



STATE RULEMAKING AND COMMENTS Fact Sheet

Kentucky Legal Provisions

Law can be a powerful tool to protect and promote public health. For law to be an effective tool one must understand public health's legal framework. This framework is made up of several types of law, including constitutions, statutes, court opinions and regulations.

This fact sheet focuses on the regulations component of the public health legal framework and provides information about Kentucky's rulemaking process. Though the details of the fact sheet apply only in Kentucky, the legal provisions addressed in this document likely have similar counterparts in all other states. Lawyers in other states may have developed, or could develop, comparable guidance relating to the rulemaking process in their states. You may wish to talk with your attorney, or visit the [State Public Health Lawyer Directory](#) to find contact information for a public health attorney in your state.

Rules and Regulations

"Rule" and "regulation" both refer to measures passed by government agencies that have the force and effect of law. Legislatures often empower state agencies to develop, adopt and enforce regulations. For example, when the Kentucky Legislature enacted Kentucky Revised (KRS) [194A.050](#), it gave the Cabinet for Health and Families Services (CHFS) the power to adopt, administer and enforce all regulations necessary to protect the health of the people of the Commonwealth. Pursuant to this grant of authority CHFS adopted a regulation setting out the standards and requirements for disease surveillance. See [902 KAR 2:020](#). Kentucky's regulations are compiled in the Kentucky Administrative Regulations (KAR) and are available online at <http://www.lrc.ky.gov/kar/frntpage.htm>.

Kentucky's Rulemaking Process

Kentucky's rulemaking process is found in [Chapter 13A](#) of the Kentucky Revised Statutes, entitled Administrative Regulations. The rulemaking process begins when an agency, such as CHFS, files a notice of a proposed rule with the Regulations Compiler. The notice includes the proposed language for the rule, as well as information about the public hearing and comment period, a regulatory impact analysis and fiscal note.

The agency proposing the new rule will schedule a public hearing and request that anyone interested in attending the hearing contact the agency within a certain period. If nobody requests to attend the hearing then it may be cancelled. The notice of proposed rule also sets a deadline for the agency's receipt of written comments. The name and address of the person to whom to submit comments is also provided in the notice. See [KRS 13A.270](#). In general, the agency has a duty to consider all comments received, though it may disagree with the comments after considering them. The agency will



respond to and address any written or public comments it receives through a “statement of consideration” it files with the Regulations Compiler. See [KRS 13A.280](#).

Emergency regulations, such as regulations to meet an imminent threat to public health, are exempt from the regular public comment requirement and are effective immediately upon the agency’s filing. Emergency regulations will expire within 180 days unless the agency also proposes the regulation as an ordinary regulation and goes through the regular public hearing and comment process. If an agency does not plan on filing an ordinary regulation then it must schedule a public hearing and accept comments on the emergency regulation. See [KRS 13A.190](#).

After the agency considers and addresses the comments it receives from the public, the proposed regulation is reviewed by the Administrative Regulation Review Subcommittee, and then referred to a jurisdictional committee for a second review. See [KRS 13A.020](#) and [KRS 13A.290](#). The regulation is considered adopted and in effect after the jurisdictional committee meets or 30 days after its referral, whichever occurs first. Anyone can sign up to receive e-mail or written notification of proposed regulations at RegWatch, <https://secure.kentucky.gov/regwatch/>.

Commenting on Proposed Rules

Anyone can comment on a proposed rule or attend a public hearing. Commenting on a proposed rule is generally not considered lobbying. However, you should check with your attorney or employer to find out whether any restrictions apply before submitting comments in your professional or personal capacity. Once submitted, comments are generally available to the public for review.

Why Comment?

Commenting is a way for agencies to hear from public health experts and those who practice in the public health field. Commenting allows those who will be affected by the proposed rule to voice concerns about the rule and provides the opportunity to:

- Introduce evidence that may have been overlooked
- Identify inconsistencies with the law, including violations of the Constitution
- Describe practical barriers
- Suggest alternatives
- Request clarification
- Point out drafting errors
- Make policy arguments
- Offer proposals to improve administration of the program
- Argue that the new state rule should not preempt local legislation

Notice-and-comment rulemaking may provide an opportunity for you to be more deeply involved in developing public health policies. The contributions of public health practitioners, officials and advocates may result in better regulations, as evidenced by improved health outcomes, greater compliance, lower costs or fewer appeals and legal challenges.

SUPPORTERS

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