

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 5, 2009
Room 535-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-Chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Joe Patton
Representative Ed Trimmer

Members Absent

Representative Jan Pauls

Staff Present

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

Others Present

Jeff Barnes, Kansas Home Inspectors Registration Board
Julia Mowers, Kansas State Board of Healing Arts
Randy Forbes, Kansas Pharmacy Board
Debra Billingsley, Kansas Pharmacy Board
Julene Miller, Kansas Board of Regents
John Wine, Kansas Insurance Department
Dick Cook, Kansas Insurance Department
Jean Redeker, Kansas Board of Regents

Gary Alexander, Kansas Board of Regents
Kip Peterson, Kansas Board of Regents
Mark Boranyak, Capitol Strategies
Tom Day, Kansas Corporation Commission
Randy Stookey, Kansas Department of Agriculture
C.V. Cotsoradis, Kansas Department of Agriculture
Dan Tuggle, Kansas Department of Agriculture
Katie Howard, Kansas Department of Agriculture
Gary Meyer, Kansas Department of Agriculture
Martin Hawver, Hawver's Capitol Report
Ron Seeber, Kansas Agribusiness Retailers Association
Christine Mennicke, Kansas Department of Health and Environment
Elizabeth Saadi, Ph.D., Kansas Department of Health and Environment
Thomas Gross, Kansas Department of Health and Environment
Tom Langer, Kansas Department of Health and Environment
Martha Cooper, Kansas Department of Health and Environment
Darren E. Root, Kansas Employment Security Board of Review
Tom Reiling, Kansas Employment Security Board of Review
Carman Allen, Kansas Board of Emergency Medical Services

Chairperson Holmes called the meeting to order at 9:00 a.m. Chairperson Holmes welcomed Jeff Barnes to speak to the proposed rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-1-1, registration; KAR 130-1-4, registration expiration, renewal; KAR 130-1-5, reinstatement of registration; KAR 130-2-1, fees; KAR 130-3-1, approval of educational providers; KAR 130-5-1, standards for approval of continuing education courses; and KAR 130-5-2, approval of continuing education providers.

Mr. Barnes noted that in KAR 130-1-1(j)(2), the language will be deleted. He stated that KAR 130-1-4 is the result of HB 2316. In KAR 130-1-4, there should be a period after "effect" with the rest of the paragraph being deleted. In KAR 130-5-1, paragraphs (c), (4), (B), and (C) are to be deleted and subsections (a), (c), and (d) in KAR 130-5-2 are deleted. These changes will be effectuated at the public hearing.

A Committee member noted that in KAR 130-2-1, there is a technical error in the lettering of the list of items with multiple sections labeled "(e)." Mr. Barnes responded to questions from the Committee concerning how the fees were determined by the Board. Mr. Barnes stated that the members of the Board would look at the fees at the end of two years to determine whether the fees need adjusting.

The Chairperson recognized Jean Redeker, Director of Academic Affairs, Kansas Board of Regents, to address questions raised by the Committee at the August 24, 2009, meeting (Attachment 1). Ms. Redeker responded to all questions.

The Chairperson asked for action on the minutes for the August 24, 2009, meeting. A Committee member noted that "questions" on page two, last paragraph, line three, should be singular. *Representative Huebert moved to approve the minutes as corrected; Senator Lee seconded the motion. The motion passed.*

Chairperson Holmes called on Mr. Wilke to review two bills the Committee had requested for introduction during the 2010 Legislative Session.

Mr. Wilke reviewed the bill concerning the carbon dioxide reduction act; pertaining to liability of the State of Kansas (Attachment 2). After discussion by the Committee, it was *moved by Senator Lee that the bill be prefiled and recommended it be introduced in the House. Representative Huebert seconded the motion. The motion passed.*

Mr. Wilke reviewed the second bill requested by the Committee concerning birth centers (Attachment 3). The purpose of the bill is to replace the term “maternity center” with “birth center.” This will bring the statute in line with what the agency and community currently are using. *Senator Schmidt moved that the bill be prefiled and recommended it be introduced in the Senate; Senator Brownlee seconded the motion. The motion passed.*

Chairperson Holmes recognized John Wine, Staff Attorney, to address the proposed rule and regulation noticed for hearing by the Kansas Insurance Department. KAR 40-1-38, insurance companies; hazardous financial condition; standards; corrective actions (Attachment 4).

Mr. Wine noted that KAR 40-1-38 would amend the current regulation relating to insurance companies in hazardous financial condition. The Committee had no questions for Mr. Wine.

The Chairperson introduced Randy Stookey, Counsel with the Department, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture regarding anhydrous ammonia. KAR 4-10-1, definitions; KAR 4-10-1a, prohibited acts; KAR 4-10-1b, reportable events; KAR 4-10-2e, container valves and appurtenances; KAR 4-10-4a, containers; KAR 4-10-4b, markings on containers and systems; KAR 4-10-4c, permanent storage facility design and permanent storage container location; KAR 4-10-4d, pressure-relief valves; KAR 4-10-4e, hose specifications; KAR 4-10-4f, gauging devices; KAR 4-10-5a, tank trucks and semitrailers used for transport for infield delivery; KAR 4-10-6a, transfers; KAR 4-10-6b, transfers; tank cars and transport trucks; additional requirements; KAR 4-10-7, implements of husbandry; KAR 4-10-10, safety; KAR 4-10-16, reactor units; and KAR 4-10-2a, KAR 4-10-2c, KAR 4-10-2d, KAR 4-10-2f, KAR 4-10-2g, KAR 4-10-2h, KAR 4-10-2i, KAR 4-10-2j, KAR 4-10-2k, KAR 4-10-4, KAR 4-10-6, KAR 4-10-15; and KAR 4-10-17, revoked.

Mr. Stookey stated that these proposed rules and regulations are to organize the information into a more logical, efficient, and user-friendly format.

Staff stated that in KAR 4-10-1 (z), material is adopted by reference and should include a date certain. Mr. Stookey stated that this would be added. A Committee member suggested that the agency look at subsection (n) to make sure that the wording is broad enough to include transfer from tanks to applicators in the fields. In KAR 4-10-1a, several Committee members had concerns about (h) and the fact that a 100-pound release would be hard to detect. A question was raised by a Committee member that the term “release” as used in KAR 4-10-1a and KAR 4-10-1b is not defined. In KAR 4-10-1b, staff suggested the paragraph be clarified by moving the phrase “to the secretary or the secretary’s authorized representative” to after “report.” In KAR 4-10-2e, a Committee member had concerns about the “cast iron” language in (d) and asked the agency to check into whether some fittings might have a cast iron interior. The agency spokesperson indicated that staff of the agency will check on this. In KAR 4-10-4a (e), the Committee asked that the agency ensure the term “firm” would not preclude an individual from being approved. In KAR 4-10-4b (f)(1), the small size of the required lettering concerned a Committee member. Mr. Stookey stated that they were using the federal guidelines. It was suggested that emergency personnel be contacted to see if this would be acceptable. The Committee suggested that the size of the type should be included in (g) for uniformity. Mr. Stookey stated that the agency would look into both of these items. In KAR 4-10-4f (e), staff noted clarification is needed so that future regulations adopted be limited to weights and measures. A Committee member requested that in KAR 4-10-10 (a)(4), that a “rain suit” be defined by the agency.

Mr. Stookey responded to all questions from the Committee.

The Chairperson recognized Mr. Stookey to speak to the proposed rules and regulations notice for hearing by the Department of Agriculture on pesticides. KAR 4-13-2, pesticide business license application; KAR 4-13-3, categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; KAR 4-13-9, report of address, name, or personnel change by business; KAR 4-13-14, private applicator examination; KAR 4-13-16, supervision of uncertified applicators; KAR 4-13-17, report of address change by certified applicators; KAR 4-13-18, disposal of pesticides and containers; KAR 4-13-20, pesticide business license, renewal and uncertified employee fees; KAR 4-13-21, government agency registration and renewal fees; KAR 4-13-22, revoked; KAR 4-13-23, examination fees; KAR 4-13-24, certified private applicator's certificate fee; KAR 4-13-30, dealer recordkeeping requirements; KAR 4-13-33, pest control technician registration and renewal fees; and KAR 4-13-62, amount of civil penalty.

Mr. Stookey stated that KAR 4-13-9, KAR 4-13-20, KAR 4-13-21, KAR 4-13-24 and KAR 4-13-33 are amended to change the sunset date to July 1, 2015.

Chairperson Holmes welcomed Christine Mennicke, Bureau of Waste Management, to speak to proposed rule and regulation noticed for hearing by the Department of Health and Environment (Attachment 5). KAR 28-29-501, uncontaminated soil.

Ms. Mennicke explained that this proposed new rule and regulation defines "uncontaminated soil" and states how the determination will be made that soil with very low levels of contamination can be considered clean rubble. Clean rubble can be used as general fill material and does not need to be placed in a permitted solid waste disposal area or disposed of as hazardous waste.

Staff stated that on page 2, (d)(2)(C), line 3, the words "which is" should be inserted before "hereby adopted." In response to a question from a Committee member, Ms. Mennicke stated that testing can cost from \$125.00 to \$1,000.00 depending on how many samples are required to be taken. A Committee member questioned the economic statement stating that there would be no increased cost to the Department. Ms. Mennicke stated that, at this time, the agency had not estimated how many people would be using the program.

Chairperson Holmes welcomed Elizabeth Saadi, Ph.D., Interim Director and Acting State Registrar, Bureau for Public Health Informatics, to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 6). KAR 28-17-6, fees for copies, abstracts, and searches; and KAR 28-17-12, delayed certificate of birth, filing fee.

Dr. Saadi stated that due to the decline in the number of vital records sold during 2008 and 2009, there is a need to increase fees to meet increasing operating expenses. Vital records fees used for operating expenses have not been increased since 2003.

The Committee noted that the Economic Impact Statement should show how much revenue will be generated by an increase in fees and that this should be included before the public hearing. It was suggested by staff that if the agency wishes this to become effective on January 1, 2010, the phrase "effective on or after January 1, 2010" should be inserted at the end of each rule and regulation. There were no further questions from the Committee.

The Chairperson recognized Thomas Gross, Bureau of Air, to address proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 7). KAR 28-19-712, definitions; KAR 28-19-712a, applicability; KAR 28-19-712b, general requirement for heavy-duty diesel vehicles; KAR 28-19-712c, general requirement for load or

unload locations; KAR 28-19-712d, exemptions; KAR 28-19-713, applicability; KAR 28-19-713a, emission limitation requirements; KAR 28-19-713b, alternate emissions limit; KAR 28-19-713c, control measures and equipment; and KAR 28-19-713d, compliance demonstration, monitoring, and reporting requirements.

Mr. Gross stated that the proposed rules and regulations are to reduce air pollution emissions for ozone precursors from mobile and stationary sources of ozone in the Kansas portion of the Kansas City Maintenance Area (KCMA). These proposed rules and regulations apply only to Wyandotte and Johnson Counties in Kansas.

Mr. Gross stated that the counties of Jackson, Clay, and Platte in Missouri also are included in the KCMA and that Missouri was backing off the load and unload location restrictions, making Kansas restrictions more stringent than those in Missouri in that specific way. The Committee was concerned that if Kansas has more stringent rules and regulations than Missouri, it would create an unfair business climate. The Committee asked that the agency look at the model law for idle time, possibly eliminating the five minutes which it is now recommending. Mr. Gross stated that if the Environmental Protection Agency (EPA) lowers the ozone standards, Sedgwick County would be subject to those regulations. In response to a question from the Committee, Mr. Gross stated that the penalty for not complying with the EPA's requirements would be \$10,000 per day. Committee members asked Mr. Gross to find out how many cities the same size as the Kansas City Metropolitan Area would be in compliance with the EPA ozone requirements and provide that information to the Committee. If most cities are not able to be in compliance, then the Committee thought that the EPA requirements may be too strict. Senator Brownlee stated that she would be in contact with local officials in Johnson County and local school boards about this set of rules and regulations.

Tom Langer, Bureau of Environmental Health, was welcomed by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-72-1, revoked; KAR 28-72-1a, definitions; KAR 28-72-1c, definitions; KAR 28-72-1d, definitions; KAR 28-72-1e, definitions; KAR 28-72-1g, definition; KAR 28-72-1h, definitions; KAR 28-72-1i, definition; KAR 28-72-1k, definition; KAR 28-72-1l, definitions; KAR 28-72-1m, definition; KAR 28-72-1n, definition; KAR 28-72-1o, definitions; KAR 28-72-1p, definitions; KAR 28-72-1r, definitions; KAR 28-72-1s, definitions; KAR 28-72-1t, definitions; KAR 28-72-1v, definition; KAR 28-72-1x, definition; KAR 28-72-2, general requirements for accreditation, licensure, and certification, adoption by reference; KAR 28-72-3, fees; KAR 28-72-4, training provider accreditation; KAR 28-72-4a, curriculum requirements for training providers. KAR 28-72-40, revoked; KAR 28-72-4c, training provider accreditation, refresher training course; KAR 28-72-5, application process and requirements for the certification of lead inspectors; KAR 28-72-6, application process and requirements for the certification of risk assessors; KAR 28-72-6a, application process and requirements for the certification of an elevated blood lead level investigator; KAR 28-72-7, application process and requirements for the certification of lead abatement workers; KAR 28-72-7a, application process for renovators and requirements for certification in lead-safe work practices; KAR 28-72-8, application process and requirements for the certification of lead abatement supervisors; KAR 28-72-9, application for the certification of project designers; KAR 28-72-10, application process and licensure renewal requirements for lead activity firms; KAR 28-72-10a, application process and licensure renewal requirements for renovation firms; KAR 28-72-11, renewal of lead occupation certificates; KAR 28-72-12, application process and requirements for reapplication after certificate expiration; KAR 28-72-13, work practice standards, general standards; KAR 28-72-14, work practice standards, inspection; KAR 28-72-15, work practice standards, lead hazard screen; KAR 28-72-16, work practice standards, risk assessment; KAR 28-72-17, work practice standards, elevated blood lead level investigation risk assessments; KAR 28-72-18, work practice standards, lead abatement; KAR 28-72-18a, work practice standards, lead abatement: replacement; KAR 28-72-18b, work practice standards, lead

abatement: enclosure; KAR 28-72-18c, work practice standards, lead abatement: encapsulation; KAR 28-72-18d, work practice standards, lead abatement: removal; KAR 28-72-18c, work practice standards, postabatement clearance procedures; KAR 28-72-19, work practice standards, collection and laboratory analysis of samples; KAR 28-72-20, work practice standards, composite dust sampling prohibited; KAR 28-72-21, work practice standards, quarterly reports, recordkeeping; KAR 28-72-22, enforcement; KAR 28-72-51, definitions; KAR 28-72-52, applicability; and KAR 28-72-53, information distribution requirements.

In KAR 28-72-1a, staff stated that the terms "abatement project inspection penalty" and "adequate quality control" were not used in these rules and regulations and should be removed if not used elsewhere. In KAR 28-72-1e(a), KAR 28-72-2 should be changed to KAR 28-72-2. Staff noted that in KAR 28-72-1l, page 5, (p) the words "which is" should be added after "June 2003" and in KAR 28-72-3, the first paragraph needs to be clarified to indicate that each training course in each language will require a separate accreditation fee. Staff stated that in KAR 28-72-4, on page 8, (11) it should state when the recordkeeping is to begin. Staff suggested that a cross reference in KAR 28-72-4a (a)(2)(D) and elsewhere should be included where something is adopted by reference. After discussion by the Committee, staff was instructed to draft legislation similar to that used for the solid waste law relating to changes of codes of federal regulations.

A Committee member had questions concerning KAR 28-72-7a(a)(2)(A)(iii) and the use of the social security number on the application form. The Committee stated that this concern was applicable to all instances in the rules and regulations where the social security number was required. Mr. Langer stated that the staff of the agency would take a look at this requirement and see whether any other number could be substituted. In response to questions from the Committee, Mr. Langer stated that since this is a health concern, the results of the investigation are reviewed by KDHE and results are issued quickly. A Committee member requested that the agency provide the Committee with an itemized economic statement showing the costs per house, the costs across the state, and how many houses that these rules and regulations cover.

The Chairperson recognized Julia Mowers to address the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-28a-2, application (licensure of physicians' assistants).

A Committee member asked how many physician assistants were registered within the state. Ms. Mowers stated that there were 821 on file and 747 were active at this time.

Ms. Mowers stated that the concerns from the Committee from the August meeting pertaining to the procedure used by the Board for handling rules and regulations had been shared with the Board members and this matter would be taken up at the Board's next meeting in two weeks.

Darren Root, Staff Attorney, was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Employment Security Board of Review. KAR 48-1-1, filing of appeal; KAR 48-1-2, notice of hearing; KAR 48-1-3, disqualification of referees; KAR 48-1-4, conduct of hearing; KAR 48-1-5, continuance of hearings, withdrawal of appeal; KAR 48-1-6, determination of appeal; KAR 48-2-1, creation and organization; KAR 48-2-2, filing of appeal to the board of review; KAR 48-2-3, hearing of appeals; KAR 48-2-4, additional evidence; KAR 48-2-5, decision of the board of review; KAR 48-3-1, witnesses; KAR 48-3-2, representation before referee and board of review; KAR 48-3-4, service of notice; KAR 48-3-5, disqualification of board members; KAR 48-4-1, notice of appeal; when filed; and KAR 48-4-2, constructive filing.

Mr. Root stated that the purpose of the proposed rules and regulations was to correct grammatical errors, update statutory and Kansas Supreme Rule citations, and standardize procedure used in the unemployment benefit appeals. These changes are expected to improve participation in the appeal process.

A Committee member had questions concerning KAR 48-1-4, page 1,(a)(2), relative to hearsay evidence and noted that the second sentence contradicts the first sentence. It was suggested that the sentence be changed to state that the referee can give the hearsay evidence less weight. Mr. Root stated that the agency would look at this wording. A Committee member was concerned about the fact that if the call was dropped, the proceeding would continue without that witness. This seems like a penalty for having a cell phone. In KAR 48-3-2(c)(1), staff questioned what would happen if a state agency was involved. Mr. Root stated that the Board would review these suggestions before the public hearing.

Scott Gates, Chief Counsel and Learning Quest Director, was welcomed by Chairperson Holmes to speak to the proposed rule and regulation notice for hearing by the State Treasurer's Office. KAR 3-4-4, eligibility period (Learning Quest).

Mr. Gates stated that this rule and regulation would prevent a beneficiary from receiving a matching grant in any calendar year in which the account owner or beneficiary makes a withdrawal from the account. This will ensure that the program rewards more long-term savings rather than simply churning deposits and withdrawals within the same calendar year.

Randy Forbes was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Pharmacy Board. KAR 68-2-20, pharmacist's function in filling a prescription.

Mr. Forbes stated this rule and regulation identifies a pharmacist's function in filling a prescription. This matter came to the Board's attention when prescriptions were being filled from an internet connection by filling out a questionnaire, with no doctor's visit or physical taking place.

The Committee expressed concern as to whether this would be excluding telemedicine which is used in areas of western Kansas. A Committee member asked if there is an existing definition of a valid pre-existing doctor-patient relationship. A Committee member asked that the staff of the agency look at the definition of "telemedicine" to be sure that this rule and regulation does not exclude it.

A copy of a response from Mr. Forbes to a letter from the Committee dated August 27, 2009, was distributed to the Committee (Attachment 8). Mr. Forbes responded to general questions from the Committee concerning the letter. A Committee member questioned whether the list of Institutional Drug Rooms was complete. Mr. Forbes stated that the list was complete as far as the Board could determine at this time.

Carman Allen was welcomed by Chairperson Holmes to address the rules and regulations noticed for hearing by the Board of Emergency Medical Services. KAR 109-5-1, continuing education; KAR 109-5-4, revoked; KAR 109-6-1, requirements for temporary certification for applicant with non-Kansas credentials; KAR 109-6-2, renewal of attendant, training officer, and instructor-coordinator certificates; KAR 109-10-7, distance learning; KAR 109-11-1, first responder course approval; KAR 109-11-3, emergency medical technician-basic course approval; KAR 109-11-4, emergency medical technician-intermediate course approval; and KAR 109-11-6, mobile intensive care technician course approval.

Ms. Allen stated the change in KAR 109-5-1 and KAR 109-6-1 reflects the biennial recertification period and inclusion of the supervisory requirement for those practicing under temporary certification which took effect July 1, 2008.

Staff noted that in KAR 109-11-4 (a)(2)(D), the "requirements of Kansas enrichments, module 4" should be adopted by reference with a date certain.

Staff provided copies of a letter from the Office of the Attorney General dated September 15, 2009. The letter was in response to the Committee's inquiry concerning state law requiring state boards and commissions to take affirmative action to approve regulations prior to initiating the statutory approval process (Attachment 9). The second handout was a memorandum dated October 5, 2009, from the Legislative Research Department staff showing the results of a letter sent to state agencies asking the process by which the respective board or commission promulgates its rules and regulations (Attachment 10).

The Committee expressed disappointment in the response received from the Office of the Attorney General.

The Chairperson stated that the November meeting may need to be two days, November 16 and 17, 2009. Chairperson Holmes adjourned the meeting at 5:30 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas State Insurance Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning insurance companies, hazardous financial condition, standards, corrective actions. After discussion, the Committee had no comment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; prohibited acts; reportable events; container valves and appurtenances; containers; markings on containers and systems; permanent storage facility design and permanent storage container location; pressure-relief valves; hose specifications; gauging devices; tank trucks and semitrailers used for transport for infield delivery; transfers; transfers, tank cars and transport trucks, additional requirements; implements of husbandry; safety; reactor units; and revocations. After discussion, the Committee had the following comments.

KAR 4-10-1. In subsection (z), list a date certain for the adoption by reference of the corresponding CFR or a cross reference to the regulation in which such CFR is adopted by reference. Also, please inform the Joint Committee whether the language found in subsection (n) excludes a self-propelled applicator with a built-in or attached tank.

KAR 4-10-1a. Regarding subsection (h), please explain how the agency determined the 100 pound figure as listed in the regulation and consider whether another measurement would be more appropriate and easier for the equipment user to determine. This comment also applies to the 100 pound requirement found in KAR 4-10-1b.

KAR 4-10-b. For clarity, consider moving “to the secretary or the secretary’s authorized representative” to after “report” in the second line of the regulation. Also consider defining “release” here or in KAR 4-10-1 to exclude release into the soil at application.

KAR 4-10-2e. In subsection (a), please determine whether pressure gauges should be included. Regarding subsection (c), consider how the language found in the regulation will be enforced and whether it conflicts with unlawful acts regulations. In subsection (d), consider removing the requirement that no part or component be galvanized or consist of cast iron, as the Joint Committee questions whether this is practical given that cast iron is found in much of the applicable machinery.

KAR 4-10-4a. If subsections (a) and (b) were copied into this new regulation from a previous regulation, please clarify the effective date for that portion of the regulation. In subsection (e), clarify whether the term “firm” applies to individuals.

Comment. Regarding KAR 4-10-4b (f), the Joint Committee thinks that letters only two inches in height are insufficient in size. Consider changing the regulation to require larger lettering.

KAR 4-10-4c. Please define “source of drinking water” as found in paragraph (d)(2) of the regulation.

KAR 4-10-4f. In subsection (e), please clarify whether the term “regulation” refers only to applicable regulations under the Weights and Measures Act.

KAR 4-10-10. In subsection (a)(1)(4), the Committee requests the agency further define “protective slicker or rain suit,” as this appears to be overly broad.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pesticide business license application; categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators; report of address, name, or personnel change by business; private applicator examination; supervision of uncertified applicators; report of address change by certified applicators; disposal of pesticides and containers; pesticide business license, renewal, and uncertified employee fees; government agency registration and renewal fees; examination fees; certified private applicator’s certificate fee; dealer recordkeeping requirements; pest control technician registration and renewal fees; amount of civil penalty; and revocation. After discussion, the Committee had the following comments.

KAR 4-13-2. In subsection (e), reconsider reinserting “social security number.” As currently written, the regulation could conflict with provisions of KSA 74-139 and 74-148.

KAR 4-13-23. Consider rewording the regulation to clarify whether a single \$45 fee covers all examinations for certification in a given category or whether there is a \$45 fee for each separate examination for certification in a category or subcategory.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning uncontaminated soil. After discussion, the Committee had the following comment.

KAR 28-29-501. In subsection (d)(2)(C), consider inserting “which is” before “hereby” in the adoption by reference.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for copies, abstracts, and searches; and delayed certificate of birth, filing fee. After discussion, the Committee had the following comments.

Comment. Please add to the Economic Impact Statement an estimate of the increase in revenue as a result of the changes to the regulations.

Comment. In each applicable regulation, please consider setting the effective date of the regulation to be January 1, 2010, to avoid having the regulations go into effect earlier than your agency wishes.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; applicability; general requirement for heavy-duty diesel vehicles; general requirement for load or unload locations; exemptions; applicability; emission limitation requirements; alternate emissions limit; control measures and equipment; and compliance demonstration, monitoring, and reporting requirements. After discussion, the Committee had the following comments.

Request. Please provide the Joint Committee with a list of all cities or metropolitan areas, similar in size to the Kansas City Metropolitan area, that are able to meet the federal clean air standards as applied in the regulations and as discussed at the October meeting.

Request. Please inform the Joint Committee whether any of the standards set forth in the regulations are stricter than those required by federal law or by the United States Environmental Protection Agency.

Comment. The Joint Committee thinks that no regulations in the set presented at the October meeting should contain stricter standards than those of our neighboring states. It was noted that some of the regulations outlined contain stricter standards than those in Missouri, for example. Please identify any of the requirements which are more stringent than those being implemented in Missouri.

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; definition; definitions; definition; definition; definitions; definition; definition; definitions; definitions; definitions; definitions; definition; definition; general requirements for accreditation, licensure and certification, adoption by reference; fees; training provider accreditation; curriculum requirements for training providers; training provider accreditation, refresher training course; application process and requirements for the certification of lead inspectors; application process and requirements for the certification of risk assessors; application process and requirements for the certification of an elevated blood lead level investigator; application process and requirements for the certification of lead abatement workers; application process for renovators and requirements for certification in lead-safe work practices; application process and requirements for the certification of lead abatement supervisors; application for the certification of project designers; application process and licensure renewal requirements

for lead activity firms; application process and licensure renewal requirements for renovation firms; renewal of lead occupation certificates; application process and requirements for reapplication after certificate expiration; work practice standards, general standards; work practice standards, inspection; work practice standards, lead hazard screen; work practice standards, risk assessment; work practice standards, elevated blood lead level investigation risk assessments; work practice standards, lead abatement; work practice standards, lead abatement: replacement; work practice standards, lead abatement: enclosure; work practice standards, lead abatement: encapsulation; work practice standards, lead abatement: removal; work practice standards, postabatement clearance procedures; work practice standards, collection and laboratory analysis of samples; work practice standards, composite dust sampling prohibited; work practice standards, quarterly reports, record keeping; enforcement; definitions; applicability; information distribution requirements; and revocations. After discussion, the Committee had the following comments.

KAR 28-72-1a. The definitions in subsections (a) and (e) are not used anywhere in the subsequent regulations. Please consider striking these definitions.

KAR 28-72-1e. In subsection (d), the regulation cited should be "KAR 28-72-2."

KAR 28-72-1l. In subsection (p), consider inserting the words "which is" in front of "hereby" in the fourth line.

KAR 28-72-3. For clarity, the regulation should state that there is a separate accreditation fee for each language version of a ~~class~~ training course.

KAR 28-72-4a. In subsection (a)(2)(D), please cite where the applicable documents were adopted by reference.

KAR 28-72-7a. The Committee is concerned with the requirement here and in other regulations which mandates the submission of a social security number, as this appears to be inconsistent across agencies. Please review these requirements and KSA 74-139 and 74-148 and determine whether the submission of a social security number is required. Please also consider requiring a number from state-issued identification.

Request. In section (d) of the Economic Impact Statement for KAR 28-72-53, please provide the Joint Committee with a written explanation on how the agency determined the \$350 per job amount as listed.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (Licensure of physician assistants). After discussion, the Committee had no comment.

Kansas Home Inspectors Registration Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning registration; registration expiration, renewal; reinstatement of registration; fees; approval of educational providers; standards for approval of continuing education courses; and approval of continuing education providers. After discussion, the Committee had the following comments.

KAR 130-2-1. Currently, there are two subsections labeled "(e)." Please fix the error and reletter the subsections accordingly.

Comment. The Joint Committee wishes to express its agreement with your decision to strike certain language from those regulations identified at the meeting.

Kansas State Treasurer. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility period (Learning Quest). After discussion, the Committee had no comment.

Kansas Employment Security Board of Review. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning filing of appeal; notice of hearing; disqualification of referees; conduct of hearing; continuance of hearings; withdrawal of appeal; determination of appeal; creation and organization; filing of appeal to the board of review; hearing of appeals; additional evidence; decision of the board of review; witnesses; representation before referee and board of review; service of notice; disqualification of board members; notice of appeal, when filed; and constructive filing. After discussion, the Committee had the following comment.

KAR 48-1-4. In paragraph (a)(2), consider adding language clarifying that the inclusion of hearsay evidence will be decided by the trier of fact and that hearsay may carry less weight than other types of evidence.

Kansas State Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pharmacist's function in filling a prescription. After discussion, the Committee had the following comment.

KAR 68-2-20. Please ensure the language contained in this regulation does not exclude telemedicine such as that practiced by the KU School of Medicine from the definition of "legitimate medical purpose."

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; requirements for temporary certification for applicant with non-Kansas credentials; renewal of attendant, training officer, and instructor-coordinator certificates; distance learning; first responder course approval; emergency medical technician-basic course approval; emergency medical technician-intermediate course approval; and mobile intensive care technician course approval; and revocation. After discussion, the Committee had the following comment.

KAR 109-11-4. Please consider adopting the Kansas Enrichments, Module 4 as of a date certain.

Prepared by Judy Glasgow
Edited by Raney Gilliland, Jill Shelley,
Corey Carnahan

Approved by Committee on:

November 16, 2009
(Date)