

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 6-7, 2008
Room 535-N—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative John Faber
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfried
Representative Ed Trimmer

Members Absent

Senator Donald Betts
Senator Chris Steineger
Representative Mark Treaster

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Nobuko Folmsbee, Revisor of Statutes Office
Judy Glasgow, Committee Assistant

Others Present

Jean Boline, Board of Technical Professions
George Barbee, Board of Technical Professions
Tim Sloan, Board of Technical Professions
Steve Brosemer, Board of Technical Professions
Mary Leigh Dych, Board of Technical Professions
William Sneed, Polsinelli Law Firm
Deanna Ross, Department of Health and Environment
Rick Bean, Department of Health and Environment
Scott Nightingale, Department of Health and Environment
Walter Ernest, Kansas Association of Homes and Services for the Aging
Dan Morin, Kansas Medical Society

Scott Hesse, Kansas State Board of Healing Arts
Ron Seeber, Kansas Agribusiness Retailers Association
Leslie Kaufman, Kansas Co-op Council
Marsha Schrempp, Behavioral Sciences Regulatory Board
Berend Koops, Hein Law Firm
Patrick Martin, Kansas Racing and Gaming Commission
John C. Bottenberg, Bottenberg and Associates
Sean Miller, Capitol Strategies
John Wine, Kansas Insurance Department
Jim Newins, Kansas Insurance Department
Lane Hemsley, Kansas Pharmacy Board
Debra Billingsley, Kansas Pharmacy Board
Dave Starkey, Department of Agriculture
George Blush, Department of Agriculture
Teri Canfield-Eye, Racing and Gaming Commission
Don Cawby, Racing and Gaming Commission
John Mitchell, Department of Health and Environment
Maggie Thompson, Department of Health and Environment
W. C. Blanton, Husch Blackwell
N. C. Vaughn, Husch Blackwell
Steve Johnson, ONEOK
Michael Hooper, Leadership
Susan L. Vogel, Kansas Department of Health and Environment
Rick Brunetti, Kansas Department of Health and Environment
Yvonne Anderson, Kansas Department of Health and Environment
Marla Rhoden, Kansas Department of Health and Environment
Amy Campbell, WMS Gaming, Inc.
Shari Albrecht, Kansas Department of Health and Environment
Secretary Rod Bremby, Kansas Department of Health and Environment

**Thursday, November 6
Morning Session**

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

Chairperson Schmidt recognized Jean Boline, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions ([Attachment 1](#)). KAR 66-11-5, admission requirements for fundamentals of surveying examination; KAR 66-12-1, minimum standards for the practice of land surveying; KAR 66-14-1, requirements; KAR 66-14-2, definitions; KAR 66-14-2, continuing education; KAR 66-14-4, revoked; KAR 66-14-5, computation of credit; and KAR 66-14-7, records.

It was noted that in KAR 66-12-1, subsection (b) the date should be changed from 1997 to 2005. The Committee members had several questions concerning the use of the word “activity” in place of “requirement” when writing rules and regulations concerning continuing education. Ms. Boline stated that this change was made at the suggestion of the Department of Administration. The Committee expressed concern regarding this change in wording. Staff was asked to check with the Department of Administration about the change in wording and whether it was only for this board or if it is for all agencies with continuing education requirements. In KAR 66-14-2, staff questioned whether it was necessary for “continuing education unit” to be defined since the term was not used

in the rules and regulations. The Committee had several questions concerning KAR 66-14-2, paragraphs (11) and (12). After a lengthy discussion, the Committee consensus was that there should be more specific guidelines for earning professional credit hours in these two categories. It was noted that the experience could vary greatly from urban to suburban areas. The Committee also expressed the belief that 12 credit hours for voluntary service or self study was too much. The Committee requested that the Board furnish a list of other states that are granting credit for volunteering and self study to the Committee.

After Ms. Boline responded to all questions from the Committee, Chairperson Schmidt thanked Ms. Boline for her appearance before the Committee.

Scott Nightingale, Enforcement Officer, was introduced by the Chairperson to speak to the proposed rule and regulation noticed by the Department of Health and Environment , Environmental Use Controls (Attachment 2). KAR 28-73-1, definitions.

The Committee requested that a list of the properties that would be eligible under the new regulation be furnished to the Committee. Mr. Nightingale stated that this would be done. A Committee member asked whether counties and municipalities had been notified about the public hearing on these regulations. The Committee felt that there were several properties around the Wichita area, especially the Furley hazardous waste facility, that would be especially interested in the public hearing.

Chairperson Schmidt thanked Mr. Nightingale for his presentation before the Committee.

Robert Stiles was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by Department of Health and Environment, Charitable Health Care Provider Program (Attachment 3). KAR 28-53-1, definitions; KAR 28-53-2, agreement; KAR 28-53-3, eligibility criteria for a medically indigent person; KAR 28-53-4, records and reports; and KAR 28-53-5, referrals.

In KAR 28-53-5, the Committee noted that there was a difference between the statutory language of "secretary" and the reference in the regulations to "department." The Committee expressed the belief that the language in the rules and regulations should be identical to that found in the statute.

Mr. Stiles was thanked for appearing before the Committee by the Chairperson.

The Chairperson recognized Marsha Schrempp to speak to the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-8, supervision; and KAR 102-2-12, licensed specialist clinical social work licensure requirements.

One Committee member questioned where the sites for the teleconferences would be held in western Kansas. Ms. Schrempp stated that she did not know but could get that information for the Committee. After Ms. Schrempp answered all questions from Committee members, the Chairperson thanked Ms. Schrempp for her appearance before the Committee.

Chairperson Schmidt welcomed John Wine, Staff Attorney, to address the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 4). KAR 40-3-30, fire and casualty insurance; assigned risk plans; forms and procedures.

Mr. Wine responded to questions from the Committee. Staff noted that the history section should include a reference to KSA 40-2116. Chairperson Schmidt thanked Mr. Wine for his presentation before the Committee.

Lane Hemsley, staff attorney, was recognized by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-18-1, transferring unused medications; KAR 68-18-2, accepting unused medications; KAR 68-18-3, recall of unused medications and KAR 68-16-3, donation of cancer drugs.

Mr. Hemsley noted that these rules and regulations are the result of HB 2578 passed by the 2008 Legislature. The Committee expressed concern that the letters to clinics requesting them to register had not been mailed and requested that representatives of the Kansas Department of Health and Environment furnish a list to the Kansas Pharmacy Board so that it could prepare and send letters within the next two weeks to the clinics that need to be registered. Mr. Stiles stated that KDHE would have the list to the Board of Pharmacy by the next day and Debra Billingsley stated that the letter would be prepared and mailed within the next two weeks. Staff stated that the history section in KAR 68-18-1 needed to be updated. In order to not violate the Pharmacy Act, staff stated that legislation would be needed to allow for the distribution of these drugs. This also would be true for the distribution of cancer drugs under that program. *Representative Holmes moved that staff prepare a bill to allow the distribution of drugs under both programs, Representative Faber seconded the motion. Motion carried.*

Mr. Hemsley continued his presentation and addressed the proposed rule and regulation noticed for hearing by the Kansas Pharmacy Board. KAR 68-19-1, minimum program requirements.

Staff stated that paragraphs (a), (b), and (c) needed to be clarified to list the persons who would be attending the meetings and who is to perform the tasks set forth. Mr. Hemsley stated that he would take this back to the Board. After he responded to all questions, Chairperson Schmidt thanked Mr. Hemsley for appearing before the Committee.

Chairperson Schmidt welcomed Scott Hesse to speak to the proposed rules and regulations noticed for hearing by the Board of Healing Arts. KAR 100-11-1, amount; KAR 100-28a-1, fees; and KAR 100-72-1, fees and KAR 100-72-7, registration renewals; continuing education.

Mr. Hesse stated that the 2008 Legislature passed HB 2620, which added additional personnel to the Board of Healing Arts making it necessary to increase the fees. Committee members had several questions concerning the addition of personnel and whether this increase of fees would cause a sweep of extra funds from the agency, as has happened in the past. After responding to all questions, Mr. Hesse was thanked by the Chairperson for his presentation before the Committee.

The Chairperson introduced Dave Starkey to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Agriculture. KAR 4-7-723, accurate labeling of milk, milk products, and dairy products.

Mr. Starkey stated that SB 595 was introduced during the 2008 Legislative Session. During hearings in the Senate, the Department of Agriculture was asked to meet with the different parties to come up with an acceptable agreement among all parties. One of the members of the Committee expressed surprise that this had come to the Administrative Rules and Regulations Committee and was not going back to be heard in both the House and Senate Agriculture Committees during the 2009 Legislative Session. Another Committee member had concerns about the use of technical terminology instead of the more popular term "growth hormone." Mr. Starkey stated that these are the terms that the industry uses, so that is what is in the rules and regulations. A question was raised as to whether the state can regulate anything produced outside the state and distributed within the state. Mr. Starkey stated that the state can regulate anything for sale in the State of Kansas. Mr. Starkey stated that an Ohio law is being challenged in court under freedom of speech protections concerning the required labeling. The spokesperson from the agency believes that it is constitutional,

but will watch the case and the decision that is issued. Staff stated that in (c) (2), the wording should be added to be consistent with the prior references to "milk, milk product, or dairy product." It was the consensus of the Committee that the rules and regulations go forward to the public hearing, but that a copy of the approved rules and regulations be provided to the Chairperson and Vice-Chairperson of both the Senate and House Agriculture Committees. Staff suggested that the history section be amended to include KSA 2007 Supp. 65-771.

After he responded to all questions, the Chairperson thanked Mr. Starkey for appearing before the committee.

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

Afternoon Session

Chairperson Schmidt reconvened the meeting at 1:30 p.m. She noted that a meeting date was needed in January 2009 prior to the first day of session. After discussion by members, January 8, 2009, was selected. A notice will be mailed to each member of the time and place closer to the meeting date.

Teri Canfield-Eye, Assistant Attorney General, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Racing and Gaming Commission. KAR 112-12-15, live horse racing purse supplement fund and KAR 112-13-6, Kansas greyhound breeding development fund.

Ms. Canfield-Eye stated that KAR 112-12-15 sets forth the formula for the apportionment of the balance of the money credited to the live horse racing purse supplement fund that is subject to distribution and KAR 112-13-6 sets forth the formula for the apportionment of the balance of the money credited to the Live Greyhound Racing Purse Supplement Fund.

Staff noted that in KAR 112-12-15, paragraphs (1), (2) and (3) need to be clarified to designate that it is the owners, not the horses, who will be receiving the money. It also was suggested that there should be a link to KSA 74-8830 to clarify the horse breeds that are to be included. In KAR 112-13-6 there should be a reference to KSA 2007 Supp. 74-8831. Ms. Canfield-Eye responded to all questions from the Committee concerning live racing and what was happening. The Chairperson thanked Ms. Canfield-Eye for her presentation before the Committee.

The Chairperson recognized Patrick Martin to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-101-1, prohibition against uncertified management of a gaming facility; KAR 112-101-2, facility manager application procedure; KAR 112-101-3, background investigations; KAR 112-101-4, affirmative duty to demonstrate qualifications; KAR 112-101-5, fees and costs; KAR 112-101-6, disqualification criteria; KAR 112-101-7, certificate duration; KAR 112-101-8, certificate renewal, KAR 112-101-9, notice of anticipated or actual change; KAR 112-101-10, advertising; promotion of responsible gaming; KAR 112-101-11, material debt transaction; KAR 112-101-12, notice of bankruptcy or liquidation; KAR 112-101-13, access to gaming facility and information; KAR 112-101-14, certification of employees; KAR 112-101-15, reporting requirements; KAR 112-101-16, prohibitions; KAR 112-102-1, prohibition against uncertified business; KAR 112-102-2, gaming supplier and non-gaming supplier defined; KAR 112-102-3, gaming and non-gaming supplier employees; KAR 112-102-4, application for a certificate; KAR 112-102-5, temporary supplier permit; KAR 112-102-6, affirmative duty to demonstrate qualifications; KAR 112-102-7, background investigations; KAR 112-102-8, disqualification criteria;

KAR 112-102-9, certificate duration; KAR 112-102-10, certificate renewal application; KAR 112-102-11, change in ownership; KAR 112-102-12, certificates, temporary supplier permits, and badges to be commission property; KAR 112-102-13, records; KAR 112-103-1, prohibition of unlicensed employment with a facility manager; KAR 112-103-2, license levels; KAR 112-103-3, temporary work permit; KAR 112-103-4, application for a license; KAR 112-103-5, applicant identification; KAR 112-103-6, affirmative duty to demonstrate qualifications; KAR 112-103-7, background investigation; KAR 112-103-8, disqualification criteria for a level I, level II, or level III license; KAR 112-103-9, examinations; KAR 112-103-10, license duration; KAR 112-103-11, license renewal, KAR 112-103-12, reapplication after license denial or revocation; KAR 112-103-13, reserved; KAR 112-103-14, reserved; KAR 112-103-15, license mobility; limitations; KAR 112-103-16, licenses, temporary work permits, and badges to be commission property; KAR 112-111-1, involuntary exclusion list; KAR 112-111-2, inclusion on list; notice; KAR 112-111-3, effect of placement on the exclusion list; KAR 112-111-4, licensees' duties; KAR 112-111-5, petition for removal; KAR 112-113-1, sanctions; KAR 112-114-1, definitions; KAR 112-114-2, report of an alleged violation; KAR 112-114-3, notice of alleged violation and hearing; KAR 112-114-4, waiver; KAR 112-114-5, informal settlements; KAR 112-114-6, participation by and representation of respondents; KAR 112-114-7, reserved; KAR 112-114-8, presiding officer; KAR 112-114-9, hearing procedure; KAR 112-114-10, evidence; KAR 112-114-11, orders; KAR 112-114-12, service of order; KAR 112-114-13, reserved and KAR 112-114-14, appeals of disciplinary review board hearings.

Mr. Martin responded to questions from Committee members concerning the terms "licensure" and "certificate" and how the agency is using them. Mr. Martin stated that the Attorney General had written a letter explaining the difference between "certifying" and "licensing." Mr. Martin stated that there are two different types of persons handled by the agency. Natural persons are licensed and unnatural persons (corporations, suppliers, and other similar entities) are certified by the agency. The Committee expressed continued concerns about the use of the two terms.

There was a question about the Economic Impact Statement in KAR 112-101-2, concerning the individual financial statements for each facility and whether the agency would be going back to review these figures during these tight economic times. In KAR 112-101-7, staff noted the language appears to be inconsistent because the certificate runs for "no longer than two years and one month" but the certificate shall expire on "the last day of the month of the anniversary of the date of issue" which appears to be different. KAR 112-101-13 staff noted that the agency might want to consider referencing KSA 60-206(a). Mr. Martin responded to a Committee member's question concerning KAR 112-102-2 (a) (4), stating that the agency wants to have information on tour group services bringing people to the casinos. A Committee member suggested that in KAR 112-102-4 (d), that as new information is defined, the rules and regulations should be amended to include these, so others have a complete list of information that is required. In KAR 112-103-2, a Committee member noted that the items were not listed in alphabetical order. It was noted that in KAR 112-103-3, that (b) actually allowed 180 days for a temporary work permit and a Committee member suggested that after all casinos were up and running for a year or two that the agency come back with amended rules and regulations and delete the last sentence in paragraph (b). In KAR 112-103-5, staff noted that the first sentence is awkwardly structured and needs to be clarified. Staff suggested that "J-1" be defined in the regulations to make it clearer what the agency is expecting. In paragraph (c) (3), a Committee member noted that there are college students who may not be legal citizens seeking employment at a casino and also that birth certificates were not included in the list of documents. Mr. Martin said that birth certificates were not specifically included, but that they were not excluded. It was suggested that for security purposes the agency consider the federal government's E-verify process for security clearances in this rule and regulation. Staff noted that in KAR 112-111-3 and 112-111-4, that the history section should be changed from the session law reference to the statutory reference. In KAR 112-114-2, a Committee member suggested that the agency may want to change the language in (b) if the form is to be available online. In KAR 112-114-14, paragraph (b), a Committee member questioned whether the reference to 11 days was counted at the time of mailing

or upon service. Mr. Martin stated that KAR 112-114-12, (d) states in "after service of an order is made by mail, three days shall be added." He stated that the Commission would look at this again. It was suggested that the Commission look at the section (d) time frame also. Staff expressed concern as to whether a member of the Commission could be on the disciplinary review board, because if a reconsideration were to be heard by the Commission, there could be a bias issue. Mr. Martin stated that he would look into that. A concern was raised by a Committee member in regard to the Economic Impact Statement since it contained no information as to the cost to the regulated community. Mr. Cawby stated that the agency could provide an estimated cost per facility at this time and they also would provide a general overhead cost for the program.

Friday, November 7 Morning Session

The Chairperson reconvened the meeting at 8:00 a.m.

Chairperson Schmidt welcomed Secretary Roderick Bremby, to address the Committee's concerns about the Sheltered Boiler Initiative ([Attachment 5](#)). Provided were Department of Health and Environment (KDHE) letters dated May 7, 2008 ([Attachment 6](#)) and May 27, 2008 ([Attachment 7](#)). A copy of 40 CFR Ch. I Subpart Dc (7-1-05 Edition) was provided to all Committee members for reference.

The following attachments were furnished to all Committee members prior to the meeting:

- Letter from Raney Gilliland to Secretary Bremby (dated 10/2/08) ([Attachment 8](#));
- Letter from Secretary Bremby to Senator Vicki Schmidt, cc: to Raney Gilliland (dated 10/03/08) ([Attachment 9](#));
- Letter from Secretary Bremby to Raney Gilliland (dated 10/04/08) ([Attachment 10](#));
- Letter from Raney Gilliland to Secretary Bremby (dated 10/22/08) ([Attachment 11](#));
- Two letters from Raney Gilliland to Rick Brunetti (dated 10/02/08)([Attachment 12](#));
- Letter from Rick Brunetti to Raney Gilliland (dated 10/10/08) ([Attachment 13](#));
- Permitted Dc boilers ([Attachment 14](#));
- KSA 65-3005 ([Attachment 15](#));
- KSA 65-3008 ([Attachment 16](#));
- KSA 65-3010 ([Attachment 17](#));
- Federal Regulations ([Attachment 18](#));
- Kansas Air Quality Regulations ([Attachment 19](#));
- Correspondence Received by KDHE ([Attachment 20](#));
- Initial Letter ([Attachment 21](#));
- Clarification Letter ([Attachment 22](#));
- Mailing list for boiler letters ([Attachment 23](#));
- Boiler Fact Sheet ([Attachment 24](#)); and
- Natural Gas Electrical Generators ([Attachment 25](#)).

In response to a question from the Committee concerning why there was such a the time lapse from when the U.S. Environmental Protection Agency (EPA) implemented New Source Performance Standard (NSPS) on June 9, 1989 and when the Department sent out letters in May 2008, to those boilers which meet the criteria, Mr. Brunetti stated that during routine inspections a number of boilers were found to be out of compliance and not registered as required by the NSPS. The Department made the decision to contact owners or operators of all boilers that were not

registered under the NSPS. A list of all boilers inspected in the State by the Kansas Department of Labor was requested. Upon receipt, the list was reviewed and the agency determined that 95 boilers at 65 locations could be impacted by the NSPS. The Department sent the initial letter on May 7, 2008 and, after some confusion from industry, a clarifying letter was mailed on May 27, 2008. A request was made to the Department to supply the Committee with what kind of additional information might have been requested from industry about these boilers after the initial response was received by the Department. A Committee member asked how many boilers remained out of compliance with the NSPS and what action KDHE would take to get them into compliance. Mr. Brunetti stated that there are 44 boilers at 27 locations unsheltered from enforcement action. It is the Department's consensus that these boilers have declined to register and no further effort will be offered. A Committee member asked if the registration form was available on the web. Mr. Brunetti stated that this particular program registration form was not available on the web. The Committee asked if this could be made available to those who have not registered and if a letter could be sent out stating that the form was available on the web for their response. Mr. Brunetti stated that they could check on this and determine the associated costs. A Committee member asked if KDHE conducted air quality sampling in the vicinity of these boilers. John Mitchell stated that the Department does not conduct direct testing, but their figures are based upon the boiler's potential to emit sulphur dioxide.

Mr. Brunetti, Mr. Mitchell, and Secretary Bremby answered questions from the Committee regarding what the Department's intention was concerning greenhouse gases both at the federal and state level. It was stated that penalties have been issued at the state level for not being in compliance with the NSPS. A Committee member asked how many boilers had received penalties and what the fuel sources were at those locations. Mr. Brunetti stated that there had been three enforcement penalties issued and that they were from fuel oil sources other than natural gas sources. The Committee requested a copy of all the information on the three boilers that the Department took enforcement action on, along with all letters that went back and forth from the time action was first initiated until the present date.

In response to a question from a Committee member concerning EPA inspections in the state, Mr. Mitchell stated that EPA conducts annual program reviews in all of the states on their federally funded programs. He stated that the EPA conducts approximately 10 reviews of the air quality control program. He stated that very rarely have violations been found by the EPA in Kansas.

There was a question from the Committee concerning why the May 7, 2008, letter included the second paragraph addressing greenhouse gas (GHG) emissions in Kansas. Mr. Brunetti stated that this particular paragraph was included in all correspondence going out to the air permitting entities and air correspondence from the Department. The Committee asked for the date when the first letters went out including that paragraph and a list of all the programs included, and that a copy of each type of letter in each program that contained this paragraph be provided to the Committee.

In a response to Committee members' concern as to where the authority was found giving the Secretary the authority to regulate GHG emissions, Yvonne Anderson, General Counsel, stated that the authority was contained in KSA 65-3005j and that Secretary Bremby would not be able to respond to anything concerning CO₂ because of the current litigation. A Committee member referred to a press release dated May 16, 2008, which referred to nitrous oxide, carbon monoxide, and sulphur oxide, particulate matter and volatile organic compounds, but did not include CO₂ ([Attachment 26](#)). A member asked if CO₂ was intentionally left out of the release. Mr. Brunetti stated that he would check with Tom Gross whose name was on the press release. Mr. Brunetti stated that the press release was issued after the first letter on boilers was sent and was intended for clarification.

A Committee member asked if the term "greenhouse gas" used in the May 7, 2008 letter refers to CO₂. Yvonne Anderson stated it is general knowledge that "greenhouse gas" does include CO₂ and that the letter was asking about CO₂.

A request was made by a Committee member for a report showing the number of staff in KDHE, broken down by divisions and programs from 1992 through 2008. Secretary Bremby stated that this would be done. A question from the Committee concerned the federal funding received by the Division for the Air Quality Program and on what the amount that is received is based. Mr. Mitchell stated there is a general fund amount that is to be used to conduct the air program in the state under EPA.

A question was raised by a Committee member concerning the listening tour held by Secretary Bremby this fall. Secretary Bremby stated that a letter was handed out at Dodge City and Hays stating that the CO₂ issue would not be discussed at the meeting since it was in litigation. A Committee member referred to KSA 65-3005, subsection H, and asked if Secretary Bremby had any agreements with local units of government dealing with air pollution problems within their jurisdiction and to allow them administer parts of the act in their jurisdiction. Mr. Brunetti stated that they have agreements with four local governments: Wyandotte, Johnson, Shawnee, and Sedgwick. A Committee member had a question about the Wyandotte County agreement and if the agreement includes monitoring the air emissions from the two coal fired plants and if the secretary retain that jurisdiction. Mr. Brunetti stated that the county has the responsibility to do permitting as well the monitoring for that county and the Department has oversight in Wyandotte County for air quality control.

Representative Holmes referred Secretary Bremby to copies of his electric bills for 2007 from Liberal and Topeka to demonstrate that there was a difference in the rates between Eastern Kansas and Western Kansas. He stated that the average rate being paid in Topeka was 6.612 cents a kWh and that in Liberal the rate was 11.067 cents a kWh. Rates in Liberal are 14 percent higher than last year and there will be another 8 percent increase in 2009. Representative Holmes also had two documents which will be available from the Kansas Energy Council within the next two weeks which lists all the power plants within the state of Kansas showing net generation, gross generation, and CO₂ emission rates. The other document factors in growth potential factors from 2008 to 2028 for each utility in order for the State of Kansas to know what increased capacity will be needed in the next 20 years.

Vice-Chairperson Holmes called Secretary Bremby's attention to HB 2565 passed by the 2007 Legislature on mercury emissions which requires KDHE to provide a report to the 2009 Legislature on the first day of the session.

KDHE staff responded to questions concerning the agreement that was signed between Westar and KDHE in February 2008. KDHE stated that the permit was signed by Westar prior to the agreement being signed. The Committee requested that KDHE furnish the date that the permit was signed and provide a copy of the permit to the Committee. The Committee also requested a copy of the complete inventory from each electric generation plant that it was to furnish to KDHE by October 1, 2008.

The Committee requested that KDHE furnish the Committee with the agency's cost of sending the letter on the boiler survey and implementing the registration and the source of the money. A Committee member also would like to have this information furnished for the budget process during the 2009 Legislative Session.

The Committee also requested that the Secretary furnish arguments as to why Kansas should retain primacy on the air quality standards in Kansas. The Secretary stated that he was reluctant to

do so at the meeting with opposing counsel present and would like to take time to prepare a written response for the Committee on retaining primacy.

Vice-Chairperson Holmes asked what KDHE was doing in regard to developing greenhouse gas or CO2 regulations in the State of Kansas. Yvonne Anderson, General Counsel, stated that she would advise the Secretary not to respond to that because of pending litigation. Representative Holmes stated that he would give his questions concerning this area to staff and they will forward the questions to Secretary Bremby.

Chairperson Schmidt thanked Secretary Bremby and his staff for appearing before the Committee and responding to all questions from the Committee.

The Chairperson welcomed Don Cawby to continue the review of the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-107-1, electronic gaming machine requirements; KAR 112-107-2, testing and approval; KAR 112-107-3, submission for testing and approval; KAR 112-107-4, reserved; KAR 112-107-5, transportation of EGMs; KAR 112-107-6, off-premises storage of EGMs; KAR 112-107-7, gaming floor plan; KAR 112-107-8, reserved; KAR 112-107-9, testing and software installation on the live gaming floor; KAR 112-107-10, master list of approved gaming machines; KAR 112-107-11, notice to central computer system; KAR 112-107-12, reserved; KAR 112-107-13, commencement of electronic gaming operations; KAR 112-107-14, EGM conversions; KAR 112-107-15, revocations and additional conditions; KAR 112-107-16, kiosks as automated gaming ticket and coupon redemption machines; KAR 112-107-17, automated jackpot payout machines; KAR 112-107-18, gaming tickets; KAR 112-107-19, coupons; KAR 112-107-20, EGM computer systems; KAR 112-107-21, progressive EGMs; KAR 112-107-22, wide-area progressive systems; KAR 112-107-23, electronic gaming monitoring systems; KAR 112-107-24, casino management systems; KAR 112-107-25, player tracking systems; KAR 112-107-26, external bonusing systems; KAR 112-107-27, cashless funds transfer systems; KAR 112-107-28, server-supported electronic gaming systems; KAR 112-107-29, server-based electronic gaming systems; KAR 112-107-30, EGMs and associated equipment utilizing alterable storage media; KAR 112-107-31, remote system access; KAR 112-107-32, EGM destruction procedures; KAR 112-107-33, reserved; KAR 112-107-34, waivers; KAR 112-110-1, adoptions by reference; KAR 112-110-2, central computer system accounting; KAR 112-110-3, central computer system security; KAR 112-110-4, central computer system; configuration and control; KAR 112-110-5, central computer system; software validation; KAR 112-110-6, central computer system communication; KAR 112-110-7, central computer system; protocol simulator; KAR 112-110-8, central computer system; general hardware specifications; KAR 112-110-9, central computer system backup; KAR 112-110-10, central computer system manuals; KAR 112-110-11, central computer system; support of progressive games; KAR 112-110-12, central computer system; additional functionality; and KAR 112-110-13, central computer system; acceptance testing.

Staff noted in KAR 112-107-7, paragraph (a), the second sentence "unless another scale is approved by the executive director" should be moved to the beginning of the sentence for clarity. In KAR 112-107-9, (b) (6) add the phrase "and amendments thereto" to avoid being restricted to the stated references. Staff also noted that in KAR 112-107-10, page 4 (g) that there is a cross reference to KAR 112-107-4, which is reserved. Mr. Cawby stated that he would take this back to determine the proper cross reference. Staff also suggested that all cross references be checked throughout the rules and regulations to include the phrase "and amendments thereto." A Committee member had a question concerning KAR 112-107-10 page 4, (h) and was not sure to what the reference to subsection (g) referred. Mr. Cawby stated that he would check on this and get back to the Committee. A member of the Committee questioned the title in KAR 112-107-11, since it did not refer directly to the body of the regulations. Staff had a questions in KAR 112-107-13 (a) (4), about the term "commission" and suggested that it be clarified. Staff suggested that this may need to be clarified throughout the rules and regulations. In KAR 112-107-20, page 3, (d) (2) (B) and (C), staff

suggested that the term "level I" be cross referenced to where the definition is found. A Committee member had a question about KAR 112-107-22, and the reference to using a bound book and whether this is actually used. Mr. Cawby stated that he would check on this. The Committee asked what type of personal information the casinos track and keep on players and whether the agency would provide this information to the Committee. Staff noted that in KAR 112-107-32 (c), the reference to KSA 21-4302(d)(1)(C) does not define component parts. Staff stated that by defining it down so tightly, that if this statute is amended, this rule and regulation would have to be changed. Staff suggested that the agency take the language that is needed out of the statute and put it into the regulation. Staff also questioned where waivers are included in the statute that are referred to in KAR 112-107-34 and KAR 112-110-11. The Committee had a question on 112-110-7 (d) (1) operation manual and suggested that it be clarified as to whether it is a physical manual or whether it could be online, which also would apply to KAR 112-110-10.

After he responded to all questions from Committee members, Chairperson Schmidt thanked Mr. Cawby for his appearance and presentation before the Committee.

The Chairperson stated that it is uncertain whether there will be a meeting in December, but a meeting is scheduled for January 8, 2009. The meeting was adjourned at 11:50 a.m. by Chairperson Schmidt.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Registration renewals, continuing education had no comment.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Amount; fees; and fees had the following comments.

KAR 100-11-1. The Committee is concerned that the renewal rate for paper and on-line renewal is the same. The Committee believes that this does not encourage individuals to renew on-line which would save the agency time and money.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Accurate labeling of milk, milk products, and dairy products. After discussion, the Committee had the following comments.

KAR 4-7-723. In subsection (a), the Committee suggests language be included which indicates that the terms are identical. In subsection (c)(2), please consider modification so that the reference to "rBST" also could be "rBGH." Also, the Committee wonders if the language in this subsection should refer to "product" rather than "milk" since the regulation itself references other products other than just milk.

Concern. The Committee suggests that the agency review the language in the regulation and determine if the requirements for labeling are using terms which are familiar to consumers so that there will be minimal confusion as to the product's content.

Suggestion. The Committee suggests that the agency cite KSA 65-771 as an implementing statute for this regulation.

Request. The Committee request that the agency explain how the impact of the requirements of these regulations will impact producers in surrounding states who wish to market milk or milk products within the State of Kansas.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Fire and casualty insurance, assigned risk plans, forms and procedures. After discussion, the Committee had no comment.

Kansas Board of Technical Professions. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Admission requirements for fundamentals of surveying examination; minimum standards for the practice of land surveying; requirements; definitions; continuing education activities; computation of credit; records; and revocation. After discussion, the Committee had the following comments.

KAR 66-14-1. The Committee is concerned with the use of the word “activity” rather than the word “requirement” and wonders if this same change has been made throughout the agency’s rules and regulations for consistency. This same comment would be applicable to other rules and regulations before it during this meeting. The Committee intends to inquire of the Department of Administration why there is a preference for the use of this word.

KAR 66-14-2. The Committee questions the need for the definition of the term “continuing education unit” since that term does not appear to be used in any of the rules and regulations of the agency. Does the agency need to have this term defined?

KAR 66-14-3. The Committee is concerned about the awarding of continuing education credit for serving as a volunteer member of a governmental or regulatory body involved in planning, zoning, construction, or any other area associated with a technical profession and that the volunteer status may not be adequate to deserve continuing education credit. Another issue which needs to be addressed is whether the “volunteer” is compensated in any way. Should the Legislature address this issue statutorily?

KAR 66-14-5. The Committee questions the number of PDHs received for self-study and wonders how the agency intends to monitor this self-study to determine if it really occurred. The Committee suggests a maximum of 3 PDHs for self-study.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transferring unused medications; accepting unused medications; and recall of unused medications. After discussion, the Committee had the following comment.

KAR 68-18-1. In subsection (b)(4), the Committee inquires whether the agency should use the term “pharmacist in charge” rather than the term “consulting pharmacist?” In addition, please update your history section.

KAR 68-18-2. The Committee is concerned that this donation program and the cancer drug donation program may be contrary to the Kansas Pharmacy Act and has authorized the introduction of legislation to ensure that the two programs do not conflict with the Kansas Pharmacy Act.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Donation of cancer drugs. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Minimum program requirements. After discussion, the Committee had the following comment.

KAR 68-19-1. This regulation appears not to name the individuals or group which are required to meet certain requirements. The regulation states that the “program” is to meet or to perform certain actions. Please clarify the language.

Kansas Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision and licensed specialist clinical social work licensure requirements. After discussion, the Committee had the following comment.

Concern. The Committee appreciates the use of videoconferencing to meet with supervisors, but is concerned with how individuals will know where the videoconferencing sites are. In addition, the Committee is concerned how the agency will provide notice of the location of the video conference. Has the Board discussed these issues and reached a decision?

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning Definitions (environmental use controls program). After discussion, the Committee had the following comments.

Request. The Committee asks the agency to provide a list of the facilities in the state which would be eligible for this Environment Use Control Program.

Request. The Committee request that the landowners and residents around the Furley facility in Sedgwick County be notified of the public hearing. In addition, the Committee requests the Sedgwick County Commission be notified of the public hearing.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; agreement; eligibility criteria for a medically indigent person; records and reports; and referrals (charitable health care providers). After discussion, the Committee had the following comments.

KAR 28-53-2. In subsection (b), the Committee is concerned with the meaning of the change of the word “immediate” to “concurrent.” Could the agency explain the change and what, if any, the change in word use effectuates.

Comment and Question. In many places throughout this set of rules and regulations the word “department” has been substituted for the word “secretary.” (See KAR 28-53-4, subsection (a)(2)) Yet, in some places, this change has not been made. (See KAR 28-53-2, subsection (b)) Why was this change made? The Committee believes that the authority rests with the Secretary.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning live horse racing purse supplement fund and Kansas greyhound breeding development fund. After discussion, the Committee had the following comments.

KAR 112-12-15. The Committee believes that clarity could be added to this regulation with the addition of language which indicates the individuals to whom the distribution of the money in the fund would be given. As the language stands, it appears the money is distributed to “each horse breed.” In addition, the Committee believes there should be linkage in the text to KSA 74-8830.

KAR 112-13-6. The Committee believes that reference should be made to KSA 74-8831 in the text of this regulation.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

Article 101

Prohibition against uncertified management of a gaming facility; facility manager application procedure; background investigations; affirmative duty to demonstrate qualifications; fees and costs; disqualification criteria; certificate duration; certificate renewal; notice of anticipated or actual change; advertising, promotion of responsible gaming; material debt transaction; notice of bankruptcy or liquidation; access to gaming facility and information; certification of employees; reporting requirements; and prohibitions

KAR 112-101-7. The Committee believes that the second sentence of this regulation is confusing in that the expiration occurs on the last day of the month of the anniversary date of issue, but the first sentence indicates that certificate may be issued for two years and one month.

KAR 112-101-10. The Committee suggests that there be some criteria established to determine if any advertisements are false, deceptive, or misleading.

KAR 112-101-13. The Committee suggest clarity be added to this regulation by the addition of language indicated whether the “seven days” are calendar days or some other counting method for the number of days.

Article 102

Prohibition against uncertified business; gaming supplier and non-gaming supplier defined; gaming and non-gaming supplier employees; application for a certificate; temporary supplier permit; affirmative duty to demonstrate qualifications; background

investigations; disqualification criteria; certificate duration; certificate renewal application; change in ownership; certificates, temporary supplier permits, and badges to be commission property; and records

KAR 112-102-2. In subsection (a)(4), the Committee questions what constitutes a “junket” or “tour group services.” If these are defined terms, then a cross reference to the definition would be helpful. Consider definitions if they are not otherwise defined.

KAR 112-102-4. In subsection (d), the Committee suggests clarity and specificity since there is no indication of what other information the Commission may deem necessary.

Article 103

Prohibition of unlicensed employment with a facility manager; license levels; temporary work permit; application for a license; applicant identification; affirmative duty to demonstrate qualifications; background investigation; disqualification criteria for a level I, level II or level III license; examinations; license duration; license renewal; reapplication after license denial or revocation; license mobility, limitations; and licenses, temporary work permits, and badges to be commission property

KAR 112-103-2. The Committee suggests that the lists in this regulation be placed in alphabetical order for ease of use.

KAR 112-103-3. The Committee questions what would happen if the application process takes longer than the combined 180 days and whether the applicant would be able to continue to work.

KAR 112-103-5. The Committee suggests that the agency include a definition for “J-1 authorization.” In addition, the Committee questions why a birth certificate was not one of the items permitted for applicant identification. Finally, the Committee suggests that the agency consider the use of E-verify which is administered by the federal government to authenticate identity.

Article 111

Involuntary exclusion list; inclusion on list, notice; effect of placement on the exclusion list; licensees’ duties; and petition for removal.

KAR 112-111-3 and 112-111-4. In both of these regulations reference is made to the chapter number of a Kansas Session Law volume. Please correct these references and check in other regulations to determine if the proper statutory citation has been provided rather than the reference to a chapter number in a Kansas Session Law volume.

Article 113

Sanctions

KAR 112-113-1. In subsection (a), the Committee is concerned with the language “any other law that directly or indirectly affects the integrity of gaming in Kansas.” To what is this referring? Please consider adding specificity. In subsection (f), the Committee is questions the authority to make each offense of a continuing nature a separate offense. Please provide statutory authority for this portion of the regulation.

Article 114

Definitions; report of an alleged violation; notice of alleged violations and hearing; waiver; informal settlements; participation by and representation of respondents; presiding officer; hearing procedure; evidence; orders; service of order; and appeals of disciplinary review board hearings

KAR 112-114-2. The Committee suggests that the forms which appear to be available only in commission offices also be available on-line. If this regulation is changed to include on-line forms, please review other regulations for a similar modification.

KAR 112-114-14. In subsection (b), the Committee is concerned with the “forms being provided by the commission in the commission’s Topeka office.” Could the language be modified to permit forms “approved by the commission” instead of “provided by the commission?” Also in this subsection, the Committee suggests clarity be added to the number of days permitted and suggest the 11 days be changed to 14.

Economic Impact Statement. The Committee suggests that the Economic Impact statement not only include the cost to the State, but also the cost to facility operators in order to comply with the proposed regulations.

Article 107

Electronic gaming machine requirements; testing and approval; submission for testing and approval; transportation of EGMs; off premises storage of EGMs; gaming floor plan; testing and software installation on the live gaming floor; master list of approved gaming machines; notice to central computer system; commencement of electronic gaming operations; EGM conversions; revocations and additional conditions; kiosks as automated gaming ticket and coupon redemption machines; automated jackpot payout machines; gaming tickets; coupons; EGM computer systems; progressive EGMs; wide area progressive systems; electronic gaming monitoring systems; casino management systems; player tracking systems; external bonusing systems; cashless funds transfer systems; server-supported electronic gaming systems; server-based electronic gaming systems; EGMs and associated equipment utilizing alterable storage media; remote system access; EGM destruction procedures; and waivers

KAR 112-107-7. The Committee suggests a modification to the second sentence by moving the phrase “unless another scale is approved by the executive director” to the beginning of the sentence.

KAR 112-107-9. The Committee suggests the addition of the words “and amendments thereto” to subsection(b)(6). The Committee also suggests that similar language be added wherever else appropriate.

KAR 112-107-10. In subsection (g), there is a reference to KAR 112-107-4 which currently is reserved. Please make reference to the correct regulatory citation. This is another location where the addition of the words “and amendments thereto” would be appropriate. In subsection (h), reference is made to persons in subsection (f), yet subsection (f) does not really refer to a group of people. Please review and determine if modification to subsection (h) is appropriate.

KAR 112-107-11. The title of the regulation is not referred to in the body of the regulation. Perhaps the title of the regulations should be modified.

KAR 112-107-13. The Committee is concerned with the language in subsection (a)(4). In subsection (a)(3) approval is by the Executive Director where in (4) approval is by the Commission. The Committee believes that the appropriate approval should be by the Executive Director. Please review and modify if appropriate.

KAR 112-107-20. In subsection (d)(1)(B) and (C), reference is made to level I employees where a cross reference to the definition would be appropriate.

KAR 112-107-22. In subsection (k)(4)(B), reference is made to the requirements of a log and that it be maintained in a book with bound and numbered pages. Is there a reason that the log should be kept in this manner rather than in an electronic format? Please explain. If there are other requirements for a paper record throughout these regulations, the Committee poses the same question.

KAR 112-107-25. The Committee is concerned about the information which may be kept in a player tracking system. Please inform the Committee of the information kept in the tracking system and whether any of the information could be used to assume a false identity.

KAR 112-107-32. In subsection (c), the term “component part” is not defined by the statutory reference. Consider lifting the definition desired out of the current appropriate statute and replacing it in the regulation in case the statutory reference changes in the future.

KAR 112-107-34. The Committee is concerned about the authority for the Commission to grant waivers. Please provide where the agency believes this authority exists. In terms of a general comment regarding all of the regulations reviewed, please review any other regulation granting a waiver and determine if statutory authority exists for the granting of the waiver.

Article 110

Adoptions by reference; central computer system accounting; central computer system security; central computer system, configuration and control; central computer system, software validation; central computer system communication; central computer system, protocol simulator; central computer system, general hardware specifications; central computer system backup; central computer system manuals; central computer system, support of progressive games; central computer system, additional functionality; and central computer system, acceptance testing

KAR 112-110-7. The Committee suggests that a cross reference be made to the definition of the central computer system. Further in this regulation, the Committee

believes that it should be made clear that the operations manual may not necessarily be a written document, but rather an electronic document. In terms of a general comment regarding all of the regulations reviewed, please review for the existence of requirements for manuals or certain documents and clarify if the manual or document must be written or whether an electronic document would be sufficient.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Corey Carnahan

Approved by Committee on:

January 8, 2009

(Date)