

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

June 1, 2011
Room 152-S—Statehouse

Members Present

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

Member Absent

Representative Caryn Tyson

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

Chris Tymeson, Kansas Department of Wildlife and Parks
David Barfield, Department of Agriculture
Rick Fleming, Office of Securities Commissioner
Judy Jewsome, Kansas Corporation Commission
Jean Redeker, Board of Regents
Julene Miller, Board of Regents
Carman Allen, Board of Emergency Medical Services
Tom Hawk, Behavioral Sciences Regulatory Board

Sky Westerlund, National Association of Social Workers
Mack Smith, State Board of Mortuary Arts
Marla Rhoden, Kansas Department of Health and Environment
Patrick Broxterman, Office of the State Fire Marshal
Rose Rozmiarek, Office of the State Fire Marshal

Others Present

Tim Boese, Groundwater Management District Number 2
Aaron Jack, Kansas Securities Commission
Michelle Lancaster, Kansas Securities Commission
Steve Wasson, Kansas Securities Commission
Gary Davenport, Kansas Corporation Commission
Mike Hoeme, Kansas Corporation Commission
Rob Mealy, Kearney and Associates
Brenda Kroll, Kansas Department of Health and Environment
Mary Flin, Kansas Department of Health and Environment
Leslie Allen, Behavioral Sciences Regulatory Board
Susan Vogel, Kansas Department of Health and Environment
Matt Peek, Kansas Department of Wildlife and Parks
Derek Hein, Hein Law Firm
Dan Murray, Federico Consulting
Sean Miller, Capital Strategies
Debb Boss, Hein Law Firm
Phyllis Kelly, Kansas Adult Care Executives
Doug Jorgensen, Acting State Fire Marshal

Morning Session

Chairperson Carl Holmes called the meeting to order at 9:00 a.m.

The Chairperson recognized Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-1-1, definitions; KAR 115-5-1, furbearers and coyotes, legal equipment, taking methods, and general provisions; KAR 115-5-2, furbearers and coyotes, possession, disposal, and general provisions; KAR 115-25-9a, deer, open season, bag limit and permits, additional considerations, Fort Riley; and KAR 115-25-11, furbearers, open seasons, and bag limits.

Mr. Tymeson stated that KAR 115-5-1 and KAR 115-25-11 were amended to allow otters to be trapped. He stated that this was in response to public request. Mr. Tymeson responded to a question from a Committee member concerning the growing deer population in District 36; he stated that the Commission was looking at several ways to reduce the population, including having a two week doe-only season in the fall. A question was raised by a Committee member as to when it is necessary to report an accident with a wild turkey. Mr. Tymeson stated that he was not sure and the Department of Transportation and Highway Patrol handle these matters, but he would inquire and get back to the Committee.

David Barfield, Chief Engineer, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Department of Agriculture, Division of Water Resources (Attachment 1). KAR 5-22-4a, water flowmeter requirement; and KAR 5-22-4d, water flowmeter installation procedures.

Mr. Barfield stated that KAR 5-22-4a requires the installation of a water flowmeter on each non-domestic, non-temporary groundwater right (well) located within the boundaries of the Equus Beds Groundwater Management District No. 2 (GMD 2) which were not previously metered through orders of the chief engineer or action of the GMD board.

Mr. Barfield did say that there was some discussion about the use of “board” in KAR 5-22-4d(f) and (g). Staff and Committee members suggested that the term “or the board’s designee” be added since board members did not make inspections.

Chairperson Holmes recognized Rick Fleming, General Counsel, to address the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-22-1, applications for registration; KAR 81-20-1; KAR 81-20-2; KAR 81-22-2; KAR 81-23-1; KAR 81-23-2; KAR 81-24-1; KAR 81-25-1; KAR 81-25-2; KAR -81-25-3; KAR 81-226-3; KAR 81-28-1; KAR 81-28-2; and KAR 81-30-1, revoked; KAR 81-2-1, forms and adoptions by reference; and KAR 81-5-21, invest Kansas exemption.

Mr. Fleming stated that KAR 81-5-21 is being amended to create a new exemption that allows a Kansas company to raise up to \$1 million without going through the registration process. The maximum allowable investment by any single person is \$1,000 unless the person is an accredited investor. A Committee member suggested that in rural areas, especially western Kansas, it could be impossible to get over 10 or 20 investors to raise the kind of capital that the business might need. The Committee members suggested there be an exemption in specific situations to allow individuals to contribute more than the \$1,000.

Staff had a concern that this rule and regulation is creating an exemption to the Securities Act that was not there previously. Staff wondered if this was something that should have to go through the legislative process. Mr. Fleming stated that the Commission could expand exemptions by rule, but cannot restrict exemptions by rule. A Committee member noted that the economic impact statement for KAR 81-5-21 did not have a complete description of costs. The Committee suggested that this be completed before the public hearing. Mr. Fleming assured the Committee that it would be done.

The Chairperson recessed the meeting at 10:00 a.m. to allow members to attend the *Sine Die* Session of the Legislature.

The meeting reconvened at 10:40 a.m. The Chairperson stated that the Committee had received an answer to its questions concerning when to report an accident with a turkey to the Kansas Highway Patrol. Staff stated that if the accident caused \$1,000 or more in damages, or caused any human injury, the accident should be reported.

Chairperson Holmes welcomed Judy Jewsome, Litigation Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission. KAR 82-4-1, definitions; KAR 82-4-2a, authority of agents, employees, or representatives authorized by commission; KAR 82-4-3a, hours of service; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-6d, waiver of physical requirements; KAR 82-4-8a,

accessories and equipment; and KAR 82-4-20, transportation of hazardous materials by motor vehicles.

Ms. Jewsome stated that many of the changes in the amended rules and regulations were to update state regulations to reflect the most recent federal Motor Carrier Safety Administration regulations.

Staff noted that in KAR 82-4-1, page 5 (v) the term “examiner” was inserted in place of “practitioner” and ask for an explanation, since the history section did use the term “practitioner.” Ms. Jewsome stated that this was changed to mirror what the Board of Healing Arts had used in its statutes. Staff also noted that the history section needs to be updated to include KSA 66-1, 129 and KSA 66-1, 129a, to include the authority to promulgate in subsection (aa). Ms. Jewsome stated that this would be done. A Committee member had a question on KAR 82-4-3f, because of an experience he had on a recent bus ride. Ms. Jewsome asked that the Committee member meet with her and give her the details so the Commission could look into the incident. A staff member stated that he could not find the adoption by reference in KAR 82-4-3i of 40 CFR, Part 82, as stated in KAR 82-4-8a(a)(4). Ms. Jewsome stated that she would check to make sure the adoption by reference was included and she would get back to the Committee.

Chairperson Holmes noted that a quorum was present and asked for action on the minutes from April 27, 2011, and April 29, 2011. *Senator Vicki Schmidt moved that the minutes be approved as presented; Representative Valdenia Winn seconded the motion; the motion carried.*

Jean Redeker, Director of Academic Affairs, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents (Attachment 2). KAR 88-29-1, definitions; KAR 88-29-3, categories of admission; KAR 88-29-4, qualifications required for the admission of an applicant with 24 or more transferable credit hours; KAR 88-29-5, qualifications required for the admission of a Kansas resident who is under the age of 21; KAR 88-29-6, qualifications required for the admission of a Kansas resident who is 21 or older; KAR 88-29-7, qualifications required for the admission of a nonresident who is under the age of 21; KAR 88-29-7a, qualifications required for the admission of a nonresident who is 21 or older; KAR 88-29-8, the exception window for resident freshman class admissions; KAR 88-29-8c, the exception window for nonresident freshman class admissions; KAR 88-29-9, admission policies for state educational institutions; KAR 88-29-10, methods for state educational institutions to use when evaluating qualifications for admission; KAR 88-29-11, requirements for the qualified admission precollege curriculum; KAR 88-29-12, establishment of a qualified admission precollege curriculum by an accredited high school in Kansas; KAR 88-29-18, functional equivalents of the qualified admission precollege curriculum, residents; KAR 88-29-19, functional equivalents of the qualified admission precollege curriculum, nonresidents; KAR 88-29a-5, qualifications required for the admission of a Kansas resident who is under the age of 21; KAR 88-29a-6, qualifications required for the admission of a Kansas resident who is 21 or older; KAR 88-29a-7, qualifications required for the admission of a nonresident who is under the age of 21; KAR 88-29a-7a, qualifications required for the admission of a nonresident who is 21 or older; KAR 88-29a-8, the exception window for resident freshman class admissions; KAR 88-29a-8c, the exception window for nonresident freshman class admissions; KAR 88-29a-9, admission policies for state educational institutions; KAR 88-29a-10, methods for state educational institutions to use when evaluating qualifications for admission; KAR 88-29a-11, requirement for the qualified admission precollege curriculum; KAR 88-29a-18, functional equivalents of the qualified admission precollege curriculum, residents; and KAR 88-29a-19, functional equivalents of the qualified admission precollege curriculum, nonresidents.

Ms. Redeker stated that the proposed rules and regulations under new article KAR 88-29a (State University Admissions) establishes admission standards for freshmen who apply for admission for the 2015 summer session or later

A staff member had a question on KAR 88-29-7a, paragraph one, and stated that the "(a)" should be moved to the end of the first sentence to conform with the other rules and regulations. Ms. Redeker stated that this would be done. In KAR 88-29-12, page 4, (e), staff said that this subsection needs to be reviewed and clarified. Julene Miller, Chief Counsel, stated that this would be reviewed. A Committee member had a question concerning the GED and homeschool students and the requirements to have a GED Certificate and a score of 21 on the ACT test. The Committee member stated that the statute was changed several years ago to make the GED certificate a high school diploma, rather than equal to a high school diploma. Ms. Miller stated that the statute, under which the Board of Regents is operating, states that the applicant must graduate from an accredited high school, not just have a high school diploma. A Committee member stated that the Legislature might want to look at changing the language of the statute to accept the high school diploma. A question was raised by a Committee member about military dependents and residency; Ms. Miller state that these rules and regulations do not change the requirements for military dependents.

The Chairperson recessed the meeting until 1:30 p.m.

Afternoon Session

The Chairperson reconvened the meeting at 1:30 p.m.

Chairperson Holmes recognized Carman Allen to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Service. KAR 109-5-5, retroactive approval of continuing education course; KAR 109-9-1, instructor-coordinator certification; KAR 109-9-4, requirements for acceptance into an instructor-coordinator initial course of instruction; KAR 109-10-3, late enrollment; KAR 109-10-5, revoked; KAR 109-15-1, reinstating attendant certificate after expiration; and KAR 109-15-2, recognition of non-Kansas credentials.

Ms. Allen stated that these changes are necessary to incorporate the new levels of certification associated with adoption of the new scopes of practice and to add the requirement of completion of transition training to have certification reinstated.

Tom Hawk, Executive Director, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-4a, continuing education for licensees; and KAR 102-2-12, licensed specialist clinical social work licensure requirements.

Mr. Hawk stated that the proposed rules and regulations clarify the types of continuing education experiences which may be used to meet the social worker safety awareness requirement and the types of practice activities and types of clients needed to meet requirements for clinical licensure.

Chairperson Holmes recognized Sky Westerlund, Executive Director of the Kansas Chapter, National Association of Social Workers (KNASW)) to speak on KAR 10202-4a

(Attachment 3). Ms. Westerlund stated that KNASW suggests two modifications to the proposed regulations: Specify topic areas that are to be covered in the safety awareness training and exclude this particular training from online self-study.

Committee members were concerned about the restricting of online self-study for the safety training, especially in areas of western Kansas where participants must travel so far to receive training. The Committee suggested if the training cannot be done online, that training sessions be provided in various western Kansas locations so participants do not have to travel long distances and lose several days from work to obtain the training. Ms. Westerlund stated that she would be willing to travel to those areas to provide the training.

Mack Smith, Executive Secretary, was recognized by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Mortuary Arts. KAR 63-1-6, general requirements relating to the practice of embalming, cremation and funeral directing; KAR 63-4-1, payment of fees; KAR 63-6-2, standards for approval; KAR 63-6-3, post approval and review; KAR 63-7-1, definitions; KAR 63-7-2, crematory operator in charge, crematory operator, recordkeeping; KAR 63-7-6, licensure applications for crematories; KAR 63-7-7, inspection of crematories; KAR 63-7-9, crematory operator's license; application requirements; KAR 63-7-10, crematory operator's initial license, biennial renewal; and KAR 63-7-11, continuing education.

Mr. Smith stated that the rules and regulations were being amended to include crematory operators. Mr. Smith stated that the number of cremations has increased by about 35 percent in the State of Kansas. The number of crematories also is rising. This is primarily because of the lower costs involved with cremation.

A Committee member noted that in KAR 63-7-1, the definitions should be in alphabetical order, current item (b) should come after (d). Mr. Smith stated that this would be corrected before the public hearing.

Chairperson Holmes recognized Marla Rhoden to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment, Division of Health, Bureau of Child Care and Health Facilities. KAR 28-38-18, licensing examination; KAR 28-39-169a, medication aide; and KAR 28-39-169b, state medication aide test.

Staff noted that in KAR 28-38-18, subsections (e) and (f) appear to be in conflict and clarification is needed. Staff stated that the history section in KAR 28-39-169a should be revised to include KSA 65-1,121 in the implementation section. Staff also noted that, in order to be in compliance with statutory language, the term "department" should be replaced by the term "secretary" in KAR 28-39-169a and KAR 28-39-169c. Staff stated that the history section of KAR 28-39-169b needs to be rechecked and KSA 65-1,121 reinserted. A Committee member was concerned about KAR 28-39-169b, page 2, (a)(5) allowing a person with limited English proficiency to use a bilingual dictionary during testing, stating that it would be important for a medication aide to have proficiency in oral language skills, as well.

Patrick Broxterman was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State Fire Marshal's Office. KAR 22-25-1, definitions; KAR 22-25-2, requirements for the sale of cigarettes; KAR 22-25-3, certification forms and requirements; KAR 22-25-4, exceptions; KAR 22-25-5, recertification requirement; and KAR 22-25-6, administrative hearings.

The Committee questioned why these rules and regulations had been approved by the Department of Administration and the Attorney General in 2009, and only now are coming before the Committee. It was explained that there had not been a general counsel for a period of time and that these were discovered when the new acting fire marshal came into the office. Staff noted that the history section would need to be updated because of the length of time.

The Chairperson recognized Rose Rozmiarek to speak to the proposed rules and regulations noticed for hearing by the State Fire Marshal's Office. KAR 22-19-2, certification of fire investigators; KAR 22-19-3, revoked; and KAR 22-19-5, filing reports with state fire marshal.

Chairperson Holmes asked the Committee to set dates for the Interim Committee meetings. The following dates were approved by the Committee:

July 22, 2011	Friday
August 29, 2011	Monday
October 10, 2011	Monday
November 21, 2011	Monday
January 3, 2011	Tuesday

The Chairperson brought to the Committee's attention the new law that requires agencies to bring rules and regulations back to the Committee within 30 days of the public hearing if the agency believes substantial changes have occurred. In order to avoid special meetings being called, the Committee directed staff to send agencies a letter concerning this change in the procedures, including the scheduled dates for Committee meetings during the Interim. This would allow agencies to notify staff if there would be a need to review these changes.

The Chairperson announced the next meeting would be July 22, 2011. The meeting was adjourned at 3:45 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; furbearers and coyotes, legal equipment, taking methods, and general provisions; furbearers and coyotes, possession, disposal, and general provisions; deer, open season, bag limit, and permits, additional considerations, Fort Riley (exempt); and furbearers, open seasons and bag limits (exempt). After discussion, the Committee members had no comment.

Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning water flowmeter requirement; and water flowmeter installation procedures. After discussion, the Committee members had the following comment.

KAR 5-22-4d. The Committee requests the agency review the regulation to determine whether the use of the term "board" is more appropriate than the use of the term "district" in subsections (e) and (f).

Kansas Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning applications for registration, and revocations. After discussion, the Committee had no comment.

KAR 81-5-21. The Committee questions the authority of the agency to promulgate this regulation and create an exemption to the Securities Act. Please explain the basis of the agency's authority. In addition, please complete the Economic Impact Statement.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; authority of agents, employees, or representatives authorized by commission; hours of service; general motor carrier safety regulations; qualifications of drivers; parts and accessories necessary for safe operation; waiver of physical requirements; accessories and equipment; and transportation of hazardous materials by motor vehicles. After discussion, the Committee had the following comments.

KAR 82-4-1. In subsection (v), please review the term "examiner" to determine whether this is really the term the agency wishes to use rather than "practitioner." In addition, in subsection (aa), the Committee questions whether the agency has the authority cited in the history section to adopt this provision. Please consider the addition of other statutory authority to adopt this provision.

KAR 82-4-8a. In subsection (a)(4), reference is made to the adoption of 40 C.F.R. Part 82, subpart G in KAR 82-4-3i. The Committee could not find and such adoption in KAR 82-4-3i. Please identify the location of the adoption by reference and correct the citation, if necessary.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; categories of admission; qualifications required for the admission of an applicant with 24 or more transferable credit hours; qualifications required for the admission of a Kansas resident who is under the age of 21; qualifications required for the admission of a Kansas resident who is 21 or older; qualifications required for the admission of a nonresident who is under the age of 21; qualifications required for the admission of a nonresident who is 21 or older; the exception window for resident freshman class admissions; the exception window for nonresident freshman class admissions; admission policies for state educational institutions; methods for state educational institutions to use when evaluating qualifications for admission; requirements for the qualified admission precollege curriculum; establishment of a qualified admission precollege curriculum by an accredited high school in Kansas; functional equivalents of the qualified admission precollege curriculum, nonresidents; qualifications required for the admission of a Kansas resident who is under the age of 21; qualifications required for the admission of a Kansas resident who is 21 or older; qualifications required for the admission of a nonresident who is under the age of 21; qualification required for the admission of a nonresident who is 21 or older; the exception window for resident freshman class admissions; the exception window for nonresident freshman class admissions; admission policies for state educational institutions; methods for state educational institutions to use when evaluating qualifications for admission; requirements for the qualified admission precollege curriculum; functional equivalents of the qualified admission precollege curriculum, residents; and functional equivalents of the qualified admission precollege curriculum, nonresidents. After discussion, the Committee had the following comments.

KAR 88-29-7a. This regulation appears to need to be adjusted organizationally. The “(a)” appears to need to be placed after the first complete sentence.

KAR 88-29-12. Subsection (e) appears to conflict with subsection (c). Please review the contents of each and adjust accordingly. The Committee suggests a linkage in subsection (e) back to subsection (c).

Question. In its discussion, the Committee had questions about the awarding of a GED. The Committee is curious to learn how the Board of Regents treats a GED and if it actually becomes a high school diploma. If so, is there a need to make any statutory modifications?

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning retroactive approval of continuing education course; instructor-coordinator certification; requirements for acceptance into an instructor-coordinator initial course of instruction; late enrollment; reinstating attendant certificate after expiration; and recognition of non-Kansas credentials. After discussion, the Committee had no comment.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning general requirements relating to the practice of embalming, cremation, and funeral directing; payment of fees; standards for approval; post approval and review; definitions; crematory operator in charge, crematories; crematory operator's license, application requirements; crematory operator's initial license, biennial renewal; and continuing education. After discussion, the Committee had the following comment.

KAR 63-7-1. The Committee asks that the list of definitions be placed in alphabetical order.

Kansas State Fire Marshal. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; requirements for the sale of cigarettes; certification forms and requirements; exceptions; recertification requirement; and administrative hearings. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning licensing examinations (adult care home administrators); medication aide; state medication aide test; and medication aide continuing education. After discussion, the Committee had the following comments.

KAR 28-38-18. In subsections (e) and (f), it appears that there may be two different standards for when an applicant may submit an application for retaking the national examination. In subsection (e), it appears the applicant may not apply until receiving board approval of subsection training and in subsection (f) it appears the applicant must have completed the training before application. Please clarify.

KAR 28-39-169a and KAR 28-39-169b. Please review these regulations for the proper authority. The Committee that the authority resides with the “secretary” rather than with the “department.”

Questions. The Committee is curious to learn if the secretary has considered an oral English Proficiency test for medication aides. The Committee also is curious as to the English proficiency lever required b other states.

Prepared by Judy Glasgow
Edited by Jill Shelley and Sharon Wenger

Approved by Committee on:

July 22, 2011

(Date)