

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 27, 2011  
Room 142-S—Statehouse

#### Members Present

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

#### Members Absent

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  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Conferees

John Wine, Kansas Insurance Department  
Randy Stookey, Kansas Department of Agriculture  
Mary Murphy, Kansas Department of Health and Environment  
Tom Gross, Bureau of Air, Kansas Department of Health and Environment  
Sara Arif, Department on Aging

## Others Present

Gary Meyer, Kansas Department of Agriculture  
Daniel Tuggle, Kansas Department of Agriculture  
Jim Riemann, Kansas Department of Agriculture  
Berend Koops, Hein Law Firm  
Linda Sheppard, Kansas Insurance Department  
Chris Wilson, Kansas Department of Agriculture  
Dorothy Tenney, Kansas Department of Health and Environment  
Rachel Berroth, Kansas Department of Health and Environment  
Susan Vogel, Kansas Department of Health and Environment

Vice-chairperson Vicki Schmidt called the meeting to order.

The Vice-chairperson welcomed John Wine, a staff attorney for the Kansas Insurance Department, to address the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-1-22, insurance policies and certificates; change of name or merger of an insurance company; assumption of risk endorsements.

Mr. Wine stated that this regulation clarifies that assumption of risk endorsements must be attached to certificates of insurance as well as to insurance policies. The Committee had no questions.

The Vice-chairperson recognized Randy Stookey to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture. KAR 4-1-2, definitions; KAR 4-1-5, label; 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; KAR 4-1-14, experimental use; KAR 4-1-17, registration fee. The following are revoked: KAR 4-1-6, KAR 4-1-8, and KAR 4-1-11.

Staff had a question on KAR 4-1-2, page 2, (c) and suggested that representatives of the agency also look at KSA 2-2210, because it does not allow contractors to be included. A question was raised by staff concerning KAR 4-1-14 and the term "seed modified genetically." It was suggested that representatives of the agency take a look at KSA 2-2202 to see whether this is covered. Mr. Stookey responded to all general questions raised by members of the Committee.

Vice-chairperson Schmidt requested action on the Committee's minutes for March 1, 2011. *Representative Trimmer moved the minutes be approved as presented. The motion was seconded by Senator Allen Schmidt. The motion carried.*

Mary Murphy, Bureau of Child Care and Health Facilities, was recognized by the Vice-chairperson to speak to the proposed rules and regulations noticed for hearing by the 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 28-4-428a,

education and training requirements; KAR 28-4-440, infant and toddler programs. The following are revoked: KAR 28-4-120 and 28-4-121.

Ms. Murphy stated that these proposed rules and regulations noticed for hearing incorporate the provisions of Lexie's Law. A Committee member had a question regarding KAR 28-4-93, page 1, (b) and felt that it would be better for an applicant to be able to "opt in" rather than "opting out" with regard to having the applicant's address and telephone number on the online information dissemination system. Staff had questions concerning KAR 28-4-113, page 2, (m) concerning the statutes that were cited and suggested that the representatives of the agency review them. Ms. Murphy stated that they would do this. Staff also had a question on page 3 (r), and suggested the last line be changed to "and who meet the following requirements" to clarify to whom the requirements pertain. In KAR 28-4-115, page 4, (h), staff suggested that there should be a definition of "other weapons." Staff also noted in KAR 28-4-116, page 6, (f), that the term "highly processed foods" should be defined to avoid individual definitions by each facility. A Committee member requested a definition of "cultural heritage of the children." Committee members requested that figures be provided to the Committee tracking the number of daycare providers that are registered compared to the numbers before this legislation was enacted.

Chairperson Holmes recognized Tom Gross, Bureau of Air, to address the proposed rule and regulation noticed for hearing by the Kansas Department of Health and Environment (Attachment 2). KAR 28-19-645a, restrictions on open burning operations that supersede the provisions of KAR 28-19-645 for certain counties during the month of April.

Mr. Gross stated that this new regulation was proposed in support of the Flint Hills Smoke Management Plan (SMP) of the State of Kansas and was adopted formally by the Kansas Department of Health and Environment on December 29, 2010. This regulation is being proposed in parallel as a temporary and as a permanent regulation in an effort to have the regulatory component of the SMP in place for the Flint Hills burn season this March-April 2011. He stated that the primary goal is to ensure that all Kansas air monitors meet the federal air quality standards.

Staff noted there is conflicting language in regulations KAR 28-19-647 and KAR 28-19-648 that needs to be addressed by the agency. Mr. Gross stated that he would take this information back to the agency and the staff would review these areas. Mr. Gross responded to questions of a general nature from Committee members.

Chairperson Holmes welcomed Sara Arif, Director of Public Affairs, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Aging (Attachment 3). KAR 26-1-1, definitions; KAR 26-1-5, area plan development; KAR 26-1-6, operating policies and procedures of area agencies; KAR 26-1-8, confidentiality; policies and procedures to protect information; sanctions; KAR 26-2-3, reporting and unearned funds requirements; KAR 26-2-10, audits; KAR 26-3-1, contracting and granting practices and requirements; KAR 26-4-1, notice of actions; appeals by written requests; time to file written requests; KAR 26-4a-2, appeals and fair hearings; KAR 26-8-2, eligibility criteria; KAR 26-8-5, assessment; KAR 26-8-8, termination; and KAR 26-9-1, client assessment, referral, and evaluation (CARE) for nursing facilities. The following are revoked: KAR 26-1-7; KAR 26-2-9; KAR 26-3-4; KAR 26-4-6; KAR 26-4-7 through 26-4-15; KAR 26-4a-1; KAR 26-5-2 through 26-25-10; KAR 26-11-1 through 26-11-3; and KAR 120-1-2.

Ms. Arif stated that the purpose of these proposed regulations was to reflect the Older Americans Act currently in effect, a change in federal policy, and to clarify the regulations.

Staff noted that in KAR 26-1-1 page 1 (a), (b), (c), and (e), the word “older” should be inserted in front of “individuals.” Staff also noted that on page 2, (h), it should be changed to include a specific amendment date. A Committee member questioned changing the word “contractee” to “contractor” since legally the word “contractee” would refer to parties under the contract.

A question was raised in KAR 26-1-8, page 1, (b) (3), using the Social Security number as an identifying number. Members of the Committee were concerned about the rise in identity theft, whether the site would be secure, and whether persons who had access to Social Security numbers had passed security checks. There also was concern about how many policies and procedures the agency has that are not included in administrative rules and regulations, since those can be changed without notice to the provider. The Committee requested that the agency provide the Committee with the number of policy and procedures that it has. Another concern expressed by a Committee member in KAR 26-1-8, page 3, (e), was that the attorney was paid by the program administered by the Department, but could not disclose the identity of the individual to the agency. Ms. Arif stated that she would get back to the Committee on that issue.

It was noted that in KAR 26-3-1, page 2, (d) (1) (B), in the third line the words “employee and officer” need to be in the possessive form. Also in (d) (1) (B), there needs to be a definition somewhere of “financial or other interest.” Staff noted that KAR 26-4a-2 may be in conflict with the Kansas Administrative Procedure Act. Ms. Arif stated that the agency would check on this. A Committee member had a question concerning KAR 26-8-2 and the “approved uniform assessment instrument,” since no level of score is given and it could be changed by the agency at any time. The Committee suggested that the agency check the statute to be sure that “customer” is the term that is used.

Chairperson Holmes stated that the next meeting would be April 29, 2011, at 8:00 a.m. and that comments on each of the rules and regulations reviewed at this meeting would be made at the April 29, 2011, meeting. The Chairperson adjourned the meeting.

Prepared by Judy Glasgow  
Edited by Raney Gilliland

Approved by the Committee on:

June 1, 2011  
(Date)