

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the November Meeting

November 9, 2020

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Monday, November 9, 2020, at 1:00 PM, in Room 171 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, Alice Forgy Kerr, and Reginald Thomas; Representatives Deanna Frazier, Mary Lou Marzian, and Tommy Turner.

Guests: Al Duncan, Donna Scrivener, Dennis Shepherd, Department of Veterans' Affairs; Jon Grate, Farrah, Petter, Jim Royse, Auditor of Public Accounts; Beau Barnes, Teachers' Retirement System; Morgan Ransdell, Board of Nursing; Bryan Morrow, Board of Alcohol and Drug Counselors; Clint Quarles, Department of Agriculture; Chad Collins, Julian Tackett, Kentucky High School Athletic Association; Todd Allen, David Couch, Robin Kinney, Marty Park, Laura Raganas, Micki Ray, Matt Ross, Department of Education; Michael "Howdy" Kurtsinger, Jeffrey Walther, Fire Commission; Dale Hamblin, Robert Swisher, Department for Workers' Claims; Joshua Newton, Allyson Taylor, Department of Alcoholic Beverage Control; Bryan Alvey, Kentucky Distillers' Association, Jay Hibbard, Distilled Spirits Council of the US; Marc Guilfoil, Chad Thompson, Jennifer Wolsing, Horse Racing Commission; Robert Heleringer, Attorney; Regina Covington, Doug Hardin, Ambrose Wilson IV, Department of Charitable Gaming; Julie Brooks, Sally Dabb, Donna Little, Kelli Redmon, Department for Public Health; Shannon Stiglitz, Agribusiness Association of Kentucky.

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

The Administrative Regulation Review Subcommittee met on Monday, November 9, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GOVERNOR'S OFFICE: Department of Veterans' Affairs: Tuition Waiver Program

17 KAR 1:040. Application requirements for tuition waiver programs related to veterans. Al Duncan, director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 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.

State Veterans' Nursing Homes

17 KAR 3:050. Drug testing procedures at Kentucky Department of Veterans' Affairs state veterans' nursing homes.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4 through 6, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Veterans' Service Organization Burial Honor Guard Program

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

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.

17 KAR 4:040. Indigent Veterans' Burial Program.

In response to a question by Co-Chair West, Mr. Duncan stated that death from coronavirus (Covid-19) had resulted in the need for more indigent veteran burials. The program had buried fifteen (15) veterans at a cost of \$15,000 so far this year and expected more.

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.

Recognitions

17 KAR 5:020. Kentucky Medal for Freedom.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to

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

AUDITOR OF PUBLIC ACCOUNTS: Audits

45 KAR 1:050. Audits of fiscal courts. Jon Grate, general counsel; Farrah Petter, assistant state auditor; and Jim Royse, director of local audits, represented the Auditor of Public Accounts.

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. Beau Barnes, deputy secretary and general counsel, represented the system.

In response to a question by Co-Chair West, Mr. Barnes stated that the amendments to this administrative regulation clarified provisions established by KRS 161.220(9)(b), which limited member compensation for the purposes of retirement calculation in the three (3) years immediately prior to retirement. There were two (2) exceptions, including if there was an increase in the employee's corresponding length of employment and if there was a change in the corresponding position. A change in corresponding position might be, for example, if a teacher became assistant principal.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add distinguishing language; and (3) to add a Section 6 regarding the limitation established by KRS 161.220. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:085. Licensure periods and miscellaneous requirements. Morgan Ransdell, general counsel, represented the board.

In response to a question by Co-Chair West, Mr. Ransdell stated that these administrative regulations provided for electronic communication with licensees and an audit mechanism for APRN practice review.

201 KAR 20:161. Investigation and disposition of complaints.

Board of Alcohol and Drug Counselors

201 KAR 35:040. Continuing education requirements. Bryan Morrow, attorney, represented the board.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Industrial Hemp

302 KAR 50:013. Repeal of 302 KAR 050:020, 302 KAR 050:030, 302 KAR 050:055, and 302 KAR 050:090. Clint Quarles, attorney, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that these administrative regulations had been considered by this subcommittee and by the Interim Joint Committee on Agriculture, along with other related administrative regulations. Changes were made for federal compliance. These represented the last administrative regulations related to Kentucky's Hemp Program currently going through the administrative regulation process.

302 KAR 50:021. Policies and procedures for hemp growers.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 5, 7, 8, 10, 12, 14, 16 through 19, and 21 through 28 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:031. Policies and procedures for hemp processors and handlers.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 7, 9, 12, and 13 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 18 to clarify that monetary civil penalties shall be calculated based on the severity of the violation, not to exceed \$2,500 per violation. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:045. Department's reports to USDA; records retention for three years.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

302 KAR 50:056. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

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 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.

302 KAR 50:080. Materials incorporated by reference.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Department of Education: School Terms, Attendance, and Operation**

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Todd Allen, general counsel, Kentucky Board of Education; Chad Collins, general counsel, Kentucky High School Athletic Association; and Julian Tackett, commissioner, Kentucky High School Athletic Association, represented the department.

In response to a question by Representative Frazier, Mr. Tackett stated that there was no intended difference pertaining to forms incorporated by reference regarding the use of the terms “gender” and “sex at birth.” Some of the forms were developed by the agency, and some were developed by the American Academy of Pediatrics and other groups. Mr. Collins stated that the terms were intended for use in a straight-forward manner.

A motion was made and seconded to approve the following amendment: to amend Section 7 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

702 KAR 7:140E. School calendar.

In response to questions by Co-Chair West, Mr. Allen stated that he did not believe that Senate Bill 177 from the 2020 Regular Session of the General Assembly included statutory authority for this administrative regulation. As school districts reopened to in-person learning, there was a need for increased sanitization, temperature monitoring, and student safety measures related to coronavirus (Covid-19). This necessitated some flexibility to the instructional calendar. This emergency administrative regulation authorized up to thirty (30) minutes per day for coronavirus (Covid-19) prevention instruction and measures.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:303. Required Academic Standards. Todd Allen, general counsel, Kentucky Board of Education, and Micki Ray policy advisor, represented the office.

Academic Standards

704 KAR 8:090. Required Kentucky Academic Standards for Technology. Todd Allen, general counsel, Kentucky Board of Education; David Couch, associate commissioner; and Dr. Marty Park, commissioner, represented the office.

In response to questions by Co-Chair West, Dr. Park stated that this administrative regulation updated the 2008 technology standards. The office worked with stakeholders to organize technology standards by grade bands.

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

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

739 KAR 2:050. Volunteer fire department aid. Michael Kurtsinger, division director, represented the commissioner.

In response to a question by Representative Frazier, Mr. Kurtsinger stated that this administrative regulation did not add any required training hours. This administrative regulation extended the deadline, giving an extra six (6) months to complete required training.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers; compensation medical fee schedule for physicians. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department.

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

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

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, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:415. Direct shipper license. Joshua Newton, general counsel, and Allyson Taylor, commissioner, represented the department. Representative Adam Koenig and Bryan Alvey, senior director of government and external affairs, Kentucky Distillers' Association, appeared in support of this administrative regulation. Jay Hibbard, vice president of government relations, Distilled Spirits Council of the US, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Representative Koenig stated that he supported this administrative regulation and wished to see it proceed quickly through the process.

In response to a question by Co-Chair West, Mr. Alvey stated that Kentucky Distillers' Association supported this administrative regulation.

In response to a question by Co-Chair West, Mr. Hibbard stated that, while the Distilled Spirits Council of the US generally approved of this administrative regulation, there were some specific outstanding concerns, including fulfillment center provisions, tied-house requirements, and the 600-gallon limitation. They wished for this administrative regulation to proceed, but hoped to work further with the agency to make changes in the future.

In response to a question by Senator Thomas, Ms. Taylor stated that this administrative regulation included wine shippers and importers, who would be able to ship in and out of Kentucky if they met the criteria.

Senator Thomas stated that, because his wife was an importer, pursuant to Section 57 of the Constitution of the Commonwealth of Kentucky, he was abstaining from any vote related to this administrative regulation and was not taking a position on the policy.

In response to a question by Representative Marzian, Representative Koenig stated that this administrative regulation included craft breweries and out-of-state wine shippers shipping into Kentucky.

In response to a question by Co-Chair West, Mr. Newton stated that, due to statutory constraints, in-state importers would not be able to get direct shipper licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to add a category of distributor. Without objection, and with agreement of the agency, the amendments were approved.

Department of Charitable Gaming

820 KAR 1:050 & E. Raffles. Doug Hardin, staff attorney, and Ambrose Wilson IV, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 11 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: Communicable Diseases

902 KAR 2:020 & E. Reportable disease surveillance. Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department.

In response to questions by Co-Chair West, Ms. Little stated that this administrative regulation added two (2) diseases caused by coronavirus (Covid-19), including SARS-CoV-2 and the Multi-system Inflammatory Syndrome in children, to the list of diseases that required urgent reporting. This was consistent with US CDC guidelines to assist in tracking the true rate of infection. Both positive and negative test result reporting was required. This testing was for both adults and children. Laboratories and physicians performed the reporting.

Maternal and Child Health

902 KAR 4:030. Newborn screening program.

In response to a question by Representative Marzian, Ms. Little stated that the twenty-seven (27) dollar increase for testing was the result of new tests required by statute.

Sanitation

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

Food and Cosmetics

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

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

Milk and Milk Products

902 KAR 50:050. Manufacturing plant requirements.

902 KAR 50:071. Repeal of 902 KAR 050:070.

902 KAR 50:080. Standards of identity and labeling.

902 KAR 50:090. Milk adulteration.

902 KAR 50:120. Unpasteurized goat milk.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 8, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the November 9, 2020, subcommittee agenda:

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.

Board of Optometric Examiners

201 KAR 5:140. Dispensing.

Board of Architects

201 KAR 19:215. Accredited schools and colleges.

201 KAR 19:220. Application for examination.

201 KAR 19:225. Examinations required; general provisions.

201 KAR 19:230. Reexamination; reconsideration.

201 KAR 19:235. Reciprocity; registration without examination.

201 KAR 19:240. Resident licensed in another state; reciprocity.

201 KAR 19:245. Duplicate certificates.

201 KAR 19:250. Temporary licensing not permitted.

201 KAR 19:255. Fees.

201 KAR 19:260. Professional practice standards; violations, penalties.

201 KAR 19:265. Individual seals; office titles.

201 KAR 19:270. Plans and specifications standards.

201 KAR 19:275. Use of title “architect”.

201 KAR 19:410. Accredited schools and colleges for certified interior designers.

201 KAR 19:415. Application for certification as an interior designer.

201 KAR 19:420. Qualifications for certification.

201 KAR 19:425. Limited period of certification by prior experience.

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

201 KAR 19:435. Certification renewal.

201 KAR 19:440. Fees for certification of interior designers.

201 KAR 19:445. Continuing education.

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

201 KAR 19:455. Unprofessional conduct.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:035. Supervision of marriage and family therapist associates.

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: Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Department of Education: General Administration**

702 KAR 1:190E. District employee emergency leave.

Facilities Management

702 KAR 4:090. Property disposal.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Licensing

810 KAR 3:020. Licensing of racing participants. Marc Guilfoil, executive director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission. Robert Heleringer, attorney and former Kentucky Representative, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation made three (3) changes to provisions for the licensure of racing participants. A licensee would fail to meet the financial responsibility requirements if he or she failed to satisfy any final, non-appealable judgment related to horse racing, even if it related to a non-licensed racing participant. A licensee would no longer have to domesticate out-of-state judgments in order to bring the judgment to the attention of the commission. Additionally, anyone could bring a final judgment to the attention of the commission, not just a successful complainant.

In response to a question by Co-Chair West, Mr. Heleringer stated that he was opposed to this administrative regulation, which represented a huge expansion of authority. While this administrative regulation pertained to a former client, Mr. Heleringer was not appearing on behalf of any client. Financial responsibility was important for security at the track; however, the sole purpose for this change was retaliation against Mr. Heleringer's client after a judicial decision to which the commission was opposed. An owner or trainer, especially should be financially responsible. The current version of this administrative regulation covered licensee financial responsibility needs. A former client had a civil judgment issued in Ireland. That judgment was domesticated in California and Kentucky. The client had entered into an agreement to pay the judgment. Payments were being made monthly; however, the client was denied an owner license in Kentucky on the basis of financial irresponsibility. Mr. Heleringer argued to the commission in this case, that this administrative regulation did not apply in the case of his client, because breeders were not required to be licensed in Kentucky. Franklin Circuit Court agreed that the commission did not have the authority to invoke the financial responsibility requirements against his client. As a result, the commission issued a license. Then, the commission filed this version of the administrative regulation, which would allow the commission to revoke or refuse renewal of that license. If this version became effective, the commission could become a de facto

collection agency, which was far afield of the purpose of the commission. The term “related to horse racing” was not defined and seemed overly broad. For example, a spouse suing for child support could be interpreted as being “related to horse racing” if one (1) of the spouses was affiliated with the industry.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation was not intended as retribution and the commission was within its statutory authority to promulgate this policy. Financial irresponsibility could have a negative impact on the integrity of horse racing in Kentucky. The commission would not be part of any collection process, and this administrative regulation did not apply to appealable judgments. These requirements were not expected to overwhelm the commission. This administrative regulation passed unanimously, with only one (1) abstention, at the commission meeting.

Senator Thomas stated that, for the purposes of disclosure, he owned race horses. It was important to maintain the enthusiasm, integrity, and prestige of the horse-racing industry by ensuring financial responsibility. Many professional licensure boards sanctioned licensees for matters of financial irresponsibility. In response, Mr. Heleringer stated that a license could be revoked even if a settlement had been reached if full satisfaction had not yet been made. The current version of this administrative regulation was for the purpose of ensuring financial responsibility pertaining to those at the track backside. This change would allow matters from anywhere to be brought to the commission. Senator Thomas stated that human nature dictated that a person who would not pay one (1) debt would likely not pay other debts.

In response to questions by Representative Frazier, Mr. Heleringer stated that most states with a horse-racing industry had a financial responsibility statute. Most states interpreted those requirements as applying to matters between horse-racing licensees. This change to the administrative regulation would broaden the matters that could apply. Ms. Wolsing stated that most horse-racing industry states did have financial responsibility requirements. The commission was broadening requirements to apply to non-licensed horse-related entities, as well as those who were licensed. The commission was not expanding beyond its jurisdiction; however, it was including judgments related to non-licensed entities.

In response to a question by Representative Marzian, Mr. Heleringer stated that his client was in the process of paying the settlement and had his license denied until the court case. Representative Marzian stated that this administrative regulation seemed like overkill and it might be prudent for the agency to defer consideration of this administrative regulation to the December subcommittee meeting.

In response to a question by Senator Kerr, Mr. Heleringer stated that the current version of this administrative regulation adequately addressed financial responsibility

related to the track backside. This version of this administrative regulation expanded financial responsibility provisions to include basically all matters anywhere if the aggrieved party is in any way related to the horse-racing industry. The volume of potential litigation cases might overwhelm the commission.

Senator Kerr stated that she had concerns similar to those of Representative Marzian. In response Jennifer Wolsing stated that the commission did not anticipate an overwhelming number of cases that would burden the commission.

Senator Raque Adams stated that it might be prudent to add a definition for the term, “related to horse racing,” in order to clarify and narrow requirements.

In response to questions by Co-Chair West, Ms. Wolsing stated that enforcement of this administrative regulation was triggered by someone bringing to the attention of the commission, a final, non-appealable judgment rendered against one (1) of the commission’s licensees if the judgment related to the horse-racing industry. Action would not be taken pertaining a judgment that had been satisfied or was appealable.

Co-Chair West stated concerns regarding equal protection. This administrative regulation seemed to need clarification.

Senator Thomas stated that it seemed as if this subcommittee was attempting to prejudge a licensure revocation proceeding. The outcome of a licensure revocation was not directly mandated.

In response to a request by Co-Chair West, Senator Kerr, and Representative Marzian, Ms. Wolsing agreed to defer consideration of this administrative regulation to the December meeting of this subcommittee. A motion for deferral was made and seconded. Without objection, and with agreement of the agency, this administrative regulation was deferred.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Vital Statistics

901 KAR 5:120. Abortion reporting.

Communicable Diseases

902 KAR 2:210E. Covering the face in response to a declared national or state public health emergency.

Local Health Departments

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

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

Sanitation

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

Food and Cosmetics

902 KAR 45:180. Permits and fees for food processing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale. Sally Dabb, supervisor of food manufacturing, Food Safety Branch, and Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department. Shannon Stiglitz, senior vice president of government affairs, Agribusiness Association of Kentucky, appeared in opposition to this administrative regulation.

In response to a question by Representative Frazier, Ms. Little stated that the department initially wanted to revise the food processing establishment fee structure to be based on the total gross sale income of the establishment. Numerous concerns were submitted from stakeholders during the public comment period regarding the new fee structure; therefore, the department further amended this administrative regulation as part of the Statement of Consideration process. In the Amended After Comment version, the fee structure was changed to be based on the total sales and the highest risk of the food processed at the establishment. Those processors that make a high-risk food but have less than \$100,000 in yearly gross income will pay no more than \$250 per year. Processors that make a high risk food and have greater than \$1,000,000 in yearly gross income will pay up to \$2,800 per year. This was commensurate with the federal framework.

In response to a question by Co-Chair West, Ms. Stiglitz stated that Agribusiness Association of Kentucky was opposed to this administrative regulation. The term, “gross income,” was confusing because it was unclear if this meant “gross revenue” or “net profit.” Fees were being dramatically increased. For example, grain elevators previously were low risk. Now, depending on gross income, the fee might be even higher than before the public comment period. It was difficult to understand how gross income related to a public health matter. The food business operated on a tight margin; therefore, cost increases will be passed on to consumers. Grain elevators were inspected by the department and federal regulators, as well as the Department of Agriculture. In these uncertain economic times with food insecurity issues, it did not seem to be the appropriate time to significantly raise these fees. Agribusiness Association of Kentucky requested that the fee be lowered.

In response to questions by Co-Chair West, Ms. Little stated that House Bill 129 from the 2020 Regular Session of the General Assembly, established a time limit for

increasing related fees. The department wanted to file both administrative regulations simultaneously; therefore, this proposed fee structure change was included. None of the fee increases would take effect prior to the 2022 billing cycle. This administrative regulation served to give early notice that these fee changes would be forthcoming. The current fees did not suffice to meet the department's costs. Even after this change, the fees would be insufficient. KRS 217.125 required the department to establish fees to cover the costs of the program. The department agreed to submit budgetary deficit information to the subcommittee.

In response to a question by Co-Chair West, the department agreed to defer consideration of this administrative regulation to the December meeting of this subcommittee. A motion for deferral was made and seconded. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Milk and Milk Products

902 KAR 50:040. Hauler requirements.

Department for Behavioral Health, Developmental and Intellectual Disabilities: 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: Supplemental Nutrition Assistance Program

921 KAR 3:035 & E. Certification process.

Child Welfare

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

922 KAR 1:500. Educational and training vouchers.

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

The subcommittee adjourned at 2:50 p.m. The next meeting of the subcommittee is tentatively scheduled for December 3, 2020, at 1 p.m.