

902 KAR 100:170. Proceedings.

RELATES TO: KRS 211.842-211.852, 211.990(4)

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050, 211.090, 211.844, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. The Cabinet for Health Services is authorized by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. The purpose of this administrative regulation is to provide for the conduct of proceedings before the cabinet involving the possession, use, and transfer of radioactive materials and radiation producing machines.

Section 1. Applicability. The provisions of this administrative regulation shall apply to administrative proceedings involving the use, possession or transfer of radioactive materials or radiation producing machines within Kentucky.

Section 2. Administrative Examination of License Applications. Applications for the issuance of a license, amendment of a license at the request of the holder, transfer of a license and renewal of a license shall be reviewed by the cabinet. The applicant may be required to submit additional information and may be requested to confer informally regarding the application. The cabinet shall give to others notice of the filing of applications as is required under the applicable provisions of these administrative regulations and additional notices as it deems appropriate.

Section 3. Action on License Applications, Hearings. (1) The cabinet shall, upon request of the applicant or intervenor, and may upon its own initiative, direct the holding of a formal hearing prior to taking action on the application. If no prior formal hearing has been held and no notice of proposed action has been served as provided in subsection (2) of this section, the cabinet shall direct the holding of a formal hearing upon receipt of a request therefor from the applicant or intervenor within thirty (30) days after the issuance of a license or other approval or a notice of denial.

(2) In cases it deems appropriate, the cabinet may cause to be served upon the applicant a notice of proposed action upon his application and shall cause copies thereof to be serviced upon intervenors or others entitled to or requesting notification. The notice shall state the terms of the proposed action. If a formal hearing has not been held prior to the issuance of the notice, the cabinet shall direct the holding of a formal hearing upon the request of the applicant or an intervenor received within fifteen (15) days following the service of the notice.

Section 4. Effect of Timely License Renewal Applications. If at least thirty (30) days prior to the expiration of an existing license authorizing activity of a continuing nature, a licensee files an application for a renewal or for a new license for the activity so authorized, the existing license shall not be deemed to have expired until the application has been finally determined.

Section 5. Notice of Violation. (1) Prior to the institution of proceedings for alleged violation of provisions of these administrative regulations, the Act, or the conditions or terms of a license or registration, the licensee, registrant, or other person as appropriate shall be served with a written notice of violation, except as specified in subsection (2) of this section. The notice of violation shall state the alleged violation and shall require that the licensee submit, within fifteen (15) days of the date of the receipt of the notice or other time as specified in the notice, a written explanation or statement in reply including:

(a) Corrective steps which have been taken by the licensee or registrant and the results achieved;

(b) Corrective steps to be taken;

(c) The date when correction and compliance will be achieved; and

(d) An admission or denial of the violation and the reason(s) for the violation(s) if admitted and required in the notice.

(2) If in the opinion of the cabinet the public health, interest, or safety so requires, or the violation is willful, the notice provided in this section may be omitted.

Section 6. Failure to Respond to Notice of Informal Hearing. (1) In the event the person to whom the notice of violation has been issued fails to respond within the prescribed time, the Secretary for Health Services, or his designee, may set the matter down for an informal hearing as described in Section 15 of this administrative regulation.

(2) Failure of the person to whom the notice was sent to appear at the informal hearing may result in:

(a) The registration or license of the person being modified, suspended or revoked;

(b) The recapture, quarantine or seizure of the radiation source;

(c) The inactivation of radiation producing machines; or

(d) Other appropriate action deemed necessary by the cabinet to protect public health and safety.

(3) Any person aggrieved by the action of the cabinet under this section may, within thirty (30) days after receipt of notice of the action, request a formal hearing before the secretary or his designee.

Section 7. Notices and Orders. In a case described in Section 5 of this administrative regulation, the cabinet may issue the licensee, registrant, or other person as appropriate a notice to comply with the administrative rules and administrative regulations of the cabinet or an order issued by the cabinet. The terms of the notice or order may be effective immediately or at a time specified in the notice or order. The notice or order shall apprise the licensee or registrant that he has the right to request a hearing within thirty (30) days by making a written request therefor to the cabinet. In the event a request for a hearing is received by the cabinet within the time specified, a notice of hearing shall be issued by the cabinet in accordance with Section 5 of this administrative regulation.

Section 8. Emergency Notices and Orders. If the cabinet finds that a condition exists requiring immediate action to protect the public health or welfare, the cabinet may issue a notice or an order reciting the existence of the condition and requiring that action be taken as is deemed necessary by the cabinet to protect the public health and welfare. The notice or order may be issued by the Manager, Radiation Control, on behalf of the cabinet. The notice or order shall be effective immediately. Persons to whom a notice or an order is directed shall comply therewith immediately, but applicants for hearings to the cabinet shall be afforded a hearing in accordance with 902 KAR 1:400. On the basis of a hearing, the cabinet shall continue, revoke, or modify a notice or order.

Section 9. Enforcement of Obedience to Orders. If the failure on the part of a person to comply with a lawful order of the cabinet or with process or if the refusal of a witness to testify concerning a matter on which he may be lawfully interrogated, the circuit court or a judge thereof having jurisdiction may, on application of the cabinet, compel obedience by proceedings as in contempt cases as provided by KRS 211.230.

Section 10. Recapture, Quarantine, or Seizure of Sources of Radiation. If a case of extreme importance to the health and safety of the public, the cabinet may, without prior notice of hearing, recapture, quarantine, or seize a source of radiation, if as promptly as possible and not later than ten (10) days from the recapture, quarantine, or seizure, the cabinet shall serve upon the person from whom the sources were recaptured, quarantined, or seized an appropriate order depriving that person of possession or use of the sources together with a notice which shall give that person the right to request a hearing, concerning the order depriving him of the use of the sources and the restoration of the sources to him pursuant to 902 KAR 1:400.

Section 11. Filing Papers. Unless otherwise specified, papers required to be filed with the cabinet shall be filed with the Manager, Radiation Control, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. Papers required to be filed with the cabinet shall be deemed filed upon actual receipt by the cabinet at the place specified accompanied by proof of service upon the parties required to be served as described in Section 14 of this administrative regulation. Unless otherwise specified, the filing if by mail or telegram shall upon actual receipt be deemed complete as of the date of deposit in the mail or with the telegraph company. Papers may be filed in person at the cabinet's offices, 275 East Main Street, Frankfort, Kentucky 40621.

Section 12. Computation of Time. In computing a period of time prescribed or allowed by an applicable rule or administrative regulation, notice or order, the provisions of KRS 446.030 shall apply.

Section 13. Extension of Time. (1) Extensions of time for filing or performing an act required or allowed to be done, and continuances of a proceeding or hearing, may be granted in the discretion of the cabinet upon application and good cause shown by a party, or upon the initiative of the cabinet or stipulation of the parties.

(2) If a hearing officer has been designated for hearing, the discretion in granting extensions of time and continuances in matters relating to the hearing shall rest with the hearing officer in accordance with KRS Chapter 13B.

Section 14. Intervention. (1) A person whose interests may be affected by a proceeding may file a petition to intervene pursuant to KRS 13B.060.

Section 15. Informal Hearing Procedure. The procedure to be followed in informal hearings shall be as best serve the purpose of the hearing. An informal hearing may consist of the submission of written data, views, or arguments with or without oral argument, or may partake of the nature of a conference or may assume some of the aspects of a formal hearing in which the subpoena of witnesses and the production of evidence may be permitted or directed.

Section 16. Administrative Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 17. Answer. (1) Within the time allowed by the notice of hearing for filing and serving an answer, the answer of a licensee, applicant or registrant shall fully advise the cabinet and other parties of the nature of the defense or other position of the answering party, the issues he proposes to argue and those he does not argue, and whether or not he proposes to appear and present evidence. If facts are alleged, the answer shall admit or deny specifically each allegation of fact; or if knowledge is lacking, the answer may so state and the statement shall serve as a denial. Allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative

defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be argued. The answer of an intervenor shall fully advise the cabinet and other parties of his position and whether he proposes to appear and present evidence.

(2) If a party does not oppose an order or proposed action of the cabinet embodied in or accompanying the notice of hearing or does not wish to appear and give evidence at the hearing, the answer shall so state. In lieu of appearing, the party may, if he chooses, submit a statement of reasons why the proposed order or sanction shall not be issued or shall be different than proposed, and the cabinet shall attribute weight as it deems deserving to the written reasons.

Section 18. Reply. In appropriate cases the cabinet may file and serve a reply to the answer or, if the answer affects other parties to the proceeding, the cabinet or the hearing officer may permit these parties to file and serve a reply.

Section 19. Admissions. After an answer has been filed, a party may file and serve upon the opposing side a written request for the admission of the genuineness and authenticity of relevant documents described in or attached to the request or for the admission of the truth of relevant matters of fact stated in the request. Each matter for which an admission is requested shall be deemed admitted unless within the time designated in the request, but not less than ten (10) days after service thereof or further time as the hearing officer may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying the matters upon which the admission is requested or setting up the reasons why he cannot truthfully admit or deny the matters.

Section 20. Waiver of Procedures. The parties to a hearing may agree to waive one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the cabinet.

Section 21. Public Records: Exceptions. Except as specified in this section records shall be deemed public records and shall be open to inspection by the public. The following are not to be considered public records which are available for public inspection:

(1) Documents relating to personnel matters and medical and other personnel information, which, under general governmental personnel practices, are not normally made public.

(2) Intra-agency and interagency communications including memoranda reports, correspondence, and staff papers prepared cabinet personnel, or by other government agency for use within the cabinet or within the executive branch of the government.

(3) Documents classified as restricted data under the Atomic Energy Act of 1954 or classified under Executive Order of the President of the United States as restricted data.

(4) Correspondence received in confidence by the cabinet relating to an alleged or possible violation of a statute, rule, administrative regulation, order, license or permit.

(5) Other documents involving matters of internal cabinet management.

(6) Other matters required by law to be kept confidential or not available to public inspection.

(7) Names of individuals who have received exposures to radiation.

(8) The cabinet may withhold documents or parts thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. This withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document. Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. If the applicant is responsible for the preparation of the document, he shall insofar as is possible segregate in separate paper the information for

which the special treatment is requested. The cabinet may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the persons concerned. If the request is denied, the applicant shall be notified thereof with a statement of the reasons.

Section 22. Hearings: Formal and Informal. (1) Formal hearings shall be held adjudication of rights.

(2) Informal hearings shall normally be held for the purpose of obtaining necessary or useful information, including but not limited to cases as described in Section 6 of this administrative regulation. (1 Ky.R. 421; eff. 2-5-75; Am. 2 Ky.R. 481; eff. 4-14-76; 12 Ky.R. 1419; eff. 3-4-86; 18 Ky.R. 1581; eff. 1-10-92; 23 Ky.R. 2490; eff. 8-1-96.)