

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 24, 2007  
Room 514-S—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative John Faber  
Representative Lance Kinzer  
Representative Jan Pauls  
Representative Josh Svaty  
Representative Arlen Siegfroid  
Representative Mark Treaster

#### Members Absent

Senator Donald Betts  
Senator Chris Steineger

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Melissa Calderwood, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Judy Glasgow, Committee Assistant  
Tatiana Lin, Kansas Legislative Research Department

#### Others Present

Tom Conley, Kansas Department of Health and Environment  
Isabelle Busenitz, Kansas Department of Health and Environment  
Scott Carlson, State Conservation Commission  
Steve Frost, State Conservation Commission  
Betty Rose, Kansas State Board of Technical Professions  
Murray L. Rhodes, Kansas State Board of Technical Professions  
Tom Mulinazzi, Kansas State Board of Technical Professions  
Doug Farrar, Kansas Society of Land Surveyors  
Bob Wasinger, Kansas Department of Corrections

Julie St. Peter, Kansas Department of Corrections  
Linden Appel, Kansas Department of Corrections  
Robin Kempf, Kansas Board of Regents  
Scott Gates, Kansas State Treasurer's Office

### **Morning Session**

Chairperson Holmes called the meeting to order at 10:00 a.m. on April 24, 2007. The Chairperson asked for action on the Committee minutes for March 16, 2007, March 23, 2007, and April 4, 2007. *Representative Pauls moved to approve the minutes as presented, Representative Faber seconded the motion. Motion carried.*

The Chairperson welcomed Tom Conley, Kansas Department of Health and Environment, to speak to the proposed rules and regulations noticed for hearing by the Department (Attachment 1). KAR 28-35-135a, definitions; KAR 28-35-135d, definitions; KAR 28-35-135n, definitions; KAR 28-35-135p, definitions; KAR 28-135r, definitions; KAR 28-35-177a, general licenses; source material; KAR 28-35-178a, general license; certain ionization devices; KAR 28-35-178b, general license; certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere; KAR 28-35-180a, general requirements for the issuance of specific licenses; KAR 28-35-181d, specific licenses for one or more groups of medical uses; KAR 28-35-181m, specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use; KAR 28-35-181n, specific licenses to manufacture and distribute generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material; KAR 28-35-181o, specific licenses to manufacture and distribute sources and devices for use as a calibration or reference source, or for certain medical uses; KAR 28-35-182c, qualifications for a type B specific license of broad scope; KAR 28-35-184a, specific conditions on all licenses; KAR 28-35-201, schedule F; KAR 28-35-202, revoked; KAR 28-35-203, schedule G: criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning; KAR 28-35-216a, testing for leakage or contamination of sealed sources; KAR 28-35-230g, reports of transactions involving nationally tracked sources; KAR 28-35-289, training requirements; KAR 28-35-292, location of documents and records; KAR 28-35-308, applicability; KAR 28-35-349, design, performance, and certification criteria for sealed sources used in downhole operations; and KAR 28-35-450, general requirements.

Mr. Conley stated that these proposed rules and regulations are intended to correct errors and omissions to bring these regulations in line with the federal regulations. In KAR 28-35-135a, page 3, a Committee member questioned item (q) "Alert" and how the term was used. Mr. Conley stated that this term was taken directly from the federal regulations. Staff noted that on page 4, (u) the notation "adopted by reference" should refer back to (n) on page 3. In KAR 28-35-135r, page 2, staff noted that in (j), the definition of "Radioactive material" is not identical to the definition found in the statute. In 28-35-180a, page 2, (h) staff suggested that the words "manufactured by the licensee" be added after "nationally tracked source." In KAR 28-35-181m, (b)(1) a Committee member pointed out that the word "or" should be reinserted at the end of the paragraph. The Committee stated that in KAR 28-35-203,(b) "KAR" should be inserted before the "28-35-180b" for consistency. Mr. Conley responded to questions of a general nature from Committee members. Chairperson Holmes thanked him for his presentation before the Committee.

Steve Frost, Water Conservation Program Manager, was recognized by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas State Conservation Commission (Attachment 2). KAR 11-12-1, definitions; KAR 11-12-2, eligible areas; KAR 11-12-3,

application and review; KAR 11-12-4, payment; KAR 11-12-5, transition to dry land; KAR 11-12-6, dismissal of water right; and KAR 11-12-7, petition for reconsideration.

Mr. Frost gave the Committee background information concerning the Water Right Transition Assistance Pilot Project Program (WTAP) which was authorized in 2006 under the provisions of HB 2710. It is a voluntary, incentive based water management tool to be administered by the State Conservation Commission. The purpose is to decrease historic consumptive water use in targeted, priority areas formally designated to be in need of aquifer restoration or stream recovery.

Staff had questions concerning KAR 11-12-1, page 2, (f)(1), and asked if the term “active vested or certified water right” were defined in the statute. It was determined that the term “active vested” was in the statute, but there was no defined term for “certified water right.” Mr. Frost stated that this referred to perfected water rights. It was suggested that the definition be included for clarification. Committee members had concerns about how the county appraiser would arrive at the valuation figure by using the fair market value and the appraised agriculture use value in KAR 11-12-4. Staff had questions in KAR 11-12-6, (2), and recommended that “appropriate documentation” be defined. Committee members questioned why wells would be placed on the inactive well status. Mr. Frost stated that wells removed under these rules and regulations would have to come under the Department of Health and Environment regulations. After responding to all Committee members’ questions, Chairperson Holmes thanked Mr. Frost for appearing.

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

### **Afternoon Session**

The meeting was reconvened at 1:30 p.m. Chairman Holmes introduced Scott Gates, Learning Quest Program Director, to speak to the proposed rules and regulations noticed for hearing by the State Treasurer’s Office (Attachment 3). KAR 3-4-1, definitions; KAR 3-4-2, eligibility requirements; KAR 3-4-4, eligibility period; KAR 3-4-5, matching grant accounts; and KAR 3-4-6, multiple accounts.

Staff noted that the statutory citation needs to be updated in KAR 3-4-1. In KAR 3-4-2, the Committee members questioned where in the statute the term “joint account” was limited to two. Mr. Gates stated that this was a decision made by the State Treasurer’s Office. The Committee suggested that clarification on statutory authority definition of “joint account” be made. Mr. Gates answered general questions from Committee members. Chairman Holmes thanked Scott Gates for his presentation before the Committee.

Murray Rhodes was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions (Attachment 4). KAR 66-9-5, surveying curriculum approved by the board; KAR 66-10-10a, surveying experience required of applicant who completes land surveying curriculum or is a graduate of an approved land surveying curriculum; and KAR 66-11-5, admission requirements for fundamentals of surveying examination.

Mr. Rhodes stated that the proposed rules and regulations are introducing new educational requirements for the profession of land surveyors. Mr. Rhodes introduced Tom Mulinazzi, engineer/land surveyor and professor from the University of Kansas, to address the proposed rules and regulations. Tom Mulinazzi stated that no colleges within the State of Kansas offer a four-year land surveyor degree. There is a shortage of surveyors throughout the state and all engineering

firms are in need of surveyors. In response to a question from a Committee member, Mr. Mulinazzi stated that the reason the University of Kansas and Kansas State University do not offer a degree in this area was that there were not enough students enrolled for the universities to continue to offer it. The courses to complete this study may be obtained through any accredited technical school, a two-year college, or four-year institution. Mr. Mulinazzi stated that this was not a degree program but a body of knowledge program.

Robin Kempf was introduced by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Board of Regents ([Attachment 5 and 6](#)). KAR 88-24-1, eligibility to take GED test; KAR 88-3-8, revoked; KAR 88-3-8a, military personnel; and KAR 88-3-12, discharged or retired from active military service in Kansas.

A Committee member had a question on KAR 88-24-2, in line 2, which states a Kansas state high school diploma shall be issued. The Committee questioned whether or not it was a high school diploma or a certificate stating the holder had the equivalent of a high school diploma that was issued. Ms. Kempf stated she would look into this matter. Staff noted that the history section on all the proposed rules and regulations should be reviewed and brought up to date. Ms. Kempf stated that (e) in KAR 88-3-8a, page 2, has been deleted from the proposed rule and regulation. Robin Kempf was thanked by the Chairperson for her presentation before the Committee.

The Chairperson welcomed Julie St. Peter to address the proposed rules and regulations noticed for hearing by the Department of Corrections. KAR 44-12-103, tattoos, body piercing, and body markings; KAR 44-12-105, unsanitary practices; KAR 44-12-106, hair standards and appearance; KAR 44-12-107, use of safety devices; KAR 44-12-208, misuse of state property; KAR 44-12-210, accounts; KAR 44-12-211, telephones; KAR 44-12-212, accessing unauthorized computer-based information; KAR 44-12-304, disobeying orders; KAR 44-12-306, threatening or intimidating any person; KAR 44-12-307, avoiding an officer; KAR 44-12-308, improper use of prepared food; KAR 44-12-309, kitchen utensils and shop tools; KAR 44-12-312, use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse or hoarding of authorized or prescribed medication; KAR 44-12-315, lewd acts; KAR 44-12-320a, interfering with official duties; KAR 44-12-325, security threat groups, inmate activity, limitations; KAR 44-12-601, mail; KAR 44-12-901, dangerous contraband; KAR 44-12-902, contraband; KAR 44-12-903, tobacco contraband; KAR 44-12-1101, attempt, conspiracy, accessory, solicitation; liability for offenses of another; KAR 44-12-1201, increased penalty for involving or victimizing an inmate under 18; KAR 44-12-1301, class I offenses; KAR 44-12-1302, class II offenses; KAR 44-12-1303, class III offenses; KAR 44-12-1306, use of restitution; KAR 44-12-1308, disciplinary segregation; limits.

Staff noted that in KAR 44-12-103 and KAR 44-12-208, the history section should be updated. A Committee member pointed out that in KAR 44-12-210, concerning checking accounts, the words "or maintain" should be added in the first line after "establish." A question concerning KAR 44-12-309 and KAR 44-12-901 was raised by a Committee member. The concern was whether a table knife would fall under KAR 44-12-901 or whether it could be argued to be under KAR 44-12-309. The Committee suggested that more explanation or clarification was needed. Staff noted that in KAR 44-12-902, there should be a statement excluding the items listed under dangerous contraband in KAR 44-12-901. Staff stated that this also may be necessary in KAR 44-12-903.

Bob Wasinger was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Corrections. KAR 44-13-101a, waiver of rights; KAR 44-12-106, administration of oaths; designation of persons authorized; KAR 44-13-201, disciplinary report and written notice; KAR 4-13-201a, diversion procedure; KAR 44-13-201b, summary judgment procedure; KAR 44-13-202, amendment of the charge; KAR 44-13-307, administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance; KAR 44-13-402, continuing the hearing; recesses; time limits;

extensions; KAR 44-13-403, conducting the disciplinary hearing; KAR 44-13-404, presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony; KAR 44-13-405a, calling witnesses; KAR 44-13-406, disposition; KAR 44-13-408, assistance from staff; KAR 44-13-603, absence from facility; KAR 44-13-610, collection of fines; KAR 44-13-701, administrative review; KAR 44-13-703, appeal on the record to secretary of corrections in class I and II offense cases only; and 44-13-704, Secretary of Corrections' final review on appeal.

Mr. Wasinger stated that the history section in KAR 44-13-201, KAR 44-13-202, KAR 44-13-701, KAR 44-13-703, and KAR 44-13-704 needs to be updated. A Committee member had a question concerning KAR 44-13-202, (b) (1) and (2) and what the difference was between them. Mr. Wasinger stated that a class III charge is reviewed within the facility and the class I and II are reviewed by the Secretary. It was determined that a statement should be added to clarify the difference. In KAR 4-13-408, in response to the question of whether or not the staff assistant assigned to aid the inmate at the hearing would be an attorney, Mr. Wasinger stated this person would be a unit team counselor trained in these regulations, but not an attorney.

Chairperson Holmes thanked Julie St. Peter and Bob Wasinger for their presentation before the Committee.

The Committee reviewed the calendar for the interim and the following dates were agreed upon:

Sine Die, May 22, 2007  
July 9, 2007 (primary); July 10, 2007 (secondary)  
August 14, 2007 (primary); August 13, 2007 (secondary)  
October 1, 2007 (primary); October 2, 2007 (secondary)  
November 19, 2007 (primary); November 20, 2007 (secondary)  
December 10, 2007 (primary); December 11, 2007 (secondary)  
First day of 2008 Legislative Session

There being no other business, the Chairperson adjourned the meeting at 3:55 p.m.

## **Committee Comments on Proposed Rules and Regulations**

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; definitions; definitions; definitions; definitions; general licenses, source material; general license, certain ionization devices; general license, certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere; general requirements for the issuance of specific licenses; specific licenses for one or more groups of medical uses; specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use; specific licenses to manufacture and distribute generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material; specific licenses to manufacture and distribute sources and devices for use as a calibration or reference source, or for certain medical uses; qualifications for a type B specific license of broad scope; specific conditions on all licenses; schedule F; schedule G; criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning; testing for leakage or contamination of sealed sources; reports of transactions involving nationally tracked sources; training requirements; location of documents and records; applicability; design, performance, and certification criteria for

sealed sources used in downhole operations; general requirements; and revocation and had the following comments.

KAR 28-35-135a. In subsection (q), the Committee believes that clarity is needed in the first phrase of the definition of "alert" since "a period during which an event could occur" does not appear to have any meaning. In subsection (u), the Committee suggests making reference to the specific subsection where the adoption by reference is being made, rather than to the adoption by reference "in the regulation."

KAR 28-35-135d. In subsection (j), the Committee suggests that the agency include a cross-reference to where (the specific regulation) the "appendices" are adopted by reference.

KAR 28-35-135r. In subsection (r), there is a definition of "radioactive material" which does not appear to match the definition provided in statute (KSA 48-1603(n)). The Committee believes that the agency should review the definition to determine if the two definitions should be identical.

KAR 28-35-180a. In subsection (h), the Committee suggests the addition of the words "manufactured by the licensee" after the end of the first sentence to clarify that the licensee does not have to assign a serial number to each nationally tracked source.

KAR 28-35-181m. In subsection (b), the Committee believes that there should be an "or" between (1) and (2), since the subsection begins with the phrase "either of the following."

KAR 28-35-203. Reference is made to a KAR in this regulation, but there is no "KAR" preceding the reference. Please check all references throughout this set of regulations to make sure each is preceded by "KAR."

**State Conservation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligible areas; application and review; payment; transition to dry land; dismissal of water right; and petition for reconsideration and had the following comments.

KAR 11-12-1. Please review the term "certified water right" to be sure this is the correct term to use. The statutes define the terms "vested right" and "appropriation right."

KAR 11-12-6. The Committee believes that the term "appropriate documentation" should be defined or made clear in this set of regulations.

**Kansas State Treasurer.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligibility requirements; eligibility period, matching grant accounts; and multiple accounts (Low-income Family Postsecondary Savings Accounts Incentive Program) and had the following comments.

KAR 3-4-2 and KAR 3-4-6. The Committee is concerned about the limitation for a "joint account owner" or two individuals as account owners and finds no statutory authorization for this limitation. Please provide your statutory authority for this limitation.

KAR 3-4-4. The Committee is concerned with the language which gives sole authority to the Treasurer to change the ownership of an account. Please provide an explanation of this change along with the statutory authority to do so.

**Kansas State Board of Technical Professions.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning surveying curriculum approved by the board; surveying experience required of applicant who completes land surveying curriculum or is a graduate of an approved land surveying curriculum; and admission requirements for fundamentals of surveying examination and had no comment.

**Kansas Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility to take GED test; and test score requirements and military personnel; discharged or retired from active military service in Kansas; and revocation and had the following comments.

KAR 88-24-2. The Committee questions the use of the term "a Kansas state high school diploma" as it applies to a GED certificate. Please review authority to refer to this certificate as a diploma.

KAR 88-3-8a. The Committee is concerned that current legislative enactments may impact this and other regulations of the agency. Please review legislative enactments which may necessitate changes in the regulation.

**Kansas Department of Corrections.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning tattoos, body piercing, and body markings; unsanitary practices; hair standards and appearance; use of safety devices; misuse of state property; accounts; telephones; accessing unauthorized computer-based information; disobeying orders; threatening or intimidating any person; avoiding an officer; improper use of prepared food; kitchen utensils and shop tools; use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse or hoarding of authorized or prescribed medication; lewd acts; interfering with official duties; security threat groups, inmate activity, limitations; mail; dangerous contraband; contraband; tobacco contraband; attempt, conspiracy, accessory, solicitation, liability for offenses of another; increased penalty for involving or victimizing an inmate under 18; class I offenses; class II offenses; class III offenses; use of restitution; disciplinary segregation, limits; waiver of rights; administration of oaths, designation of persons authorized; disciplinary report and written notice; diversion procedure; summary judgment procedure; amendment of the charge; administrative review of request for witnesses, denial of requests, issuance of summons, voluntary nature of witness appearance; continuing the hearing, recesses, time limits, extensions; conducting the disciplinary hearing; presence of inmate and presence of charging officer at disciplinary hearings, officer statements in lieu of testimony; calling witnesses; disposition; assistance from staff; absence from facility; collection of fines; administrative review; appeal on the record to the secretary of corrections in class I and II offense cases only; and Secretary of Corrections' final review on appeal and had the following comments.

KAR 44-12-210. The Committee is concerned that the inmate may have a relative or other person establish an account to which the inmate might have access. Should the regulation be amended to clarify that it would be a violation to "maintain" an account to which the inmate has access?

KAR 44-12-309. The Committee suggests that the regulation be modified to address the agency's separate regulation of class A tools, such as a kitchen knife.

KAR 44-12-901, KAR 44-12-902, and KAR 44-12-903. The Committee is concerned that without additional clarification an inmate could argue that what was in possession was contraband and not "dangerous contraband" or "tobacco contraband." Please review these regulations to ensure that an inmate would be subject to the appropriate regulation with no legal basis to claim the lesser penalty.

KAR 44-12-903. Please provide to the Committee the types of religious activities which require the use of tobacco.

KAR 44-13-202. The Committee suggests the combination of subsection (b)(1) and subsection (b)(2) unless there is a reason to keep the provisions separate.

Prepared by Judy Glasgow  
Edited by Raney Gilliland  
and Melissa Calderwood

Approved by Committee on:

May 22, 2007  
(Date)