



1 GENERAL GOVERNMENT CABINET

2 Department of Military Affairs

3 (Amendment)

4 106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and  
5 hearings procedure.

6 RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190,  
7 39E.200, 39E.210, 39E.220, 39E.990.

8 STATUTORY AUTHORITY: ~~KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120,~~  
9 ~~39E.200(1), 39E.210, 39E.990.~~

10 ~~NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), 39E.040(6), 39E.050(4),~~

11 ~~39E.080(4), 39E.120, 39E.200(1), and 39E.210 require the Kentucky Emergency Response~~

12 ~~Commission and the Division of Emergency Management to promulgate administrative~~

13 ~~regulations governing the activities of the Kentucky Emergency Response Commission,~~

14 ~~including standards and procedures for the operations of the commission and local emergency~~

15 ~~planning committees, fee system, hazardous substance inventory and substance release reporting,~~

16 ~~emergency procedures and requirements, and establishment of warning and notification~~

17 ~~standards. This administrative regulation establishes procedures to be followed to assess civil~~

18 ~~penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990.~~

19 ~~Section 1. General Provisions.~~

20 ~~(1) The commission shall commence an administrative action to impose a civil penalty~~

21 ~~under KRS 39E.990(3) against a person if the commission has notice of the existence of a~~

1 violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130,  
2 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990.

3 ~~————(2)~~

4 ~~————(a) The commission chairman (or designee) shall mail to the alleged violator a writing~~  
5 ~~styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the~~  
6 ~~violation, if applicable, together with a summary of the factual, legal, and other grounds upon~~  
7 ~~which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040,~~  
8 ~~39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, or 39E.990 or Title~~  
9 ~~106 KAR that were allegedly violated.~~

10 ~~————(b) Recitation of statutory or regulatory standards shall not be a sufficient summary of the~~  
11 ~~grounds for the commission's action.~~

12 ~~————(3) The commission chairman (or designee) may attempt to informally resolve the~~  
13 ~~violation. Informal resolution shall be in accordance with Section 3 of this administrative~~  
14 ~~regulation~~

15 ~~————(4) If, after ninety (90) days from the issuance of the notice of violation the alleged~~  
16 ~~violation is unresolved, the commission chairman (or designee) shall issue a notice of~~  
17 ~~administrative hearing, following the requirements of KRS 13B.050.~~

18 ~~———— Section 2. Informal Proceedings. After an administrative action commences, the~~  
19 ~~commission may seek informal resolution of the dispute with a party. Resolution shall be as~~  
20 ~~established in this section.~~

21 ~~————(1) The commission shall give notice not less than twenty (20) days prior to an informal~~  
22 ~~proceeding to all affected persons of the commission's notice of violation.~~

23 ~~————(2) After giving notice, the commission shall give affected persons or parties an~~

1 opportunity, at a mutually convenient time and place, to present to an authorized commission  
2 representative evidence in opposition to the commission action or determination, or to give a  
3 statement challenging the grounds upon which the commission has chosen to justify its action or  
4 determination.

5 ~~—— (3) The authorized representative of the commission shall give the affected person's  
6 evidence and objections due consideration, and notify all affected persons in writing within  
7 fourteen (14) days of the receipt of the evidence or objections of the commission's decision.~~

8 ~~—— Section 3. Parties. The parties to the proceeding shall be the commission chairman (or  
9 designee) and the alleged violator who shall be designated respondent. A person may be  
10 permitted to intervene in any action by filing a petition for intervention in accordance with KRS  
11 13B.060.~~

12 ~~—— Section 4. Assignment to Hearing Officer; Duties and Authority.~~

13 ~~—— (1) Within ten (10) days of the filing of the notice of violation, the commission shall  
14 designate a hearing officer for formal administrative action in any manner consistent with KRS  
15 13B.030. If the commission elects to designate a hearing officer from the Division of  
16 Administrative Hearings in the Office of the Attorney General under KRS 13B.030, the  
17 commission shall make that request in writing to the division within ten (10) days of the filing of  
18 the notice of violation.~~

19 ~~—— (2) Assignment of a hearing officer from the Division of Administrative Hearings of the  
20 Office of the Attorney General shall be made according to 400 KAR 1:001, 400 KAR 1:030, 400  
21 KAR 1:040, 400 KAR 1:090, and 401 KAR 100:010.~~

22 ~~—— (3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a  
23 designation of a hearing officer under these administrative regulations and a delegation to the~~

1 hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of  
2 the administrative action. The hearing officer shall have the authority to take any procedural  
3 action authorized by KRS Chapter 13B, Title 106 KAR, 400 KAR 1:001, 400 KAR 1:030, 400  
4 KAR 1:040, 400 KAR 1:090, or 401 KAR 100:010, including, for example, the authority to:  
5 ——— (a) Administer oaths and affirmations;  
6 ——— (b) Issue subpoenas for witnesses and production of documents or things;  
7 ——— (c) Regulate discovery;  
8 ——— (d) Rule on procedural requests;  
9 ——— (e) Hold prehearing conferences;  
10 ——— (f) Regulate the course of, and maintain order in the administrative hearing;  
11 ——— (g) Rule on evidentiary matters and admit in or exclude evidence from the record;  
12 ——— (h) Examine witnesses;  
13 ——— (i) Require the parties to submit legal memoranda, and proposed findings of fact and  
14 conclusions of law;  
15 ——— (j) Make proposed findings of fact, conclusions of law, and recommended orders for the  
16 agency head; and  
17 ——— (k) Take any action consistent with law to promote the orderly and prompt conduct of the  
18 administrative action.  
19 ——— Section 5. Continuances.  
20 ——— (1) Any party may request a continuance of a scheduled hearing for a death, serious  
21 illness or injury, emergency, or other unforeseen event or circumstance beyond the ability of a  
22 person acting with reasonable care and diligence to control that reasonably prevents a party from  
23 attending the hearing.

1 ~~—— (a) The request shall be in writing and include the reason for the request.~~

2 ~~—— (b) The request shall be submitted to the commission chairman (or designee) at least ten~~  
3 ~~(10) days prior to the hearing date.~~

4 ~~—— (2) Any party objecting to a requested continuance may file a written objection to the~~  
5 ~~commission chairman (or designee) at least five (5) days prior to the scheduled hearing.~~

6 ~~—— (3) The hearing officer shall rule on all requests for a continuance.~~

7 ~~—— (a) In the hearing officer's absence, the commission chairman (or designee) shall rule on~~  
8 ~~the requests.~~

9 ~~—— (b) The commission chairman (or designee) shall execute and transmit an order either~~  
10 ~~granting or denying the continuance to all parties involved.~~

11 ~~—— Section 6. Conflict of Interest; Recusal.~~

12 ~~—— (1) If at any time during an administrative action an assigned hearing officer's continued~~  
13 ~~service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics,~~  
14 ~~that hearing officer shall recuse and enter a written order withdrawing from the administrative~~  
15 ~~action.~~

16 ~~—— (2) At any point during an administrative action a party may move the hearing officer to~~  
17 ~~recuse from an administrative action. The motion to recuse shall be in writing filed in the record~~  
18 ~~and shall be supported by an affidavit setting forth specific facts that demonstrate one (1) or~~  
19 ~~more of the grounds for recusal set forth in KRS 13B.040(2)(b).~~

20 ~~—— (3) Within ten (10) days of recusal of a hearing officer, the commission shall request or~~  
21 ~~assign another hearing officer by written order.~~

22 ~~—— Section 7. Ex Parte Contact Prohibited.~~

23 ~~—— (1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or~~

1 any person working under the hearing officer's supervision, and any person with a direct or  
2 indirect interest in the outcome to that administrative action concerning the merits of the  
3 administrative action assigned to the hearing officer.

4 ~~—— (2) This administrative regulation shall not prohibit ex parte contact with staff on purely  
5 procedural matters not at issue in the case. This section shall not prohibit communications with  
6 staff regarding the status of a case.~~

7 ~~—— (3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall  
8 take every action required under KRS 13B.100, shall cause the parties to be notified of the  
9 contact, and shall inform the other parties to the action of their right to move for a recusal.~~

10 ~~—— (4) The hearing officer may impose appropriate sanctions on a person who knowingly  
11 makes a prohibited ex parte contact, including deeming the person to have defaulted; striking all  
12 or part of that person's pleadings, claims, or defenses; denying any pending motions by the party;  
13 issuing a show cause order requiring the person to show why the hearing officer should not  
14 sanction the person; or taking such other actions as are appropriate pursuant to KRS Chapter  
15 13B.~~

16 ~~—— Section 8. Motion for Summary Disposition. A hearing officer may grant a motion for a  
17 summary disposition and recommend the agency head rule in the moving party's favor if the  
18 hearing officer finds that there is no genuine dispute as to any issue of material fact and the  
19 moving party is entitled to a summary disposition as a matter of law.~~

20 ~~—— Section 9. Filing of Papers.~~

21 ~~—— (1) All papers after the petition required to be served upon a party shall be filed with the  
22 commission either before service or not less than twenty (20) days in advance of a hearing.~~

23 ~~—— (2) Pleadings and other papers shall be filed with the commission when they are received~~

1 and endorsed by the commission. The commission shall endorse the date of receipt on every  
2 paper filed in an action immediately upon receipt.

3 ~~——(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile  
4 telephone number listed for the commission on the notice of violation.~~

5 ~~——(a) A party filing by telefacsimile machine shall include a certificate that the paper is  
6 being filed by fax and the original paper is being filed by mail and shall immediately after faxing  
7 a paper mail the original paper to the commission.~~

8 ~~——(b) The filing date of a paper sent by facsimile shall be the date the commission receive  
9 the original, unless the original is received with five (5) business days of the facsimile, in which  
10 ease the filing date shall be the date the commission received the facsimile.~~

11 ~~——(4) Papers may be filed electronically to email tier2kyem@gmail.com. Papers filed  
12 electronically via email shall include a certificate that the paper copy is being filed by email and  
13 the original paper is being filed by mail immediately after electronic submittal.~~

14 ~~——(5) All papers filed in an administrative action shall be signed by the filing person.~~

15 ~~——(a) The signature of the filing person or his or her authorized representative constitutes a  
16 certificate that the signing person has read the paper and that to the best of his or her knowledge,  
17 information and belief formed after reasonable inquiry, it is not interposed for any improper  
18 purpose.~~

19 ~~——(b) If a paper is signed in violation of this subsection, the hearing officer may strike the  
20 paper from the record, deem the party to have failed to file the paper, and take any action  
21 allowed as a consequence of the failure, strike all or part of any pleading, claim or defense  
22 asserted in the filing, or bar an attorney violating this subsection from future participation in that  
23 administrative action, and recommend that the agency head bar that attorney from appearing in~~

1 ~~future administrative actions before the commission.~~

2 ~~—— Section 10. Venue. Administrative hearings shall be conducted at a site designated by the~~  
3 ~~hearing officer. In determining venue, the hearing officer shall consider the requirements of law~~  
4 ~~and the convenience of the parties, the witnesses, and the evidence.~~

5 Section 11. Default.

6 ~~—— (1) If a party fails to timely comply with an order of a hearing officer or a requirement of~~  
7 ~~these administrative regulations, the hearing officer shall file an order directing the~~  
8 ~~noncomplying party to show cause why the hearing officer should not deem that party to have~~  
9 ~~waived his or her right to an administrative hearing and why the hearing officer should not~~  
10 ~~immediately recommend that the commission chairman (or designee) enter an order adverse to~~  
11 ~~the party. If the noncomplying party does not satisfy the show cause order as required, the~~  
12 ~~hearing officer may recommend the entry of a final order in conformity with the relief requested~~  
13 ~~by the opposing party in the administrative action.~~

14 ~~—— (2) If a party fails to appear at a formal administrative hearing, the hearing officer may~~  
15 ~~deem that party to have waived his or her right to a formal administrative hearing and may~~  
16 ~~immediately recommend the commission chairman (or designee) enter a final order in~~  
17 ~~conformity with the relief requested in the appropriate pleadings, or may proceed without the~~  
18 ~~defaulted party.~~

19 ~~—— (3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing~~  
20 ~~officer may recommend the commission chairman (or designee) grant any relief to which the~~  
21 ~~opposing party is entitled.~~

22 ~~—— (4) A hearing officer may, before the time for filing exceptions has run, set aside a~~  
23 ~~recommendation by default under this section for a death, serious illness or injury, emergency, or~~



1 other unforeseen event or circumstance beyond the ability of a person acting with reasonable  
2 care and diligence to control that reasonably prevents a party from complying.

3 ~~Section 12. Burden of Proof.~~

4 ~~(1) The commission shall have the burden of going forward to establish a prima facie case  
5 and the ultimate burden of persuasion to show the propriety of the commission's action~~

6 ~~(2) The party asserting an affirmative defense shall have the burden of going forward and  
7 the ultimate burden of persuasion to establish that defense.~~

8 ~~(3) The ultimate burden of persuasion in all administrative actions shall be met by a  
9 preponderance of substantial evidence in the record.~~

10 ~~Section 13. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing  
11 officer shall make findings of fact, conclusions of law, and issue a recommended order for  
12 review and approval by the full commission with service on all parties.~~

13 ~~(1) Any party may take exception in writing within fifteen (15) days of mailing of the  
14 hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall,  
15 as directed by the commission, approve the findings of fact, conclusions of law, and  
16 recommended order or may modify the findings of fact, conclusions of law and recommended  
17 order.~~

18 ~~(2) If no exceptions are filed and the commission takes no action on the hearing officer's  
19 findings of fact and conclusions of law, within thirty (30) days, the order of the hearing officer  
20 shall be final.~~

21 ~~Section 14.~~

22 ~~(1) Service of the notice of violation, notice of administrative hearing, and the hearing  
23 officer's recommended order shall be made by certified mail to the alleged violator at the address~~

1 ~~shown on the annual inventory report or facility plan required to be filed by KRS Chapter 39E. If~~  
2 ~~no facility plan or annual inventory report has been filed, then to the last known address.~~

3 ~~———(2) All documents filed with the commission by any party shall be served by mail upon~~  
4 ~~all other parties.~~

5 STATUTORY AUTHORITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120,  
6 39E.200(1), 39 E.210, 39E.990 and the Emergency Planning and Community Right-to-Know  
7 Act of 1986, 42 U.S.C. 11000 to 11050.

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), KRS 39E.040(6), and  
9 KRS 39E.080(4) requires the Kentucky Emergency Response Commission and the Division of  
10 Emergency Management to issue administrative regulations to implement KRS Chapter 39E and  
11 the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11000 to  
12 11050, governing the reporting requirements and procedures for individuals, businesses, and  
13 governmental agencies that manufacture, use, store, or transport hazardous substances. KRS  
14 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any  
15 administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. This  
16 administrative regulation provides the procedure to assess, protest and appeal penalties provided  
17 for in KRS 39E.990.

18 Section 1. Definitions

19 (1) “Compliance Review Board” means any current five (5) members of the Kentucky  
20 Emergency Response Commission, selected by the commission chairman, to review and issue  
21 findings, recommendations, and penalties regarding violations of KRS 39E.050, 39E.120,  
22 39E.130, 39E.190, 39E.220, and 39E.990, and any administrative regulation promulgated, or  
23 order issued pursuant to KRS Chapter 39E.

1 (2) "Notice of Non-Compliance" means the notice sent to a facility owner or operator to  
2 inform them of a violation, or violations, of KRS 39E or 106 KAR and the penalties due and  
3 owed per KRS 39E.990.

4 Section 2. Notice of Non-Compliance

5 (1) The commission chairman, or designee, shall mail a notice of non-compliance when the  
6 commission has notice of the existence of a violation of any provision of KRS 39E.050,  
7 39E.080, 39E.120, 39E.130, 39E.190, 39E.220, or 39E.990, or any administrative regulation  
8 promulgated, or order issued pursuant to KRS Chapter 39E.

9 (2) The notice of non-compliance shall contain the specific date, time, and place of the  
10 violation, if applicable, and a summary of the factual, legal, or other grounds upon which the  
11 notice is based, including the applicable provision of KRS Chapter 39E or 106 KAR.

12 (3) Upon receiving a notice of non-compliance, the facility owner or operator shall either:

13 (a) Agree to the violation cited in the notice of non-compliance and become compliant by  
14 remedying the violation, submitting payment for past due fees, and submitting payment  
15 penalties, within thirty (30) days of the date of the notice of non-compliance; or

16 (b) Disagree with the violation and penalty cited in the notice of non-compliance. If the  
17 facility owner or operator disagrees with the notice of non-compliance, they may file a protest  
18 per Section 3 of this administrative regulation.

19 (4) The commission may grant an extension of time for actions in subsection (3)(a) of this  
20 section, to extended beyond thirty (30) days, with the approval of the commission chairman, or  
21 designee.

22 Section 3. Protesting a Notice of Non-Compliance

23 (1) If a facility owner or operator protests the notice of non-compliance, the protest shall:

1 (a) Be received by the commission within thirty (30) days from the date of the notice of  
2 non-compliance;

3 (b) Be in writing; and

4 (c) Contain a supporting statement setting forth the grounds upon which the protest is  
5 made. Upon written request, the commission may grant an extension for filing the supporting  
6 statement if it determines the delay is necessary and unavoidable. The refusal of such extension  
7 may be reviewed in the same manner as a protested notice of non-compliance.

8 (2) If a protest meets the requirements of Section 3, Subsection (1) of this section, the facility  
9 owner or operator may waive or request a conference with the non-compliance review board.

10 (a) If a conference is requested, the compliance review board shall give notice of the  
11 conference date, place, and time to all affected persons. This notice shall be provided to the  
12 facility owner or operator at least twenty (20) days before the date of the conference.

13 (b) The conference may be held in person, or virtually, and per the Open Meeting Act  
14 requirements contained in KRS 61.800 to 61.850. The compliance review board shall give the  
15 facility owner or operator, and other affected persons, an opportunity to present a statement or  
16 evidence challenging the notice of non-compliance. The facility owner or operator may appear  
17 in person or by a designated representative.

18 (c) Further conferences may be held by mutual agreement.

#### 19 Section 4. Findings and Recommendations and Final Decision

20 (1) After considering the protest, including any matters presented at the final conference, the  
21 compliance review board shall issue findings and recommendations on any matter in  
22 controversy.

23 (a) These findings and recommendations shall be:

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1. In writing;

2. Mailed to the facility owner or operator, and to all affected parties per Section 6 of this administrative regulation, within fourteen (14) days of issuance; and

3. Mailed or transmitted to the chairman, or his designee, within fourteen (14) days of issuance.

(2) The commission shall approve or disapprove the findings and recommendations of the compliance review board and issue a final decision at the first scheduled and available commission meeting in which there is a quorum.

(3) The final decision shall be signed by the commission chairman, or a designee stating that it is a final decision of the commission, generally state the issue in controversy, the commission's position, and set forth the procedure for an appeal.

(4) The facility owner or operator shall have twenty (20) days after the final decision is signed, issued, and mailed via certified mail, to:

(a) Resolve the findings; or

(b) Appeal the commission's final decision per Section 5 of this administrative regulation by filing a request for an administrative hearing.

Section 5. Appeal of the Commission's Final Decision

(1) The facility owner or operator shall request an administrative hearing by mailing such request to the commission chairman or designee within the time set forth in Section 4 Subsection 4, of this administrative regulation.

(2) Upon receipt of the request, the commission chairman, or designee, shall request an administrative hearing officer for an administrative hearing. The administrative hearing will be held according to the procedures in KRS 13B.050.

1 Section 6. Service and Mailing of Documents.

2 (1) Service of documents by the commission, commission chairman or designee, or the  
3 compliance review board, shall be mailed by certified mail to the facility owner or operator at the  
4 address shown on the annual inventory report or facility plan required by KRS Chapter 39E. If  
5 no facility plans or annual inventory report has been filed, then to the last known address.

6 (2) All documents filed with the commission, commission chairman or designee, or the  
7 compliance review board, by any party, shall be served by mail upon all other parties.

This is to certify that the Kentucky Emergency Response Commission approved this administrative regulation unanimously by Motion #046-2023 on Wednesday, November 15, 2023. The director of the Division of Emergency Management concurs with this administrative regulation as required by KRS 39.E.080.



Dustin Heiser  
Interim Director  
Kentucky Division of Emergency Management



Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on February 28, 2024, at 9:00 a.m. Eastern Standard Time at 100 Minuteman Parkway, Bldg. 100, Room 238 (EOC 2<sup>nd</sup> Floor Conference Room) Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 through February 29, 2024. 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: Corey Ann Howard Jackson, Legislative Liaison and Policy Specialist, Department of Military Affairs, 100 Minuteman Parkway, Frankfort, KY 40601, phone (502) 330-3323, fax (502) 607-1240, email [corey.a.jackson23.nfg@army.mil](mailto:corey.a.jackson23.nfg@army.mil).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

Contact Person: Corey Ann Howard Jackson

Phone: (502) 330-3323

Email: corey.a.jackson23.nfg@army.mil

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does:

KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. KRS Chapter 39E reflects the federal requirements of the Emergency Planning and Community Right-to-Know Act of 1986. This administrative regulation provides the procedure to assess, protest and appeal penalties provided for in KRS 39E.990.

- (b) The necessity of this administrative regulation:

This administrative regulation is necessary to carry out the requirements of KRS 39E.040(6) and KRS 39E.080(4) that require the Kentucky Emergency Response Commission (KEREC) and the Division of Emergency Management to issue administrative regulations to implement KRS Chapter 39 E and the Emergency Planning and Community Right-to-Know Act of 1986. This Act, known as Title III, governs the reporting requirements and procedures for individuals, businesses, and governmental agencies regarding the manufacture, use, storage, or transportation of hazardous substances.

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

KRS 39E.990 provides penalties for any person violating KRS Chapter 39E. KRS Chapter 39E provides standards for facility owners or operators that manufacture, use, store, or transport hazardous substances. This administrative regulation supports compliance with the requirements of KRS 39E.990 by providing the procedure for the Commission to assess penalties and notify applicable owners or operators of facilities of non-compliance. This administrative regulation also provides methods for protest and appeal of penalties associated with non-compliance.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation establishes the penalty process and procedure that results from non-compliance with the statutes governing the storage, transport, or manufacture of hazardous substances.

- (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: Provides a way to ensure compliance with the statutes and gives facility owners or operators an opportunity to become compliant after a notice of a violation before resorting to an administrative hearing.

(b) The necessity of the amendment to this administrative regulation: There were errors and improper citations to sections within the regulation as well as inconsistencies regarding the trigger for administrative hearings.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation supports compliance with the requirements of KRS 39E.990 by providing the procedure for the commission to assess penalties and notify applicable owners or operators of facilities of non-compliance.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will be clear and allow the facility owners or operators due process while also allowing a route to compliance, without an administrative hearing.

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

This administrative regulation will affect the Department of Military Affairs, the Kentucky Emergency Response Commission (KERC) and individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

(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 overall requirements of the regulated entities will not change. This amendment will clarify options for Title II facilities to achieve compliance when given a notice of non-compliance

This will also allow the KERC to ensure greater compliance with KRS 39E with a more streamlined and simple penalty assessment and collection procedure.

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

There is no additional cost to these entities unless they incur a fee or penalty per KRS 39E.990.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

These entities will be notified of non-compliance and have an opportunity to become compliant before incurring greater fees or penalties.

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

(a) Initially: None. The Department of Military Affairs administratively supports the KERC and this will not require additional costs. KERC fees are obtained through the required Tier II facilities fees. Those fees, and any penalties collected, then fund the KERC operation and a grant for Local Emergency Planning Committees (LEPC).

(b) On a continuing basis: See (5)(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KERC fees are obtained through the required Tier II facility fees. Those fees, and any penalties, fund the KERC operation and a grant for Local Emergency Planning Committees.

(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: No. The Department of Military Affairs currently administratively supports the KERC and will continue this support. This continuation will not require additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No. This administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulation will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

## FEDERAL MANDATE ANALYSIS COMPARISON

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

Contact Person: Corey Ann Howard Jackson

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

The "Emergency Planning and Community Right-To-Know Act of 1986" at 42 U.S.C. 11000-11050.

(2) State compliance standards.

KRS Chapter 39E.

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

Emergency Planning and Notification standards are located in 42 U.S.C. 11001  
Substances and facilities covered and notification are located in 42 U.S.C. 11003.  
Subtitle B, Sec. 311 (42 U.S.C. 11021) contains federal reporting requirements.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

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

## FISCAL NOTE

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

Contact Person: Corey Ann Howard Jackson

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(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Military Affairs and local emergency management planning committees (LEPCs). LEPCs are most likely to become aware of facilities that are not complying with KRS Chapter 39E.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.  
KRS 39E.990

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.  
None. The fund has already been established.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unknown. Unable to determine the number of penalties that may be collected. Penalties and fees which are collected are kept in a fund and used for the operation of the KERC and grants to the LEPCs that provide training, equipment, and planning.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?  
Unknown. See (3)(a) above.

(c) How much will it cost to administer this program for the first year?  
No additional cost will be incurred.

(d) How much will it cost to administer this program for subsequent years?  
No additional cost will be incurred.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No additional revenue will be generated by the regulations.

Expenditures (+/-): No additional expenditures will be incurred.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

No additional cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

No additional cost savings.

(c) How much will it cost the regulated entities for the first year?

No additional cost will be incurred if regulated entities comply with KRS Chapter 39E.

(d) How much will it cost the regulated entities for subsequent years?

No additional cost will be incurred if regulated entities comply with KRS Chapter 39E.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): No additional cost savings will be realized.

Expenditures (+/-): No additional costs will be incurred

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The administrative regulation will have no major economic impact.