

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 27, 2004
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Carl Holmes, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator Chris Steineger
Representative Eric Carter
Representative Jerry Henry
Representative Andrew Howell
Representative Jan Pauls
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Representative Candy Ruff

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Julie Ehler, Kansas Department of Agriculture
Tom Sim, Kansas Department of Agriculture
Josh Hersh
Larry Buening, Board of Healing Arts
Jennifer Springer, Behavioral Sciences Regulatory Board
Cheryl Magathan, Real Estate Appraisal Board
Keri Kish, Kansas Insurance Department
Ron Seeber, Hein Law Firm

Dave Waldo, Kansas Department of Health and Environment
Sandy McAdam, Kansas Department of Health and Environment
Steven K. Frost, Kansas Department of Health and Environment
Kelly Kelsey, Kansas Department of Health and Environment

Morning Session

Chairman Umbarger called the meeting to order at 9:20 a.m.

The calendar for meetings for the summer was discussed, with the following dates being set for meetings:

July 9, primary, and July 8, if second day is needed
August 24, primary, and August 25, if second day is needed
October 7, primary, and October 6, if second day is needed
November 16, primary, and November 15, if second day is needed
December 6, primary and December 7, if second day is needed.

Chairman Umbarger called for action on minutes of the March 29 and April 27 meetings. *Senator Clark moved to approved the minutes as presented. Senator Steineger seconded the motion. The motion passed.*

Chairman Umbarger introduced Julie Ehler, Staff Attorney for the Department of Agriculture to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture. KAR 4-8-14a, definitions; KAR 4-8-27, adoption of musk thistle control program; KAR 4-8-28, adoption of johnsongrass control program; KAR 4-8-29, adoption of field bindweed control program; KAR 4-8-30, adoption of hoary cress control program; KAR 4-8-31, adoption of Russian knapweed control program; KAR 4-8-32, adoption of bur ragweed (bursage) control program; KAR 4-8-33, adoption of Canada thistle control program; KAR 4-8-34, adoption of leafy spurge control program; KAR 4-8-35, adoption of quackgrass control program; KAR 4-8-36, adoption of pignut control program; KAR 4-8-37, adoption of kudzu control program; KAR 4-8-39, adoption of multiflora rose control program; KAR 4-8-40, adoption of sericea lespedeza control program; and KAR 4-8-42, adoption of bull thistle control program.

Ms. Ehler responded to general questions from staff and Committee members concerning the availability of the publications adopted by reference. She stated that this material also was available on the Department of Agriculture's web site. There being no further questions, Chairman Umbarger thanked Ms. Ehler for her presentation before the Committee.

Larry Buening, Executive Director of the Board of Healing Arts, was recognized by Chairman Umbarger to address the proposed rule and regulation noticed for hearing by the Board of Healing Arts. KAR 100-49-4, fees.

Mr. Buening explained that the fees are being amended to reduce the on-line renewal fee so that it will remain the same as paper renewal after paying the additional on-line fees. There were no questions for Mr. Buening and the Chairman thanked him for appearing before the Committee.

Chairman Umbarger recessed the meeting at 10:00 a.m. so that members could attend Sine Die adjournment.

The Vice Chairman reconvened the meeting at 11:30 a.m.

Vice Chairman Holmes recognized Jennifer Springer to speak to the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-8, supervision; KAR 102-3-7a, postgraduate supervised professional experience requirement to be licensed as a clinical professional counselor; KAR 102-4-3a, educational requirements; KAR 102-4-4a, applications for licensure; KAR 102-4-7a; postgraduate supervised professional work experience requirement; KAR 102-5-4a, applications for licensure; and KAR 102-5-7a, postgraduate supervised professional experience requirement for a clinical marriage and family therapist.

Ms. Springer responded to questions of a general nature from Committee members and staff. There being no further questions, Vice Chairman Holmes thanked Ms. Springer for her appearance before the Committee.

Vice Chairman Holmes introduced Cheryl Magathan to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-2-2, licensed classification; experience requirement; KAR 117-3-2, general classification; experience requirement; and KAR 117-4-2, residential classification; experience requirement.

Ms. Magathan responded to questions raised by staff concerning how the hours for appraisals were recorded and how this was different from the present procedure. After responding to all questions, Ms. Magathan was thanked for her presentation before the Committee.

Keri Kish was recognized by Vice Chairman Holmes to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department. KAR 40-3-6, fire and casualty insurance; rates and forms; unfair fictitious classification prohibited.

In response to questions from Committee members, Ms. Kish stated that the new regulation does not change anything, but was requested to clarify the language in the regulation. It was suggested by a Committee member that in (b) the words "a grouping or classification of risks" be added after "shall mean" to clarify the objective. There being no other comments, Ms. Kish was thanked for her appearance before the Committee.

The meeting was recessed for lunch.

Afternoon Session

Chairman Umbarger reconvened the meeting at 1:45 p.m. He recognized Dave Waldo to speak to the proposed rules and regulations noticed for hearing by the Department of Health and Environment, domestic water supply and primary drinking water. KAR 28-15-11; KAR 28-15-13; KAR 28-15-14; KAR 28-14-15a; Revoked. KAR 28-15-16, permit requirements for public water supply systems; KAR 28-15-18, operation and maintenance requirements; KAR 28-15-20, revoked; KAR 28-15-21, revoked; KAR 28-15a-2, definitions; replaced terms; KAR 28-15a-3, coverage; conditions for exclusion; KAR 28-15a-4, variances and exemptions for small systems; KAR 28-15a-6, effective dates; KAR 28-15a-11, maximum contaminant levels for inorganic chemicals; KAR 28-15a-21, coliform sampling; KAR 28-15a-23, inorganic chemical sampling and analytical requirements; KAR

28-15a-24, requirements for sampling and analyzing organic chemicals; KAR 28-15a-25, analytical methods for measuring radioactivity; KAR 28-15a-26, frequency of monitoring for radioactivity; KAR 28-15a-27, alternate analytical techniques; KAR 28-15a-28, approved laboratories; KAR 28-15a-29, monitoring of consecutive public water supply systems; KAR 28-15a-31, general reporting requirements; KAR 28-15a-33, general record maintenance; KAR 28-15a-41, special monitoring for sodium; KAR 28-15a-42, special monitoring for corrosivity characteristics; KAR 28-15a-43, prohibition on use of lead pipes, solder, and flux; KAR 28-15a-60, effective dates for maximum contaminant levels and maximum residual disinfectant levels, KAR 28-15a-61, maximum contaminant levels for organic contaminants; KAR 28-15a-62, maximum contaminant levels for inorganic contaminants; KAR 28-15a-63, maximum contaminant levels for microbiological contaminants; KAR 28-15a-64, maximum contaminant levels for disinfection byproducts; KAR 28-15a-65, maximum residual disinfectant levels; KAR 28-15a-66, maximum contaminant levels for radionuclides; KAR 28-15a-70, general requirements for filtration and disinfection; KAR 28-15a-72, disinfection; KAR 28-15a-73, filtration; KAR 28-15a-74, filtration and disinfection: analytical and monitoring requirements; KAR 28-15a-75, filtration and disinfection: reporting and recordkeeping requirements; KAR 28-15a-76, filter recycling requirements; KAR 28-15a-80, general requirements for control of lead and copper; KAR 28-15a-81, applicability of corrosion control treatment steps; KAR 28-15a-82, requirements for corrosion control treatment; KAR 28-15a-83, requirements for source water treatment; KAR 28-15a-84, requirements for lead service line replacement; KAR 28-15a-85, requirements for public education and supplemental monitoring; KAR 28-15a-86, monitoring requirements for lead and copper in tap water; KAR 28-15a-87, monitoring requirements for water quality parameters; KAR 28-15a-88, monitoring requirements for lead and copper in source water; KAR 28-15a-89, analytical methods for control of lead and copper; KAR 28-15a-90, reporting requirements for lead and copper control; KAR 28-15a-91, recordkeeping requirements for lead and copper control; KAR 28-15a-100, requirements for public water supply systems using point-of-entry devices; KAR 28-15a-101, use of bottled water; KAR 28-15a-110, general requirements for treatment techniques; KAR 28-15a-111, treatment techniques for acrylamide and epichlorohydrin; KAR 28-15a-130, disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors: general requirements; KAR 28-15a-131, disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors: analytical requirements; KAR 28-15a-132, disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors: monitoring requirements; KAR 28-15a-133, disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors: compliance requirements; KAR 28-15a-134, disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors: reporting and recordkeeping requirements; KAR 28-15a-135, treatment technique for control of disinfection byproduct precursors; KAR 28-15a-151, applicability of requirement for consumer confidence reports; KAR 28-15a-152, effective dates for required consumer confidence reports; KAR 28-15a-153, content of consumer confidence reports; KAR 28-15a-154, required additional health information; KAR 28-15a-155, report delivery and recordkeeping; KAR 28-15a-170, general requirements for enhanced filtration and disinfection for subpart H systems serving 10,000 or more people; KAR 28-15a-172, disinfection profiling and benchmarking for subpart H systems serving 10,000 or more people; KAR 28-15a-173, enhanced filtration requirements for subpart H systems serving 10,000 or more people; KAR 28-15a-174, enhanced filtration sampling requirements for subpart H systems serving 10,000 or more people; KAR 28-15a-175, enhanced filtration and disinfection reporting and recordkeeping requirements for subpart H systems serving 10,000 or more people; KAR 28-15a-201, general requirements for public notification; KAR 28-15a-202, Tier 1 public notice: form, manner, and frequency of notice; KAR 28-15a-203, Tier 2 public notice: form, manner, and frequency of notice; KAR 28-15a-204, Tier 3 public notice: form, manner, and frequency of notice; KAR 28-15a-205, content of public notice; KAR 28-15a-206, notice to new billing units or new customers; KAR 28-15a-207, special notice of availability of results of unregulated contaminant monitoring; KAR 28-15a-208, special notice for exceedance of the secondary maximum contaminant level (SMCL) for fluoride; KAR 28-15a-209, special notice for nitrate exceedances above MCL by non-community water supply systems (NCWSS); KAR 28-15a-210, notice by department on behalf of the public water supply

system; KAR 28-15a-500, general requirements for enhanced filtration and disinfection for subpart H systems serving fewer than 10,000 people; KAR 28-15a-501, applicability of general requirements for enhanced filtration and disinfection in subpart H systems serving fewer than 10,000 people; KAR 28-15a-502, effective dates of requirements for enhanced filtration and disinfection in subpart H systems serving fewer than 10,000 people; KAR 28-15a-503, compliance criteria for enhanced filtration and disinfection in subpart H systems serving fewer than 10,000 people; KAR 28-15a-530, disinfection profiling for subpart H systems serving fewer than 10,000 people; KAR 28-15a-531, criteria for avoiding disinfection profiling in subpart H systems serving fewer than 10,000 people; KAR 28-15a-532, effective dates for required disinfection profiling in subpart H systems serving fewer than 10,000 people; KAR 28-15a-533, collection of disinfection profile data for subpart H systems serving fewer than 10,000 people; KAR 28-15a-534, calculation of inactivation ratio for subpart H systems serving fewer than 10,000 people; KAR 28-15a-535, inactivation ratio for viruses in subpart H systems serving fewer than 10,000 people; KAR 28-15a-536, retention of disinfection profile data for subpart H systems serving fewer than 10,000 people; KAR 28-15a-540, disinfection benchmark for subpart H systems serving fewer than 10,000 people; KAR 28-15a-541, significant changes to disinfection practice in subpart H systems serving fewer than 10,000 people; KAR 28-15a-542, consultation regarding significant change to disinfection practice for subpart H systems serving fewer than 10,000 people; KAR 28-15a-543, calculation of disinfection benchmark for subpart H systems serving fewer than 10,000 people; KAR 28-15a-544, disinfection benchmark for primary disinfectants other than chlorine for subpart H systems serving fewer than 10,000 people; KAR 28-15a-550, requirements for combined filter effluent turbidity in subpart H systems serving fewer than 10,000 people; KAR 28-15a-551, limits for strengthened combined filter effluent turbidity in subpart H systems serving fewer than 10,000 people; KAR 28-15a-552, alternative filtration demonstration for subpart H systems serving fewer than 10,000 people; KAR 28-15a-553, special provision for combined filter effluent in subpart H systems serving fewer than 10,000 people; KAR 28-15a-560, requirements for individual filter turbidity in subpart H systems serving fewer than 10,000 people; KAR 28-15a-561, contingency requirements for monitoring of individual filter turbidity in subpart H systems serving fewer than 10,000 people; KAR 28-15a-562, special provision for continuous monitoring of combined filter effluent turbidity in subpart H systems serving fewer than 10,000 people; KAR 28-15a-563, follow-up actions to monitoring of individual filter turbidity for subpart H systems serving fewer than 10,000 people; KAR 28-15a-564, special provision for alternative turbidity exceedance levels in subpart H systems serving fewer than 10,000 people; KAR 28-15a-570, reporting requirements for enhanced filtration and disinfection for subpart H systems serving fewer than 10,000 people; and KAR 28-15a-571, recordkeeping requirements for enhanced filtration and disinfection for subpart H systems serving fewer than 10,000 people.

Dave Waldo explained that these proposed rules and regulations will bring the Kansas regulations up to date with federal guidelines. He answered questions from Committee members concerning the use of bottled water, and stated that bottled water was acceptable only as an alternative on a short-term emergency basis. Mr. Waldo explained how the state handles nitrates in water. This is broken down between different categories. If the result is between 10 percent and 15 percent a review of informal options will be done with the community, if the results are over 15 percent, but if under 20 percent, a professional would be hired to look at the cost of more formal options, *i.e.*, new well, over 20 percent, then corrective options must be put into effect. A questions was raised about the time frame to implement these regulations and Mr. Waldo stated that the effective dates are staggered all the way from 2002 on up. He stated that for dates that have already passed, the date of the implementation of these regulations would be used.

Committee members requested that the cost of providing a fresh water supply for communities of all sizes be included in the economic impact comparing what the costs would be to comply with these proposed rules and regulations. Committee members were concerned about whether or not communities understood the costs of implementing these regulations and what the

feedback would be when the actual costs were assessed. A general concern from Committee members was that the economic impact statements did not reflect the costs of implementing the rules and regulations on individual communities and what the costs and benefits would be for these communities. Committee members recommended that the agency not implement the rules and regulations until the agency had provided additional answers and information requested by the Committee. Mr. Waldo stated that this information could be obtained and provided to the Committee.

Staff asked about KAR 28-15-18, reference to the emergency operations plans, and where these were located. It was suggested that these items should be listed in the regulations for enforcement purposes. Staff also noted that in KAR 28-15a-2, (1) (A), the definition for "Public water system" is broader than that in the statute and that in (3) the definition for "Person" also is different from what is in the statute and should be amended. Staff suggested that the statute would need to be updated and amended to include these definitions.

In KAR 28-15-18, page 2 (c), members questioned where the standards to safeguard the water supply were located and suggested that these should be listed in the regulations.

Upon answering all questions from Committee members, Chairman Umbarger thanked Mr. Waldo for his appearance before the Committee.

Dr. Bill Wolff, Associate Director, Legislative Research Department, reviewed all rules and regulations that had been filed as permanent since last reviewed by the Administrative Rules and Regulations Committee:

Department of Agriculture	Department of Administration
Department of Commerce	Kansas State Dental Board
Board of Emergency Medical Services	Governmental Ethics Commission
Department of Health and Environment	Employee Health Care
Kansas Insurance Department	Board of Pharmacy
Racing and Gaming Commission	Real Estate Appraisal Board
Board of Regents	Department of Revenue
State Corporation Commission	Board of Technical Professions
Division of Water Resources	Board of Veterinary Examiners

Chairman Umbarger thanked Dr. Wolff for his presentation before the Committee.

COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees. After discussion, the Committee had no comment.

Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning noxious weeds. After discussion, the Committee had no comment.

Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning domestic water supply and primary drinking water. After discussion, the Committee expressed the following comment.

General comment. The Committee requests that the proposed rules and regulations not be adopted until such time as the Department has responded to the following concerns. The Committee is concerned that the fiscal impact statement is incomplete and should be amended to reflect the statewide impact. Additionally, the Committee requests the Department provide a cost-benefit analysis that compares the cost of the program if administered by the state or by the federal government. Please respond to the Committee's comment upon development of the information requested.

Behavioral Sciences Regulatory Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision requirements. After discussion, the Committee had no comment.

Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations license classifications. After discussion, the Committee had no comment.

Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations fire and casualty insurance--rates and forms; fictitious classification prohibited. After discussion, the Committee expressed the following comment.

KAR 40-3-6. In subsection (b) (1), (2), and (3) the noun and verb are inconsistent. One is singular and one is plural, *i.e.*, change "are" to "is," and "do" to "does."

Chairman Umbarger announced that the next meeting would be July 9, 2004. There being no further business, the meeting was adjourned.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

July 9, 2004

(date)