



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

JACK CONWAY
ATTORNEY GENERAL

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CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

Michael Head
Director and Chief Hearing Officer
Division of Administrative Hearings
Cabinet for Health and Family Services
275 E. Main St.
HS 1E-A
Frankfort, KY 40621

Dear Mr. Head:

The Cabinet for Health and Family Services has requested a partial exemption for KRS Chapter 13B for its fair hearing procedures under 902 KAR § 18:040, which concern the Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) program hearings governed by 7 CFR § 246.9.

The Cabinet's request asks for an exemption from the KRS 13B.050(1) requirement that "the agency . . . shall give notice of the hearing to the parties not less than 20 days in advance of the date set for the hearing."

The Office of the Attorney General has determined that this request satisfies two grounds for an exemption as provided in KRS 13B.020(4). First, the 20 day notice requirement in KRS 13B.050(1) conflicts with a provision of a federal regulation with which the Cabinet must comply to permit persons within the Commonwealth to receive federal funds and other benefits. The provision of federal law with which the quoted portion of KRS 13B.050(1) conflicts is 7 CFR § 246.9(k)(3), which requires the recommended order in a WIC hearing to be issued "[w]ithin 45 days of the receipt for request for hearing." Second, conformity with the 20-day notice requirement of KRS 13B.050(1) from which exemption is sought is impractical as to deny due process because of undue delay in the conduct of administrative hearings. This is because the 20-day notice requirement of KRS



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13B.050(1) unduly delays the conduct of administrative hearings that must be held to decide if citizens of the Commonwealth are entitled to WIC benefits.

Because the Cabinet's request satisfies these two grounds for a partial exemption from the requirements of KRS Chapter 13B, the Office of the Attorney General approves this request for a partial exemption.

This partial exemption approval shall be referenced in the "regulations for alternate procedures" that, under KRS 13B.020(5), are to be "submitted to the Administrative Regulations Review Subcommittee." The Cabinet's regulations for alternate procedures also shall include a statement informing the public that a copy of this partial exemption approval letter is posted on the Cabinet's official website.

Sincerely,

JACK CONWAY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Robyn R. Bender", written over a horizontal line.

Robyn R. Bender
Assistant Deputy Attorney General