

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

February 26, 2010  
Room 546-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-chairperson  
Senator Karin Brownlee  
Senator Janis Lee  
Senator Ralph Ostmeyer  
Representative John Faber  
Representative Shirley Palmer  
Representative Joe Patton  
Representative Jan Pauls

#### Members Absent

Senator Chris Steiniger  
Representative Steve Huebert  
Representative Ed Trimmer

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Nobuko Folmsbee, Office of the Revisor of Statutes  
Judy Glasgow, Committee Assistant

#### Others Present

Cheryl Magathan, Real Estate Appraisal Board  
Jeff Barnes, Kansas Home Inspectors Registration Board  
Kathleen Selzler Lippert, Kansas State Board of Healing Arts  
Greg Arnett, Kansas State Board of Healing Arts  
Chris Tymeson, Kansas Department of Wildlife and Parks  
Berend Koops, Hein Law Firm  
Randy Forbes, Kansas Pharmacy Board

Lou Henry, Sandstone Group, LLC  
John Wine, Kansas Insurance Department  
Rob Mealy, Kearney and Associates  
Theresa M. Schwatz, Kansas Board of Regents  
Gary Alexander, Kansas Board of Regents  
Jacqueline Johnson, Kansas Board of Regents  
Julie Ehler, Kansas Department of Agriculture  
Angela Kohls, Kansas Department of Agriculture  
Steve Moris, Kansas Department of Agriculture  
Erik Wisner, Kansas Department of Agriculture  
Dave Starkey, Kansas Department of Agriculture  
Jeff Bottenberg, Polsinelli Shughart PC  
Tim Boese, Groundwater Management District No.2  
Sharon Falk, Groundwater Management District No. 5  
Lane Letourneau, Kansas Department of Agriculture

Chairperson Senator Vicki Schmidt called the meeting to order at 1:00 p.m.

Chris Tymeson was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Wildlife and Parks Commission. KAR 115-4-2, big game and wild turkey; general provisions; KAR 115-4-6, deer; management units; KAR 115-7-1, fishing; legal equipment, methods of taking, and other provisions; and KAR 115-25-14, fishing; creel limit, size limit, possession limit, and open season.

Staff suggested that KAR 115-4-2, page 1, line 10 be changed to read "digital photograph of sufficient clarity of the deer head and of the completed carcass tag" to highlight that it is the photo that needs to be clear. Senator Lee requested that the map of the new boundaries of the four northeast units as referenced in KAR 115-4-6 be sent to her. Mr. Tymeson stated that this would be done.

Chairperson Schmidt recognized Cheryl Magathan to speak to the proposed rules and regulations noticed for hearing by the Kansas Real Estate Appraisal Board. KAR 117-6-1, continuing education; renewal requirements; and KAR 117-6-3, education; obtaining course approval.

The Committee noted that USPAP should be included in parentheses after "uniform standards of professional appraisal practice" in KAR 117-6-1(b), on page 2. The acronym could be used then throughout the following regulations.

Chairperson Schmidt welcomed Kathleen Selzler Lippert to address the proposed rule and regulation noticed for hearing by the Kansas Board of Healing Arts. KAR 100-69-12, application.

The Committee suggested the addition of "driver's license number" to the list of identity forms permitted on applications by the agency. The Committee also suggested adding "card" after non-driver's identifications to reflect the statutory name of the document.

Randy Forbes was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State of Kansas Pharmacy Board. KAR 68-1-1b, continuing educational unit; KAR 68-7-21, institutional drug rooms; and KAR 68-20-10a, electronic prescription transmission of controlled substances.

The Committee had no questions for Mr. Forbes concerning these rules and regulations.

Chairperson Schmidt welcomed Jeff Barnes to speak to the proposed rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-1-2, registration renewal; KAR 130-1-3, examination; KAR 130-1-4, registration expiration; renewal; KAR 130-3-1, approval of education providers; and KAR 130-5-2, approval of continuing education providers.

In response to a question concerning KAR 130-1-3(a), (2) and who would determine if an examination was psychometrically sound, Mr. Barnes stated there are people who can review a test and whether it tests subject matter knowledge or test-taking ability.

Jacqueline Johnson, Director of Private Postsecondary Education, was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents (Attachment 1). KAR 88-28-6, fees.

Committee members expressed concern that the fees were being increased so drastically, and thought that a more moderate increase might be more appropriate. Ms. Johnson stated that the increase was necessary to hire additional people to keep up with the additional workload. In response to a question, Ms. Johnson stated that the additional positions had been approved. The Committee noted that the economic information included in the attachment provided by Ms. Johnson to Committee members should have been provided in the economic impact statement that went out with the notice of hearing and should have included a cost analysis showing that the fees are needed by the agency to complete its work. Ms. Johnson stated that the Division is fee-supported rather than supported by state general funds.

Chairperson Schmidt asked for action on the January 4, 2010, minutes. *Representative Holmes moved that the minutes of the Committee be approved as presented. Senator Ostmeyer seconded the motion. The motion was approved.*

Chairperson Schmidt welcomed Julie Ehler to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-27-1, lodging establishment application fees; KAR 4-27-2, definitions; KAR 4-27-3, licensure; plans and specifications; variances; KAR 4-27-4, food service and food safety; KAR 4-27-5, imminent health hazard; KAR 4-27-6, general requirements; KAR 4-27-7, personnel; health, cleanliness, and clothing; KAR 4-27-8, guest and public safety; KAR 4-27-9, guest rooms; KAR 4-27-10, dishware and utensils; KAR 4-27-11, housekeeping and laundry facilities; maintenance supplies and equipment; KAR 4-27-12, poisonous or toxic materials; KAR 4-27-13, public indoor areas; KAR 4-27-14, ice and ice dispensing; KAR 4-27-15, exterior premises; KAR 4-27-16, swimming pools, RWFs, and hot tubs; KAR 4-27-17, water supply systems; KAR 4-27-18, sewage systems; KAR 4-27-19, electrical systems; KAR 4-27-20, plumbing systems; KAR 4-27-21, heating, ventilation, and air-conditioning (HVAC) systems; KAR 4-27-22, lodging establishment inspections by qualified individuals, private entities, or public entities; KAR 4-28-1, definitions; KAR 4-28-2, adoption by reference; KAR 4-28-8, definitions; KAR 4-28-11, equipment, utensils, and linens; KAR 4-28-12, water, plumbing, and waste; KAR 4-28-18, guaranty; definition; KAR 4-28-19, definitions and standards of identity for miscellaneous beef products; KAR 4-28-20, definitions and standards of identity for miscellaneous meat food products; KAR 4-28-21, definitions and standards of identity for miscellaneous pork products; KAR 4-28-22, breaded products; KAR 4-28-23, sidewalk or street display of food products; prohibitions; KAR 4-28-24, rooms where food is handled; KAR 4-28-25, temperature requirements; KAR 4-28-26; means for cleansing and sterilizing tools and equipment; KAR 4-28-27, toilet and handwashing facilities; KAR 4-28-28, inspection by plant operator; KAR 4-28-29, products to be frozen before storage; and KAR 4-28-30, place for processing.

The following are being revoked: KAR 28-21-1; KAR 28-21-6; KAR 28-21-7; KAR 28-21-8; KAR 28-21-9; KAR 28-21-10; KAR 28-21-11; KAR 28-21-20a; KAR 28-21-21a; KAR 28-21-22a; KAR 28-21-23a; KAR 28-21-24a; KAR 28-21-25a; KAR 28-21-26a; KAR 28-21-27a; KAR 28-21-28a;

KAR 28-21-29a; KAR 28-21-30a; KAR 28-21-31a; KAR 28-21-32a; KAR 28-21-33a; KAR 28-21-34a; KAR 28-21-35a; KAR 28-21-40a; KAR 28-21-41a; KAR 28-21-42a; KAR 28-21-43a; KAR 28-21-44a; KAR 28-21-50a; KAR 28-21-51a; KAR 28-21-52a; KAR 28-21-53a; KAR 28-21-54a; KAR 28-21-55a; KAR 28-21-56a; KAR 28-21-57a; KAR 28-21-58a; KAR 28-21-59a; KAR 28-21-60a; KAR 28-21-61a; KAR 28-21-62a; KAR 28-21-63; KAR 28-21-64; KAR 28-21-70a; KAR 28-21-71a; KAR 28-21-72a; KAR 28-21-82; KAR 28-21-83; KAR 28-21-84; KAR 28-21-85; KAR 28-23-4; KAR 28-23-9; KAR 28-23-10; KAR 28-23-20; KAR 28-23-21; KAR 28-23-22; KAR 28-23-23; KAR 28-23-24; KAR 28-23-26; KAR 28-23-27; KAR 28-23-28; KAR 28-23-29; KAR 28-23-30; KAR 28-23-31; KAR 28-23-32; KAR 28-23-34; KAR 28-23-35; KAR 28-23-36; KAR 28-23-41; KAR 28-23-42; KAR 28-23-43; KAR 28-23-44; KAR 28-23-45; KAR 28-23-46; KAR 28-23-47; KAR 28-23-48; KAR 28-23-49; KAR 28-23-50; KAR 28-23-51; KAR 28-23-52; KAR 28-23-53; KAR 28-23-54; KAR 28-23-55; KAR 28-23-70; KAR 28-23-71; KAR 28-23-73; KAR 28-23-75; KAR 28-23-78; KAR 28-23-79; KAR 28-23-80; KAR 28-36-30; KAR 28-36-31; KAR 28-36-70; KAR 28-36-71; KAR 28-36-72; KAR 28-36-73; KAR 28-36-74; KAR 28-36-75; KAR 28-36-76; KAR 28-36-77; KAR 28-36-78; KAR 28-36-79; KAR 28-36-80; KAR 28-36-81; KAR 28-36-82; KAR 28-36-83; KAR 28-36-84; KAR 28-36-85; KAR 28-36-86; KAR 28-36-87; KAR 28-36-88; KAR 28-36-89; KAR 28-36-101; KAR 28-36-102; KAR 28-36-103; KAR 28-36-104; KAR 28-36-105; KAR 28-36-106; KAR 28-36-107; KAR 28-36-108; and KAR 28-36-109.

Ms. Ehler stated that these regulations are ones that were transferred from the Kansas Department of Health and Environment to the Department of Agriculture covering the inspection of lodging establishments. At this point, because of budgetary constraints, no inspections are being performed. A Committee member asked whether a self inspection process had been considered by the agency to handle all these inspections. Ms. Ehler stated that this had been discussed at one time and the agency is open to it, but the industry was not ready to undertake this. The Committee suggested that consideration of privatizing inspections be considered to give consumers some level of confidence in Kansas lodging establishments. A suggestion was made by a Committee member on KAR 4-27-17(d)(3)(A), page 1, that it be amended to read "a reasonable supply of complimentary commercially bottled drinking water."

Chairperson Schmidt recognized Sharon Falk to speak to the proposed rule and regulation noticed for hearing by the Groundwater Management District No. 5. KAR 5-25-15, exemptions for up to 15 acre-feet of groundwater.

The Committee questioned whether the term "groundwater pit" was defined anywhere in the regulations. David Barfield stated that the office would check on this and get back to the Committee.

Tim Boese was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Groundwater Management District No. 2. KAR 5-22-7, safe yield.

Staff suggested that on page 3(b)(1)(D) and (E) the sentences should read "does not authorize an additional quantity of water in excess of 15 acre-feet" for clarification.

Chairperson Schmidt welcomed David Barfield, Chief Engineer, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture, Division of Water Resources. KAR 5-1-4, water flowmeter specifications; KAR 5-1-9, criteria to determine when a water flowmeter is out of compliance; KAR 5-4-1, distribution of water between users when a prior right is being impaired; KAR 5-4-1a, distribution of water between users when a prior right is being impaired due to a regional lowering of the water table; and KAR 5-7-1, due and sufficient cause for nonuse.

A Committee member questioned what the fiscal impact under KAR 5-4-1 and KAR 5-4-1a would be, especially to those found in noncompliance. The Committee member suggested that the cost of one case (for example, a case in Stevens County) that has been performed by the agency

be referenced in the economic impact statement. Staff questioned what the intent is in KAR 5-4-1, page 6, (e) (2). Mr. Barfield stated that it was the intent for the Chief Engineer to allow GMDs to make recommendations. In KAR 5-4-1, a Committee member asked that this section be reviewed so only the Chief Engineer's signature should be on the final order. Staff noted that on page 2 the term "or that person's authorized representative" is included in some portions, but others specify only the Chief Engineer, and they questioned whether the agency intended only the Chief Engineer to take certain actions. Mr. Barfield noted that if Substitute for House Substitute for SB 316 were to pass, it would accomplish the same thing as KAR 5-7-1 and this regulation would be pulled and revised to conform to the statutory changes.

Chairperson Vicki Schmidt recognized Representative Carl Holmes to address HB 2530, an act concerning the Rules and Regulations Filing Act; pertaining to filing process. Representative Holmes stated that this bill came on the House floor for action and there were several areas that were of concern to members, and rather than have the bill killed, he recommended that the bill be rereferred to the House Appropriations Committee for review and amendment. Professor Richard E. Levy was recognized to speak to HB 2530 (Attachments 2 and 3). In response to questions from the Committee, Professor Levy stated that guidance documents have no legal weight but the bill provides that notice of an agency's intent to follow these guidance documents be given. Representative Neufeld was recognized to speak against the bill as drafted and he proposed several changes (Attachments 4 and 5). A Committee member asked that the bill include better notification by the agency to interested parties on these guidance documents. After a lengthy discussion by the Committee members on the bill, the Committee unanimously proposed that the following changes be made to the provisions of 2010 HB 2530.

- The Committee recommended that the portion of the bill that would allow for a state agency to issue a non-regulation guidance document without going through the rule and regulation adoption process be deleted.
- In Section 10 of the bill, the Committee recommended adding the following persons to the list of those receiving notice of a state agency's intended action once that agency's rules and regulations have been approved by the Secretary of Administration and the Attorney General: the Vice-chairperson and Ranking Minority Member of the Joint Committee on Administrative Rules and Regulations and the Legislative Research Department.
- The Committee recommended correcting the language related to the agency's name in the portion of the bill related to rule and regulation changes for the pharmacy program in the state Medicaid Plan, indicating the Kansas Health Policy Authority should provide appropriate notice regarding changes.
- In Section 12 of the bill, the Committee recommended that a temporary rule and regulation shall be effective for a period not to exceed 120 days (rather than 180 days) adding that a state agency could request such a rule and regulation could be renewed one time, for good cause, for an additional period not to exceed 120 days.
- Finally, in Section 17, the Committee recommended that the Secretary of State add members of the Joint Committee on Administrative Rules and Regulations to the list of those to whom Kansas administrative regulations would be made available upon request.

The Chairperson adjourned the meeting at 4:50 p.m.

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

**Kansas Department of Wildlife and Parks..** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game and wild turkey, general provisions; deer, management units; and fishing, legal equipment, methods of taking, and other provisions. After discussion, the Committee had the following comment.

KAR 115-4-2. In paragraph (a)(1), the Committee suggest the movement of language in the definition of “Electronically registering.” Specifically, it suggests moving “of sufficient clarity” to after “photographs” to clarify that it is the photographs which need to be of sufficient clarity.

**Kansas Real Estate Appraisal Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education, renewal requirements and education, obtaining course approval. After discussion, the Committee had the following comment.

KAR 117-6-1 and KAR 117-6-3. The Committee suggests that in both regulations the term “uniform standards of professional appraisal practice” be followed by the acronym USPAP or that the acronym be preceded by the term.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application (athletic trainers). After discussion, the Committee had the following comment.

KAR 100-69-12. The Committee suggests the addition of “driver’s license number” to the list of identity forms permitted on applications by the agency. The Committee also suggests adding “card” after “nondriver’s identification” to reflect the statutory name of the document.

**Kansas Pharmacy Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing educational unit; institutional drug rooms; and electronic prescription transmission of controlled substances. 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 renewal; examination; registration expiration, renewal; approval of education providers; and approval of continuing education providers. After discussion, the Committee had no comment.

**Kansas Board of Regents.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees (private or out-of-state postsecondary institutions). After discussion, the Committee had the following comments.

Economic Impact Statement. The Committee suggests that the information contained in the material provided to the Committee regarding economic impact should be included in the Economic Impact Statement associated with this regulation, including information on the effects on the State General Fund.

Concern. The Committee is concerned with the extent of the increase in the fees and believes that a cost analysis should be done to determine whether the increases proposed by this regulation are justified.

**Division of Water Resources, Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning exemptions for up to 15 acre-feet of groundwater. After discussion, the Committee had the following comment.

KAR 5-25-15. The Committee suggests that a definition of “groundwater pit” would be helpful or, if one exists, that reference be made to it in this regulation.

**Division of Water Resources, Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning safe yield. After discussion, the Committee had the following comment.

KAR 5-22-7. In paragraph (b)(1)(D) and (E), the Committee suggests the placement of the words “in excess of 15 acre-feet” to after the phrase “an additional quantity of water” in order to add clarity to the sentence.

**Division of Water Resources, Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning water flowmeter specifications; criteria to determine when a water flowmeter is out of compliance; distribution of water between users when a prior right is being impaired; distribution of water between users when a prior right is being impaired due to a regional lowering of the water table; and due and sufficient cause for nonuse. After discussion, the Committee had the following comments.

KAR 5-4-1. In paragraph (b), authority is given to the Chief Engineer or “that person’s authorized representative.” However, subsequent subsections and paragraphs refer only to the Chief Engineer’s role in the complaint process. Please review all of the regulations to determine if it is the Chief Engineer’s intent to allow an “authorized representative” to have the authority of the Chief Engineer.

Comment. In some of these rules and regulations reference is made to the Division of Water Resources and in some places references are made to “the agency.” Please review the rules and regulations to determine if the proper term to use is Division of Water Resources or “the agency.”

Economic Impact Statement. The Committee suggests the Economic Impact Statement include information on costs to the regulated community.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning lodging establishment application fees; definitions; licensure, plans and specifications, variances; food service and food safety; imminent health hazard; general requirements; personnel, health, cleanliness, and clothing; guest and public safety; guest rooms; dishware and utensils; housekeeping and laundry facilities, maintenance supplies and equipment; poisonous or toxic materials; public indoor areas; ice and ice dispensing; exterior premises; swimming pools, RWFs, and hot tubs; water supply systems; sewage systems; electrical systems; plumbing systems; heating, ventilation, and air-conditioning (HVAC)

systems; lodging establishment inspections by qualified individuals, private entities, or public entities; definitions; adoption by reference; definitions; equipment, utensils, and linens; water, plumbing, and waste; guaranty, definition; definitions and standards of identity for miscellaneous beef products; definitions and standards of identity for miscellaneous meat food products; definitions and standards of identity for miscellaneous pork products; breaded products; sidewalk or street display of food products, prohibitions; rooms where food is handled; temperature requirements; means for cleansing and sterilizing tools and equipment; toilet and handwashing facilities; inspection by plant operator; products to be frozen before storage; place for processing; and revocations. After discussion, the Committee had the following comments.

KAR 4-27-17. The Committee suggests that the language be modified in (d)(3)(A) to indicate that the facility should provide reasonable quantities of complimentary bottled water in those cases where tap water is or may be unfit for human consumption.

Suggestion. The Committee suggests that the agency consider inspection of lodging facilities by private inspection services similar to those currently inspecting scales and scanning devices under the agency's Weights and Measures program.

Prepared by Judy Glasgow  
Edited by Raney Gilliland

Approved by Committee on:

April 5, 2010  
(Date)