existing tobacco laws without requiring immediate licensure of retailers.

Response: The administrative regulations were not amended based on this comment, as none of them impose a January 1, 2026, deadline. The January 1, 2026, deadline for licensure was imposed by statute. Effective January 1, 2026, KRS 438.3061(1) states as follows, by operation of Sections 4 and 31 of 2025 Ky. Acts Ch. 78 (SB 100):

“A person, firm, or corporation shall not operate as a retailer selling alternative nicotine products, tobacco products, or authorized nicotine vapor products in or on any premises in the Commonwealth *without first obtaining a tobacco, nicotine, or vapor product license issued by the department.*”

(Emphasis added). KRS 438.3061(2) imposes criminal penalties for a violation of the provision quoted above. Nowhere in the statutes created or amended by SB 100 is this prohibition waived or modified.

These commenters point to KRS 438.3063(3), also effective January 1, 2026, which permits a licensed alcoholic beverage retailer to “initiate the application process to obtain a tobacco, nicotine, or vapor product license on the date of its next [alcoholic beverage license] renewal” to claim that tobacco, nicotine, or vapor product (“TNVP”) licensing was intended to be phased in. However, that provision neither explicitly nor implicitly exempts TNVP retailers from the licensure requirement of KRS 438.3061(1). Had the legislature intended such an exemption, it would have included language explicitly creating such an exemption; for example, by beginning KRS 438.3063(3) with, “Notwithstanding [KRS 438.3061]...”

Further, KRS 438.3063(3) does not create an implicit exemption. When two statutory provisions conflict, ABC must take care to “harmonize any conflicting provisions and give effect to both sections if possible.” *Reisinger v. Grayhawk Corp.*, 860 S.W.2d 788, 790 (Ky. App. 1993). However, while KRS 438.3063(3) would create a gap for alcoholic beverage licensees who wait to initiate their application for TNVP licensure, it does not provide that alcoholic beverage licensees may begin to sell or continue selling TNVPs without a TNVP license. Therefore, it does not directly conflict with KRS 438.3061’s prohibition against businesses operating as TNVP retailers without a TNVP license, and the two provisions do not need to be “harmonized.”

Neither could ABC have “grandfathered in” alcoholic beverage licensees. To “grandfather in” alcoholic beverage licensees would have meant to exempt them from licensure because they met previous criteria. However, while KRS 438.3063(3) permits alcoholic beverage licensees to wait to “*initiate* the application process to obtain a [TNVP] license,”¹ that still requires

¹ Emphasis added.

alcoholic beverage licensees to undergo the application process for a *TNVP license*, specifically. It does not exempt them.

Finally, ABC could not have continued enforcing existing tobacco laws without requiring immediate licensure of retailers. As an executive agency, ABC “may not seek to amend, alter, enlarge, or limit terms of legislative enactment” by regulation. *Ruby Const. Co., Inc. v. Department of Revenue, Com. ex rel. Carpenter*, 578 S.W.2d 248, 252 (Ky. App. 1978). KRS 438.3061 is now an existing tobacco law. Effective January 1, 2026, no retailer can sell TNVPs without a TNVP retail license. To not require licensure of retailers beginning January 1, 2026, would impose an unauthorized limitation on SB 100’s legislative enactment.

(2) Subject Matter: 804 KAR 13:010 Section 3

- (a) **Comment:** Shannon Stiglitz and Tod Griffin commented that 804 KAR 13:010 Section 3 does not explain how a retailer may appeal and obtain a hearing in sufficient time to receive a license before January 1, 2026.

Response: This comment is moot, as the January 1, 2026 deadline has now passed. In addition, KRS 438.3067(2)(c) spells out the time for appealing a denial.

- (b) **Comment:** Shannon Stiglitz and Tod Griffin commented that the amendment to 804 KAR 13:010 deleted provisions related to an annual data survey.

Response: The administrative regulation was not amended based on this comment. The referenced survey is already independently required by KRS 438.331 and does not therefore need to be restated within this regulation. ABC is still statutorily responsible for performing the survey and generating the report, which it will do.

(3) Subject Matter: 804 KAR 13:010 Section 6

- (a) **Comment:** Brian Clark commented that it is unconstitutional to destroy property that is not in and of itself illegal and that property that is not determined to be illegal should be returned to the retailer after final resolution of the matter. Mr. Clark requested that 804 KAR 13:010 be amended to reflect that only contraband property will be confiscated.

Response: ABC will amend Section 6 to clarify that only contraband property, as defined in KRS 438.305(4) will be seized in investigations of administrative violations of KRS 438.305 to 438.350.

(4) Subject Matter: Promulgating 804 KAR 13:020 prior to the effective date of KRS 438.3063.

- (a) **Comment:** Shannon Stiglitz and Tod Griffin commented that ABC imposed a deadline requiring all TNVP retailers to be licensed by January 1, 2026, when SB 100 did not take effect until January 1, 2026. Ms. Stiglitz and Mr. Griffin stated that this “raise[d] a fundamental legal question as to whether the agency may promulgate and enforce regulations implementing licensing provisions prior to the effective date of the statute granting such authority” when

“nothing in the statute requires all retailers to be licensed by January 1, 2026.” (Emphasis in original).

Brian Clark commented that SB 100 “does not contain any such provision, requirement, or language that is non-discretionary or mandated as to licensing by January 1, 2026.” Mr. Clark added that “some provision should be equitably afforded to all lawful retailers to streamline the process to obtain the statutorily required licensing that affords more notice and time to collect all the items being requested per location and per employee and uploaded into the Department’s system.”

Response: The administrative regulation was not amended based on this comment. As has already been addressed above, SB 100 Section 4—now KRS 438.3061—required all TNVP retailers to be licensed by January 1, 2026, to continue legally selling TNVPs. Selling TNVPs without a TNVP license after January 1, 2026, subjects a retailer to criminal penalties under the same statute. No provision of SB 100 gives an alternative date for when a TNVP retailer would need to be licensed or could be held responsible for the unlicensed sale of TNVP products. No language has been provided by these commenters for when a TNVP retailer would be required to have a TNVP license. Simply put, SB 100 required all retailers selling TNVPs to be licensed by January 1, 2026.

Even assuming, *arguendo*, that the legislature had intended to permit alcoholic beverage retail licensees to continue selling TNVPs and to forgo TNVP licensure until their next renewal date, if ABC had not promulgated these regulations prior to January 1, 2026, any TNVP retailers without alcoholic beverage retail licenses would have had to stop selling TNVPs on January 1, 2026, and wait until ABC promulgated a license application form regulation to apply for licensure. This would have created a massive interruption in TNVP retail sales.

Furthermore, affording some provision to “all lawful retailers” raises the question of who is a “lawful retailer,” which the application process is meant, in part, to determine. Nevertheless, understanding the potential gap in an ability to legally sell TNVPs as a result of the January 1 deadline, ABC promulgated 804 KAR 13:025E, which created a provisional license for all TNVP retailers who applied before January 1, 2026, and whose applications had not yet been processed. ABC took this action to ease the burden that the new licensing requirement places on lawful TNVP retailers. This measure appears to have been effective, as the agency received more than 5,000 applications prior to January 1, 2026—on which provisional licenses were issued for any that were not fully processed by that date—and it has received fewer than 400 total applications since.

Regarding the legal question raised by Ms. Stiglitz and Mr. Griffin, the administrative regulations were promulgated so that TNVP retailers could apply for a TNVP license and be licensed in time to comply with statute by January 1, 2026. ABC did not “enforce” these regulations prior to January 1, 2026 (i.e., no retailer was cited for selling TNVPs without a license prior to January 1, 2026), but rather, promulgated them so that there would be a licensing and enforcement structure in place by the effective date of the legislation. This is appropriate under KRS 13A.190(1) and (3) and KRS 13A.200, and it was done to benefit the very industry Ms. Stiglitz and Mr. Griffin purport to represent.

(5) Subject Matter: 804 KAR 13:020 Section 2 document requirements

- (a) **Comment:** Shannon Stiglitz and Tod Griffin commented that the documents requested by ABC as part of the application process create an undue burden upon lawful TNVP retailers who lacked sufficient time to gather them prior to applying for TNVP licensure. Brian Clark commented that the documents required by the form “have no legal or statutory requirement for the lawful sale of tobacco, nicotine, or vapor products and should therefore be removed.”

Ms. Stiglitz and Mr. Griffin commented that ABC may seek verification that an applicant has a valid deed or lease, but that this could have been accomplished by: (1) relying on documents already on file for retailers holding an ABC license; and (2) accepting a sworn affidavit attesting to the existence of such valid documents.

Ms. Stiglitz and Mr. Griffin also state that images of the four corners of the entire premises required by the application are “unnecessary and irrelevant” since products must be sold through face-to-face transactions. If a retailer violates the requirement to sell face-to-face, ABC may inspect and discover these violations.

Additionally, Ms. Stiglitz and Mr. Griffin commented that requiring submission of the signed employee training acknowledgments required by KRS 438.325 as part of the application process is impractical given employee turnover, and that it exceeds statutory requirements, which only require that these documents be kept on the premises and available for inspection. Mr. Clark also commented that ABC requiring its own employee training acknowledgment form rather than permitting retailers’ own forms creates an undue burden on retailers. All recommended that this requirement be removed from the application process and replaced with an attestation that the applicant has had their employees sign the employee training acknowledgment form.

Mr. Clark commented that 804 KAR 13:020 describes the license application process but does not enumerate what information will be needed in the application process and recommended that ABC amend the regulation to include a list of what information and documents will be needed in order to complete the application.

Response: The administrative regulation has been amended due to these comments. KRS 438.3063(1) states, “Each application for a tobacco, nicotine, or vapor product license shall be made in a form prescribed by the department, accompanied with a nonrefundable application fee of fifty dollars (\$50) *and any supporting documentation required by the department.*” (emphasis added).

ABC believed it to be irresponsible not to ensure compliance with state tobacco retail laws by applicants prior to issuing licenses to sell TNVPs at retail. To that end, the Department required the following supporting documentation under 804 KAR 13:020E and 13:020:

- A deed or lease showing the applicant has the right to occupy the premises;
- Photographs of the premises to be licensed; and

- The signed employee training acknowledgment required by KRS 438.325(3).

If the photographs revealed that the applicant was offering nicotine vapor products that did not appear to be authorized, the Department also required the applicant to provide documentation to prove that these products were authorized, or to otherwise remove the products.

The Department required these documents because the timeline for licensure did not permit the Department to do in-person field inspections of every applicant prior to the January 1, 2026 statutory deadline for TNVP retailers to be licensed. The Department wanted to ensure, to the best of its ability under the circumstances, that each applicant was compliant with KRS 438.305 to 438.350.

Ms. Stiglitz and Mr. Griffin commented that if a retailer is violating the requirement to sell TNVPs face-to-face, ABC may discover it after issuing them the license and may revoke the license thereafter. Licensing TNVP retailers who are acting unlawfully and waiting until they are inspected to discover their violations greatly increases the difficulty in stopping the unlawful conduct that could have been discovered prior to licensure and would allow such behavior to continue unabated until discovered. This is especially true considering that, in hundreds of applications received to date, the requirement to submit images of the premises to be licensed revealed inventory consisting of unauthorized nicotine vapor products. In such instances, ABC informed the applicant of the potential for violation and required them to dispose of the unlawful inventory prior to licensing them.

Submission of the signed employee training acknowledgments required by KRS 438.325(3) was an extension of ABC's right to inspect these documents and further ensured that applicants were compliant prior to licensure.

(6) Subject Matter: Questions outside ABC authority

- (a) Comment:** Shannon Stiglitz, Tod Griffin, and Brian Clark commented that the application form asks applicants about sales of hemp products, including illegal hemp products, but policing the sale of hemp products is outside ABC authority since enforcement of delta-8 and hemp product laws is a Cabinet for Health and Family Services (CHFS) concern and recommended that this be removed.

Mr. Clark also commented that the application requires attestation that no gambling devices are present on the premises without acknowledging that some gambling devices are legal, including Kentucky Lottery and licensed or approved charitable gaming devices, and recommended that this be amended.

- (b) Response:** ABC agrees that the presence of hemp products and gambling devices are not relevant to TNVP licensure and will therefore amend the TNVP application form to remove these attestations.

(7) Subject Matter: Application fee clarification

(a) **Comment:** Shannon Stiglitz and Tod Griffin commented that statute requires a \$50 application fee and a \$450 licensing fee upon approval. Brian Clark commented that 804 KAR Sections 2(1)(b) & (c) do not clearly indicate that the \$50 application fee is credited to the \$500 license fee upon approval. All three commenters recommended that ABC amend this section to clarify.

(b) **Response:** ABC declines to amend 804 KAR 13:020 due to this comment. KRS 438.3063(1) requires payment of the \$50 application fee and KRS 438.3063(4)(a) sets the amount of the license fee to be \$500 annually. 804 KAR 13:020(1) correctly requires both of these fees to be paid by citing to the relevant sections of KRS 438.3063. An applicant wishing to know what these fees are will see in statute that the application fee is applied to the license fee, and therefore the offset does not need to be reiterated in regulation. ABC will continue accepting and offsetting fees in accordance with statute.

(8) Subject Matter: Advertisements for initial applications

(a) **Comment:** Brian Clark commented that a drafting error requires initial applicants to run advertisements in local newspapers. Mr. Clark recommends that 804 KAR 13:020 Section (2) be removed from 804 KAR 13:020 and placed in 804 KAR 13:040, which regards the transitional license, or revise 804 KAR 13:020 Section 2(2) to contain clarifying language.

(b) **Response:** ABC declines to amend 804 KAR 13:020 due to this comment. 804 KAR 13:020 Section 2(2) requires an advertisement only “[i]f the applicant has purchased a tobacco, nicotine, or vapor product *licensed* business” (emphasis added), which comports with statute.

(9) Subject Matter: Batch applications

(a) **Comment:** Brian Clark commented that “both the statutes and regulations reference batch applications” and recommended 804 KAR 13:020 Section 2 be amended to include a process for batch applications for retailers with multiple locations in Kentucky.

(b) **Response:** ABC did not amend 804 KAR 13:020 due to this comment. Although 804 KAR 13:020 references batch applications, the statutes—at least those in KRS Chapter 243 and those created and amended by SB 100—do not.

(10) Subject Matter: Application Instructions

(a) **Comment:** Brian Clark commented that the instructions provided for TNVP applications reference “administrators” making determinations on the application, which is not supported by statute. Rather it is the commissioner and the director of the Division of Tobacco, Nicotine, and Vapor Product Licensing who should be managing TNVP applications.

(b) **Response:** ABC will amend the administrative regulation, as the instructions should not reference “administrators.” Instead, they should reference the commissioner—and, where appropriate, the director of the Division of Tobacco, Nicotine, and Vapor Product Licensing.

(11) Subject Matter: 804 KAR 13:030, generally

(a) **Comment:** Shannon Stiglitz, Tod Griffin, and Brian Clark commented that the regulations treat TNVPs too similarly to alcoholic beverages for the purposes of regulation, and that this is inappropriate because alcoholic beverages are more highly regulated than TNVPs at both the state and federal levels. Ms. Stiglitz and Mr. Griffin commented that 804 KAR 13:030 “establishes both mandatory and discretionary reasons for denial of a tobacco, nicotine, or vapor product licenses ... in a manner similar to quota retail package alcohol licenses.”

Mr. Clark also commented that there are no statutory “checklists identifying what are the requirements that shall be considered or consistently applied as the standard for issuance of license across all applicants, reasons or causes for denial, or what the application will be considered on.”

Response: ABC did not amend the administrative regulation based on this comment. SB 100 mandates that the commissioner “shall approve or deny every application” for a TNVP license. *See* KRS 438.3067(1). If the commissioner denies an application, SB 100 mandates that the applicant “shall be notified of the commissioner’s denial which shall include the reason for the denial.” *Id.* However, as Mr. Clark highlighted, SB 100 does not provide *any* statutory criteria for the commissioner to use to approve or deny a TNVP license. Nor does SB 100 provide any statutory reasons for denial of a TNVP application. Rather, SB 100 provides circumstances under which a TNVP retailer may not renew their license or reapply for licensure. *See* KRS 438.310(4)(d) and (7), KRS 438.312(3)(d), KRS 438.316(2)(c), KRS 438.3067(3)(b). These are not reasons for denial, *per se*, but rather prohibitions on application. Therefore, SB 100 mandates the commissioner take action, but does not give statutory guidance for how to undertake that action. Pursuant to the legislature’s directive in the bill, ABC promulgated 804 KAR 13:030E to carry out enforcement and give that guidance to applicants.

ABC agrees that TNVPs should differ from alcoholic beverages in how they are regulated, but disagrees that these regulations hew too close to alcoholic beverage regulations. The language of SB 100 shows that the legislature wanted greater regulation of TNVPs and used alcoholic beverage licensing as the basis for TNVP licensing. SB 100 created a new division for TNVP licensing within the alcoholic beverage regulating entity (ABC), and put the ABC commissioner in charge of approving or denying TNVP license applications and suspending or revoking TNVP licenses for violations. Moreover, under SB 100, selling TNVPs at retail is now as lawful an activity as selling alcoholic beverages at retail—but both require licensure. The unlicensed retail sale of TNVPs is now punished in precisely the same way as the unlicensed retail sale of alcoholic beverages: KRS 438.3061(2) states that selling TNVPs without a license invokes the penalties of KRS 243.990(2), which is the statute that penalizes the unlicensed retail sale of alcoholic beverages. Also, under the new version of KRS 438.3071, ABC investigators are empowered to enter TNVP-licensed premises without a warrant and confiscate contraband property, mirroring their authority to enter alcoholic beverage premises under KRS 241.090(1). KRS 438.3069 lists the reasons a TNVP license can be revoked or suspended and is also almost identical to KRS 243.490.

ABC is therefore justified in using KRS 243.450—the statute which provides the reasons why an alcoholic beverage administrator shall or may deny any alcoholic beverage license (not just

quota retail package licenses)—as a foundation upon which to enumerate reasons why the commissioner might deny a TNVP license, and upon which to develop criteria for making such a determination. This section neither limits nor expands the authority of the commissioner under SB 100.

(12) Subject Matter: 804 KAR 13:030 Section 1(1)

- (a) Comment:** Brian Clark commented that 804 KAR 13:030 Section 1 “gives an extremely broad and undefined range of grounds for the Commissioner to deny a tobacco, nicotine, or vapor product license” application. Mr. Clark commented that selling TNVPs “is a lawful activity and as such the grounds for denying such activity should be narrow and tailored to effectuate the purpose of the statute which is to promote public safety.” Specifically, Mr. Clark commented that Section 1(1)’s assertion that not fully complying with all applicable statutes under KRS 438.305 to 438.350 shall result in a denial could subject the regulation to legal challenge because SB 100 limited “the ability of the department to regulate retailers only to KRS 438.305 to 438.350 ... as they relate to the regulation of alternative nicotine products, tobacco products, and vapor products.” (quoting KRS 438.3055) (emphasis in original comment). Mr. Clark commented that KRS 438.305 to 438.350 contain statutes like KRS 438.350, which prohibits minors from *possessing* a TNVP, and minor *possession* should not be grounds for holding a retailer accountable. Also, Mr. Clark commented that KRS 438.343 regulates nitrous oxide, which is not relevant to regulating TNVP licensees.

Shannon Stiglitz and Tod Griffin further commented that 804 KAR 13:030 Section 1 mandates denial under enumerated circumstances, but KRS 438.3063 does not mandate automatic denial. “Rather, it directs the Commissioner to approve or deny applications based on statutory criteria and grants discretion—not a requirement—to deny licensure.”

All three of these commenters also pointed out that 804 KAR 13:030 Section 1(1) incorrectly uses “and” instead of “to,” which limits applicable statutes referenced to KRS 438.305 *and* 438.350 instead of KRS 438.305 *to* 438.350.

- (b) Response:** Regarding 804 KAR 13:030 Section 1(1), ABC will amend “and” to “to” so that it appropriately reads that applicants must “comply fully with all applicable statutes under KRS 438.305 to 438.350 and with the administrative regulations promulgated under 804 KAR Chapter 13.”

However, ABC will not further amend 804 KAR 13:030 based upon these comments. Since Section 1(1) is a mirror of KRS 243.450(1)(a), it is doubtful that a challenge to its constitutionality or legality will be successful. Although the provisions of KRS 438.305 to 438.350 may contain statutory requirements not directly applicable to TNVP retailers, KRS 438.3069(1) states that a TNVP license “may be revoked or suspended by the commissioner for a violation of ... [a]ny of the provisions of KRS 438.305 to 438.350,” and KRS 438.3069(2) permits revocation or suspension for violation of ABC tobacco regulations. If the commissioner can revoke a TNVP license for a violation, it would be an absurd interpretation that the commissioner is unable to deny an application for a license for the same reason.

(13) Subject Matter: 804 KAR 13:030 Section 1(2)

- (a) Comment:** Brian Clark commented that 804 KAR 13:030 Section 1(2) “effectively prohibits anyone who has had their license revoked in the past from obtaining license in the future” in contravention of KRS 438.3067(3)(b), which states that only revocations occurring in the past two years may prohibit licensure. Shannon Stiglitz and Tod Griffin commented that Section 1(2) fails because it requires denial for conduct for which revocation would be authorized but does not identify those activities.
- (b) Response:** ABC will amend the administrative regulation to remove Section 1(2) because it appears to be redundant to 804 KAR 13:030 Section 1(1). However, SB 100 identifies multiple activities for which revocation would be authorized in KRS 438.310(4)(d), KRS 438.312(3)(d), and KRS 438.316(2)(c), but goes further in KRS 438.3069 to say that revocation may be based upon any violation of the provisions of KRS 438.305 to 438.350, tobacco regulations promulgated by ABC, tobacco tax regulations promulgated by the Department of Revenue, federal laws of any kind, and “any cause for which the department in the exercise of its sound discretion deems sufficient.” As has already been discussed, ABC cannot limit these reasons by regulation.

(14) Subject Matter: 804 KAR 13:030 Section 1(3)

- (a) Comment:** Brian Clark comments that 804 KAR 13:030E Section 1(3) permits denial of an applicant for making any false material statement in its application, even unknowingly. Mr. Clark requested that ABC amend this section to add a “knowingly” standard. Additionally, 26 RS SB 245 would supersede 804 KAR 13:030, if passed.
- (b) Response:** ABC agrees that a “knowingly” standard should be understood to apply to this section and will therefore amend the section accordingly.

(15) Subject Matter: 804 KAR 13:030 Section 1(4)

- (a) Comment:** Brian Clark commented that 804 KAR Section 13:030 Section 1(4) is redundant to Section 1(1) and should be removed. Mr. Clark commented that it “is a good example of a precise and identifiable reference to a violation of KRS 348.305 to 348.350[sic] which could result in a mandatory denial of a license.”
- (b) Response:** ABC did not amend the administrative regulation based on this comment. SB 100 does not include a provision explicitly mandating payment of the license fee, but rather states that the \$50 application fee shall be applied to the license fee if the license is issued, the fee shall be \$500 per year, and the fee shall be made payable to the State Treasury. *See* KRS 438.3063(1) & 4(a). As has already been discussed, limiting the commissioner to “precise and identifiable” violations of KRS 438.305 to 438.350 that result in application denial would place a limitation on the commissioner’s authority enacted in SB 100.

(16) Subject Matter: 804 KAR 13:030 Section 2

- (a) Comment:** Shannon Stiglitz, Tod Griffin, and Brian Clark commented that the factors listed for the commissioner to consider in making a determination on a TNVP application under 804 KAR 13:030 Section 2 apply to alcoholic beverages and not TNVPs. Ms. Stiglitz and Mr. Griffin commented further that Section 2 “could allow denial of all licenses based on subjective determinations that the products are harmful to the public,” and that it therefore exceeds statutory authority.

Ms. Stiglitz and Mr. Griffin commented that Sections 2(1), allowing denial based upon public sentiment, and 2(4), allowing denial based upon “types of area involved,” could “force businesses to discontinue lawful sales, relocate, or close entirely—potentially creating food deserts or limiting access to fuel and medicine.” They commented that Section 2(2), allowing denial based upon the number of licensed outlets in the area, is inappropriate for a license that is not capped by law, presumably drawing a comparison to quota retail package licenses. They commented that Section 2(3), permitting denial based upon “potential for future growth,” is too vague and “should clearly articulate what growth is being evaluated and how it relates to licensure.” Finally, Ms. Stiglitz and Mr. Griffin commented that denial based upon the financial potential of an area, as permitted by Section 2(5), could disproportionately affect economically depressed communities and result in an alcohol licensee being denied a tobacco license based upon “speculative economic criteria.”

Mr. Clark commented, “All who qualify legally to hold a license should be issued a license once they have successfully submitted application for licensure and paid the required licensing fee,” and therefore, “[t]his entire section should be deleted and removed.” Mr. Clark commented that Section 2 is vague and “creates the opportunity for inconsistent application of law, inequities, and unfair treatment” and—presumably in the alternative—he “requests that the Commissioner’s discretion for denial be limited only to grounds or reasons for denial set forth in statute related to tobacco, nicotine and vapor products.”

- (b) Response:** ABC did not amend the administrative regulation based on this comment. As has already been discussed, SB 100 does not set forth statutory grounds or reasons for denial of a TNVP license application. Rather, statute mandates that the commissioner “approve or deny every application” for TNVP licensure and provide the applicant with the reason for the denial. ABC promulgated 804 KAR 13:030 in an effort to provide structure and predictability to applicants in the absence of clear statutory factors for the commissioner to consider, using KRS 243.450 as a foundation in much the same way the legislature used KRS 243.490 as a foundation for outlining the reasons why a TNVP license may be revoked under KRS 438.3069.

ABC disagrees that public sentiment should not be a consideration for the commissioner. While the public notice provision is limited to transitional license applications, its inclusion in SB 100 is an indication that the legislature intended for public sentiment to be considered in evaluating a license for TNVP retail sales.

ABC is open to considering amendments to the other factors enumerated in 804 KAR 13:030 for TNVP applications. ABC welcomed further comment on the ordinary regulations regarding

what factors the commissioner should consider when determining whether to approve or deny licenses in accordance with the discretion left to them by statute; despite this express invitation, no specific suggestions were offered.

(17) Subject Matter: Missing Sections

(a) Comment: Brian Clark commented that there is no regulation regarding revocation or suspension of licenses as is set forth in KRS 438.3069 and that ABC needs to address this area since the regulations reference revocation and suspension in 804 KAR 13:030.

(b) Response: ABC did not amend the administrative regulation based on this comment. ABC described the process for appealing revocations and citations in the ordinary amendments to 804 KAR 13:010. As Mr. Clark commented, the reasons for revocation and suspension of licenses are set forth in KRS 438.3069, and ABC does not believe further explication of those reasons would be appropriate. When referenced in 804 KAR 13:010 and 13:030, the reasons enumerated in statute are sufficient.

(18) Subject Matter: Criminal Background Checks

(a) Comment: Brian Clark commented that the instructions to the application on the online portal indicate that ABC may request criminal background checks for applicants at any time, when the enabling statute does not require criminal background checks be conducted to obtain a license. Therefore, Mr. Clark commented this instruction should be eliminated.

(b) Response: ABC will amend the administrative regulation based on this comment. ABC agrees that pursuant to SB 100, criminal history and commission of crimes (other than federal crimes) have no bearing on a TNVP licensee that does not also have an alcoholic beverage license. ABC will therefore remove this instruction from the TNVP application instructions.

(19) Subject Matter: 804 KAR 13:020 Section 3

(a) Comment: Brian Clark commented that the renewal schedule in 804 KAR 4:390, referenced in 804 KAR 13:020 Section 3, should be incorporated by reference in 804 KAR 13:020 Section 7.

(b) Response: ABC did not amend the administrative regulation based on this comment. The renewal schedule referenced in 804 KAR 13:020 Section 3 is clearly set out in 804 KAR 4:390. ABC believes citing to 804 KAR 4:390 is sufficient.

(20) Subject Matter: 804 KAR 13:020 Section 4, generally

(a) Comment: Shannon Stiglitz and Tod Griffin commented that 804 KAR 13:020 Section 4 conflates application and renewal, leading to confusion, because KRS 438.3063(2)(a) requires annual renewal, not annual application. Ms. Stiglitz and Mr. Griffin requested that the

regulation be amended to clearly allow ABC-licensed retailers to initially apply at their 2026 renewal date.

Mr. Clark commented that renewals should require only such information as is absolutely necessary, which should be set forth either in 804 KAR 13:020 Section 4 or enumerated in a checklist provided by ABC.

- (b) **Response:** ABC did not amend the administrative regulation based on this comment. ABC disagrees that the terms “application” and “renewal” are improperly conflated. ABC cannot assume that a TVNP licensee holding an existing license will want to renew on an annual basis, and therefore, requiring an application for renewal is the only logical option available to ensure that TVNP licensees who wish to continue selling TVNP products maintain appropriate licensure. KRS 438.340 authorizes ABC to promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and carry out the provisions of KRS 438.305 to 438.350. KRS 438.3063, which falls within the above-referenced statutory range, requires annual renewal. ABC therefore promulgated the renewal application process set out in 804 KAR 13:020 to effectuate and implement the above-referenced statutory directives.

(21) Subject Matter: 804 KAR 13:020 Section 4(1)

- (a) **Comment:** Brian Clark commented that 804 KAR 13:020 Section 4(1) states that a TNVP licensee must pay all fines incurred under KRS 438.305 to 438.350 before renewing, but it should not include fines incurred under KRS 438.343 for violations related to the sale of nitrous oxide.
- (b) **Response:** ABC did not amend the administrative regulation based on this comment. Section 4(1) was promulgated in accordance with KRS 438.310(7), which states, “A retailer shall be prohibited from renewing its license until all fines incurred under KRS 438.305 to 438.350 are paid.” No exception is made for fines incurred under KRS 438.343.

(22) Subject Matter: 804 KAR 13:020 Section 4(2)

- (a) **Comment:** Shannon Stiglitz, Tod Griffin, and Brian Clark commented that the application fee for renewals under Section 4(2) should be eliminated because it is not authorized by statute. 26 RS SB 245 would amend KRS 438.3063 to require the licensure fee with a renewal application, but not an application fee.
- (b) **Response:** ABC did not amend the administrative regulation based on this comment. As addressed above, ABC promulgated the renewal application process to effectuate and implement the requirement for annual TNVP license renewal. Under KRS 438.3063, applications for annual TNVP licenses have a \$50 nonrefundable application fee and the annual TNVP license is \$500, with the \$50 application fee offsetting the \$500 license fee upon issuance. As the application fee offsets the licensing fee, this change will not affect the amount TNVP licensees must pay.

(23) Subject Matter: 804 KAR 13:020 Section 4(4)

(a) Comment: Brian Clark commented that 804 KAR 13:020 Section 4(4) seeks to require a renewal period of no more than 45 days prior to its expiration and asks what this 45-day period is based on and what statutory requirement supports it.

(b) Response: ABC did not amend the administrative regulation based on this comment. ABC established this renewal period for TNVP licenses to ensure that the information provided for renewal is recent and therefore has some assurance of accuracy at the time of the TNVP license's annual renewal. The provision has been promulgated pursuant to the department's authority in KRS 438.3055(2) and 438.340.

(24) Subject Matter: 804 KAR 13:020 Section 5

(a) Comment: Brian Clark commented that 804 KAR 13:020 Section 5 gives the department discretion to grant a renewal grace period after expiration of a TNVP license, but does not provide any guidance to determine when or why a renewal grace period would be denied. Mr. Clark comments that this period is not supported by statute and should be removed or at the very least should either clarify on what conditions a 30-day grace period would be granted or denied or change the language to mandate the grant of the grace period. Mr. Clark further comments that the grace period should be 60 or 90 days, not 30 days, to renew without having to completely reapply.

(b) Response: ABC will amend Section 5 to say, "shall grant" rather than "may grant." ABC established the grace period in 804 KAR 13:020 Section 5 for TNVP licensees in an effort to prevent such licensees from having to reapply for licensure if they fail to timely renew their TNVP license, resulting in its expiration. The provision has been promulgated pursuant to the department's authority in KRS 438.3055(2) and 438.340.

(25) Subject Matter: Additional items to be added to the regulations

(a) Comment: Shannon Baker and Kristin Jimison all commented in public comments at the public hearing held on January 22, 2026, that ABC should amend the regulations to: (1) provide a detailed plan and timeline for identifying and notifying TNVP retailers of their responsibilities under the new licensing regime; and (2) provide a detailed framework, plan, and timeline for conducting regular compliance checks of all TNVP retailers. Ms. Baker and Ms. Jimison added in their comments that ABC should also amend the regulations to establish and publicly promote appropriate mechanisms for filing public complaints related to underage sales, and to promptly address those complaints with retailers.

(b) Response: ABC did not amend the administrative regulation based on this comment. While ABC is implementing processes for identifying and notifying TNVP retailers of their responsibilities, and for conducting regular compliance checks of all TNVP retailers, ABC does not feel that an administrative regulation is the appropriate vehicle to establish these processes. Regarding the mechanism for filing public complaints, complaints may already be filed on the online portal, anonymously if desired, or via telephone or email to an ABC representative via contact information available on <http://abc.ky.gov>.

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

The public hearing on the proposed amendment to 804 KAR 13:010, and proposed regulations 804 KAR 13:020, and 13:030 was held, and comments were received at the hearing. Additionally, written comments were received during the comment period. The Department of Alcoholic Beverage Control has responded to the comments and will amend 804 KAR 13:010, 13:020, and 13:030 as follows.

804 KAR 13:010

Page 6

Section 6(2)

Line 5

After “Physical”, insert “**property**”

Delete “evidence”.

After “seized”, insert “**as contraband property, as defined by KRS 438.305(4),**”

After “of”, insert “**investigations of**”

Line 7

After “found that the”, insert “**property**”

Delete “evidence”.

Line 8

After “case the”, insert “**property**”

Delete “evidence”.

Section 6(3)

Line 9

After “of”, insert “**contraband property and**”.

804 KAR 13:020

Page 5

Section 5

Line 17

After “department”, insert “**shall**”

Delete “may”

Page 6

Section 7

Line 5

After “Application, ””, insert “**March 2026**”

Delete “October 2025”

Page 14

After “Application, ””, insert “**March 2026**”

Delete “October 2025”

Summary of Changes to Material Incorporated by Reference

“Initial Tobacco, Nicotine, or Vapor Product License Application,” January 2026

The department has amended the instructions to the “Initial Tobacco, Nicotine, or Vapor Product License Application” to remove the line referencing the “administrator” which also stated that background checks may be required at any time. The department also amended the form to remove attestations regarding the sale of hemp products and the presence of gambling devices on the licensed premises.

804 KAR 13:030

Page 2

Section 1(1)

Line 15

After “KRS 438.305”, insert “**to**”

Delete “and”.

Section 1(2)

Line 17

Delete the following:

“The applicant has engaged in any activity for which revocation of a tobacco, nicotine, or vapor product license would be authorized;”

Section 1(3)

Line 19

Delete “(3)”.

After “has”, insert “**knowingly**”.

Section 1(4)

After “(”, insert “**3**”

Delete “4”