

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the October Meeting

October 13, 2020

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 13, 2020, at 1:00 PM, in Room 171 of the Capitol Annex. Representative David Hale, 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, Alice Forgy Kerr, and Reginald Thomas; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Stephen McMurry, UK Agricultural Experiment Station; Todd Allen, Cassie Trueblood, Education Professional Standards Board; Mary Elizabeth Bailey, Rosemary Holbrook, Personnel Cabinet; Larry Hadley, Board of Pharmacy; Leanne Diakov, Board of Medical Licensure; David Trimble, Board of Chiropractic Examiners; Amy Barker, Natasha Burikhanov, Brandon Lynch, Department of Corrections; Robin Kinney, Matt Ross, Department of Education; John Wood, Michael Kurtsinger, Kentucky Fire Commission; DJ Wasson, Department of Insurance; Julie Brooks, Donna Little, Kelli Rodman, Department for Public Health; Laura Begin, Tara Cecil, Melanie Taylor, Department for Community Based Services.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

The Administrative Regulation Review Subcommittee met on Tuesday, October 13, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

AGRICULTURAL EXPERIMENT STATION: Fertilizer

12 KAR 4:075. Licenses and fertilizer product registration. Stephen McMurry, program director, represented the Agricultural Experiment Station.

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

12 KAR 4:080. Plant nutrient guarantees and labeling.

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

12 KAR 4:091. Repeal of 012 KAR 004:090, 004:120, and 004:160.

12 KAR 4:100. Slowly released nutrients; labeling.

12 KAR 4:110. Definitions for 012 KAR Chapter 004.

12 KAR 4:130. Investigational allowances.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 4:140. Monetary penalties.

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.

12 KAR 4:170. Maximum chlorine guarantees for tobacco fertilizers.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates

16 KAR 3:090. Certifications for advanced educational leaders. Todd Allen, general counsel, and Cassie Trueblood, policy advisor and special counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 3, 5, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Alternative Routes to Certification

16 KAR 9:010. Professional certificate for exceptional work experience.

A motion was made and seconded to approve the following amendments: to amend 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.

PERSONNEL CABINET: Organ Donor Leave

101 KAR 6:010 & E. Living organ donor leave. Mary Bailey, commissioner, and Rosemary Holbrook, assistant general counsel, represented the cabinet.

In response to questions by Representative Marzian, Ms. Bailey stated that living organ donor provisions provided state employee leave with pay. The amount of leave varied, depending on the type of donation, but all leave was provided regardless of the employee's sick leave balance.

Co-Chair Hale stated that this administrative regulation was very important.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:311. Compounding for veterinary use. Larry Hadley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 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.

Board of Medical Licensure

201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. Leanne Diakov, general counsel, represented the board.

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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 9:200. National Practitioner Data Bank Reports.

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

201 KAR 9:210. Criminal background checks required for all new applicants.

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

201 KAR 9:230. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.

201 KAR 9:240. Emergency orders and hearings; appeals and other proceedings.

201 KAR 9:260. Professional standards for prescribing, dispensing, and administering controlled substances.

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

201 KAR 9:360. Continuing education requirements for physician assistants.

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.

Board of Chiropractic Examiners

201 KAR 21:041. Licensing, standards, fees. David Trimble, counsel, represented the board.

In response to a question by Representative Marzian, Mr. Trimble stated that the fees established in this administrative regulation were not being changed.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter

13A; and (2) to amend Section 7 to update material incorporated by reference. Without objection, and with the agreement of the agency, the amendments were approved.

201 KAR 21:042. Standards, application and approval of continuing education.

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 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

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

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:120. Blackburn Correctional Complex. Amy Barker, assistant general counsel, and Brandon Lynch, program administrator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to clarify provisions, correct citations, update edition dates, and comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:270E. SEEK funding formula. Todd Allen, general counsel, and Robin Kinney, associate commissioner, represented the department.

In response to a question by Representative Marzian, Mr. Allen stated that 702 KAR 3:270E and 702 KAR 7:125E covered the current school year and into 2021. These changes gave local school boards flexibility to determine the best mode of education, whether in-person attendance, remote learning, or a combination. "Attendance" was temporarily being changed to "participation" to accommodate the various modes of education.

In response to questions by Representative Frazier, Ms. Kinney stated that funding was not affected by which mode of education a local school board chose. Because these emergency administrative regulations would expire on April 10, 2021, it might be

necessary to implement further legislative relief during the 2021 Regular Session of the General Assembly. Lacking a 2021 legislative remedy, it might be necessary to take further Executive Branch action.

School Terms, Attendance, and Operation

702 KAR 7:125E. Pupil attendance.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education

739 KAR 2:040. Survivor benefits for death of a firefighter. Michael Kurtsinger, division director, and John Wood, counsel, represented the commission.

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.

739 KAR 2:155. Alan “Chip” Terry Professional Development and Wellness Program.

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, 5, and 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.

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

806 KAR 3:170. Annual audited financial reports. DJ Wasson, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 14 and 16 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Assets and Liabilities

806 KAR 6:010. Valuation standards; audits.

A motion was made and seconded to approve the following amendments: (1) 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; and (2) to amend Section 1 to add a definition for “life actuary.” Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 6:080. Reserve standards for individual health insurance policies.

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 through 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.

806 KAR 6:100. Actuarial opinion and memorandum.

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 through 5, 7, and 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.

Investments

806 KAR 7:035. Finance committee of domestic insurers.

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

806 KAR 7:090. Custodial accounts for investment securities of insurance companies.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to require all custodian banks to have capital and surplus funds equal to or exceeding \$25,000,000; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 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.

Administration of Deposits

806 KAR 8:010. Valuation of assets on deposit.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 5 to comply with the drafting

requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Captive Insurers

806 KAR 49:020. Captive insurer application requirements.

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

806 KAR 49:030. Captive insurer reporting requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Division of Women's Health: Maternal and Child Health

902 KAR 4:110. Abortion information. Julie Brooks, regulation coordinator, represented the division.

In response to a question by Representative Marzian, Ms. Brooks stated that the requirement that a provider shall give information on abortion pill reversal was established in Senate Bill 50 from the 2019 Regular Session of the General Assembly. The statute did not include provisions for who would be deemed responsible if injury or death resulted from use of abortion pill reversal.

Representative Marzian stated that there was insufficient evidence to support the safety and efficacy of abortion pill reversal. It was unfortunate to provide false information.

In response to questions by Representative Frazier, Ms. Brooks stated that the one (1) dollar fee established in this administrative regulation was to recover the cost of printing the informational material if the printing was performed by the agency. The agency had not received any requests to do this printing in the last two (2) years. Providers, not individuals, paid this fee. If a private citizen, rather than a provider, requested this information to be printed by the agency, the fee was not charged. Ms. Brooks stated that she would provide follow-up information to the subcommittee regarding other fees the division might charge for materials.

In response to a question by Co-Chair West, staff stated that the fee for printing the information was statutorily required.

Division of Public Health Protection and Safety: Milk and Milk Products

902 KAR 50:010. Definitions for milk and milk products.

902 KAR 50:031. Standards for producer eligibility for manufactured grade milk.

902 KAR 50:032. Standards for farm requirements for manufactured grade milk.

In response to questions by Co-Chair West, Ms. Brooks stated that 902 KAR 50:032 and 50:033 pertained to milk that did not fall into the classification of pasteurized milk. Enforcement action for a violation was only implemented after education, an opportunity for correction, and a reinspection.

In response to questions by Co-Chair Hale, Ms. Brooks stated that there were two (2) classifications for milk, manufactured grade milk and pasteurized milk, which was regulated by the US Food and Drug Administration. These administrative regulations had not been revised since the 1990s. Changes were made to update provisions, and technical corrections were made commensurate with amendments to KRS Chapter 13A. This division did not intend to increase the burden on Kentucky's dairy farmers.

Co-Chair Hale stated that it was important to ensure milk safety and sanitation; however, it was also important not to overregulate the few dairy farmers remaining in Kentucky.

902 KAR 50:033. Standards for enforcement procedures for manufactured grade milk.

Radiology

902 KAR 100:012. Fee schedule.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 8 to incorporate material by reference. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:330. Child protective services. Laura Begin, regulation coordinator; Tara Cecil, branch manager; and Melanie Taylor, assistant division director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 3(15)(a) to add human trafficking to the list of reports that may trigger a medical or psychological examination. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the October 13, 2020, subcommittee agenda:

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System

102 KAR 1:340. Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years prior to retirement.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

201 KAR 2:106. Licensed or permitted facility closures.

201 KAR 2:225. Special limited pharmacy permit – medical gas.

201 KAR 2:240. Special limited pharmacy permit- charitable.

201 KAR 2:320. Requirements or manufacturers and virtual manufacturers.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:201. Emergency Medical Responders.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

202 KAR 7:401. Paramedics.

202 KAR 7:601. Training, education and continuing education.

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

601 KAR 2:231. Repeal of 601 KAR 2:030.

601 KAR 2:232 & E. Kentucky Ignition Interlock Program.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers; compensation medical fee schedule for physicians.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:415. Direct shipper license.

Horse Racing Commission: Licensing

810 KAR 3:020. Licensing of racing participants.

Department of Charitable Gaming

820 KAR 1:050 & E. Raffles.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Division of Epidemiology and Health Planning: Vital Statistics

901 KAR 5:120. Abortion reporting.

Communicable Diseases

902 KAR 2:020 & E. Reportable disease surveillance.

Division of Maternal and Child Health: Maternal and Child Health

902 KAR 4:030. Newborn screening program.

Division of Administration and Financial Management: Local Health Departments

902 KAR 8:160 & E. Local health department operations requirements.

902 KAR 8:170 & E. Local health department financial management requirements.

Division of Public Health Protection and Safety: Sanitation

902 KAR 10:030. Registered environmental health specialists and sanitarians.

902 KAR 10:036. Repeal of 902 KAR 010:035

Division of Public Health Protection and Safety: Food and Cosmetics

902 KAR 45:110. Permits and fees for retail food establishments, vending machine companies, and restricted food concessions.

902 KAR 45:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

Milk and Milk Products

902 KAR 50:040. Hauler requirements.

Department for Behavioral Health, Developmental and Intellectual Disabilities:
Division of Behavioral Health: Substance Abuse

908 KAR 1:381. Repeal of 908 KAR 001:380.

908 KAR 1:400. Licensing and standards for substance use and misuse prevention.

Department for Community Based Services: Division of Protection and
Permanency: Child Welfare

922 KAR 1:450 & E. Eligibility confirmation for tuition waiver.

922 KAR 1:520 & E. Supplements to per diem rates.

The subcommittee adjourned at 1:50 p.m. The next meeting of the subcommittee is tentatively scheduled for November 9, 2020, at 1 p.m.