

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the December Meeting

December 16, 2019

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 16, 2019, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Perry B. Clark, and Alice Forgy Kerr; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Rob Akers, Cassie Trueblood, Education Professional Standards Board; Sharron Burton, Personnel Cabinet; Jeremy Branham, Richard Dobson, Department of Revenue; Phil Dietz, Chuck O'Neil, John Wood, Board of Emergency Medical Services; Jay Hall, Evan Jones, Department of Tourism; Rhonda Nix, Department of Tourism; Steve Fields, Rich Storm, Jessica Tyler, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Dennis Hatfield, Bert Gibbons, Michael Mullins, Department for Natural Resources; Patrick O' Connor, Department of Insurance; Stephanie Brammer-Barnes, Office Inspector General.

The Administrative Regulation Review Subcommittee met on Monday, December 16, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Educator Preparation

16 KAR 6:031. Repeal of 016 KAR 006:030. Rob Akers, associate commissioner, and Cassie Trueblood, counsel, represented the board.

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

101 KAR 2:210 & E. Plan Year Handbook for the Public Employee Health Insurance Program. Sharon Burton, deputy executive director, Office of Legal Services, represented the office.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Sales and Use Tax; Registration and Collection

103 KAR 25:050. Factors and agents. Jeremy Branham, consultant, and Richard Dobson, executive director, Office of Sales and Excise Taxes, represented the department.

In response to a question by Co-Chair West, Mr. Dobson stated that this package of administrative regulations included updates in accordance with Kentucky tax reform and updates for clarity.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 25:060. Temporary vendors and transient merchants.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:030. Optometrists, oculists and opticians.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 26:050. Common carriers.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 26:110. Motor carrier repair and replacement parts.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:080. Meals served by railroads, airlines, and other transportation companies.

103 KAR 27:100. Motor vehicles, manufactured homes, mobile homes, and trailers.

103 KAR 27:220. Restaurant transactions.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:090. Tangible personal property; security instrument enforcement.

Sales and Use Tax; General Exemptions

103 KAR 30:270. Oil and gas extraction machinery.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Alcoholic Beverages

103 KAR 40:091. Repeal of 103 KAR 040:091.

Selective Excise Tax; Cigarettes

103 KAR 41:031. Repeal of 103 KAR 041:030, 103 KAR 041:050, 103 KAR 041:060, and 103 KAR 041:200.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM:
Kentucky Board of Emergency Medical Services

202 KAR 7:020. Board organization. Phil Dietz, chair; Chuck O'Neal, deputy executive director; and John Wood, counsel, represented the board.

In response to questions by Co-Chair West, Mr. Wood stated that changes to quorum requirements were to compensate for fluctuations in the number of board members required as a result of executive orders, not because of problems with attendance.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to include material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Travel Development

300 KAR 1:010 & E. Procedure for Tourism Marketing Incentive Program. Jay Hall, acting commissioner; Evan Jones, assistant general counsel; and Rhonda Nix, assistant director, represented the department.

In response to a question by Co-Chair West, Mr. Hall stated that this administrative regulation was being amended for equity pertaining to the Matching Funds Program. The formula for distribution of the annual 2.5 million dollars for the Matching Funds Program was being amended to include expenditures related to room nights and economic impact, rather than population and tourism expenditures.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, and CONFORMITY paragraph; and Sections 1 through 3, 5 through 9, and 11 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:100. Special commission permits. Steve Fields, staff attorney; Rich Storm, commissioner; and Jessica Tyler, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Industrial Hemp

302 KAR 50:050. THC sampling and testing, post-testing actions. Clint Quarles, counsel, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that this administrative regulation updated the analysis method for THC levels in hemp to improve accuracy and to remove an unnecessary step. The University of Kentucky was responsible for and would continue to be responsible for performing the actual analysis for THC levels in hemp. This change was not expected to expedite results.

In response to questions by Senator Clark, Mr. Quarles stated that the classification of “certified seed” did not directly indicate THC levels. THC expectations related to seed were based on the genetic pedigree and THC levels in the ancestor plants. THC levels were

also affected by environmental conditions, such as growing conditions and weather; therefore, it was impossible to predict the exact THC levels to expect from seed. The classification of “certified seed” indicated varietal protection. The zero and three-tenths (0.3) percent THC threshold for hemp was established at the federal level, and Kentucky was required to adhere to that standard. Seed itself could not be analyzed for THC levels because seeds did not have THC levels. Analysis occurred only after the plant reached a certain point in the growth cycle. Crops were only destroyed if required based on the federal limit. THC levels could fluctuate even among different parts of the same field. Exceedances of the THC level were not frequent. Some exceedances were as high as two (2) percent.

In response to a question by Representative Marzian, Mr. Quarles stated that analysis had to occur at a certain point in the growth cycle. Crops were only destroyed if required based on the federal limit.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department of Natural Resources:
Division of Oil and Gas

805 KAR 1:001. Definitions for 805 KAR Chapter 001. Dennis Hatfield, division director, represented the division. Bill Barr, legislative affairs chair, Kentucky Oil and Gas Association, and Tom FitzGerald, Kentucky Resources Council, appeared in support of these administrative regulations.

In response to questions by Co-Chair West, Mr. Hatfield stated that this package of administrative regulations was developed primarily by the Kentucky Oil and Gas Workgroup, which was composed of various stakeholders for the purpose of modernizing these programs. Most changes were the result of House Bill 199 from the 2019 Regular Session of the General Assembly. There were also reorganizational changes related to the Red Tape Reduction Initiative. Mr. Barr stated that this package of administrative regulations both modernized and reorganized requirements. Mr. FitzGerald stated that the agency amendment to 805 KAR 1:170 was the result of consensus among stakeholders to allow more flexibility pertaining to fluid pits. Fluid pit liners would be necessary for pits in the Eastern parts of Kentucky where there tended to be karst geological conditions; however, liners would not necessarily be required in clay areas in Western parts of Kentucky. The agency amendment was not intended to be related to fracking. Mr. Barr stated that these pits were typically used for very short-term processes that lasted days or a few weeks prior to reclamation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and

Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:020. Protection of fresh water zones.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:050. Bonds, requirements, cancellation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:060. Plugging wells.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:110. Underground injection control.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 15 and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 4 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:140. Directional and horizontal wells.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Oil and Gas

805 KAR 1:160. Posting of an identification sign and a danger sign on a crude oil tank battery site.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:170. Content of the operations and reclamation plan.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 5 through 7 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to: (a) establish that, if site conditions necessitate that pits be constructed in fill areas, the division shall first determine if the location is stable to prevent failure of the pit; (b) reduce from twelve (12) mil to ten (10) mil, the required fluid pit liner thickness; and (c) authorize a waiver of fluid pit liner requirements under specific circumstances. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:180. Production reporting.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:190. Gathering lines.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2, 6, 10 through 12, 14, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:200. General information associated with oil and gas permits.

A motion was made and seconded to approve the following amendments: to amend Section 7 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

Division of Mine Reclamation and Enforcement: Explosives and Blasting

805 KAR 4:050. Records

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Miner Training, Education and Certification

805 KAR 7:101. Repeal of 805 KAR 007:100.

Sanctions and Penalties

805 KAR 9:011. Repeal of 805 KAR Chapter 009.

PUBLIC PROTECTION CABINET: Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:230. Standards for safeguarding customer information. Patrick O'Connor, deputy commissioner, represented the department.

In response to a question by Co-Chair West, Mr. O'Connor stated that most of the changes to this package of administrative regulations were technical in nature.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060. Registration of service contracts for consumer products.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Investments

806 KAR 7:021. Repeal of 806 KAR 007:020.

Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:265. Rental vehicle agent license.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:280. Prescribed pediatric extended care centers. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

In response to a question by Representative Marzian, Ms. Brammer – Barnes stated that Home of the Innocents would not be affected by this administrative regulation; however, the facilities that were affected by this administrative regulation were currently treating increased numbers of infants. This administrative regulation applied to facilities that treated children with complex medical needs. There were currently nine (9) licensed facilities of this type, where care was provided by teams of licensed RNs, LPNs, and nurse assistants.

In response to a question by Co-Chair West, Ms. Brammer – Barnes stated that the primary change to this administrative regulation was the result of a request from these facilities. Two (2) RNs were still required to be on-site at the facility. This was primarily a cost-saving measure.

The following administrative regulations were deferred or removed from the December 16, 2019, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:185. Hunter education.

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian: Livestock Sanitation

302 KAR 22:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish.

302 KAR 22:020. Restriction of transportation of livestock, poultry, and fish.

302 KAR 22:040. Carcass transport and composting.

302 KAR 22:080. Feed restrictions.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:002. Definitions for 405 KAR Chapter 005.

405 KAR 5:032. Permit requirements.

General Provisions

405 KAR 7:040. General obligations of operators and permittees.

405 KAR 7:050. Coal processing waste disposal sites.

Permits

405 KAR 8:010. General provisions for permits.

405 KAR 8:030. Surface coal mining permits.

Bond and Insurance Requirements

405 KAR 10:050. Bond forfeiture.

Performance Standards for Surface Mining Activities

405 KAR 16:100. Permanent and temporary impoundments.

405 KAR 16:210. Post mining land use capability.

Performance Standards for Underground Mining Activities

405 KAR 18:100. Permanent and temporary impoundments.

405 KAR 18:220. Post mining land use capability.

Special Performance Standards

405 KAR 20:040. Prime farmland.

Operation of Two (2) Acres or Less

405 KAR 26:011. Repeal of 405 KAR 026:001.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission: Motorcycle Safety

500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030E. Ignition interlock.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:260. Treatment guidelines.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare

902 KAR 20:450. Ambulatory infusion agencies.

Department for Community Based Services: Child Welfare

922 KAR 1:330 & E. Child protective services.

The subcommittee adjourned at 1:40 p.m. The next meeting of the subcommittee is tentatively scheduled for January 13, 2020, at 1 p.m.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.