

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 9, 2023

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Thursday, November 9, 2023 at 2:00 p.m. in Room 154 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Representative Derek Lewis, Co-Chair; Senators Julie Raque Adams, Damon Thayer, and Steve West; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

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

Guests: Cassie Trueblood, Education Professional Standards Board; Taylor Brown, Board of Elections, Eden Davis, Christopher Harlow, Board of Pharmacy; Eddie Sloan, John Wood, Board of Emergency Medical Services; Dave Dreves, Steven Fields, Jenny Gilbert, Gabe Jenkins, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Nathan Goens, Scott Jordan, Russ Williams, Department of Justice; Jonathan Gifford, Law Enforcement Council; Amy Barker, Leah Boggs, Allison Brown, William Codell, Department of Juvenile Justice; Todd Allen, Department of Education; Jamie Eads, Jennifer Wolsing, Travers Manley, Horse Racing Commission; Daniel Bell, Julie Brooks, Wes Duke, Troy Wilkerson, Department of Public Health; Phyllis Milspaugh, Rachael Ratliff, Department for Developmental Health, Developmental and Intellectual Disabilities; Joe Barnett, Kelli Blair, Department for Community Based Services; David Barron, Sam Potter, Department of Public Advocacy; Jim Higdon, Cornbread Hemp, and Katelyn Wiard, U.S. Hemp Roundtable.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Educator Preparation

[016 KAR 005:060](#). Literacy program requirements for middle school, high school, grades 5-12, and grades P-12. Cassie Trueblood, counsel, represented the board.

STATE BOARD OF ELECTIONS: Forms and Procedures

[031 KAR 004:196E](#). Consolidation of precincts and precinct election officers. Taylor Brown, general counsel, represented the board.

In response to a question by Senator Thayer, Mr. Brown stated that the board was available to meet with legislators to consider concerns of constituents regarding access to consolidated

polling locations and vote centers. Because this model was relatively new, centralized polling location provisions would require adjustments. The board itself had suggestions to improve the process for all parties and offered to provide additional data.

In response to a question by Co-Chair West, Mr. Brown stated that the amendment revised the precinct form to add a field for stating parking sufficiency.

[031 KAR 004:196](#). Consolidation of precincts and precinct election officers.

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

BOARDS AND COMMISSIONS: Board of Pharmacy

[201 KAR 002:040](#). Registration of pharmacist interns. Eden Davis, general counsel, represented the board.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

[202 KAR 007:550](#). Required equipment and vehicle standards. Eddie Sloan, executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 10 comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

[301 KAR 001:115](#). Propagation of aquatic organisms. Dave Dreves, fisheries director; David Jenkins, deputy commissioner; and Jenny Gilbert, legislative liaison, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 3 to specify the procedure for obtaining the cabinet's approval for additional paddlefish stocking events beyond the authorized one stocking event per approved water supply lake; and to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[301 KAR 001:125](#). Transportation of fish.

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, 3, and 5 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and to

amend Section 2 to delete language stating that a Fish Transportation Permit is to be renewed annually by calendar year. Without objection, and with agreement of the agency, the amendments were approved.

Game

[301 KAR 002:083](#). Holding and intrastate transportation of captive cervids.

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

[301 KAR 002:172](#). Deer hunting seasons, zone, and requirements.

A motion was made and seconded to approve the following amendments: to amend Section 1 to add a definition for the term, "KDSS"; and to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

DEPARTMENT OF AGRICULTURE: Livestock, Poultry, and Fish

[302 KAR 022:150](#). Cervids. Clint Quarles, counsel, represented the department. Jenny Gilbert, legislative liaison, and David Jenkins, deputy commissioner, Department of Fish and Wildlife Resources, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Quarles stated that the Department of Agriculture had proposed changes to this administrative regulation based on suggestions from both the previous and current state veterinarians, but did not have statutory authority to make the changes requested by the Department of Fish and Wildlife Resources. Mr. Jenkins stated that it was important that monitoring for Chronic Wasting Disease (CWD) be continuous.

In response to a question by Co-Chair Lewis, Ms. Gilbert stated that, in order to protect Kentucky from CWD, changes were necessary pertaining to cervids that seemed to be left unregulated if a cervid farm certification was no longer valid. Mr. Quarles stated that the Department of Agriculture preferred statutory authority be given to the Department for Fish and Wildlife Resources to destroy these unregulated cervids that were no longer classified as farmed or wild.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, 5, 20, and 22 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Justice: Capital Punishment

[501 KAR 016:310](#). Pre-execution medical actions. Allison Brown, counsel; Nathan Goens, attorney; Scott Jordan, acting deputy commissioner; and Russ Williams, licensed psychologist, represented the department. Sam Potter, on behalf of David Barron, Department of Public Advocacy, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Goens stated that the amendments made to this administrative regulation were sufficient to address legal concerns. Mr. Potter stated that the Department of Public Advocacy had concerns similar to those expressed in the determination by the Franklin County Circuit Court that this administrative regulation did not contain mechanisms to suspend an execution if there was an intellectual disability or impairment. As amended, this administrative regulation still did not comply.

In response to questions by Senator Thayer, Mr. Goens stated that this administrative regulation neither made it easier, nor more difficult, to perform an execution. This amendment was to comply with federal standards expressed by Franklin County Circuit Court. An inmate with a death penalty sentence could be competent at the time of the crime and become impaired during the incarceration period. Pursuant to U.S. and Kentucky Supreme Court precedents, that hypothetical scenario would prevent a legal execution.

In response to questions by Representative Grossberg, Mr. Williams stated that age-related decline and mental health status were reviewed weekly. Those review records would be used to comply with mental health provisions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and to amend Section 4 to insert existing language that was inadvertently omitted. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Law Enforcement Council

[503 KAR 001:140](#). Peace officer, telecommunicator, and court security officer professional standards. Jonathan Gifford, staff attorney, represented the council.

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

Department of Juvenile Justice: Child Welfare

[505 KAR 001:010](#). Definitions. Amy Barker, assistant general counsel, and Leah Boggs, general counsel, represented the department.

In response to a question by Co-Chair West, Ms. Boggs stated that this package of administrative regulations was for compliance with Senate Bill 162 and House Bill 3 from the 2023 Regular Session of the General Assembly. The amendments were in accordance with the plan to implement a regional model once feasible.

[505 KAR 001:100](#). Admissions.

[505 KAR 001:110](#). Intake and orientation.

[505 KAR 001:180](#). Day treatment admissions.

[505 KAR 001:185](#). Day treatment programs.

[505 KAR 001:210](#). Restraints and control methods.

[505 KAR 001:220](#). Transportation of juveniles.

[505 KAR 001:240](#). Dietary services.

[505 KAR 001:250](#). Drug screening and testing.

[505 KAR 001:260](#). Education.

[505 KAR 001:270](#). Grievances.

[505 KAR 001:280](#). Hair and grooming.

[505 KAR 001:290](#). Juvenile allowance and work detail.

[505 KAR 001:300](#). Juvenile records and information.

[505 KAR 001:310](#). Leave, releases, and furloughs.

[505 KAR 001:320](#). Library services.

[505 KAR 001:330](#). Personal property, dress, and clothing and bedding supply.

[505 KAR 001:340](#). Recreation.

[505 KAR 001:350](#). Religious practice.

[505 KAR 001:360](#). Searches.

[505 KAR 001:370](#). Treatment.

[505 KAR 001:380](#). Mail, visiting, and telephone use.

[505 KAR 001:390](#). Juvenile Accounts and Youth Activity Fund Account.

[505 KAR 001:400](#). Behavior management and progressive discipline.

[505 KAR 001:410](#). Isolation and protective custody.

[505 KAR 001:420](#). Youthful offenders.

EDUCATION AND LABOR CABINET: Department of Education: Office of Chief State School Officer

[701 KAR 005:110](#). Use of local monies to reduce unmet technology need. Todd Allen, deputy commissioner and general counsel, represented the department.

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

School Administration and Finance

[702 KAR 003:340](#). Approval of school district lease agreements.

In response to questions by Co-Chair West, Mr. Allen stated that the amendments to lease approval agreements would implement preexisting statutes and streamline processes so that school districts could verify records, materials, and information in order to receive approval or denial of lease agreements from the department in a timely manner.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Local Board Attorney Certification form to delete the citation to KRS 45.570; and to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3 to comply with the drafting requirements KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance and Operation

[702 KAR 007:125](#). Pupil attendance.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 9, 10, and 12 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: Kentucky Horse Racing Commission: Horse Racing: General

[810 KAR 002:020](#). Thoroughbred and flat racing officials. Jamie Eads, executive director; Travers Manley, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission.

In response to questions by Senator Thayer, Ms. Eads stated that these administrative regulations addressed salient issues prior to the start of quarter horse racing at a new track currently under construction near Ashland.

[810 KAR 002:070](#). Thoroughbred and other flat racing associations.

Horse Racing: Flat and Steeplechase Racing

[810 KAR 004:001](#). Definitions for 810 Chapter 4.

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.

[810 KAR 004:010](#). Horses.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 11 and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[810 KAR 004:030](#). Entries, subscriptions, and declarations.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3, 11, 12, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[810 KAR 004:040](#). Running of the race.

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

Sections 10 and 12 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: Department for Public Health: Food and Cosmetics

[902 KAR 045:190E](#). Hemp-derived cannabinoid products; packaging and labeling requirements. Julie Brooks, policy specialist, and Wes Duke, general counsel, represented the department. Jim Higdon, co-founder, Cornbread Hemp, and Katelyn Wiard, director of operations, U.S. Hemp Roundtable, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Brooks stated that the amendments to this emergency administrative regulation were in response to House Bill 544 from the 2023 Regular Session of the General Assembly.

In response to a question by Co-Chair West, Ms. Wiard stated that the U.S. Hemp Roundtable had concerns regarding cannabinoid product ratio requirements and fees. Kentucky was establishing a 25:1 ratio of CBD to THC. Colorado and Maryland required a ratio of 15:1. There was a \$200 fee for every hemp product, which was burdensome and should be lowered or changed to a product classification fee, rather than a fee for individual products.

In response to a question by Co-Chair West, Mr. Higdon stated that Cornbread Hemp opposed Kentucky's overuse of "adult" labeling for non-intoxicating products.

In response to a question by Representative Frazier Gordon, Mr. Duke stated that the intent was to create a robust regulatory scheme for public safety and business integrity. The department was open to further dialog with legislators and stakeholders about this new program.

Senator Thayer stated that the department should continue to address these stakeholder concerns and should involve brewers and alcohol-related industries in these discussions.

Representative Grossberg stated that there were concerns about safety and youth access. The 25:1 ratio might be confusing. A minimum standard of index per unit would be less confusing and thus safer for avoiding over consumption.

Co-Chair West asked that the department continue to work with stakeholders before the ordinary version of this administrative regulation came to the subcommittee for consideration.

Radiology

[902 KAR 100:019](#). Standards for protection against radiation.

[902 KAR 100:050](#). General licenses.

[902 KAR 100:058](#). Specific licenses to manufacture, assemble, repair, or distribute products.

[902 KAR 100:065](#). Reciprocal recognition.

[902 KAR 100:165](#). Notices, reports, and instructions to employees.

[902 KAR 100:185](#). Standards for protection against radiation from radioactive materials.

[902 KAR 100:195](#). Licensing of special nuclear material.

[902 KAR 100:200](#). Licenses and radiation safety requirements for irradiators.

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

[908 KAR 002:300E](#). Kentucky problem gambling assistance account. Phyllis Milspaugh, assistant division director, and Rachael Ratliff, regulation coordinator, represented the division.

Department for Community Based Services: Child Support

[921 KAR 001:420](#). Child support distribution. Kelli Blair, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Ms. Blair stated that changes to this administration regulation relieved recipients from reporting escrow as income. The escrow information was still accessible by the department.

The following administrative regulations were deferred or removed from the November 9, 2023, subcommittee agenda:

PERSONNEL CABINET: Classified

[101 KAR 002:210E](#). 2023 and 2024 Plan Year Handbooks for the Public Employee Health Insurance Program.

KENTUCKY COMMISSION ON HUMAN RIGHTS: Human Rights

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets.

[104 KAR 001:040](#). Guidelines for advertising employment or licensing opportunities.

[104 KAR 001:050](#). Standards and procedures for providing equal employment opportunities.

[104 KAR 001:080](#). Guidelines on fair housing.

[104 KAR 001:100](#). Nondiscrimination on the basis of disability by a place of public accommodations, licensing agencies and trade organizations.

Board of Veterinary Examiners

[201 KAR 016:510](#). Fees for veterinarians.

[201 KAR 016:512](#). Fees for veterinary technicians.

[201 KAR 016:514](#). Fees for animal control agencies and animal euthanasia specialists.

[201 KAR 016:516](#). Fees – other fees.

[201 KAR 016:550](#). Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

[201 KAR 016:552](#). Responsibilities for certified animal control agencies; limitations on drugs.

[201 KAR 016:560](#). Certification as an animal euthanasia specialist.

[201 KAR 016:701](#). Standards for medical records.

[201 KAR 016:702](#). Standards for veterinary surgery.

[201 KAR 016:750](#). Licensed veterinary technicians (LVTs) – Scope of practice and supervisory requirements.

Board of Nursing

[201 KAR 020:700](#). Medication aide training programs and credentialing of medication aides.

Board of Social Work

[201 KAR 023:055](#). Inactive status of license.

[201 KAR 023:160](#). Temporary permission to practice.

[201 KAR 023:170](#). Telehealth and social work practice.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Underground Storage Tanks

[401 KAR 042:250](#). Petroleum Storage Tank Environmental Assurance Fund reimbursement.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Sports Wagering

[809 KAR 001:002](#). Service provider licensing.

[809 KAR 001:003](#). Occupational licenses.

Sports Wagering: Technical Criteria

[809 KAR 010:001](#). General provisions.

[809 KAR 010:002](#). Standards for sports wagering.

[809 KAR 010:003](#). Technical requirements and oversight.

[809 KAR 010:004](#). Sports wagering accounts.

[809 KAR 010:005](#). Licensed premises.

[809 KAR 010:006](#). Audit and internal control standards.

[809 KAR 010:007](#). Responsible gaming and advertising.

[809 KAR 010:008](#). Disciplinary actions and hearings.

General

[810 KAR 002:100](#). Self-exclusion.

Horse Racing: Licensing

[810 KAR 003:010](#). Licensing of racing associations.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

[900 KAR 005:020](#). State Health Plan for facilities and services.

Certificate of Need

[900 KAR 006:075](#). Certificate of need non-substantive review.

Department of Medicaid Services: Payment and Services

[907 KAR 003:310](#). Community health worker services and reimbursement.

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

[908 KAR 002:300](#). Kentucky problem gambling assistance account.

The subcommittee adjourned at 3:25 p.m. The next meeting of this subcommittee was tentatively scheduled for December 11, at 1 p.m. in Room 149 of the Annex.