



## KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

November 10, 2020

### Public Meeting Minutes

The Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, met via Zoom.

Chairman Larry Roberts called the meeting to order at 9:00 am ET. Chairman Roberts turned the meeting over to Judge Thomas Wingate to swear in Board members Ms. Caitlin Blair and Mr. John Holbrook.

Judge Wingate swore in Ms. Blair and Mr. Holbrook and advised the certificates of appointments would be sent to the Secretary of State's office.

Ms. Molly Van Over called the roll. Members attending were Ms. Caitlin Blair, Dr. Traci Byrd, Mr. William Carey, Mr. Hampton Henton, Mr. John Holbrook, Mr. James Kay, Mr. Keith Murt, Mr. Kenneth Nichter, Mr. Charles Steve Sparrow, Mr. Robert Mac Stone, and Mr. John Stovall. Ms. Angela Bednark was absent.

Chairman Roberts noted for the record there was a quorum and stated that General Counsel Sam Flynn spoke with Ms. Caitlin Blair and Mr. John Holbrook regarding Executive Branch Ethics' rules prior to the meeting.

Chairman Roberts inquired if there were any additions or corrections to the February 27, 2020 Board meeting minutes. There being none, Chairman Roberts opened the floor for a motion to accept the minutes. A motion was made by Mr. Sparrow and seconded by Mr. Nichter; the motion passed unanimously.

Chairman Roberts asked if there was any Old Business to discuss. There being none, Chairman Roberts turned it over to Commissioner Kimberlee C. Perry to provide an OSH Program update.

Commissioner Perry summarized significant events and changes that affected the OSH Program since the beginning of the SAR-CoV-2 pandemic, including the implementation of hotlines manned by Workplace Standards staff and utilizing compliance officers to serve as agents of public health. Commissioner Perry advised there were 54,897 KYSAFER online submissions, 33,817 KYSAFER hotline calls, 748 PPE hotline calls, and 1,200 PPE online submissions. Additional impacts include a rise in discrimination complaints from 276 complaints in 2016 to 1,052 complaints in 2020, of which 652 complaints were COVID-related. Additionally, Commissioner Perry provided an OSH Program staffing update, including the addition of one (1) discrimination officer beginning November 15. Having no questions to answer, Commissioner Perry turned it back over to Chairman Roberts.



Chairman Roberts praised the OSH Program for improvements on lapse times and issuing citations while facing increased staff turnover. Chairman Roberts asked Mr. Chuck Stribling, OSH Federal-State Coordinator, to provide a regulatory update.

Mr. Stribling clarified that each regulation to be discussed included updates to the “Relates To” section, the “Statutory Authority” section, the “Necessity, Function and Conformity” section, as well as “Definitions”. The updates establish consistency and appropriate review pursuant to KRS Chapter 13A. The first regulatory update was 803 KAR 2:180 and it became effective September 29, 2020. It was amended to clarify that all deaths, amputations, hospitalizations and loss of eye, or eyes, must be reported to the Division of OSH Compliance.

Mr. Stribling advised there were five (5) procedural regulations updated that govern how the OSH Program handles business. Mr. Stribling explained the five (5) regulations do not establish or adopt any federal or state rule and are not subject to OSH Standards Board vote, but felt it important the Board be informed so it has a full understanding of the OSH Program. Mr. Stribling provided overview on updates to the regulations pertaining to advanced notice of inspections, complaint inspections, imminent danger, penalties, and citations. All were technical in nature to maintain consistency and improve syntax. Mr. Stribling explained that much of what had been stricken within the complaint inspections regulation was due to already been stated within KRS 338.121; and, cannot be restated in a regulation pursuant to KRS 13A. Additionally, Mr. Stribling noted the citations regulation update allows for other avenues to deliver citations outside of using the United States Postal Service, which during this COVID period was been a significant challenge.

Having no questions for Mr. Stribling, Chairman Roberts recognized Ms. Robin Maples, OSH Standards Specialist. Ms. Maples reviewed amendments to ten (10) regulations, which adopted the federal requirements verbatim and are supported by the OSH Program. The amended regulations include 803 KAR 2:401, general interpretations; 405, fire protection; 408 tools, hand and power; 409, welding and cutting; 410, electrical; 414, motor vehicles, mechanized equipment and marine operations; 415, excavations; 416, concrete and masonry work; 424, diving; and 600, occupational safety and health standards for agriculture.

Chairman Roberts asked for a motion to adopt the amendments. A motion was made by Mr. Stovall and seconded by Ms. Blair; the motion passed unanimously. Chairman Roberts recognized Mr. Stribling.

Mr. Stribling presented 803 KAR 2:240, the time for filing a discrimination complaint, a variant from the federal regulation 29 CFR 1977.15. The Kentucky regulation allows 120 days to file a discrimination complaint, whereas the federal allows thirty (30) days. Having no questions, Chairman Roberts asked for a motion to approve the amendments. A motion was made by Mr. Kenneth Nichter and seconded by Mr. Steve Sparrow; the motion passed unanimously. Chairman Roberts returned the floor to Mr. Stribling.



Mr. Stribling presented amendments to 803 KAR 2:309, General environmental controls. The amendment restores the requirement to have a door on water closets in order to be as effective as the federal requirement. Additionally, the regulation maintains the requirement for a lock when implementing lockout/tagout procedures. The amendments are primarily technical in nature and update syntax. There being no questions, Chairman Roberts asked for a motion. Mr. Stovall made a motion to adopt, seconded by Mr. Holbrook; motion passed unanimously.

Mr. Stribling spoke on the amendment for 803 KAR 2:314, Machinery and machine guarding, which removes redundant language and simply adopts the federal requirement. With no questions, Chairman Roberts asked for a motion. A motion was made by Dr. Byrd to adopt, seconded by Mr. Stovall, motion passed unanimously.

Amendments to 803 KAR 2:413, helicopters, hoists, elevators and conveyors, were explained by Mr. Stribling. The suggested language is to repeal outdated requirements and adopt the federal requirement. No questions were asked and Mr. Sparrow made a motion to adopt the amendment that was seconded by Mr. Stovall; the motion passed unanimously.

Next, Mr. Stribling addressed amendment to 803 KAR 2:417, Steel erection. The amendment maintains the maximum trigger height for fall protection at ten (10) feet, unlike the federal which is fifteen (15) to thirty (30) feet. There were no questions or comments and Mr. Holbrook made a motion to adopt that was seconded by Mr. Nichter; the motion passed unanimously.

Mr. Stribling presented amendment to 803 KAR 2:420, Blasting and use of explosives. The amendment adopts the fourteen (14) different federal standards with minor changes to ensure the standard is at least as effective as the federal requirement. This regulatory amendment along with all prior amendments are supported by the OSH Program. A motion to adopt the amendment was made by Mr. Kay and seconded by Mr. Stovall; the motion passed unanimously.

Chairman Roberts recognized Ms. Maples. Ms. Maples explained that 803 KAR 2:096, if adopted, would repeal two (2) regulations, 803 KAR 2:095, Trade secrets, and 803 KAR 2:430, Appendix A to 29 CFR 1926. Both regulations are unnecessary as the first restates what is already found in KRS 338.171 and the second is an unnecessary informational appendix that establishes no requirements. Ms. Maples advised the Kentucky OSH Program supports the adoption of the. There being no questions or comments, Chairman Roberts asked for a motion to adopt. Mr. Sparrow made a motion to adopt the amendment which was seconded by Mr. Kay; the motion passed unanimously.

Mr. Stribling presented next set of regulations. The first, 803 KAR 2:010, Board procedures, has been around since the inception of the program. The amendment eliminates several provisions and simplifies the regulation while maintaining the primary provisions of the regulation. There being no questions or comments, Chairman Roberts entertained a motion to adopt. A motion was made by Mr. Kay to adopt the amendment which was seconded by Mr. Holbrook; the motion passed unanimously.



Mr. Stribling presented 803 KAR 2:019, Receiving and unloading bulk hazardous liquids, which has no federal equivalent and is unique to Kentucky. This regulation is of value to the program and has resulted in citations generally in response to an event at a workplace; it is not often invoked on scheduled inspections. There being no questions or comments, Chairman Roberts asked for a motion to adopt the regulatory amendment. A motion was made by Dr. Byrd and seconded by Mr. Sparrow; the motion passed unanimously.

Ms. Maples presented two (2) regulations that are Kentucky-specific based on federal requirements. The first was 803 KAR 2:021, Identification, classification, and regulation of potential occupational carcinogens. This amendment eliminates outdated references and is supported by the Kentucky OSH Program. Chairman Roberts asked for a motion to adopt, having no questions or comments. A motion to adopt was made by Mr. Holbrook and seconded by Mr. Kay; the motion passed unanimously.

Ms. Maples continued presented 803 KAR 2:050, Scope. This Kentucky-specific regulation establishes the scope of regulations pertaining to Kentucky OSH under Chapter 338. The regulation mirrors the federal language and has no substantive changes. The amendment is supported by the Kentucky OSH Program. A motion to adopt was entertained by Chairman Roberts, having received no questions or comments. A motion to adopt was made by Mr. Nichter and seconded by Mr. Stovall; the motion passed unanimously.

Chairman Roberts asked Mr. Stribling to provide an update on the next steps in the regulatory process. Mr. Stribling advised the promulgated regulations adopted by the Board will be filed at LRC in phases. Additionally, there are seventeen (17) more for the Board to address that have an August 1 sunset for most. Mr. Stribling anticipates having another batch of regulations ready for Board review in early spring to allow time to file with LRC.

Chairman Roberts opened the floor for comments or statements members would like on record. Mr. Mac Stone requested *Federal Register* hyperlinks be made available. Chairman Roberts and Mr. Stribling advised that will be made available in the future. With no additional questions, comments, or statements, Chairman Roberts adjourned the meeting at 9:54 am ET.