

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 29, 2011  
Room 142-S—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-chairperson  
Senator Oletha Faust-Goudeau  
Senator Allen Schmidt  
Representative Steve Huebert  
Representative Jan Pauls  
Representative Ed Trimmer  
Representative Caryn Tyson  
Representative Valdenia Winn

#### Members Absent

Senator Ralph Ostmeyer  
Senator Tim Owens  
Representative Joe Patton

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Conferees

Andrew Schulte, Litigation Counsel, Kansas Corporation Commission

Chairperson Carl Holmes called the meeting to order.

Chairperson Holmes welcomed Andrew Schulte, Litigation Counsel, Kansas Corporation Commission (KCC), to address the proposed rules and regulations noticed for hearing by the KCC.

KAR 82-11-4, transportation of natural and other gas by pipeline; minimum safety standards; and KAR 82-11-10, drug and alcohol testing.

After discussion, the Committee had the following comments.

KAR 82-11-4. Because of federal action to repeal the Natural Gas Pipeline Safety Act of 1968, and most of its reenactment in Public Law 103-272, it appears that the agency may need to seek revision and updating of certain provisions in KSA 66-1,150 through 66-1,157d. Please review and advise the Committee of the agency's need to have those statutes amended.

KAR 82-11-10. In subsection (d), reference is made to genders through the use of "he or she." Please revise this in order to make this provision gender neutral.

Concern. The Committee is concerned about the statement in the Economic Impact Statement which indicates that a rule and regulation violates a Commission Order. What authority does the Commission have to overturn an administrative rule and regulation by entering and implementing a Commission Order.

The Committee then turned its attention to the comments it wished to make on rules and regulations reviewed at its meeting on April 27, 2011. The following outlines the rules and regulations reviewed and the comments, if any, to the agencies.

### **Kansas Insurance Department**

KAR 40-1-22, insurance policies and certificates; change of name or merger of an insurance company; assumption of risk endorsements.

After discussion, the Committee had no comment.

### **Kansas Department of Agriculture**

KAR 4-1-2, definitions; KAR 4-1-5, label; KAR 4-1-6 and KAR 4-1-8, revoked; KAR 4-1-9, registration; KAR 4-1-9a, registration for special local need; KAR 4-1-9b, emergency situation exemptions; KAR 4-1-13, enforcement; product sampling; and KAR 4-1-14, experimental use; registration fee.

After discussion, the Committee had no comments.

### **Kansas Department of Health and Environment**

KAR 28-4-93, online information dissemination system; KAR 28-4-113, definitions; KAR 28-4-114, applicant; licensee; KAR 28-4-114a, initial and ongoing professional development; KAR 28-4-115, facility; KAR 28-4-115a, supervision; KAR 28-4-116, daily care of children; KAR 28-4-116a, napping and sleeping; KAR 28-4-120, revocation; KAR 28-4-121, revocation; KAR 28-4-428a, education and training requirements; and KAR 28-4-440, infant and toddler programs.

After discussion, the Committee made the following comments.

KAR 28-4-113. In subsection (m), reference is made to specific statutory citations which refer to persons who “shall be deemed” to engaged in a certain practice and not to citations of licensure. Are these the correct statutory citations? In subsection (r), it appears that the phrase “according to” implies that the conditions following describe how the children are to be supervised and not conditions imposed upon the supervisor. The Committee suggests the intent be clarified.

KAR 28-4-115. In subsection (h), the term “weapon” is used. The Committee suggests that consideration be given to defining this term. In subsection (i), the term “large motor activity” is used. The Committee suggests that this term be defined. In the second sentence of paragraph (l)(3) does the phrase “hours of operation” refer to the operation of the “facility” or the operation of the trampoline?

KAR 28-4-116. In paragraph (b)(1), reference is made to the cultural heritage of the children. The Committee suggests defining this term. In subsection (d), requirements are outlined for handwashing. Members of the Committee understand that it is recommended that children not use alcohol-based hand sanitizers and wonders why this issue was not addressed in this regulation. In subsection (f), reference is made to “highly processed foods” and to “foods and beverages of low nutritional value.” The Committee suggests defining those terms.

Request. The Committee requested the staff from the agency to return to the Committee and explain changes made after the public hearing and final regulations have been adopted.

## **Kansas Department of Health and Environment**

KAR 28-19-645a, restrictions on open burning operations.

After discussion, the Committee made the following comment.

KAR 28-19-645a. It appears that this regulation amends KAR 28-19-645 by implication and the Committee is curious as to why KAR 28-19-645 was not amended to correspond to include the changes in this regulation. The Committee also requests the agency review KAR 28-19-647 and KAR 28-19-648 to determine whether these regulations also should be amended to reflect the changes in KAR 28-19-645a.

## **Kansas Department on Aging**

KAR 26-1-1, definitions; KAR 26-1-5, area plan development; KAR 26-1-6, operating policies and procedures of area agencies; KAR 26-1-7, revocation; KAR 26-1-8, confidentiality; policies and procedures to protect information; KAR 26-2-3, reporting and unearned funds requirements; KAR 26-2-9, revocation; KAR 26-2-10, audits; KAR 26-3-1, contracting and granting practices and

requirements; KAR 26-3-4, revocation; KAR 26-4-1, notice of actions; appeals by written requests; time to file written requests; KAR 26-4-6 revocation; KAR 26-4-7 through 26-4-15, revocation; KAR 26-4a-1, revocation; KAR 26-4a-2, appeals and fair hearings; KAR 26-5-2 through 26-5-10, revocations; KAR 26-8-2, eligibility criteria; KAR 26-8-5, assessment; KAR 26-8-8, termination; KAR 26-9-1, client assessment, referral, and evaluation (CARE) for nursing facilities; KAR 26-11-1 through 26-11-3 revocations; and KAR 120-1-2, revocation.

After discussion, the Committee made the following comments.

KAR 26-1-1. In subsection (e), the Committee questions the use of the term “contractor” to replace the term “contractee.” In most instances the endings of these types of terms refer to opposite entities or individuals. Please explain. In this regulation and throughout this set it appears the word “older” has been stricken when not intended. The Committee believes the intent was to refer to “older individuals.” Please consider the following:

- In subsections (b), (c) and (e) the term “older person” has been replaced with the term “individual.” Since subsection (v) defined “older individual” and “older person” as one at least 60 years of age, are there overstrikes in subsections (b), (c) and (e)?
- In subsections (b), (c), (e) and elsewhere, the use of the term “individual” creates the impression that the program is being expanded to cover individuals who are under the age of 60; e.g. subsections (p) and (q) on page 3.

KAR 26-1-6. This regulation refers to “policies and procedures” adopted by the area agencies on aging. Please explain why these are not adopted as administrative rules and regulations.

KAR 26-1-8. The Committee is concerned about the submission of social security numbers and asks the agency to review this policy. In addition, the Committee asks the agency to explain what steps have been taken to protect the social security numbers. In subsection (e), the Committee is concerned about the non-disclosure of the names of individuals who are receiving legal assistance. Please explain the rationale for non-disclosure of at least the names of those who are receiving legal assistance.

KAR 26-3-1. In paragraph, (d)(1)(B), it appears that there is a need to make the words “employee” and “officer” possessive. Also in paragraph (d)(2), the Committee suggests the agency define what is meant by a “combination of federal and state funds.”

KAR 26-4a-2. Do the Social and Rehabilitation Services regulations referenced in subsection (b) reflect current Kansas Administrative Procedures Act practices?

KAR 26-8-2. The Committee is curious to know whether the Department’s “uniform assessment instrument” and “long-term care threshold” are defined in a rule or regulation and, if so, where those items exist.

KAR 26-8-5. The Committee suggests that the agency define “significant change.”

Requests. The Committee is curious as to the number and topics of “policies and procedures” which the agency has in place that are not contained in administrative rules and regulations. In addition, the Committee requests that the agency review the set of rules and regulations to ensure that the proper terms are used consistently. The terms “customer,” “older individual” and “individual” all are used, but appear to refer to the same set of individuals.

Economic Impact Statement. Please update the Economic Impact Statement with actual figures of economic impact.

## COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning transportation of natural and other gas by pipeline and minimum safety standards. After discussion, the Committee had the following comments.

KAR 82-11-4. Because of federal action to repeal the Natural Gas Pipeline Safety Act of 1968, and most of its reenactment in Public Law 103-272, it appears that the agency may need to seek revision and updating of certain provisions in KSA 66-1,150 through 66-1,157d. Please review and advise the Committee of the agency's need to have those statutes amended.

KAR 82-11-10. In subsection (d), reference is made to genders through the use of “he or she.” Please revise this in order to make this provision gender neutral.

**Concern.** The Committee is concerned about the statement in the Economic Impact Statement which indicates that a rule and regulation violates a Commission Order. What authority does the Commission have to overturn an administrative rule and regulation by entering and implementing a Commission Order?

Prepared by Sharon Wenger  
Edited by Raney Gilliland

Approved by the Committee on:

June 1, 2011

(Date)