

Final 11-24-2020

SUGGESTED SUBSTITUTE

**BOARDS AND COMMISSIONS
Board of Pharmacy**

201 KAR 2:320. Requirements for [Permit] [or] manufacturers and virtual manufacturers.

RELATES TO: KRS 315.010, 315.020(2), 315.036, [and] 315.191(1)(a), 315.400, [and] 315.404[.]

STATUTORY AUTHORITY: KRS 315.020(2), 315.036, 315.191(1), 315.400[.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.036 and 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate the manufacturers and virtual manufacturers of drugs and drug-related devices. [~~KRS 315.036 authorizes the board to promulgate administrative regulations regarding manufacturer permits and the maintenance and reporting of accurate records of all drugs manufactured, received and sold. KRS 315.020(2) authorizes the Board to promulgate administrative regulations regarding the pharmacist-in-charge.~~] This administrative regulation establishes the requirements for [a] the regulation of manufacturers and virtual manufacturers [~~manufacturer permit and for functioning as a manufacturer~~].

Section 1. Definitions [Requirements].

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and **drug**-related device.

(2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(3) "**Illegitimate Product**" is defined by KRS 315.400(11).

(4) "Manufacturer or virtual manufacturer" is defined by KRS 315.010(13)~~[means, in addition to KRS 315.010(13), any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, conversion, or processing of a drug either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both and includes any packaging or repackaging of a drug or the labeling or relabeling of its container]~~.

(5) "**Product**" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(6)~~(4)~~ "Relabeler" means:

(a) Any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name; **and**

(b) [~~This~~] Does not include establishments that do not change the original labeling, but merely add their own name.

(7)~~(5)~~ "Repackager" is defined by~~[has the same meaning as in]~~ KRS 315.400(16).

(8)~~(6)~~ "Suspect product" means a **component, prescription drug, or drug-related device**~~[product]~~ for which there is reason to believe that such **component, prescription drug, or drug-related device** ~~[product]~~:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the **component, prescription drug, or drug-related device**~~[product]~~ would result in serious adverse health consequences or death to

humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the **component, prescription drug, or drug-related device[product]** would result in serious adverse health consequences or death to humans or animals.

Section 2. Requirements.

(1) A manufacturer or virtual manufacturer engaging in manufacturing in the Commonwealth shall apply for a permit from the Board of Pharmacy in accordance with KRS 315.036 and this administrative regulation.

(2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a permit holder shall not be required to obtain a permit under this section when the agent or employee is acting in the usual course of business or employment.

(4) A permit shall not be issued or renewed unless the applicant [or its officers] demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official [current year] United States Pharmacopoeia (USP) compendium requirements, **USP Chapter 659, Packaging and Storage Requirements as incorporated by reference in 201 KAR 2:105.** Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components and [prescription] drugs and **drug-related devices**;

(b) Separation [Physical separation] and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or otherwise recalled components and drugs and **drug-related devices [merchandise]** until they are destroyed or returned;

(c) Providing accurate and precise records of all components and drugs and **drug-related devices [goods]** shipped or received including source or and recipient, date, quantity, itemized description, and any other information pertinent to the [transaction]-receipt and distribution or disposition; **and**

(d) Providing proof of registration [with the state controlled substance authority, and] with the U.S. Food and Drug Administration (FDA), **[and]** the U.S. Drug Enforcement Administration (DEA), and compliance with all [DEA] federal, state, and local laws and regulations.**[-; and]**

(5) Manufacturers and virtual manufacturers **shall[must]** comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), **21 U.S.C. 360eee-360eee-4.**, if applicable.

(6) Manufacturers and virtual manufacturers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify FDA, the Board of Pharmacy, and recipient(s) of illegitimate product, if illegitimate product is found.

(7) All virtual manufacturers shall be exempt from the requirements of **subsection[Section] 2(4)(a) and (b) of this Section, and Section 5(1)(a) and (b) and (2)(a) and (b) of this administrative regulation.**

Section [2]3. Qualifications for Permit.

(1)[(a)] The [Kentucky] Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacture or virtual manufacture[manufacturer] of [prescription] drugs and **drug-related devices** within the Commonwealth:

(a)[4.] Any convictions of the officers of the applicant under any federal, state, or local laws relating to drugs, **including[to include]** drug samples and controlled substances;

(b) Any felony convictions of the applicant or its officers under federal, state, or local laws;
(c) ~~2.~~ The applicant's~~applicant's~~ and its officers' past experience in the manufacture or virtual manufacture of ~~prescription~~ drugs and drug-related devices, including drug samples and controlled substances;

~~3.~~ The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or virtual drug manufacturing;

~~4.~~ ~~(d)~~ Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant or its officers for the manufacture or virtual manufacture of any drugs and drug-related devices, including drug samples and controlled substances;

~~5.~~ ~~(e)~~ Compliance with the requirements under any previously granted license or permit, if any; and

~~6.~~ ~~(f)~~ Compliance with requirements to maintain or make available to the [Kentucky] Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation [section].

~~(b)~~ The [Kentucky] Board of Pharmacy shall have the right to deny a permit to an applicant or its officers if it determines that the granting of that permit would not be in the public interest based on health and safety considerations ~~for any reason established in KRS 315.121~~.

~~(3)~~ A permit shall not be issued pursuant to this administrative regulation unless the applicant ~~or its officers~~ has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is ~~and its officers are~~ in compliance with all applicable federal, ~~and~~ state, and local laws and regulations relating to drugs and drug-related devices; and

(b) That the applicant is ~~and its officers are~~ equipped as to land, buildings, and security to properly carry on the business described in the application. [

~~(3) A permitted manufacturer may sell or distribute federal legend drugs only to the following:~~

~~(a) A currently permitted manufacturer;~~

~~(b) A currently licensed wholesale distributor;~~

~~(c) A currently permitted pharmacy;~~

~~(d) A currently licensed practitioner;~~

~~(e) A currently licensed hospital, but only for use by or in that hospital; or~~

~~(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.]~~

(4) A permit issued pursuant to this administrative regulation [holder] may be disciplined, suspended, or revoked for failure to comply with the provisions of KRS 315.020, 315.036, 315.400 ~~pursuant to KRS 315.121~~, or this administrative regulation.

(5) No permit shall fail to designate a pharmacist-in-charge.

Section 4~~3~~. Application, Fees~~;~~, Renewals.

(1) An application for a permit shall be submitted to the Board of Pharmacy on the f ~~Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer [(KBP M 5:09)].~~ ~~["~~

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the applicant;

(b) All trade or business names used by the applicant;

(c) Addresses, telephone numbers, and the names of the ~~contact~~ persons for the facility used by the permit holder ~~permittee~~ for the storage, handling, and manufacturing or virtual manufacturing of drugs and drug-related devices ~~prescription drugs~~;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the permit holder ~~permittee~~, including;

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of

the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to manufacture, virtual manufacture or possess [~~prescription~~] drugs and drug-related devices.

(4) All permits shall:

(a) Expire on September 30 following the date of issuance; and

(b) Be:

1. Renewable annually thereafter upon completion of the [~~Renewal~~] [~~proper~~] Application to Operate as a Manufacturer or Virtual Manufacturer that is accompanied by the renewal fee set forth in 201 KAR 2:050; and

2. Nontransferable.

Section [4]5. Standards.

(1) Facilities.

(a) All facilities [~~buildings~~] in which components and [~~legend~~] drugs and drug-related devices are labeled, relabeled, packaged, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities [~~Buildings~~] shall meet all applicable federal, state, and local standards. The facility shall [~~have a~~] quarantine components and [~~area for storage of prescription~~] drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, [~~or that are in immediate or sealed secondary containers that have been opened~~].

(c) A facility shall not be located in a residence.

(2) Security.

(a) A manufacturer shall be equipped with an alarm system to detect entry after hours.

(b) A manufacturer shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components [~~legend~~] and drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the manufacture or virtual manufacture [~~manufacture~~] of [~~prescription~~] drugs and drug-related devices.

(e) Lists of officers, directors, managers and other persons in charge of manufacture or virtual manufacture, distribution or disposition, storage, and handling of components and [~~prescription~~] drugs and drug-related devices, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records [~~of transactions~~] regarding the receipt and distribution or disposition of components [~~legend~~] and drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period six (6) [~~of two (2)~~] years following disposition of the drugs. These records shall include:

1. The business name and address of the source of the components and drugs and drug-

related devices including the ~~[name and principal address of the]~~ seller or transferor and the address of the location from which the components and drugs and **drug-related devices** were shipped;

2. The business name and address to whom components and drugs and **drug-related devices** were shipped including the purchaser and the address of the location where the components and drugs and **drug-related devices** were shipped;

3[2]. The identity and quantity of the components and drugs and **drug-related devices** received and distributed or disposed of; and

43[4]. The dates of receipt and distribution or disposition-~~[other distribution]~~ of the components and drugs and **drug-related devices**.

(b) The manufacturer or virtual manufacturer shall keep production and process control records for a period of six (6) years following completion of manufacturing.

(c[b]) Records described in this section that are kept at the inspection site or that can be **readily retrievable within forty-eight (48) hours**~~[immediately retrieved]~~ by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(d) Manufacturers and virtual manufacturers shall maintain an ongoing list of verified persons and businesses with whom they do business.

(e) A permitted manufacturer and virtual manufacturer may sell or distribute drugs and **drug-related devices** only to the following:

1. A currently permitted manufacturer or virtual manufacturer;

2. A currently licensed third-party logistics provider;

3. A currently licensed wholesaler;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager or relabeler;

8. A currently licensed hospital, but only for use by or in that hospital **pursuant to KRS 217.182(1); [or]**

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes **pursuant to KRS 217.182(1); or**;

10. **Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.**

~~(d)~~(f) Manufacturers and virtual manufacturers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any component or drug or **drug-related device** to the Board of Pharmacy and **if**~~where~~ applicable the FDA and DEA.

(4) Written policies and procedures, **requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.**

(a) A manufacturer or virtual manufacturer shall establish, maintain, and adhere to written policies and procedures for ~~[the]~~ all operations including production, process controls, receipt, security, storage, inventory, and distribution or disposition of components and ~~[prescription]~~ drugs and **drug-related devices**; ~~[including policies and procedures for identifying, recording, and reporting losses or thefts and to ensure that the manufacturer prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency].~~

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the manufacturer and virtual manufacturer prepares for, protects against, and handles crisis situations that affect the security, or operation, and records of the facility permit holder. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) [(b)] There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) [(c)] There shall be written policies and procedures to assure that any outdated stock components or drugs or **drug-related devices** or any [stock] components or drugs or **drug-related devices** with an expiration date that, in the manufacturer's or virtual manufacturer's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return or otherwise destroyed, and this shall be documented.

(f) [(d)] There shall be written policies and procedures by which the manufacturer or virtual manufacturer exercises control over the shipping and receiving of all-[stock] components and drugs and **drug-related devices** within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy, FDA, and recipient(s) of illegitimate product.

(5) Returned, damaged, and outdated [prescription] drugs and **drug-related devices**. A manufacturer [manufacturer's] or virtual manufacturer [operation] shall maintain and follow a written procedure to assure the proper handling and disposal of returned components or drugs or **drug-related devices** [goods]. If conditions under which a [prescription] drug or **drug-related device** has been returned cast doubt on the drug's or **drug-related device's** safety, identity, strength, quality, or purity, then the drug or **drug-related device** shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug or **drug-related device** meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or **drug-related device** has been returned cast doubt on the drug [drug's] or **drug-related device's** safety, identity, strength, quality, or purity, the manufacturer or virtual manufacturer shall consider, among other things, the conditions under which the drug or **drug-related device** has been held, stored, or shipped before or during its return and the condition of the drug or **drug-related device** and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A manufacturer or virtual manufacturer shall adopt, maintain, and follow a written policy and procedure for handling recalls and withdrawals of [products] components or drugs or **drug-related devices**. The policy shall cover all recalls and withdrawals [of drug products] due to:

(a) Any voluntary action on the part of the manufacturer or virtual manufacturer;

(b) The direction of the FDA [Food and Drug Administration], or any other federal, state, or local government agency; and

(c) Replacement, relabeling, or repackaging of existing component or drug or **drug-related devices** [merchandise with an improved product or new package design].

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock. [

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the first expiration inventory is distributed first.]

(b)[(e)] A manufacturer or virtual manufacturer shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to [prescription] drug product and **drug-related devices** salvaging or reprocessing.

Section 6[5]. Pharmacist-in-charge. A manufacturer or virtual manufacturer shall designate a

pharmacist-in-charge of the facility [~~who shall be responsible to the board for security and recordkeeping~~]. The pharmacist-in-charge shall review the security and records by conducting and documenting an on-site inspection not less than quarterly.

Section 7[6]. Violations.

(1) A drug manufacturer or virtual manufacturer shall not distribute [~~legend~~] prescription drugs and drug-related devices directly to a consumer or a patient [~~or operate in a manner that endangers the public health~~].

(2) A manufacturer or virtual manufacturer shall not operate in a manner that endangers the public health.

(3) [(2)] Violation of any of these provisions shall be grounds for the discipline, suspension, or revocation of the permit [pursuant to KRS 315.124].

Section 8[7]. Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer", May 2020; and

(b) "Renewal Application to Operate as a Manufacturer or Virtual Manufacturer", May 2020[6/09], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, [Spindletop Administrative Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511,]Monday through Friday, 8 a.m. through 4:30 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

The agency needs to file **one (1) clean copy** of the following at the time it files this staff suggested amendment:

- **The "Renewal Application to Operate as a Manufacturer or Virtual Manufacturer"**
 - **Updates the edition date to May 2020**
 - **Updates the Renewal fee from \$100 to \$125**