

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

April 6-7, 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 Jan Pauls
Representative Ed Trimmer

Members Absent

Representative Joe Patton

Staff Present

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

Others Present

Linda Kenney, Kansas Department of Health and Environment
Brenda E. Walker, Kansas Department of Health and Environment
John Mitchell, Kansas Department of Health and Environment
Roderick Bremby, Secretary, Kansas Department of Health and Environment
Chris Tymeson, Kansas Department of Wildlife and Parks
Julie Ehler, Kansas Department of Agriculture

Lindsey Douglas, Kansas Department of Agriculture
Bill Scott, Kansas Department of Agriculture
Steven Sutton, Kansas Board of Emergency Medical Services
Randall Forbes, Kansas Dental Board
Tom Day, Kansas Corporation Commission
Leo Haynos, Kansas Corporation Commission
Colleen Harrell, Kansas Corporation Commission
Sally Pritchett, Kansas Real Estate Appraisal Board
Julia Mowers, Kansas State Board of Healing Arts
William Scott Hesse, Kansas State Board of Healing Arts
Jay Hall, Kansas Racing and Gaming Commission
Cheryl Dolejsi, Kansas Racing and Gaming Commission
Ken Gorman, Department of Labor
Rick Fleming, Officer of the Securities Commissioner
Doug Farmer, Kansas Health Policy Authority
Berend Koops, Hein Law Firm
Susan Vogel, Kansas Department of Health and Environment
Marla Rhoden, Kansas Department of Health and Environment
Mary Plin, Kansas Department of Health and Environment
Paul Johnson, Kansas Catholic Conference
Bobbi Mariani, Kansas Department of Social and Rehabilitation Services
L. Kimsey, Kansas Department of Social and Rehabilitation Services
John Wine, Kansas Insurance Department
Susan Ellmaker, Kansas Insurance Department
Chut Tee, Kansas Insurance Department
Julie Holmes, Kansas Insurance Department
Craig Van Aalst, Kansas Insurance Department
Linda Sheppard, Kansas Insurance Department
LeRoy Brungardt, Kansas Insurance Department
Jeff Barnes, Kansas Home Inspection Registration Board
Craig Thompson, Kansas Department of Health and Environment
Mike Cochran, Kansas Department of Health and Environment
Mark Jennings, Kansas Department of Health and Environment

**Monday, April 6
Morning Session**

Chairperson Holmes called the meeting to order at 9:10 a.m. on April 6, 2009.

Secretary Roderick Bremby, Kansas Department of Health and Environment (KDHE), addressed the Joint Committee on Administrative Rules and Regulations in response to the Committee's request for information concerning instances in which KDHE was authorized or required to develop rules and regulations by legislation passed during Legislative Sessions 2004-2008 (Attachment 1). See Kansas Legislative Research Department memorandum and worksheet dated February 2, 2009 (Attachment 2).

Secretary Bremby went through each of the nine instances in which rules and regulations had not been promulgated by the Department.

He stated that underground crude oil storage rules and regulations were to come before the Committee during the April meeting. Secretary Bremby responded to questions from the Committee members concerning each of the eight remaining instances.

The Secretary noted that KDHE determined that no new rules and regulations were needed for 2007 SB 190, for the proof of financial responsibility for underground storage tanks, at this time since the application form requires contractors to submit proof of financial responsibility.

The Secretary stated that in regard to 2007 House Sub. for SB 11, newborn screening tests, KDHE is testing all Kansas newborns according to the core uniform panel of newborn screening conditions recommended by the American College of Medical Genetics. Regulations in place prior to the introduction of this expansion are adequate to initiate the expansion, but will be subject to future review by KDHE in consultation with the Advisory Council formed to guide decision-making for the expansion.

In regard to 2006 House Sub. for SB 84, the Secretary stated that national accrediting standards and processes have been promulgated by the American Association of Blood Banks and Foundation for the Accreditation of Cellular Therapy, but there are no facilities accredited by either in Kansas. No resources exist for licensure or certification and inspection.

The Secretary noted that KDHE does not believe that regulations are necessary under 2006 HB 2756, reimbursement to eligible owners of aboveground petroleum storage tanks or bulk plants, because the statute uses permissive language and existing rules and regulations cover this issue. The application form is available on the KDHE website.

Secretary Bremby stated that in regard to 2006 HB 2916, KDHE does not intend to add a preliminary breath alcohol screening device to the list. A Committee member questioned whether law enforcement was in agreement with this decision. The Secretary stated that the Council was in agreement with this at this time.

KDHE has concluded that the Bureau of Waste Management will utilize the Bureau of Environmental Remediation's RISK Manual as a judgment tool and consider other relevant factors as well as odor in the definition of "uncontaminated soil" for solid waste passed in 2005 HB 2052. The Bureau of Waste Management currently is working to finalize this change in regulation.

Secretary Bremby noted that 2005 HB 2264 concerning tuberculosis evaluation for certain students was passed in 2005 and rules and regulations were prepared. The Attorney General's office determined that the draft regulations were more comprehensive than what the statute allowed. A new bill, SB 62, was introduced during the 2009 Legislative Session at the request of the Joint Committee on Administrative Rules and Regulations. The bill passed the Senate, but did not make it out of the House. It is now in a conference committee, but no action has been taken. After discussion by the Committee, the Committee members requested that staff draft a letter to be sent to the three House and three Senate members of the conference committee, along with the Speaker of the House and the Senate President, asking for assistance in getting the bill passed this Legislative Session.

In regard to 2004 SB 418, the Secretary stated that no state funding has been provided for this activity. A federal grant submission to the Center for Disease Control was not successful. KDHE continues to build capacity within the Department to strengthen its position with regard to future funding opportunities. The Committee suggested that rules and regulations should be prepared so that when funds become available KDHE will be ready to move forward. Secretary Bremby told the Committee that KDHE would go back and look at preparing these rules and

regulations and get back to the legislative staff. A Committee member asked whether any other national organization collected birth defect information that would be available to the state. Secretary Bremby stated that he would go back and check all available sources and get back to the Committee on this also.

After the Secretary responded to all questions from the Committee, Chairperson Holmes thanked Secretary Bremby and his staff for appearing before the Committee.

The Chairperson called the Committee members' attention to the minutes before them for the February 13, 2009, meeting and requested action. *Representative Pauls moved that the minutes be approved as presented; Representative Faber seconded the motion. Motion passed.*

Raney Gilliland provided a copy of correspondence from Behavioral Science Regulatory Board withdrawing the rule and regulation that came before the Committee at the last meeting concerning KAR 102-2-6, social work regulation. The letter states that the Board will now take a formal vote on all regulation changes prior to moving them forward (Attachment 3).

A copy of correspondence from Kansas Health Policy Authority (KHPA) also was provided to Committee members in response to the Committee's request that the KAR 129-5-151 be withdrawn (Attachment 4). KHPA stated that it was withdrawing the rule and regulation at this time.

Chairperson Holmes requested that the Committee set the meeting dates for the rest of the year. The Committee then established tentative meeting dates.

Chairperson Holmes welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-25-7, antelope; open season, bag limit, and permits (exempt); KAR 115-25-9, deer; open season, bag limit, and permits (exempt); KAR 115-4-11, big game and wild turkey permit applications; KAR 115-8-1, department lands and waters: hunting, fur harvesting, and discharge of firearms; KAR 115-25-8, elk; open season, bag limit and permits (exempt); KAR 115-15-1, threatened and endangered species; general provisions; KAR 115-15-2, nongame species; general provisions; and KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations (exempt).

Mr. Tymeson noted that the exempt regulations were to adjust areas and bag limits for the year. He answered questions of a general nature concerning deer population and hunting permits from Committee members. In answer to a question from a Committee member concerning removing bald eagles from the threatened species list, Mr. Tymeson stated that Kansas has a growing population of bald eagles and the federal government has removed them from its threatened list, so Kansas also removed them from its threatened list. They are still protected by the Bald and Golden Eagle Protection Act.

After Mr. Tymeson answered all questions from the Committee, Chairperson Holmes thanked Mr. Tymeson for his appearance before the Committee.

Julie Ehler was recognized by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Department of Agriculture. KAR 4-15-5, live plant dealer license fee.

A question was asked by a Committee member concerning the exemption provisions that had been removed. Ms. Ehler stated that those persons offering live plants for advertising or promotional purposes, without charging a fee or offering the plants for sale, do not need to obtain a license. The Committee member said that the regulation should be clarified, since they are considered live plant

dealers but are not required have a license. After responding to all questions, Ms. Ehler was thanked by the Chairperson for her presentation before the Committee.

Chairperson Holmes welcomed Steve Sutton to address the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services. KAR 109-2-9, variances; and KAR 109-3-1, standards for ambulance attendants.

Mr. Sutton explained to the Committee that the proposed change in KAR 109-2-9 was necessary to establish when a variance request must be submitted, the need of the applicant to identify a "serious hardship," and the period for which a variance may be granted. The change in KAR 109-3-1 would allow high school students to acquire training and certification and begin their careers while still in high school.

Mr. Sutton addressed all questions from the Committee, and Chairperson Holmes thanked him for appearing.

Randall Forbes, General Counsel, was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Dental Board. KAR 7-11-1, practice of dentistry.

Mr. Forbes stated that this proposed rule and regulation identified that any nonlicensed person who provides a service or procedure altering the color or physical condition of teeth is deemed to be practicing dentistry. Staff suggested that there needs to be clarification of the language since the language may be too broad. It was suggested the regulation be amended to add "if this is done for a fee." The Committee also suggested that it spell out that over-the-counter products were not included. Mr. Forbes stated that he would take the suggestion back to the Dental Board for its consideration. The Chairperson thanked Mr. Forbes for his appearance before the Committee.

Chairperson Holmes recognized Leo Haynos to address the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 5). KAR 82-11-4, transportation of natural and other gas by pipeline; minimum safety standards; and KAR 82-11-10, drug and alcohol testing.

Mr. Haynos stated that KAR 82-11-4 adopts by reference the federal rules and regulations found at 49 C.F.R. Part 192, with the enumerated exceptions. KAR 82-11-10 adopts 49 C.F. R. Part 199 concerning drug and alcohol testing, with the enumerated modifications and exceptions.

In KAR 82-11-4, page 4, a question from a Committee member concerned what was considered short segment of pipe. Mr. Haynos stated that a short segment would be less than 10 feet. Staff noted that on page 2 of KAR 82-11-10, the agency needs to adopt by reference the material referred since it is not adopted elsewhere. This would require a separate regulation. Mr. Haynos stated he would take this back to the Commission for correction. Mr. Haynos stated that on page 1, "of" should be changed from to "or" in the definition of "administrator." After responding to all questions from the Committee, Mr. Haynos was thanked for his presentation by the Chairperson.

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

Afternoon Session

Chairperson Holmes reconvened the meeting at 1:30 p.m.

The Chairperson recognized Sally Pritchett, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-3-1, general classification; education requirements; KAR 117-4-1, residential classification; education requirements; and KAR 117-6-1, continuing education; renewal requirements.

Ms. Pritchett stated that KAR 117-3-1 and KAR 117-4-1 are being proposed to reduce the qualifying education requirement for appraisers holding a valid state license or residential certification. There were no questions from the Committee. Ms. Pritchett was thanked by the Chairperson for appearing before the Committee.

Rick Fleming, General Counsel, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Office of the Securities Commissioner. KAR 81-3-6, dishonest or unethical practices of broker-dealers and agents; KAR 81-5-14, notice filings and fees for offerings of investment company securities; and KAR 81-14-5, dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers.

Mr. Fleming stated that KAR 81-3-6 sets forth the dishonest and unethical practices that constitute grounds for discipline against a broker-dealer or agent. KAR 81-14-5 sets forth the dishonest and unethical practices for investment advisers.

Staff noted that in KAR 81-3-6, page 14, (2), line 2 should refer to "subsection" rather than "paragraph." Staff also suggested that the Commission clarify paragraph (C) to keep the authority for approval with the Commissioner and require applicants to provide documentation that they are certified by the other agency. Staff noted that this also would apply to KAR 81-14-5, page 16. A Committee member suggested that a letter addressing these questions be sent to the Attorney General's office and the Securities Commissioner be notified of the opinion request. The Committee had several questions concerning the fee increases and the purpose for the proposed increase. Mr. Fleming stated the fee increase would be used to increase the budget of the Commission for certain employees in the agency and the rest would go into the State General Fund (SGF). In fiscal year 2010, the Commission will collect \$12.6 million, the Office will take \$2.8 million for its budget and send approximately \$9.8 million to the SGF.

After he responded to all the questions from the Committee, Mr. Fleming was thanked by the Chairperson for his presentation before the Committee.

Julia Mowers was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the State of Kansas Board of Healing Arts. KAR 100-55-7, continuing education; license renewal; KAR 100-55-9, special permits; and KAR 100-29-16, supervision of physical therapist assistants and support personnel.

Staff noted that in KAR 100-55-7, paragraph (f)(1), there needs to be something added indicating that the Board of Healing Arts accepts the offerings approved by the American Association of Respiratory Care and that those also meet the requirements of the State of Kansas. After responding to all questions from the Committee, Ms. Mowers was thanked by the Chairperson for appearing before the Committee.

Chairperson Holmes recognized Ken Gorman, Kansas Public Employees Relations Board, to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 84-2-1, service of pleadings.

Mr. Gorman stated that the proposed rule and regulation is being amended to allow for electronic submission of documents with the Board. Staff noted that the history section needs to be updated. The Chairperson thanked Mr. Gorman for his presentation before the Committee.

Doug Farmer, Director, State Employee Health Plan, was welcomed by the Chairperson to address the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 108-1-4, local unit of government employee health care benefits plan.

Mr. Farmer stated that there are four groups which have been through the process with the Kansas Health Policy Authority and desire to be added to the state health plan: (1) any housing authority created pursuant to KSA 17-2337; (2) any local environmental protection program obtaining funds from state water plan fund; (3) any city-county, county, or multicounty health board or department established pursuant to KSA 65-204 and 65-205; and (4) any nonprofit independent living agency as defined in KSA 65-5101.

Committee members had several questions concerning the addition of the local environmental protection program designation being permitted to join the Plan. A question was raised about the term "program" instead of department, agency, or people. The Committee felt that the designation should be more restrictive and asked Mr. Farmer to provide more information to the Committee. The Committee asked that the agency examine KSA 75-5657 and clarify the term "entity." Mr. Farmer stated he would have to research this information and get back to the Committee. Staff noted that the term "plan" should be added on page 2, (H), between "water" and "fund." A Committee member had a question on page 8, (g), where the term "spouses" has been deleted since spouses are not considered dependents. Mr. Farmer stated, in response to a question from staff, that enrollees must sign on for a three-year term and, if they are no longer eligible before the end of the three years, they must continue to pay the premiums for the remainder of the contract. A concern was raised by the Committee concerning page 10, (3) (A) (v) and what the actual intent was. Mr. Farmer stated that this was the same language that is used in the state employee plan; he would get an answer and get back to the Committee. Since the public hearing on this rule and regulation would not take place until after the May 18 meeting, it was the consensus of the Committee that Kansas Health Policy Authority be asked to come to the May 18, 2009, meeting for further clarification. After responding to all Committee questions, Mr. Farmer was thanked for his presentation before the Committee.

The Chairperson welcomed Jay Hall to address the proposed rule and regulation noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-102-2, gaming supplier and non-gaming supplier defined.

Mr. Hall stated that this rule and regulation narrows the scope of the persons who are required to undergo background checks. A Committee member asked where the agency came up with the \$100,000 limit. Mr. Hall stated that this was from another state and that it uses this as a resource for its other rules and regulations. Committee members noted that the notice did not include the ability to provide comment by e-mail. Mr. Hall stated that this was an oversight. Chairperson Holmes thanked Mr. Hall for appearing before the Committee.

Chairman Holmes recessed the meeting until 9:00 a.m. on April 7, 2009.

**Tuesday, April 7
Morning Session**

Chairperson Holmes reconvened the meeting at 9:00 a.m. on April 7, 2009.

Jeff Barnes was welcomed by Chairperson Holmes to speak to the rules and regulations noticed for hearing by the Kansas Home Inspectors Registration Board. KAR 130-1-1, registration; KAR 130-1-2, registration renewal; KAR 130-1-3, examination; KAR 130-2-1, fees; and KAR 130-3-1, approval of educational program.

Mr. Barnes stated that these are new rules and regulations as a result of HB 2315 passed in the 2008 Legislative Session and cleanup bill HB 2260 passed in 2009. There will be a couple of corrections that need to be made in these rules and regulations because of the passage of HB 2260. In KAR 130-1-1 (f) (2) (and KAR 130-1-3 (e) (3)) the date will be changed from "July 1, 2008" to "July 1, 2007." Another change is in KAR 130-1-1 (h), documentation from an insurer "authorized to do business in Kansas." There are a number of insurers particularly providing errors and omissions coverage that are not licensed with the State of Kansas or regulated by the State of Kansas. The Insurance Commissioner has agreed those insurers may do business here as long as the inspector signs a waiver release indicating that the inspector is aware that the insurer is not licensed in the State of Kansas and if there is a problem with that insurer, the inspector cannot go to the Insurance Commissioner for help.

Several Committee members expressed concern about the errors and omissions section and insurers not authorized to do business in Kansas. Mr. Barnes stated that there is a sunset on this program in 2013 so, if problems are found, they can be addressed at that time. A Committee member suggested that renewals could have a question on the renewal form as to whether there had been any filings against that person concerning errors and omissions. This could be done with a yes or no answer. A question was raised concerning the economic impact statement since the dates had been changed. Mr. Barnes stated that the July 1, 2009, date would be combined into the July 1, 2010, date.

After responding to all questions, Mr. Barnes was thanked by the Chairperson for his presentation before the Committee.

Chairperson Holmes recognized Craig Thompson, Section Chief, Division of Environment, Bureau of Environmental Field Services, to address a rule and regulation noticed for hearing by the Department of Health and Environment. KAR 28-16-28g, surface water register.

Mr. Thompson stated that in the period from January 1, 2007, through July 30, 2008, 954 stream segments and 71 lakes were evaluated by a designated use attainability analysis (UAA) to determine the appropriate use designations. These proposed revisions identify the designated use changes for 731 stream segments and 71 lakes as a result of the UAA findings. The Chairperson recommended that each Committee member review the streams and lakes in his or her area to see if he or she concurs with the UAA recommendations. The Chairperson requested that exact points tested on the Cimarron River and also on the Cimarron River North Fork be provided by the agency. The Chairperson also had questions on all entries on page 65 in the Cimarron River Basin. He asked that the Lake Meade State Park and Meade County State Park Wildlife Area be reevaluated; another member asked for reevaluation of the Atwood Township Lake in Rawlins County. Mr. Thompson stated that this could be provided. After responding to all questions, the Chairperson thanked Mr. Thompson for appearing before the Committee.

Marla Rhoden, Director, Health Occupations Credentialing, was welcomed by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-39-164, definitions; KAR 28-39-165, nurse aide training program; KAR 28-39-166, nurse aide course instructor; KAR 28-39-167, out-of-state and allied health training endorsement for nurse aide; and KAR 28-39-168, state nurse aide test.

A Committee member noted that in KAR 28-39-167, the first paragraph needs to be clarified so that it is clear that both completing training and passing a test are required. The Chairperson thanked Ms. Rhoden for her appearance before the Committee.

Chairperson Holmes introduced Mike Cochran, Chief, Geology Section, Bureau of Water, to address proposed rules and regulations noticed for hearing by the Department of Health and Environment (Attachment 6, 7, 8, and 9). KAR 28-45b-1, definitions; KAR 28-45b-2, permit required for facilities and storage wells; variances; KAR 28-45b-3, well conversions and reentry; KAR 28-45b-4, permit required for facility and associated storage wells; KAR 28-45b-5, public notice; KAR 28-45b-6, modification and transfer of a permit; KAR 28-45b-7, signatories for permit applications and reports; KAR 28-45b-8, siting requirements for new storage wells and facilities; KAR 28-45b-9, financial assurance for closure of underground crude oil storage facility; KAR 28-45b-10, operations and maintenance plan; KAR 28-45b-11, emergency response plan and safety and security measures; KAR 28-45b-12, design and construction of storage wells; KAR 28-45b-13, monitoring; KAR 28-45b-14, testing and inspections; KAR 28-45b-15, groundwater monitoring; KAR 28-45b-16, record requirements and retention; KAR 28-45b-17, well workovers; KAR 28-45b-18, plugging and plugging-monitoring requirements; KAR 28-45b-19, underground crude oil storage fees; KAR 28-45b-20, permit required for a brine pond; KAR 28-45b-21, brine pond permit application; permit renewal; KAR 28-45b-22, public notice for a brine pond; KAR 28-45b-23, modification and transfer of a brine pond permit; variance; KAR 28-45b-24, signatories for brine pond permit applications and reports; KAR 28-45b-25, financial assurance for brine pond closure; KAR 28-45b-26 design, construction, and maintenance of brine ponds; KAR 28-45b-27, groundwater monitoring for brine ponds; and KAR 28-45b-28, brine pond closure requirements.

Mr. Cochran stated that these new regulations concern the underground storage of crude oil in bedded salt. The proposed regulations require industry to minimize adverse impacts to the environment that could result in contamination by crude oil or brine. The regulations require safety measures for the safe operation and maintenance of the storage facility.

Staff noted that in KAR 28-45b-1, page 1, (b), last line should be "expressed in degrees API." Staff noted that in KAR 28-45b-40, page 6, (q), the word "activities" is misspelled. In KAR 28-45b-4, page 6, (p), a Committee member questioned the required 100-foot roof thickness maintained above the storage cavern and asked that the agency look at these requirements since crude oil does not carry the same pressure as natural gas. With regard to KAR 28-45b-8, page 3, (f), "shipping traffic," a Committee member noted that this should be removed as there is no shipping traffic in Kansas. A Committee member had a question concerning KAR 28-45b-12, page one, (1), and asked the agency to clarify whether this is just for new storage wells. In KAR 28-45b-14, page 1, (B), staff noted that clarification is needed to designate when the five-year period starts. In KAR 28-45b-19, staff had a question concerning the Economic Impact. Mr. Cochran noted that these are new regulations and no one has contacted them regarding these storage facilities, so they have no idea of the potential numbers.

Mr. Cochran responded to all questions from the Committee. Chairperson Holmes thanked Mr. Cochran and Mr. Jennings for their presentation before the Committee.

The Chairperson welcomed John Wine, Staff Attorney, to address the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachments 10, 11 and 12). KAR 40-4-37v, long-term care; agent training; KAR 40-1-37, audited financial reports; filing requirements; and KAR 40-4-35, Medicare supplement policies; minimum standards.

Mr. Wine stated that KAR 40-4-37v is a new regulation being proposed to specify the training required for licensed agents selling long-term care partnership program policies. The conferee stated that KAR 40-1-37 is being updated to adopt by reference the February 5, 2009 policy and procedure requiring annual audited financial reports. It affects only those companies having annual premiums of \$500 million or more. KAR 40-4-35 is proposed to update the existing regulations on Medicare supplement insurance to adopt standards equal to or exceeding the minimum standards and requirements permitted by Section 1395ss(b) of the federal Social Security Act. There were no questions concerning these regulations and Mr. Wine was thanked by the Chairperson for his appearance before the Committee.

The Chairperson introduced Bobbi Mariani to speak to the proposed rule and regulation noticed for hearing by the Social Rehabilitation Services. KAR 30-4-90, eligibility factors specific to the GA program.

Representative Faber provided a detailed list for Committee members showing each county and the number of individuals who would be impacted by this proposed rule and regulation (Attachment 13).

Staff questioned how the agency would notify clients about this rule and regulation. Ms. Mariani stated that there is a notification process in place now for recipients when they reach the end of their eligibility and this would be the method for notification. Ms. Mariani stated that case workers were notifying clients as they meet with them now. Several members of the Committee had concerns about the statement "time frame to be determined by the secretary." The Committee asked that (e) be changed to apply only "for fiscal year 2010." Ms. Mariani responded to additional questions from Committee members. The Chairperson thanked Ms. Mariani for her presentation before the Committee.

Deanna Lieber, General Counsel, was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-1-200, definition of terms; KAR 91-1-202, endorsements; KAR 91-1-203, licensure requirements; KAR 91-1-204, licensure of out-of-state and foreign applicants; KAR 91-1-205, licensure renewal requirements; and KAR 91-1-216, procedures for promulgation of in-service education plans; approval by state board; area professional development centers' in-service programs.

In KAR 91-1-203, staff noted on page 5, (H), that a clarification regarding the five-year time frame needs to be made. Staff noted that KAR 91-1-216, (d), should be clarified as to when the semester time frame would begin and end. Ms. Lieber stated that the Department would look at that time frame again.

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 threatened and endangered species, general provisions; and nongame species; general provisions and big game and wild turkey permit applications; and department lands and waters: hunting, furharvesting, and discharge of firearms. 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 live plant dealer license fee. After discussion, the Committee had no comment.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning variances and standards for ambulance attendants. After discussion, the Committee had no comment.

Kansas Dental Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning practice of dentistry. After discussion, the Committee had the following comment.

KAR 71-11-1. The Committee suggests that the Board consider adding words such as "for a fee" after the phrase "service or procedure" to clarify that the use of "over-the-counter products" by individuals is not covered by this regulation.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transportation of natural and other gas by pipeline, minimum safety standards and drug and alcohol testing. After discussion, the Committee had the following comments.

KAR 82-11-10. The Committee notes that the word "of" in subsection (b) in the definition of "administrator" should be "or." Also, in the definition of "DOT Procedures," the Committee believes the agency should adopt the federal regulation by reference or refer to the place where it is adopted by reference.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general classification, education requirements, residential classification, education requirements, and continuing education; renewal requirements. After discussion, the Committee had no comment.

Office of the Securities Commissioner. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning dishonest or unethical practices of broker-dealers and agents; notice filings and fees for offerings of investment company securities; and dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers. After discussion, the Committee had the following comments.

KAR 81-3-6. In subsection (i)(2), reference is made to "paragraph" (i)(1)(D) and the Committee believes this word should be changed to "subsection." Please review the other regulations in this set for similar references and make the appropriate change. The Committee is planning to write to the Attorney General with respect to the establishment of a rebuttable presumption for a designating or certifying organization to determine whether this is an unlawful delegation of authority for this subsection and for a similar subsection in KAR 81-14-5.

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Special permits
- Supervision of physical therapist assistants and support personnel
- Continuing education; license renewal (respiratory therapy)

After discussion, the Committee had the following comments.

KAR 100-55-7. The Committee is concerned that the agency does not approve the continuing education offerings by the American Association of Respiratory Care and is concerned that this may be an unlawful delegation of authority.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning local unit of government employee health care benefits plan. After discussion, the Committee had the following comments.

KAR 108-1-4. The Committee believes in the heading of subsection (g) that the language should read "Coverage of spouses and eligible dependent participants." In subsection (h)(3)(A)(v), the Committee is concerned about the language and who exactly is covered. The Committee has requested that the agency provide a copy of the coverage for regular KPERS retired individuals to determine whether the language is identical. In addition, in terms of local entities, covered the Committee asks for information on which local environmental protection programs are included by the regulation. Finally, the Committee requests that a spokesperson from the agency appear at the next regular meeting of the Committee to answer further questions about these issues.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning service of pleadings. After discussion, the Committee had no comment.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning gaming supplier and non-gaming supplier defined. 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

renewal; examination; fees; and approval of educational program. After discussion, the Committee had the following comments.

KAR 130-1-1. The Committee is concerned as to whether "errors and omissions" insurance is required by the applicants for registration.

Request of the Attorney General. The Committee is concerned with the potential impact that the 2009 enactment of HB 2260 may have upon these regulations and plans to write to the Attorney General to express this concern.

Economic Impact Statement. The Committee believes that the Economic Impact Statement for KAR 130-2-1 needs to be updated.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the surface water register. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; nurse aide training program; nurse aide course instructor; out-of-state and allied health training endorsement for nurse aide; and state nurse aide test. After discussion, the Committee had the following comment.

KAR 28-39-167. The Committee is concerned that the language in subsection (a) could be interpreted to mean that a person who receives only training but has not passed a test would be able to become a nurse aide. The Committee believes that clarification should be added to make it clear that passing a test is required.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; permit required for facilities and storage wells; variances; well conversions and reentry; permit required for facility and associated storage wells; public notice; modification and transfer of a permit; signatories for permit applications and reports; siting requirements for new storage wells and facilities; financial assurance for closure of underground crude oil storage facility; operations and maintenance plan; emergency response plan and safety and security measures; design and construction of storage wells; monitoring; testing and inspections; groundwater monitoring; record requirements and retention; well workovers; plugging and plugging-monitoring requirements; underground crude oil storage fees; permit required for a brine pond; brine pond permit application; permit renewal; public notice for a brine pond; modification and transfer of a brine pond permit; variance; signatories for brine pond permit applications and reports; financial assurance for brine pond closure; design, construction, and maintenance of brine ponds; groundwater monitoring for brine ponds; and brine pond closure requirements. After discussion, the Committee had the following comments.

KAR 28-45b-1. In subsection (b), the Committee believes that the gravity scale should be expressed in "degrees API" rather than just in "degrees" in order to add clarity.

KAR 28-45b-2. The Committee is concerned with the agency granting variances when no specific authority to do so exists. The Committee plans to write to the

Attorney General expressing concern with the approval of this regulation and others when no specific statutory authority exists.

KAR 28-45b-4. In subsection (p), the Committee questions the thickness requirement and wonders how the 100 foot thickness requirement was determined when in subsection (r) and (s) it appears there could be approved storage caverns with salt roof thickness of between 50 and 100 feet. The Committee asks the agency to review all salt thickness requirements throughout these regulations to determine their adequacy. In subsection (q), the word "activities" is not spelled correctly.

KAR 28-45b-8. In subsection (f), the Committee questions what kind of aircraft or shipping traffic hazards the agency expects to have in proximity to any salt cavern storage of crude oil. Please make any appropriate modifications.

KAR 28-45b-14. In subsection (c)(1)(B), the Committee believes clarification should be added so that one would know when the "five year" time period actually begins.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning:

- Long-term care; agent training
- Audited financial reports; filing requirements
- Medicare supplement policies; minimum standards

After discussion, the Committee had no comment.

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility factors specialized to the GA program. After discussion, the Committee had the following comment.

KAR 30-4-90. The Committee is concerned that the proposed wording regarding the time frame for assistance means the lifetime maximum could be changed by the Secretary without Legislative notification and believes that the agency should change the regulation each time the agency wishes to change the time frame. The Committee suggests that the agency change the wording of the regulation so that the 18 calendar months applies only to those receiving assistance during FY 2010. Also, the agency should provide some means of notification or communicating the Secretary's decision on the number of months if different from 18, *e. g.* publication in the *Kansas Register*.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definition of terms; endorsements; licensure requirements; licensure of out-of-state and foreign applicants; license renewal requirements; and procedures for promulgation of in-service education plans, approval by state board, area professional development centers' in-service programs. After discussion, the Committee had the following comment.

KAR 91-1-203. In subsection (b)(4)(C), the Committee suggests that clarity could be achieved if additional language were added to make clear that it is college credit that is being required. After subsection (b)(4)(H), the Committee suggests language to make it clear when the subsection (b)(4) expires.

KAR 91-1-216. In subsection (d), the Committee believes clarifying language should be added so that there is a specific time frame when the plan will be approved, approved with modifications, or disapproved to indicate that the time frame is within the first semester.

The meeting was adjourned by the Chairperson at 12:45 p.m.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by Committee on:

May 18, 2009

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
 COMMITTEE GUEST LIST

DATE: April 7, 2009

NAME	REPRESENTING
Berend Koops	Hein Law Firm
Susan Vogel	KDHE
Marla Rhoden	KDHE
Maay Flis	KDHE
Paul Johnson	Ks Catholic Conf.
B. Marioni	JRS
Blauz	SRS
L. Komsey	SRS
John Wine	KID
Susan Elmacher	KID
Chut Tee	KID
Julie HOLMES	KID
Craig Vantolst	KID
Linda Sheppard	KID
LeRoy BRUNGARDT	KID



Year Enacted	Topic	Bill Number	Session Law Chapter	KSA Reference	Requires or Authorizes?	Specific Requirement	Deadline	Program	KDHE Status Update
2008	Underground crude oil storage	2892, new section 1	106	55-1,117a	Requires	Not later than January 1, 2009, the Secretary of health and environment shall adopt, pursuant to KSA 55-1,117, ... rules and regulations governing underground crude oil storage.	1/1/2009	Bureau of Waste Management	The necessary regulations have been drafted and are scheduled for presentation at the April 6, 2009 meeting of the JCARR.
2007	Proof of financial responsibility for underground storage tanks	SB 190, section 2 (f)	34	65-34,110	Authorizes	KDHE may promulgate rules and regulations to ensure that evidence of financial responsibility is presented with an application for a contractor license and subsequent renewals of contractor license to the department; that financial assurance amount is to be equal to or greater than \$1 million per occurrence and \$2 million annual aggregate for the costs of corrective action directly related to releases caused by improper manufacture, installation or repair of such tank or piping.	None	Bureau of Environmental Remediation	KDHE does not believe that regulations are necessary and the statute uses permissive language (KDHE may promulgate rules and regulations.) The application form required in KAR 28-44-20 requires contractors to submit proof of financial responsibility.
2007	Newborn screening tests	H Sub. For SB 11, Sec. 230	177	65-180	Authorizes	Not later than July 1, 2008, the secretary of KDHE shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics titled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by KDHE to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.	7/1/2008	Kansas Department of Health and Environmental Laboratories and Bureau of Family Health	As of July 1, 2008, KDHE is testing all Kansas newborns according to the core uniform panel of newborn screening conditions recommended by the American College of Medical Genetics. A Council of medical specialists, parents and community providers has been assembled to guide decision-making for this expansion. Regulations in place prior to the introduction of this expansion are adequate to initiate the expansion but will be subject to future review by KDHE in consultation with the Advisory Council.

Joint Committee on Administrative Rules & Regs 4/16-7/2009 Attachment 1





2006	Umbilical cord blood banks	H. Sub. For SB 84	176	65-1,249	Requires	The secretary of health and environment shall adopt rules and regulations regarding the operation of umbilical cord banks in Kansas, including compliance with standards set by the federal government, and standard collecting method guideline.	none	Bureau of Family Health	No resources exist for licensure/certification and inspection. An alternative would be to accept license/certification by other bodies but this poses a potential delegation problem. National accrediting standards and processes have been promulgated by the American Association of Blood Banks and Foundation for the Accreditation of Cellular Therapy, but there are no facilities accredited by either in Kansas. Parent and provider informaton materials have been developed and posted on the KDHE website.	2-1
2006	Reimbursement to eligible owners of aboveground petroleum storage tanks or bulk plants	HB 2756, Sec. 2	50	65-34,132(f)	Authorizes	The Secretary may adopt rules and regulations necessary to reimburse eligible owners of above ground storage tanks or bulk plants for certain upgrades or permanent closure expenses from the funds available in the Kansas Essential Fuels	None	Bureau of Environmental Remediation	KDHE does not believe that regulations are necessary and the statute uses permissive language (The Secretary may adopt rules and regulations.) The application form (Kansas Petroleum Storage Tank Release Trust Fund Application Form) is available on the KDHE website.	
2006	Breath screening tests for alcohol	HB 2916	173, Sec. 8	75-5665	Authorizes	This amendment to existing law did not change the basic rule-making authority for creating a list but was included in the 2006 JCARR report. The bill added "for purposes of determining violations of KSA 41-727" (underage drinking) to the list of reasons for which the Secretary of KDHE may add a preliminary screening device to the list of devices approved for use by law enforcement agencies.	Not Applicable	Kansas Department of Health and Environmental Laboratories	KDHE does not intend to add a preliminary screening device to the list of devices approved for use by law enforcement agencies at this time. As a result, regulations are unnecessary at this time.	
2005	Definition of "uncontaminated soil" for solid waste statutes	HB 2052	25	65-3402	Authorizes	"(w) 'Clean rubble' means the following types of construction and demolition waste: Concrete and concrete products including reinforcing steel, asphalt pavement, brick, soil or rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."	None	Bureau of Waste Management	KDHE has concluded that the Bureau of Waste Management will utilize the Bureau of Environmental Remediation's RISK Manual as a judgment tool and consider other relevant factors as well as odor. The Bureau of Waste Management is currently working to finalize this change in regulation.	



2005	Tuberculosis evaluation for certain students	HB 2264	122, Sec.5	65-129e	Requires	"The secretary of health and environment is hereby authorized and directed to adopt rules and regulations establishing evaluation requirements for certain students entering college or university classrooms in Kansas having been born in or lived or traveled in countries identified by the centers for disease control and prevention as areas where tuberculosis is a health risk. ...These rules and regulations shall establish evaluation criteria in compliance with best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control."	None	Bureau of Disease Control and Prevention- TB Program	After working with key stakeholders at the colleges and universities as requested by the legislature at the time of adoption, final draft regulations were prepared and started through the promulgation process. While being reviewed in the Attorney General's office it was determined that the draft regulations, while in concurrence with the known intent of the statute, they stretched beyond the statute limitations. A meeting was held with the KDHE staff, regents staff, legislative research and the attorney general's staff. It was agreed the regulations were actually written to meet the public health need and it was decided a revision to the statute was the next step. SB 62 was written and introduced this year by the Senate Public Health and Welfare Committee, which has passed the full Senate and is currently in conference committee.	1-2
2004	Birth defects information system	SB 418	27, Sec 5	65-1,245	Requires	Subject to available funding, KDHE was to implement a birth defects information system; the rules and regulations are to specify the types of congenital anomalies and abnormal conditions to be reported, establish reporting requirements, and establish a form to be used when a request is made to remove a child from the system.	1/1/2004	Bureau of Family Health	No state funding has been provided for this activity. A federal grant submission to CDC for \$136,977/year x 5 years (3-1-05 to 2-28-10) was not successful. KDHE continues to build capacity within the department to strengthen our position with regard to future funding opportunities. At this time KDHE does not meet CDC standards.	

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 2, 2009

To: Representative Carl Holmes
From: Jill Shelley, Research Analyst
Re: Recent KDHE Rule and Regulation Authorizations or Requirements

You asked for information on rule and regulation requirements or authorizations passed by the Legislature in recent years applicable to the Kansas Department of Health and Environment (KDHE), and whether appropriate rules and regulations subsequently have been adopted. The attached summary lists the 13 instances in which KDHE was authorized or required to develop rules and regulations by legislation passed during legislative sessions 2004 through 2008.

Rules and regulations have been finalized for three of the requirements or authorizations. KDHE is scheduled to present proposed rules and regulations for two of the requirements at the next two meetings of the Joint Committee on Administrative Rules and Regulations (JCARR). As explained in footnotes, KDHE officials provided information on the lack of rules and regulations for seven of the authorizations or requirements.

Please contact me if you have any questions.

Enclosures

JS/ml

KDHE rule and regulation requirements passed by the Legislature in recent years, and whether appropriate rules and regulations have been adopted as of 2/3/09

Year enacted	Topic	Bill number	Session Law chapter	KSA reference	Requires or authorizes?	Specific requirement	Deadline in the law for developing such regulations	Have such regulations come before the JCARR?	If they have been to JCARR review, have such regulations been finalized?
2008	underground crude oil storage	2892, New Sec. 1	106	55-1,117a	requires	New Sec. 1: Not later than January 1, 2009, the secretary of health and environment shall adopt, pursuant to K.S.A. 55-1,117, ... rules and regulations governing underground crude oil storage. The secretary, pursuant to K.S.A. 75-5616, ... shall appoint an advisory committee to consult with and advise the secretary on the promulgation of such rules and regulations....	1/1/2009	no, but scheduled for the 6 April 2009 meeting	
2007	newborn screening tests	H. Sub. for SB 11, Sec. 23(i)	177	65-180	authorizes	Not later than July 1, 2008, the secretary of KDHE shall adopt rules and regulations as needed to require, to the extent of available funding, newborn screening tests to screen for treatable disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics titled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by KDHE to provide more appropriate newborn screening guidelines to protect the health and welfare of newborns for treatable disorders.	7/1/2008	no (a)	
2007	uses of the Cancer Registry	H. Sub. for SB 11, Sec. 24(b)	177	65-1,172	requires	The secretary shall adopt rules and regulations to define who may be authorized to conduct such follow up studies [based on information in the Cancer Registry] and to develop criteria for obtaining informed consent....	none	no, but scheduled for the 13 February 2009 meeting	
2007	proof of financial responsibility for underground storage tanks	SB 190, Sec. 2(f)	34	65-34,110	authorizes	KDHE may promulgate rules and regulations to ensure that evidence of financial responsibility is presented with an application for a contractor license and subsequent renewals of contractor license to the department; that financial assurance amount is to be equal to or greater than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for the costs of corrective action directly related to releases caused by improper manufacture, installation or repair of such tank or piping.	none	no (b)	

2-2

KDHE rule and regulation requirements passed by the Legislature in recent years, and whether appropriate rules and regulations have been adopted as of 2/3/09

Year enacted	Topic	Bill number	Session Law chapter	KSA reference	Requires or authorizes?	Specific requirement	Deadline in the law for developing such regulations	Have such regulations come before the JCARR?	If they have been to JCARR review, have such regulations been finalized?
2006	umbilical cord banks	H. Sub. for SB 84	176	65-1,249	requires	The secretary of health and environment shall adopt rules and regulations regarding the operation of umbilical cord banks in Kansas, including compliance with standards set by the federal government, and standard collecting method guidelines....	none	no (c)	
2006	state assistance with treatment products for newborns	H. Sub. for SB 579	158	65-180	requires	The Secretary is to adopt rules and regulations establishing standards for determining eligibility for state assistance for necessary treatment products not provided by another state agency.	none	yes, 9/6/06	yes, 28-4-514 published in the Register 10/5/06 and effective 10/20/06
2006	collecting fees from trauma facilities related to their designation	HB 2752	111	75-5665	required	amended law to specify that the Secretary develop rules and regulations to fix, charge, and collect fees from trauma facilities to recover all or part of the expenses incurred in the designation of trauma facilities by level of trauma care capabilities	none	yes, 7/9/07	yes, 28-54-3 published in the Register 10/18/07 and effective 11/2/07
2006	reimbursement to eligible owners of aboveground petroleum storage tanks or bulk plants	HB 2756, Sec. 2	50	65-34,132(f)	authorized	The Secretary may adopt rules and regulations necessary to reimburse eligible owners of aboveground storage tanks or bulk plants for certain upgrades or permanent closure expenses from the funds available in the Kansas Essential Fuels Supply Trust Fund. Such expenses must be incurred between August 1, 2001, and July 1, 2009; application must be made on the Department's form before January 1, 2011.	none	no (d)	
2006	breath screening tests for alcohol	HB 2916	173, Sec. 8	75-5665	authorizes	This amendment to existing law did not change the basic rule-making authority for creating a list but was included in the 2006 JCARR report. The bill added "for purposes of determining violations of K.S.A. 41-727" (underage drinking) to the list of reasons for which the Secretary of KDHE may add a preliminary screening device to the list of devices approved for use by law enforcement agencies.	n/a	n/a	

2-3

KDHE rule and regulation requirements passed by the Legislature in recent years, and whether appropriate rules and regulations have been adopted as of 2/3/09									
Year enacted	Topic	Bill number	Session Law chapter	KSA reference	Requires or authorizes?	Specific requirement	Deadline in the law for developing such regulations	Have such regulations come before the JCARR?	If they have been to JCARR review, have such regulations been finalized?
2005	definition of "uncontaminated soil" for solid waste statutes	HB 2052	25	65-3402	authorizes	"(w) 'Clean rubble' means the following types of construction and demolition waste: Concrete and concrete products, including reinforcing steel, asphalt pavement, brick, soil or rock and uncontaminated soil as defined in rules and regulations adopted by the secretary."	none	no (e)	
2005	tuberculosis evaluation for certain students	HB 2264	122, Sec. 5	65-129e	requires	"The secretary of health and environment is hereby authorized and directed to adopt rules and regulations establishing tuberculosis evaluation requirements for certain students entering college or university classrooms in Kansas having been born in or lived or traveled in countries identified by the centers for disease control and prevention as areas where tuberculosis is a health risk. These rules and regulations shall establish evaluation criteria in compliance with best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control."	none	no (f)	
2004	birth defects information system	SB 418	27, Sec 5	65-1,245	requires	Subject to available funding, KDHE was to implement a birth defects information system; the rules and regulations are to specify the types of congenital anomalies and abnormal conditions to be reported, establish reporting requirements, and establish a form to be used when a request is made to remove a child from the system.	within 180 days after the effective date of the act (1/1/05)	no (g)	
2004	reporting of screening of newborns for hearing loss	SB 511	150	65-1,157a	authorizes	KDHE "shall adopt such rules and regulations as may be necessary" to establish standards for equipment used for newborn infant hearing screening, for protocols to be followed in performing those screenings, for qualifications and training of personnel who perform the screening, for the responsibilities of personnel necessary to carry out the program, and for reports and other information necessary for KDHE to carry out the provisions of the Newborn Infant Hearing Screening Act.	none	yes (date not available)	yes, 28-4-600 through 28-4-613, effective 7/2/04

(a) The director of the Bureau of Family Health reports that the law has been implemented but KDHE has not needed new rules and regulations to do this.

Handwritten initials: JFH

KDHE rule and regulation requirements passed by the Legislature in recent years, and whether appropriate rules and regulations have been adopted as of 2/3/09

2-5

Year enacted	Topic	Bill number	Session Law chapter	KSA reference	Requires or authorizes?	Specific requirement	Deadline in the law for developing such regulations	Have such regulations come before the JCARR?	If they have been to JCARR review, have such regulations been finalized?
	(b) The application form required in KAR 28-44-20 requires contractors to submit proof of financial responsibility. (KLRD received a copy of this form.)								
	(c) from an email from the Director of the Bureau of Family Health: "No, there are no rules and regulations and none are needed. The information, which we just updated with the assistance of genetic counselors at KUMC, is available at the following website: http://www.kdheks.gov/bcyf/umbilical_cord_info_act.htm ." An internet search found no public or private cord blood banks in Kansas.								
	(d) The application form (Kansas Petroleum Storage Tank Release Trust Fund Application Form) is available on KDHE's website.								
	(e) An official with the Bureau of Waste Management said that this regulation is in process within the agency.								
	(f) An official with the Kansas Tuberculosis Control Program in the Bureau of Epidemiology and Disease Prevention said a draft of these rules and regulations had gotten as far as the Attorney General's office. 2009 SB 62 is designed to clarify requirements regarding these regulations.								
	(g) The director of the Bureau of Family Health said no funds have been allocated (a condition for such a system in 65-1,241(b)) and no rules and regulations have been developed. On the latter point, she said that the Centers for Disease Control and Prevention (CDC) specifies the types of abnormalities it wants to see reported and that she has yet seen no need for rules and regulations. The registry also was delayed with the implementation of a new system in Vital Statistics; downloads from that system used to identify children with birth defects were disrupted from 2004 until August 2007 but have resumed. She has allocated staff time and used \$75,000 of a federal State Systems Development Initiatives grant to take steps toward implementation of the Birth Defects Information System law, which she described as "a good law." Those steps include working with medical providers so that those providers voluntarily submit information about birth abnormalities; convening a committee, which included parents of children with birth defects, that developed a brochure describing services available to children with birth defects and their families; sending that brochure to identified families and tracking responses; and hiring a developer (using the federal grant moneys noted above) to work on the actual data system. The current limited system is being used to look for clusters of birth defects in the state, she said. She also said the Bureau will be in position to compete for CDC funding when it offers additional funding for this purpose.								

State of Kansas
Behavioral Sciences Regulatory Board



KATHLEEN SEBELIUS
Governor

PHYLLIS GILMORE
Executive Director

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(785) 296-3240
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March 31, 2009

Raney L. Gilliland
Kansas Legislative Research Department
State Capitol Building
300 SW Tenth Avenue
Topeka, Kansas 66612-1504

RE: Social Work Regulation K.A.R. 102-2-6

Dear Mr. Gilliland:

I am writing in response to your February 20, 2009 letter regarding the review of proposed amendments to the Social Work regulation K.A.R. 102-2-6 by the Joint Committee on Administrative Rules and Regulations.

At its meeting on March 9, 2009, the Board voted unanimously to change the method it uses for the promulgation of regulatory changes. The Board will now take a formal vote on all regulation changes prior to them moving forward to be stamped by the Department of Administration and the Office of the Attorney General. Of course, the Board will continue to take a formal vote after the public comment period and public hearing related to the final adoption of the proposed regulation changes.

The Board agrees there could have been some unintended consequences in the proposed changes, especially related to the Baccalaureate level of social work. However, the potential consequences were not intended by either the Social Work advisory committee or the full Board.

Neither the Social Work advisory committee, nor the full Board is aware of any inadequacies of the social work programs in the state. There was never any intention on the part of either to negatively impact the social work programs in the state. In fact the proposed changes originated from concerns raised by the Kansas Council on Social Work Education as stated in their letter which you will find attached.

*Joint Committee on
Administrative Rules and Regulations
April 6-7, 2009
Attachment 3*

The issue of distance learning and online degrees is certainly a dynamic, complex and multi-faceted issue. It is one about which regulatory boards across the country are in dialogue. The Board has grave concerns about the protection of the public especially when licensees are allowed to diagnose and treat mental disorders independently. Yet the Board certainly recognizes the changing technology used in the delivery of academic information. With that recognition in mind, the Board welcomes a full discussion of this issue and has requested the involvement of all stake holders in the formulation of any future changes to social work regulations related to distance learning.

Additionally, the Board has made numerous efforts to reach out to the academic community. The most recent having been the initiation of annual round table discussions which were held in Wichita, Lawrence, and Manhattan this past October. Unfortunately, budgetary restraints may prohibit this type of expense during this next year, but the Board remains committed to maintaining an ongoing dialogue at the university level.

The Board withdrew the regulation by unanimous vote at its board meeting on March 9, 2009.

Please do not hesitate to contact me if the committee has any additional questions or comments regarding this matter.

Respectfully submitted,



Phyllis Gilmore
Executive Director

To BSRB;

Attention: Phyllis Gilmore, Sharon Steuwe

From: Kansas Council on Social Work Education

At our Kansas Council on Social Work Education, KCSWE, meeting on 2/20/09, a great deal of discussion was held about the proposed regulations and rules changes that were heard in the Rules & Regs committee on February 13th. We have several concerns/questions we would like to pose to you.

First, We want to thank you for being responsive to the request we passed on through Jean Peterson and the SW advisory board regarding our concerns about an out of state university coming into the state to do an entirely on-line social work degree. However, we are unsure of all of the implications the new wording might have for existing and accredited Kansas programs. Thus our primary request is that the process of considering these changes be slowed down—that the March 9th BSRB hearings be postponed—until we have a chance to have some dialogue back and forth with the Board/staff and KCSWE.

Second, we have several points of confusion:

Do the changes apply to both accredited and non-accredited programs or only non-accredited? Or does (b)(1) apply to accredited programs and everything from (2) on apply to non-accredited programs?

Even if only (1) applies to accredited programs, it raises some concerns. These concerns arise from the definitions of “residency” and “core” faculty. While all of the schools have grave concerns about degrees that are received from 100% on-line work, the 50% residency as it seems to be defined here is problematic in several ways. Also the definition of Core faculty is problematic in some ways. These are explained below.

A residency requirement would not be problematic if each school’s definition of residency was used. 50% becomes a problem in this way: Many students transfer in as Juniors, meaning that they have already completed 50% of their requirements toward graduation. The definition of residency includes “during which the student and one or more core faculty members are in face-to-face contact.” This would mean that no adjunct faculty (according to the definition of Core faculty) could teach any of their classes nor could they take any classes elsewhere to transfer in or take any on-line classes even though they are from their own institution. This seems unworkable and is an invasion into college’s ability to shape their own curriculum and program, which are already regulated by CSWE. If this is an incorrect interpretation of this proposed regulation please clarify for us the correct interpretation.

Our second point of confusion is the definition of “Core faculty member” under (B) and (C) which seem to imply that we cannot use any adjuncts because none of the adjuncts would have the educational institution as their primary employment and usually they are not involved in the decision making and program development aspects of the program (although at some schools they are involved). Again we appreciate the effort to not allow schools to simply have some random practitioner who has little or no scrutiny or connection to the educational system to be the only or primary contact for a student or whole component of programs. However, almost all

of the schools are in situations where they have to use one or more adjuncts or part time people to deliver their core classes. It is seen in the document that there is more focus on this issue in non-accredited programs, but seems to apply to accredited programs through the definition of residency. If our interpretation of this is incorrect, please let us know.

We thank you for your attention to our concerns and would be delighted to have a conversation with you about these issues. We urge you to delay action until further conversation allows these questions to be discussed and a mutual understanding to be arrived at. We also look forward to receiving your reply and explanation in response to this letter.

Sincerely,

Margaret Presley, LSCSW, ACSW

President, KCSWE

Coordinating health & health care
for a thriving Kansas

KHPATM

KANSAS HEALTH POLICY AUTHORITY

April 1, 2009

Raney L. Gilliland
Assistant Director for Research
Kansas Legislative Research Department
300 SW Tenth Avenue, Room 010-West
Topeka, KS 66612-1504

RE: withdrawal of K.A.R. 129-5-151

Dear Mr. Gilliland

Please accept this letter in response to your letter dated March 2, 2009 regarding the withdrawal of KAR 129-5-151. In your letter you asked for the following:

1. A thorough response to the original letter;
2. KHPA's original goal in proposing to change the regulation;
3. A complete explanation of why the proposed regulation, K.A.R.129-5-151, was withdrawn; and
4. The statutory authority for MediKan coverage.

1. A thorough response to the original letter

The original letter from Committee asked two basic questions following the hearing on the proposed regulation.

- i. Why is a definition of the amended term "severe acute traumatic injury," not included in the proposed regulation? Consider adding this definition, as well as definitions of the other terms used in the regulation to describe MediKan coverage. Address the absence of specific DRGs describing coverage in the regulations.

MediKan coverage is described generally in the regulation to include coverage of four medical conditions: traumatic injury, burns, acute psychotic episodes, and acute detoxification. These medical conditions are not described, i.e., defined, in any additional detail in the regulations, mostly because coverage (reimbursement) for medical conditions such as these changes routinely with the practice of medicine. These changes are reflected in new and ever-changing coverage codes (e.g., Medicare's diagnostic related groups, i.e., DRGs, and international classification of diseases tenth edition, i.e., ICD-10s). Like private insurance companies, KHPA updates its payment system each year, at least once a year, to reflect additions, deletions, and other changes to these sets of coverage codes, which include

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www.khpa.ks.gov

Medicaid and HealthWave:

Phone: 785-296-3981
Fax: 785-296-4813

State Employee Health
Benefits and Plan Purchasing:
Phone: 785-368-6361
Fax: 785-368-7180

State Self Insurance Fund:
Phone: 785-296-2364
Fax: 785-296-6995

*Joint Committee on Administrative
Rules and
Regulations
April 6-7, 2009
Attachment 4*

literally thousands of individual codes. Unlike Medicaid, MediKan coverage is not comprehensive, and the limits placed on coverage are defined in regulation by the four medical conditions. These medical conditions do not correspond to a fixed and precise set of reimbursement coverage codes. Coverage is determined through a combination of specific codes and real-time medical reviews of specific cases by clinical personnel. It would be impractical if not impossible to maintain a precise definition of MediKan coverage in regulations. Instead, KHPA and SRS have provided more specific coverage criteria and codes in its provider manuals, which are published online and can be changed quickly to keep up with medical care, and which allow rapid responses to any confusion over coverage criteria that may be raised by providers and beneficiaries that may arise on a case-by-case basis.

- ii. The Committee asked why the term “severe acute traumatic injury” is different than the term currently used in the regulation.

This represents the substantive change recommended in the proposed regulation. KHPA’s goal in proposing the change to this term is described below.

2. KHPA’s goal in proposing to change the regulation

The intention of the original regulation (30-5-151) was to define the limited hospital services available to MediKan program recipients, since the program is not defined at that level in statute (see question 4 below). However, the current regulatory language describing coverage for “traumatic injury” has been the subject of confusion and numerous coverage appeals. The proposed language would have preserved the original intent of coverage for injuries and would have aligned regulatory language with the operative and more precise coverage criteria used to administer the program. The conditions allowed for hospital services for the MediKan program remain the same. The purpose of the regulation change was to align the general language in the regulation with the more precise wording in the manual, and to move the K.A.R from a SRS regulation to a KHPA regulation in accordance with K.S.A. 75-7401 et seq.

Most of the appeals for coverage in MediKan over the years have centered around the medical condition of “traumatic injury,” not because of a disagreement over coverage codes (DRGs), but rather because the medical condition is described by cause rather than observable physical or mental condition, as are the others. This has opened the possibility, for example, to request Medikan treatment for conditions supposedly caused by injuries that occurred in the past, sometimes years in the past. The regulation proposed by the KHPA would have amended the term describing the medical condition that has been the subject of the most confusion and coverage appeals over the years, “traumatic injury.” The coverage manual for providers and beneficiaries was changed several years ago from the regulation’s wording of “traumatic injury” to read “severe traumatic injury.” It is not known why this wording was added. Speculation is that it was added to better define what type of traumatic injuries SRS felt were truly covered under the MKN program. If you look at a standard definition of “traumatic injury” it is very broad and includes bodily or emotional injury resulting from physical or mental wound or shock. A traumatic injury is caused by something outside the person's body as opposed to a sickness or a disease. An example would be injury to a hand that is smashed in a machine, or a nervous breakdown caused by stress on the job.

The MediKan program has always been managed with the understanding that a traumatic injury should be severe enough to require immediate hospitalization (gunshot wound, stab wound, motor vehicle accident, etc.)

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Over time it became apparent that the definition of severe traumatic injury may not be narrow enough. There were beneficiary appeals of denied hospitalizations for "traumatic injuries" that happened 3-5 years earlier even though the person did not require hospitalization at the time of the injury.

For example, one person was allegedly beaten up by the police and offered treatment, but treatment was refused. The patient developed back pain and degenerative disc disease that has steadily worsened over 5 years. The patient was hospitalized for spinal fusion. The attorney argued that the degenerative disc disease was caused by the severe traumatic injury and that the hospitalization should be covered. Medicaid staff argued that the alleged beating may have been considered a "severe acute traumatic injury" if the patient needed immediate hospitalization after the incident. The agency's decision to deny payment was upheld in this administrative appeal. Indeed, the agency's understanding and limits on the program have been upheld in several hearings.

As a result of this potential confusion, and questions from providers and beneficiaries about the precise definition, KHPA amended its provider manual to indicate that coverage extended only to "severe acute traumatic injury." KHPA has defined Severe Acute Traumatic Injury in its hospital and professional provider manuals and plans to add the definition to the Medicaid and HealthWave Medical Benefits booklet.

3. A complete explanation of why K.A.R.129-5-151 was withdrawn

Based on the response of the Joint Committee on Administrative Rules and Regulations, it became clear to KHPA that the proposed regulation raised questions about the need to synchronize language with guidance provided in KHPA's manual. KHPA's decision to withdraw the regulation was based on our staff's belief that the Committee's questions in the original hearing would require a more comprehensive set of changes to the regulation. Moreover, given the success of the operative definition in the manual in numerous coverage appeals, there is no compelling need to align the more general language in the regulation with the more precise and operative definition in KHPA's manual guidance. In retrospect, KHPA believes the proposed changes provided an opportunity for the Legislature and Board to confirm through regulation the operating definition of MediKan's limited hospital benefits, and will consider resubmitting the regulation.

4. The statutory authority for MediKan coverage

MediKan is the medical component of general assistance, a purely state funded assistance program. The state statutory authority for establishing Medicaid, Medikan, general assistance and other benefit programs is KSA 39-708c (a). The statute refers to the secretary of SRS as the holder of these powers but the powers identified in statute were transferred to KHPA per KSA 75-7405 (d). The Kansas Constitutional basis for the state to create such programs is found at Article IV, Section 7. However, all of the directives for MediKan are found in Kansas regulations.

KSA 39-708c (a) reads:

"(a) The secretary of social and rehabilitation services shall develop state plans, as provided under the federal social security act, whereby the state cooperates with the federal government in its program of assisting the States financially in furnishing assistance and services to eligible individuals. The secretary shall undertake to cooperate with the federal government on any other federal program providing federal financial assistance and services in the field of social welfare not inconsistent with this act. The secretary is not required to develop a state plan for participation or cooperation in all federal social security act programs or other federal programs that are available. The secretary shall also have the power, but is not required, to develop a state plan in regard to assistance and services in which the federal government does not participate."

4.3

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KSA 75-7405 (d) reads:

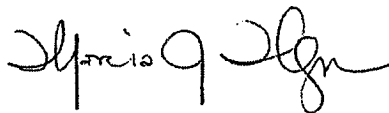
“(d) On July 1, 2006, the Kansas health policy authority shall assume operational and purchasing responsibility for (1) the regular medical portion of the state Medicaid program, (2) the MediKan program, (3) the state children's health insurance program as provided in K.S.A. 38-2001 et seq., and amendments thereto, (4) the working healthy portion of the ticket to work program under the federal work incentive improvement act and the Medicaid infrastructure grants received for the working healthy portion of the ticket to work program, (5) the Medicaid management information system (MMIS), (6) the restrictive drug formulary, the drug utilization review program, including oversight of the Medicaid drug utilization review board, and the electronic claims management system as provided in K.S.A. 39-7,116 through 39-7,121 and K.S.A. 2007 Supp. 39-7,121a through 39-7,121e, and amendments thereto, (7) the state health care benefits program as provided in K.S.A. 75-6501 through 75-6523, and amendments thereto, and (8) the state workers compensation self-insurance fund and program as provided in K.S.A. 44-575 through 44-580, and amendments thereto.”

Article IV, Section 7 of the Kansas Constitution provides:

“The respective counties of the state shall provide, as may be prescribed by law, for those inhabitants who by reason of age, infirmity, or other misfortune, may have claims upon the aid of society.”

I appreciate the Committee's careful review of the regulatory process for the Kansas Health Policy Authority and we hope that this letter clarifies the unresolved issues regarding the withdrawal of KAR 129-5-151. Should you have further questions or comments, please feel free to contact Rita Haverkamp at (785) 296-5107 or e-mail Rita.Haverkamp@khpa.ks.gov.

Sincerely,



Marcia Nielsen, PhD, MHP
Executive Director

MN/RH/rh

cc: Representative Carl Holmes
Senator Vicki Schmidt
Representative Jan Pauls

pc: KHPA Central Files

**Review and Comment of Proposed Rules and Regulations Noticed for Hearing by
the Kansas Corporation Commission
Before the Joint Committee on Administrative Rules and Regulations
April 6, 2009**

Background

The primary purpose for amending the Kansas pipeline safety regulations in 2009 is in order to fulfill our commitment to this committee to address minor issues raised when we last appeared before you on October 8, 2007. The Commission Staff has also taken the opportunity to clarify certain portions of K.A.R. 82-11-4 to make them more understandable by the regulated community. We are also taking this opportunity to update K.A.R. 82-11-10 to include the most recent amendments to the federal regulations that pertain to drug and alcohol testing of operators of intrastate natural gas pipelines. The KCC last adopted the federal drug and alcohol regulations that were in effect as of October 2002.

K.S.A 66-1,150 gives the KCC the authority to adopt rules and regulations as may be necessary to be in compliance with the Federal Gas Pipeline Safety Act of 1968 as amended. The KCC has an agreement with the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) to adopt most current regulation. In return, PHMSA agrees to fund up to 80% of the administration costs for the Kansas Pipeline Safety Program and allows the state to administer the federal rules.

The KCC also has promulgated a series of state regulations that supplement the adopted federal regulations. For the most part, the state additions were promulgated in response to natural gas incidents that have occurred in Kansas, and they are more stringent than the federal requirements. The great majority of them were adopted in the early 1990's. Since their adoption, the goal of the Kansas additions to the federal regulations has been to clarify some of the vagaries of the federal regulation and to place more stringent requirements on those portions of the regulation that are considered to present a higher risk to public safety.

A short summary and discussion of each of the regulations proposed for adoption are as follows:

K.A.R. 82-11-4:

This regulation adopts federal pipeline safety requirements as they pertain to intrastate gas pipelines within Kansas as in effect on October 1, 2006. This regulation also contains 21 Kansas additions to pipeline safety regulations. Paragraph (a) through paragraph (ff) of this regulation reflect Kansas changes made to the federal regulation.

Paragraph (f): This paragraph requires the operator to carefully inspect the external coating on steel pipe prior installation. The proposed change to this paragraph

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reflects the request of this committee to clarify that the exception to this requirement only applies to piping where the external coating is applied after installation.

Paragraph (bb): This paragraph establishes deadlines for the operator regarding the repair of various categories of gas leaks. The proposed modification to the regulation restructures the paragraph to improve its readability. As proposed, the regulation's requirements for certain action are placed at the beginning of the paragraph and separated from the definitions of the various categories of leaks.

Paragraph (ee): The proposed changes to this paragraph reduce the requirements to cut samples from cast iron piping for corrosion analysis. As proposed, the operator will no longer be required to cut a sample from a cast iron pipe each time it is uncovered. Rather, the samples would only be collected when a leak in the body of a joint of cast iron pipe is discovered. An additional requirement is also contained in this paragraph to require the removal of any cast iron pipe 3 inches or less in diameter. The proposed change to the regulation allows two additional years for removal of the piping in order to allow a total of 5 years for removal after the original promulgation of this regulation in 2008.

K.A.R. 82-11-10:

The proposed amendments to this regulation update the Kansas adoption of the federal regulation found in 49 CFR Part 199 as in effect on October 1, 2008. The amendment also changes portions of the federal regulation to accurately reflect Kansas authority for administering this rule.

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
PRESENTATION TO THE LEGISLATURE'S JOINT COMMITTEE
ON ADMINISTRATIVE RULES AND REGULATIONS**

Proposed Regulations for Underground Crude Oil Storage Wells
and
Associated Brine Ponds

Presented by Michael Cochran, Bureau of Water, Geology Section
April 7, 2009

INTRODUCTION

Good morning. My name is Mike Cochran. I am Chief of the Geology Section which is located within the Kansas Department of Health and Environment's Bureau of Water. With me this morning is Mark Jennings who is Acting Chief of the Underground Hydrocarbon Storage Unit.

LEGISLATIVE BACKGROUND

These regulations were drafted in response to the requirements of House Bill 2892 (K.S.A. 55-1,117a) enacted by the 2008 Legislature, which directed the Secretary of the Department of Health and Environment to adopt, pursuant to K.S.A. 55-1,117, rules and regulations governing underground crude oil storage. The goal of the proposed regulations is protecting the public health and safety, property and the environment from the underground storage of crude oil in salt caverns. Included in your packet is a diagram depicting the operation of a storage well and storage well facility.

REGULATION DEVELOPMENT

The proposed regulations used as a model the existing regulations found at KDHE Article 45 (K.A.R.28-45-2a through KAR 28-45-30), which address the storage of hydrocarbons or liquified petroleum gas (LPG). The proposed regulations contain provisions specific to the requirements of crude oil storage not found in the existing LPG regulations. The storage of crude oil was not the focus of the LPG regulations when they were written. The proposed regulations provide a set of stand alone regulations specific to the storage of crude oil. The proposed regulations were drafted with input from an advisory committee of individuals from private industry and government who had expertise in crude oil storage and/or knowledge of the salt formation.

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ECONOMIC IMPACT

The proposed regulations do not require the owner/operator to bear additional costs beyond the costs associated with existing regulations for the storage of hydrocarbon in salt caverns.

OUTREACH

The proposed regulations were published in the January 22, 2009, Kansas Register establishing a 60+ day public comment period and providing notice of the public hearing for the regulations. The public hearing will be conducted at the Opera House in McPherson, Kansas, from 1 to 3 p.m. on Tuesday, April 14, 2009. The proposed regulations and the economic impact statement are posted on the KDHE Geology Section website. KDHE is still in the information gathering public comment period and comments and suggestions are welcome to assist in developing the best set of regulations possible. KDHE has received no comments to date.

REGUALTION DESCRIPTION

We are prepared to discuss the proposed regulations in more detail. Please refer to the regulation description document found in your packet.

**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
PRESENTATION TO THE LEGISLATURE'S JOINT COMMITTEE
ON ADMINISTRATIVE RULES AND REGULATIONS**

Underground Crude Oil Storage Wells and Associated Brine Ponds

K.A.R. 28-45b-1 through 28-45b-28

Description by Regulation

April 7, 2009

Presented by Michael H. Cochran

K.A.R. 28-45b-1 Definitions

This regulation provides clarification for words and terms used in this Article of regulations. The definition for 'crude oil' is provided to distinguish it from other hydrocarbons such as liquid petroleum gas (LPG) and natural gas. LPG refers to hydrocarbons that are stored under pressure as a liquid (ethane, propane and butane). Natural gas (methane) is a gas at ambient temperatures. Crude oil is a mixture of hydrocarbons. Crude oil has not been refined so other hydrocarbons such as methane, ethane, propane, etc, have not been separated out.

The "American Petroleum Institute gravity" or "API gravity" is used to define the different categories for crude oil. Crude oil is classified as light, medium or heavy, according to its measured API gravity. Light crude oil has an API gravity higher than 31.1°API; Medium oil has an API gravity between 22.3°API and 31.1°API; heavy oil has an API gravity below 22.3°API; and extra-heavy oil or bitumen has an API gravity of less than 10°API.

K.A.R. 28-45b-2 Permit required for facilities and storage wells; variances

1. A permit for each facility and storage well is required.
2. The storage of crude oil is allowed only in caverns constructed in the salt formation..
3. A variance clause will allow variances to the requirements of these regulations if alternative actions are protective of public health, safety, and the environment. The Secretary may require additional testing, monitoring, or well improvements to ensure that such action would not impose a threat to public health, safety, and the environment.

K.A.R. 28-45b-3 Well conversions and reentry

1. An operator may convert an existing well to crude oil storage if the secretary determines that such actions are protective of public health, safety, and the environment.
2. An operator may convert an unplugged storage cavern to monitoring status if the cavern is not needed for storage. A cavern is placed into monitoring status by removing all crude oil from the cavern and then filling it with brine.

K.A.R. 28-45b-4 Permit required for facility and associated storage wells

1. The proposed regulations require a permit for each facility and storage well.

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2. The proposed regulation lists criteria required for creating a crude oil reserve.
3. Each operator is required to submit a geological and hydrogeological evaluation that considers site-specific information. The evaluation should include a flood-assessment for flood-plain and flood-prone areas. Each operator is also required to submit sample (rock) cuttings and a sample log for each new well drilled at the facility. This information will be useful in the geological interpretation of the site.
4. Each operator for a new facility is required to submit a core. A core analysis describes the geomechanical properties of the rock (specifically the overburden and the salt). This information is important in determining pressure gradients, cavern dimensions, and cavern spacing.
5. Each operator is required to run open-hole logs for any new storage well. This information is important for the geological interpretation. Although the regulation lists specific logs, alternative logs are allowed if approved by the secretary. This provision will hopefully allow the industry to keep current with technological changes.
6. The new regulations require at 100 ft salt roof thickness. Caverns with a salt roof thickness between 50 to 100 ft will be allowed if the operator monitors brine salinity and monitors the salt roof every 3 years instead of every 5 years. The use of unsaturated or fresh brine to displace product is prohibited and the secretary may require geomechanical studies from core if the roof integrity is suspect.
The operation of caverns with salt roof thickness less than 50 ft is prohibited.
7. Communication between caverns in the upper 50 ft of the salt is prohibited. Operations may continue between communicated caverns (below 50 ft of salt) if the operator conducts additional monitoring and testing.
8. The minimum horizontal distance between caverns is 100 ft. If the spacing is less than 100 ft, the operator must submit technical data to support to illustrate that the cavern has integrity. The horizontal spacing must be reevaluated every 5 years.

K.A.R. 28-45b-5 Public notice

1. Public notice will be given by the secretary for any permit application, the denial of a permit, or a scheduled hearing.
2. Public notice will be mailed or electronically mailed by KDHE to any person requesting placement on the mailing list, the official county newspaper of each county in which the lands affected by the application are located, and the Kansas Register.
3. Any interested person may submit written comments to the secretary on any permit action during a 30-day public comment period.
4. The response to all significant comments shall be issued when the permit decision is issued. The response to comments shall be made available to the public upon request.

K.A.R. 28-45b-6 Modification and transfer of a permit

1. The automatic transfer of a permit is prohibited. A completed application for a permit transfer must be submitted at least 60 days before the proposed effective date for the transfer.
2. The regulation cites conditions for permit modification by the secretary, notes minor modifications not requiring public notification, and modifications requiring public notification.

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K.A.R. 28-45b-7 Signatories for permit applications and reports

The regulations require a signatory to sign plans and reports. The positions that may be approved by the secretary to be a signatory are listed.

K.A.R.28-45b-8 Siting requirements for new storage wells and facilities

1. Siting requirements for new storage wells:
 - A. at least three miles from established boundaries of municipal population centers
 - B. not less than five miles from conventional shaft mining
 - C. not less than two miles from any solution mining operation
 - D. not less than one mile from porosity storage
2. Assess all wells within one mile to determine if wells have been properly constructed or plugged and abandoned.
3. Conduct geological evaluation to determine if the integrity of the proposed cavern will be adversely affected by the salt solution zone or any other stratigraphic (rock) change.
4. No outer boundary of a storage cavern shall be less than 100 ft from the property boundary of any owners who have not consented to subsurface storage under their property, any existing surface structures not owned by the facility, or any public transportation artery.

K.A.R. 28-45b-9 Financial assurance for closure of underground crude oil storage facility

1. Each facility shall establish financial assurance for the closure of the facility and the plugging of any storage well.
2. Proof of financial assurance shall be submitted with the permit application and annually thereafter.

K.A.R. 28-45b-10 Operations and maintenance plan

1. Each operator must submit a long-term operations and maintenance plan with the permit application.
2. The maximum allowable operating pressure shall not exceed 0.8 psi/ft of depth measured at the casing seat of the highest elevation of the cavern roof. Normal operation would be close to 0.75 psi/ft. The 0.8 psi/ft allows for a swing point that acts as a cushion for interface changes and product from the pipeline.
3. A minimum operating pressure that is protective of cavern integrity must be maintained.
4. Each operator shall give oral notification within two-hours and written notification within one week to the department for overpressuring, overfilling, loss of cavern or well integrity, any release of product or brine resulting in a threat to public health, safety, or the environment, establishment of communication between caverns, triggering of alarms above permit requirements, or equipment malfunction that could result in potential harm to public safety, health, or the environment.
5. The operator shall provide notification and certification that any change in type of product stored in a cavern is safe.

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K.A.R. 28-45b-11 Emergency response plan and safety and security measures

1. Each operator of a storage facility must complete an emergency response plan for the permit application. The plan shall be updated annually or whenever new information becomes available. As a security measure, facilities will maintain the emergency response plan at the facility for KDHE review.
2. The plan shall describe facility response to spills, releases, fires, explosions, cavern subsidence or collapse, and any other threat.
3. The plan should include a description of warning systems, emergency response communication systems, and employee training for emergencies. The procedures for coordination with local emergency planning committees, including emergency notification and evacuation of citizens and employees, shall be included in the plan.
4. Each operator shall establish an educational program for community awareness.
5. Each operator shall provide security measures to protect the public and to prevent unauthorized access.
6. Each wellhead (versus pods or cells) shall have warning systems such as combustible gas detectors, heat sensors, pressure sensors, emergency shutdown instrumentation, and manual isolation valves.
7. Each operator shall install a supervisory control and data acquisition system to monitor the storage operations for individual wells.
8. Each operator shall comply with instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists.

K.A.R. 28-45b-12 Design and construction of storage wells

1. Surface casing is required to protect all fresh and usable water formations.
2. New storage wells must have double casing protection.
3. Operators of existing storage wells without double-casing protection must conduct enhanced monitoring. (Casing evaluation every five years instead of every ten years as required for double-casing wells)
4. Wells will be required to maintain a maximum fill-level above the bottom of the brine string as a preventative measure against overfilling the cavern.
5. Only new steel can be used in constructing new wells.
6. Casing patches can be used if the operator submits a plan for the installation and follows departmental procedures that were adopted by reference.
7. Drill pits are prohibited. Wastes and fluids from drilling/workover operations must be contained in a tank.
8. A licensed professional engineer shall review and approve the construction plans for the crude oil storage wells and cavern systems. A licensed professional engineer, a licensed geologist, or their designee, shall supervise the storage well installation.
9. Each operator must install and maintain a corrosion control system.

K.A.R. 28-45b-13 Monitoring

1. Each operator must install continuous pressure monitoring sensors on both the brine and product side of each wellhead.
2. The required monitoring is as follows:

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A. salt roof thickness-before cavern is placed into service, every five years with gamma-density log; every three years for 50 –100 ft salt roof; when cavern integrity is suspect; and before plugging the well.

B. cavern geometry and capacity-before cavern is placed into service, every ten years; when cavern stability is suspect; after solutioning if washed volume is 20% or more of the cavern capacity; and before plugging the well if sonar has not been run in last 5 years.

3. The regulations allow an alternative method to be used for the sonar survey if the operator submits a justification and it is approved by the secretary.

4. Each operator must submit a ground subsidence monitoring plan.

5. Each operator must submit a plan for measuring the volume of hydrocarbon injected and withdrawn from the cavern, including methods for measuring and verifying volume.

K.A.R. 28-45b-14 Testing and inspections

1. Each operator shall conduct mechanical integrity tests before the cavern is placed in service, every five years, before cavern is placed back in service after being in monitoring status, and before the well is plugged unless a test has been performed in the last five years.

2. The regulations require the cavern to be tested with a product-brine interface test. Storage wells shall be tested with either an interface test or a hydraulic casing test.

3. The regulations include provisions for an alternate test if the test is substantially equivalent to the specified tests.

4. The integrity test shall be conducted at the maximum-allowable operating pressure.

5. Each operator shall submit a casing evaluation every ten years for double-cased wells, every five years for wells without double-casing, or after any workover in which the injection string is pulled.

6. A licensed professional engineer, licensed geologist or their designee shall supervise all test procedures and associated field activities.

7. Each operator shall submit a cement bond log if one has not been previously submitted.

K.A.R. 28-45b-15 Groundwater monitoring

1. Each operator must submit a groundwater monitoring plan with the permit application.

2. Well locations and well spacing will be based on site-specific geology and hydrogeology. Shallow wells must have the screen set at a depth that is inclusive of the seasonal fluctuation of the water table. Deep groundwater monitoring wells must be set at least 25 ft into the bedrock.

3. Each operator shall monitor chloride levels on a quarterly basis and combustible gas on a monthly basis (report on a quarterly basis). Each operator must take a static groundwater level measurement with the quarterly chloride analysis.

4. The operator must submit a work plan if chloride contamination or high combustible gas readings occur.

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K.A.R. 28-45b-16 Record requirements and retention

1. Each operator must submit an annual report by April 1 of each year.
2. The regulations outline the time limits for record retention.

K.A.R. 28-45b-17 Well workovers

1. Operators are required to submit a workover plan at least 30 days before performing any downhole or wellhead work that involves dismantling or removal of the wellhead.
2. Operators must ensure that a blowout preventer is used during the workover and that a lubricator is used during logging.

K.A.R. 28-45b-18 Plugging and plugging-monitoring requirements

1. Each operator must submit a plugging plan at least 60 days before the plugging event.
2. Each operator must preserve and restore the integrity of the site for the facility closure.

K.A.R. 28-45b-19 Underground crude oil storage fees

1. Each operator must pay an annual fee of \$18,890 per facility and \$305 per unplugged storage well.
2. Each operator must pay an application fee of \$700 for each new storage well.

K.A.R. 28-45b-20 Permit required for a brine pond

Each operator of a brine pond must have a permit.

K.A.R. 28-45b-21 Brine pond permit application; permit renewal

1. The term for a brine pond permit is ten years.
2. Each operator for a new brine pond must submit a hydrogeological investigation, including soil types and groundwater levels.

K.A.R. 28-45b-22 Public notice for a brine pond

1. Public notice will be given by KDHE for new brine pond construction, a denied permit, or a scheduled hearing.
2. The public notice and a copy of the draft permit shall be mailed or electronically mailed to any person who submits a written request for placement on the mailing list, the official county newspaper of each county in which the lands affected by the application are located, and the Kansas Register.
3. Public notification will be followed by a 30 day comment period.

K.A.R. 28-45b-23 Modification and transfer of a brine pond permit; variance

1. The automatic transfer of a brine pond permit is prohibited.
2. Modifications not requiring notification and modifications requiring public notification are listed.

K.A.R. 28-45b-24 Signatories for brine pond permit applications and reports

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The regulations require a signatory to sign applications and reports. The positions acceptable for a signatory are listed.

K.A.R. 28-45b-25 Financial assurance for brine pond closure

Financial assurance is required for the decommissioning of brine ponds.

K.A.R. 28-45b-26 Design, construction, and maintenance of brine ponds

1. New brine ponds are required to have double-liner protection and leak-detection systems.
2. Each operator of a brine pond must submit a contingency plan that outlines procedures for brine containment issues associated with brine pond maintenance and dewatering due to liner failure, repair, replacement, flood-response measures, or expansion of the brine pond.
3. Describes requirements for brine pond design and associated testing.

K.A.R. 28-45b-27 Groundwater monitoring for brine ponds

1. Requires monitoring wells for the perimeter of the brine pond.
2. Requires monitoring for chlorides and combustible gas.

K.A.R. 28-45b-28 Brine pond closure requirements

This regulation requires a closure plan for deactivating a brine pond.

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**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
PRESENTATION TO THE LEGISLATURE'S JOINT COMMITTEE
ON ADMINISTRATIVE RULES AND REGULATIONS**

REGULATION SUMMARIZATION

Presented by Michael Cochran

APRIL 7, 2009

The regulatory goal for the safe operation of underground storage wells is to minimize adverse impacts to the public safety and health, property and the environment by maintaining the integrity of the storage cavern and storage well. Requirements that address cavern integrity are:

- Continuous pressure monitoring at the wellhead for both brine and product;
- A maximum allowable operating pressure not to exceed 0.80 psi per foot of depth, with continuous pressure monitoring at both brine and product at the wellhead before operating pressure is allowed to exceed 0.75 psi per foot;
- A minimum of 100 feet of salt roof above the cavern, verified by gamma-density logging every five years; roof thickness of 50 to 100 feet may be allowed if verified by gamma-density logs every three years;
- Use of saturated brine to displace product;
- Cavern integrity testing every five years;
- Sonar surveys required every ten years to monitor cavern size and shape;
- Ground elevation surveys every two years.

Well integrity will be maintained and monitored with the following requirements:

- Double casing protection in all new wells with casing evaluation every ten years;
- A casing evaluation every five years for existing wells without double casing protection;
- Only new steel casing may be used in construction of new underground storage wells;
- Corrosion control plan for piping and well casing required for each facility;
- Testing of well casing integrity every five years;
- Each wellhead is required to be equipped with a comprehensive set of safety features including emergency shut-down valves on product and brine lines, heat detectors, product vapor detection, and alarm system.

Brine pond regulations are targeted to prevent leakage of brine into the environment. These regulations mirror those already in effect for brine ponds at LPG storage facilities. Provisions for protection of the environment include:

- Double liners on all new ponds;
- Leak detection system;
- Groundwater monitoring wells;
- Bottom of pond a minimum of ten feet above water table.

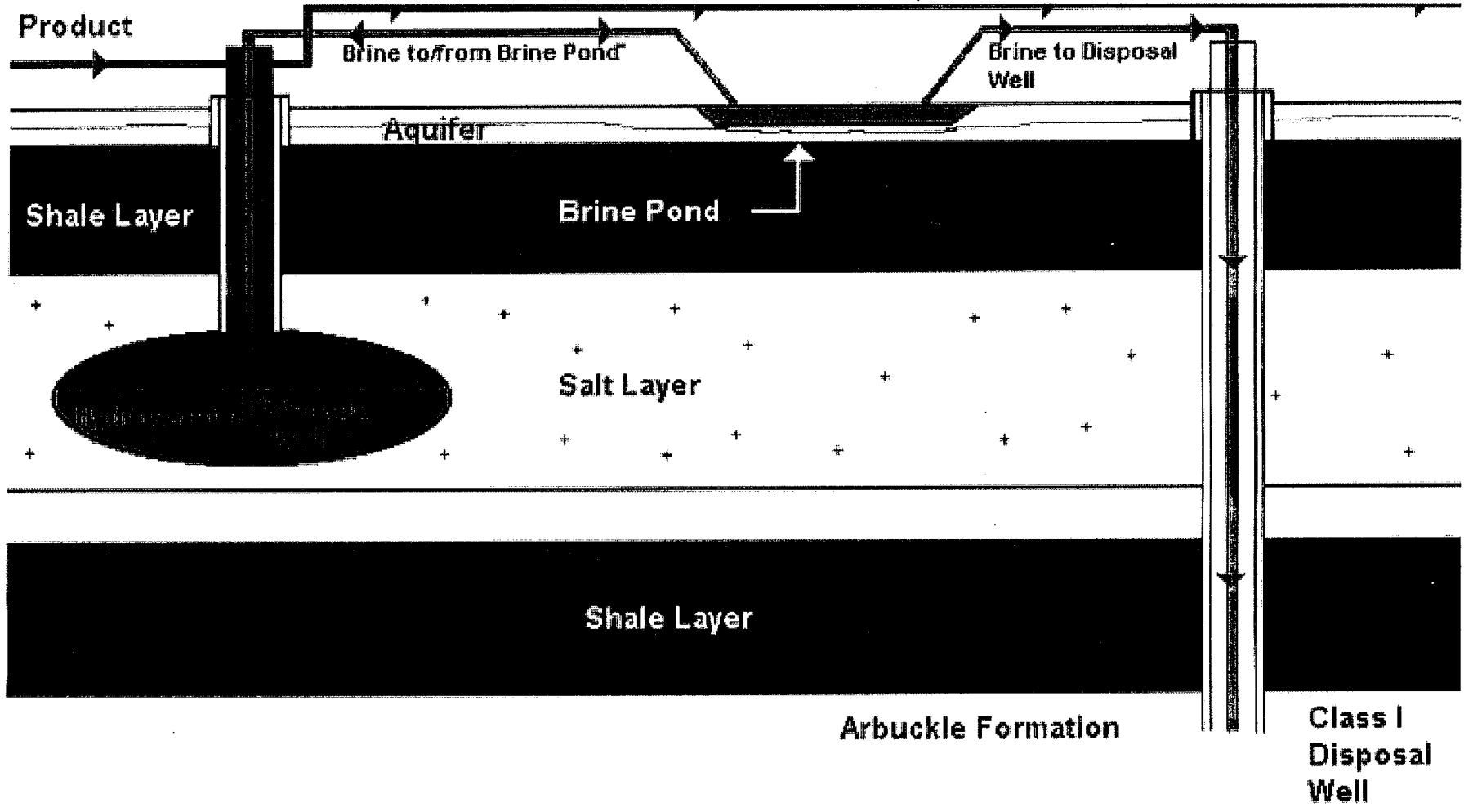
*Joint Committee on
Administrative Rules and
Regulations
April 6-7, 2009
Attachment 8*

Public safety is a significant concern and each facility is required to prepare an emergency response plan that addresses both the prevention of and response to potential threats to public health or the environment. Provisions of the emergency response plan include the following:

- Installation of monitoring, warning, and leak detection systems to ensure early detection and notification of any potential threat;
- Each well will be required to have a meter installed at the wellhead, and accurate accounting of product stored in each cavern will be required to prevent overfilling;
- An emergency response communication system to notify the public if a product release or emergency condition occurs;
- The establishment of an educational program for community safety and awareness;
- Employee safety training;
- Security measures to protect the public and prevent unauthorized entry to the facility.

Each facility will be required to provide financial assurance for the plugging of any storage wells and the closure of brine ponds. The operator will also be required to restore and preserve the integrity of the site after closure of the facility.

Joint Committee on
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Attachment 9



MEMORANDUM

To: Joint Committee on Administrative Rules and Regulations
From: John Wine, Kansas Insurance Department
Re: K.A.R. 40-4-37v
Date: April 7, 2009

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. With me today to answer any substantive questions about this proposed regulation is Leroy Brungardt, Director of our Producers Division. I would like to thank the committee for allowing the Department to appear and comment on this proposed regulation.

K.A.R. 40-4-37v is a new regulation being proposed to specify the training required for licensed agents selling long-term care partnership program policies. The proposed regulation requires agents to initially receive four hours of certified training and at least one hour of training every two years thereafter. It also permits the long-term care training to be used to satisfy general continuing education requirements.

The only economic impact will be the amount that agents or their employers will spend to obtain the training. Otherwise the proposed regulation will not have significant economic impact on insurance companies, government agencies, regulated entities, large or small businesses or the general public.

*Joint Committee on Administrative
Rules and Regulations
April 6-7, 2009
Attachment 10*

MEMORANDUM

To: Joint Committee on Administrative Rules and Regulations
From: John Wine, Kansas Insurance Department
Re: K.A.R. 40-1-37
Date: April 7, 2009

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. With me today to answer any substantive questions about this proposed regulation is Tish Becker, a Financial Analyst with our Financial Surveillance Division. I would like to thank the committee for allowing the Department to appear and comment on the proposed revisions to K.A.R. 40-1-37.

This amendment to K.A.R. 40-1-37 is being proposed to update the current regulation relating to annual audited financial reports filed by insurance companies. K.S.A. 40-225 directs the Commissioner to make amendments or additions to the reporting requirements as may be prescribed by the National Association of Insurance Commissioners ("NAIC"). This proposed amendment to K.A.R. 40-1-37 adopts by reference the February 5, 2009 "Policy and Procedure Requiring Annual Audited Financial Reports" which incorporates the current NAIC model regulation.

Some insurance companies having annual premiums of \$500 million or more could be financially impacted if they do not currently prepare a report of the insurer's internal control over financial reporting. The large insurance companies who already voluntarily comply with the NAIC model regulation would not experience any fiscal impact. The proposed amended regulation would not have significant economic impact on other insurance companies, government agencies, regulated entities, large or small businesses or the general public.

*Joint Committee on
Administrative Rules and
Regulations
April 6-7, 2009
Attachment 11*

MEMORANDUM

To: Joint Committee on Administrative Rules and Regulations
From: John Wine, Kansas Insurance Department
Re: K.A.R. 40-4-35
Date: April 7, 2009

My name is John Wine and I am a Staff Attorney for the Kansas Insurance Department. With me today to answer any substantive questions about this proposed regulation is Linda Sheppard, Director of our Accident and Health Division. I would like to thank the committee for allowing the Department to appear and comment on the proposed revisions to K.A.R. 40-4-35.

This amendment to K.A.R. 40-4-35 is being proposed to update the existing regulation on Medicare supplement insurance. K.S.A. 40-2221 requires the Commissioner of Insurance to adopt standards equal to or exceeding the minimum standards and requirements permitted by Section 1395ss (b) of the federal social security act. The federal law provides, in part, that the Secretary of Health and Human Services must approve a state's standards if they meet or exceed the standards and requirements adopted by the National Association of Insurance Commissioners ("NAIC"). Failure to obtain federal approval of the standards would result in the transfer of regulatory power over Medicare supplement insurance to the federal government. The current version of K.A.R. 40-4-35 adopts by reference the NAIC Model Regulation promulgated in 2004. This proposed amendment to K.A.R. 40-4-35 would update the Kansas regulation by adopting by reference a policy that incorporates the current NAIC standards which were adopted in 2008.

The proposed amendment will have no economic impact on insurance companies because they are already complying with the requirements set forth in the 2008 Model Regulation. Likewise, it will have no economic impact on government agencies, regulated entities, large or small businesses or the general public.

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Attachment 12*

Since the Tier 1 population is the primary (statistically speaking probably only) source for GA individuals to transition to SSI, yes this measure would reasonably be assumed to apply only to the Tier II population.

County Specific data:

**Kansas Department of Social and Rehabilitation Services
Integrated Services Delivery Division**

**General Assistance
Tier II Adults with Over 18 Months of Assistance**

County	Adults	County	Adults
Allen	8	Linn	6
Anderson	4	Logan	-
Atchison	16	Lyon	25
Barber	4	Marion	3
Barton	11	Marshall	3
Bourbon	13	McPherson	7
Brown	8	Meade	-
Butler	29	Miami	11
Chase	-	Mitchell	-
Chautauqua	2	Montgomery	24
Cherokee	31	Morris	2
Cheyenne	-	Morton	2
Clark	-	Nemaha	-
Clay	3	Neosho	13
Cloud	5	Ness	-
Coffey	3	Norton	1
Comanche	-	Osage	6
Cowley	27	Osborne	1
Crawford	29	Ottawa	2
Decatur	1	Pawnee	3
Dickinson	3	Phillips	1
Doniphan	3	Pottawatomie	2
Douglas	54	Pratt	6
Edwards	2	Rawlins	1
Elk	1	Reno	51
Ellis	8	Republic	-

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Ellsworth	1	Rice	2
Finney	1	Riley	8
Ford	12	Rooks	2
Franklin	19	Rush	2
Geary	6	Russell	3
Gove	-	Saline	17
Graham	1	Scott	1
Grant	-	Sedgwick	368
Gray	1	Seward	5
Greeley	-	Shawnee	217
Greenwood	6	Sheridan	-
Hamilton	1	Sherman	2
Harper	1	Smith	-
Harvey	23	Stafford	-
Haskell	-	Stanton	-
Hodgeman	-	Stevens	1
Jackson	2	Sumner	8
Jefferson	6	Thomas	3
Jewell	-	Trego	2
Johnson	71	Wabaunsee	4
Kearny	-	Wallace	-
Kingman	2	Washington	-
Kiowa	-	Wichita	-
Labette	15	Wilson	10
Lane	-	Woodson	4
Leavenworth	23	Wyandotte	216
Lincoln	2	Total	1,503

Source: KAECSES Run: GA-UA MediKan (Tier 2) & GA Medicaid (Tier I), June 2008

**Kansas Department of Social and Rehabilitation Services
Integrated Service Delivery
Economic and Employment Support Services**

Monthly General Assistance (GA) Program Applications, Approvals, and Closures for Calendar Years 2007 - 2008

Data Sources: Monthly MR600 Reports and EES Ad-Hoc Reports (StatsApp and StatsClo)

March 2009

Month	Applications Received	Approvals Processed	Closures Processed	Gain / Loss	GA Caseload
January 2007	1,211	172	232	-60	3,895
Feb	891	277	233	44	3,939
Mar	995	267	251	16	3,955
Apr	971	284	262	22	3,977
May	940	274	250	24	4,001
Jun	976	289	266	23	4,024
Jul	1,036	244	277	-33	3,991
Aug	1,040	329	312	17	4,008
Sep	888	243	285	-42	3,966
Oct	1,050	413	301	112	4,078
Nov	814	286	242	44	4,122
Dec	708	282	256	26	4,148
January 2008	1,052	350	248	102	4,250
Feb	984	300	271	29	4,279
Mar	1,132	362	328	34	4,313
Apr	1,183	313	310	3	4,316
May	1,049	313	304	9	4,325
Jun	1,150	302	291	11	4,336
Jul	1,256	351	310	41	4,377
Aug	1,150	385	363	22	4,399
Sep	1,360	350	336	14	4,413
Oct	1,317	355	322	33	4,446
Nov	1,101	282	301	-19	4,427
Dec	1,214	380	364	16	4,443
Monthly Average	1,061	308	288	20	4,185