



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
February 27, 2020 Public Meeting Minutes

The Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, met Thursday, February 27, 2020 in the Brown Forman Kentucky Room at the Kentucky Historical Society, 100 West Broadway Street, Frankfort, Kentucky.

Chairman Larry Roberts called the meeting to order at 1:00 pm EST. Chairman Roberts turned the floor over to Governor Andy Beshear.

Governor Beshear spoke on the importance of worker safety and of this Board. Board members were asked to stand while Governor Beshear swore them in. Chairman Roberts echoed the Governor's sentiments on worker safety and the importance of the Board. Chairman Roberts asked members to introduce themselves.

Ms. Amy Pennington called the roll. Members attending were Ms. Angela Bednark, Dr. Traci Byrd, Mr. Bill Carey, Mr. Hampton Henton, Mr. James Kay, Mr. Keith Murt, Mr. Ken Nichter, Mr. Steve Sparrow, Mr. Mac Stone, and Mr. John Stovall. Noted absences were Ms. Caitlin Blair and Mr. John Holbrook.

Chairman Roberts called for comment or questions of the December 4, 2017 Board meeting minutes. There being no comments or questions, Chairman Roberts asked for a motion to approve. Motion made by Mr. Sparrow, seconded by Mr. Stovall. The motion passed unanimously.

Chairman Roberts called for New Business. He invited Mr. Chuck Stribling, OSH Federal-State Coordinator, to give an overview on the OSH Standards Board. The overview covered the span from 1972, when KRS 338.051 was created, establishing the Board, to the present. Additionally, Mr. Stribling gave an overview on the regulatory process.

Chairman Roberts opened the floor to nominations for Chairman Pro Tem. Dr. Byrd nominated Mr. Stovall. Mr. Sparrow seconded the nomination. There being no other nominations, Chairman Roberts asked if Mr. Stovall would accept the nomination to serve as Chairman Pro Tem. Mr. Stovall accepted.

Chairman Roberts called on Ms. Amy Cabbage, General Counsel, to discuss ethics. Ms. Cabbage informed the Board that as General Counsel of the Labor Cabinet and with the Board administratively attached to the Labor Cabinet, she also serves as the Board's Ethics Officer. Ms. Cabbage reviewed the Code of Ethics discussing items such as when it may be appropriate for a member to make a disclosure and abstain from vote as well as not accepting gifts with a value more than \$25.00. Board members were asked to review the Code of Ethics, sign, and turn in to keep on file.



Chairman Roberts recognized Ms. Kim Perry, Commissioner, Department of Workplace Standards, to give an overview and update of the Kentucky OSH Program. Commissioner Perry's overview of the program began with the Kentucky General Assembly establishing the State Plan in 1972. The Kentucky OSH Program jurisdiction extends to private sector workers, as well as state and local public sector workers throughout the Commonwealth. Federal OSHA has jurisdiction over federal properties, federal employees, and private contractors on properties ceded to the federal government. Commissioner Perry explained the OSH Program is funded by the federal and state restricted funds. Within the program, there are two (2) divisions, the Division of OSH Education and Training, also known as KYSAFE, and the Division of OSH Compliance. KYSAFE promotes voluntary compliance with Kentucky OSH standards, oversees Voluntary Partnership Protection Programs, which are VPP, SHARP, and CPP, and provides cost free training on OSH regulations. The Division of OSH Compliance enforces OSH standards in the Commonwealth as well as investigating OSH discrimination complaints. 725 inspections were conducted in FY 2019, compared to 633 the previous year, as well as 390 consultation surveys, compared to 277 surveys the previous year with 3,222 serious hazards abated. Commissioner Perry stated that KYSAFE presented four (4) population-training sessions with over 1,600 participants. The total recordable incidence rate for all industries in 2019, based on 2018 Bureau of Labor Statistics' data, was 3.4, up .1 from the 2018 record low. Among the many outreach and training opportunities provided by KYSAFE, the Labor Cabinet also developed and launched the cost free KYSAFE mobile app to provide videos, event trainings, staff directory, as well as safety and health tips.

Chairman Roberts called upon Ms. Robin Maples, OSH Standards Specialist, to give a regulatory update briefing. Ms. Maples reviewed two (2) regulations that were promulgated under the authority given to the Secretary pursuant to Executive Order 2018-586, in force at that time. Amendments to 803 KAR 2:320, Toxic and Hazardous Substances, were effective May 3, 2019. The Final Rule was published by OSHA August 9, 2018, pushing back the date of compliance for certain ancillary provisions of the general industry beryllium standard to December 12, 2018. The delay affected methods of compliance, beryllium work areas, regulated work areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping provisions of the beryllium regulation. Additionally, amendments to 803 KAR 2:505, Cranes and Derricks in Construction, were effective May 3, 2019. The Final Rule was published by OSHA November 9, 2018 and amended a provision that required operator certification based on crane type and the rate-lifting capacity of the crane. Certifying organizations are no longer required to issue certifications based on rating capacities, although they still can if they choose to do so. Employers may choose to rely on certifications based on crane type alone. OSHA's Final Rule clarifies and continues employer duty to evaluate operators for their ability to safely use equipment and will maintain safety and health protections for workers as it reduces compliance burdens. Concluding her remarks, Ms. Maples recognized Mr. Stribling.

Mr. Stribling discussed 803 KAR 2:180, Kentucky's recordkeeping, reporting, and statistics regulation, which adopts OSHA's recordkeeping requirements found in 29 CFR Part 1904 and



establishes state reporting requirements. Mr. Stribling explained Kentucky's rule, KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection and analysis of occupational safety and health statistics. Therefore, this regulation is not subject to adoption, approval, amendment, or repeal by the Board. It is a regulation the department is solely responsible for and the Commissioner fulfills that responsibility. However, as recordkeeping and reporting is an important part of the OSH world, the Cabinet believes it is prudent to keep the Board informed of activity concerning the regulation. On January 25, 2019, OSHA published a Final Rule that amended recordkeeping by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. The requirement remains for establishments to maintain those records; however, electronic submission is not required. Establishments with 250 or more employees must continue to electronically submit information from their Form 300A. Nothing in the January 2019 Final Rule repealed an employer's duty to maintain any recordkeeping forms. Additionally, OSHA amended the recordkeeping regulation to require all covered employers, regardless of size, to submit their Employer Identification Number (EIN) electronically with their injury and illness data submission. Submitting the EIN facilitates the use of data and may help reduce duplicative employer reporting. The January 25, 2019 Final Rule was adopted and became effective June 17, 2019. On February 11, 2020, the department filed an amendment to 803 KAR 2:180. The amendment adds a definition for hospitalization, which is the formal admission to a hospital or clinic for care, treatment, observation or diagnostic testing. The amendment also clarifies that any death, hospitalization, amputation, or loss of eye that occurs in the work environment, or is caused or contributed to by an event in the work environment, must be reported. The amendment is in the promulgation process and the Board will be kept apprised of its progress.

Chairman Roberts opened the floor to questions for Ms. Maples and Mr. Stribling. Mr. Henton asked for clarification on the term "covered employees," specifically how that was defined. In response, Mr. Stribling explained that as a general rule, most within the construction and general industry are covered. The employers not covered are identified in the appendix to Part 1904, based upon data from the Bureau of Labor Statistics, as well as employers with fewer than ten (10) employees for the calendar year. Mr. Henton inquired more specifically about agriculture and if there were any special exemptions within agriculture. Mr. Stribling responded that agriculture does fall under Part 1904, the recordkeeping and reporting; however, Appendix A would need to be referenced to see which sectors of agriculture are exempt. It was also clarified for Mr. Henton that even hiring ten (10) or more employees for one (1) day out of the calendar year would invalidate that employer from being exempt on the basis of fewer than ten (10) employees. Mr. Henton had a follow-up question that included hiring someone who subcontracted. Mr. Stribling advised he would need to do further research as well as confer with General Counsel to supply that answer. Chairman Roberts also suggested that if anyone does have several questions, to supply those and then after conducting research, a written answer will be provided back.

Chairman Roberts again inquired if there were additional questions. Mr. Stone asked about the process for how recommendations are brought to this Board for approval. Mr. Stribling



explained that explanation was forthcoming and asked if additional questions could be held until after the process was explained.

Chairman Roberts recognized Mr. Stribling to give an overview of House Bill (HB) 50 and its impact on current regulations. Mr. Stribling explained that HB 50, effective July 1, 2017, establishes a sunset for all Executive Branch administrative regulations based on a seven (7) year cycle. This impacts every Kentucky administrative regulation, causing any regulation last effective on or before March 1, 2013 to expire March 1, 2020. Fifty (50) of the eighty (80) OSH regulations expire March 1. Mr. Stribling explained the two (2) actions to prevent regulations from expiring, which is to review the regulation in its entirety for compliance with the requirements of KRS Chapter 13A and file a certification letter with the Regulations Compiler prior to the regulation expiration stating whether it will be amended or remain in effect without amendment. For those remaining without amendment, the effective date is updated to the date the letter was received, restarting the seven (7) year clock. For those stating the regulation will be amended, an amendment must be filed within eighteen (18) months of the letter received date. The Cabinet made the decision that all of the fifty (50) regulations about to expire would be reviewed and amended as necessary; therefore, certification letters were submitted for all fifty (50) on February 25 extending the expiration date eighteen (18) months from that date. Moving forward, this Board will continually review OSH regulations.

Chairman Roberts asked Ms. Maples to present the regulations with minor amendments ready for submission. Ms. Maples began with 803 KAR 2:040, Definitions', which is being re-evaluated as it only contains two (2) definitions. The following regulations contain minor updates per HB 50 to clean up language and harmonize definitions: 803 KAR 2:301, Adoption and Extension of Established Federal Standards; 803 KAR 2:304, Exit Routes and Emergency Planning; 803 KAR 2:311, Fire Protection; 803 KAR 2:312, Compressed Gas and Compressed Air Equipment; 803 KAR 2:316, Welding, Cutting and Brazing; and 803 KAR 2:319, Commercial Diving Operations. The Kentucky OSH Program supports the adoption of these amendments. Chairman Roberts inquired if there were any questions regarding the regulations. Mr. Henton inquired about the formatting such as striking and underlining. Ms. Maples explained that is how the Regulations Compiler requires regulatory edits. Chairman Roberts asked for a motion to accept the recommendations of the Cabinet to make these regulatory changes. Mr. Stovall motioned to accept, seconded by Mr. Nichter. The motion carried unanimously.

Chairman Roberts recognized Mr. Stribling to present regulations with minor amendments ready for submission. Mr. Stribling explained that OSHA published the fourth Standards Improvement Project (SIPs IV) Final Rule on May 14, 2019 making fourteen (14) revisions to existing requirements in recordkeeping, general industry, maritime, and the construction standards in order to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards without reducing employee protections. SIPs IV revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, rollover protective structures to comply with current consensus standards, updates for storage of digital x-rays, the method to call emergency services, and the removal of load limit signs during residential construction. Additionally, OSHA revised



two (2) standards to align with current medical practice, a reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. In order to protect employee privacy and prevent identity fraud, OSHA removed requirements from nineteen (19) standards that employers include an employee's Social Security number on exposure monitoring, medical surveillance, and other records. OSHA estimated the Final Rule provides an annual cost savings of \$6.1 million. OSHA concluded that Kentucky must adopt the Final Rule unless Kentucky demonstrates the amendments are not necessary because existing standards are already as effective as OSHA's Final Rule. The Kentucky OSH Program does not have an equivalent and supports the adoption of this Final Rule. If adopted, this Final Rule will amend 803 KAR 2:300, 2:320, 2:400, 2:403, 2:404, 2:406, 2:407, 2:418, 2:422, 2:425, and 2:500. Chairman Roberts opened the floor for questions. Having no questions, Chairman Roberts opened the floor for a motion. Ms. Bednark motioned to accept, seconded by Mr. Stone. The motion carried unanimously.

Chairman Roberts recognized Mr. Bill Cochran, the Area Director for the US Department of Labor's OSH Program, from Nashville, TN. Mr. Cochran expressed his gratitude for the invitation and communicated how important he thought this Board is to protect workers in Kentucky.

Chairman Roberts opened the floor for anyone else in the audience to speak. Chairman Roberts recognized Mr. Mike Oakley. Mr. Oakley stated that he was present on behalf of Grant's Fight. Mr. Oakley acknowledged the work of the Board and expressed his gratitude for the Board's work in helping protect Kentucky's workers. Chairman Roberts thanked Mr. Oakley for his presence.

Chairman Roberts recognized Mr. Stribling to address Mr. Stone's previous question and any additional questions. Mr. Stone inquired about the process and requirements for the board members working through the regulations needing attention. Mr. Stribling advised that while the regulations brought before the Board today did not incite a press presence future ones may draw more attention. Mr. Stribling explained that about forty (40) regulations are required to be as effective as the federal regulations. These forty (40) essentially adopt the federal and must be recertified every seven (7) years. The other forty (40) regulations are state specific standards that go above and beyond the federal requirements with rules unique to Kentucky. Mr. Stribling anticipates more public comment regarding those. He explained that material will be sent to board members ahead of time to review and call to ask questions prior to the meeting if needed.

With no further questions, Chairman Roberts thanked those present and advised the next meeting is tentatively scheduled for May 4, 2020 during the Safety and Health Conference at the Galt House in Louisville, Kentucky.

Chairman Roberts asked for a motion to adjourn. Mr. Stovall moved, seconded by Mr. Sparrow. The motion passed unanimously.