

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 18, 2009  
Room 535-N—Statehouse

#### Members Present

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

#### Members Absent

Senator Ralph Ostmeyer

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Sharon Wenger, 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

Berend Koops, Hein Law Firm  
Michelle Buhler, Capital Strategies  
R. S. McKenna, Department of Social and Rehabilitation Services  
Brian K. Dempsen, Department of Social and Rehabilitation Services  
Susan McDonald, Department of Social and Rehabilitation Services

Chris Tymeson, Kansas Department of Wildlife and Parks  
Dan McLaughlin, Kansas State Fire Marshal  
Kenya Patzer, Kansas State Fire Marshal's Office  
Teri Canfield, Attorney General's Office  
Mary Lou Davis, Board of Cosmetology  
Michael J. Smith, Attorney General's Office  
Darren Root, Kansas Department of Labor  
Joyce Grover, Kansas Coalition Against Sexual and Domestic Violence  
Laurel Klein Searles, Kansas Coalition Against Sexual and Domestic Violence  
Matt Casey, Gaches, Braden and Associates  
Trudy Aron, American Institute of Architects  
Scott Heidner, American Council of Engineering Companies of Kansas  
Kraig Knowlton, Department of Administration  
Leo Haynos, Kansas Corporation Commission  
Terri Penberton, Kansas Corporation Commission  
Tom Day, Kansas Corporation Commission

### **Morning Session**

Chairperson Holmes called the meeting to order at 10:00 a.m.

The Chairperson called the Committee members' attention to the minutes of the April 6 and 7, 2009, meeting and asked for action on them. *Representative Pauls moved that the minutes be approved as presented; Representative Trimmer seconded the motion. Motion passed.*

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 115-25-9b, deer; nonresident limited-quota antlered permit application period; and KAR 115-25-19, doves; management unit, hunting season, shooting hours, and bag and possession limits.

Mr. Tymeson stated that both of these rules and regulations were exempt regulations. KAR 115-25-9b would move back the nonresident deer permit application period to better accommodate nonresident hunters when planning to hunt in Kansas. KAR 115-25-19 will add additional hunting days to the first segment of the open season and open the second segment on the first Saturday in November for nine days.

It was noted by a Committee member that this was only for one year. Mr. Tymeson stated that since these were exempt regulations concerning season dates and bag limits, they were reviewed every year.

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

Sue McDonald was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Social and Rehabilitation Services. KAR 30-45-20, foster child educational assistance; KAR 30-46-10, definitions; and KAR 30-46-17, expungement of name of perpetrator from central registry.

Staff noted that in KAR 30-46-10 and KAR 30-46-17, the history section needs to be updated. A Committee member noted that in KAR 30-46-17, the language needs to be clarified to show expungement of the record by removing the name from the registry.

After responding to all questions, Ms. McDonald was thanked for her presentation before the Committee.

Mary Lou Davis was recognized by the Chairperson to speak to the rule and regulation noticed for hearing by the Board of Cosmetology. KAR 69-3-8, curricula and credits.

Ms. Davis stated that the Board received input from current licensees, newly licensed estheticians and school instructors. It was determined to better safeguard the consumer, the instructional and practical esthetic training be increased from 650 clock hours to 1,000 clock hours. In 2008, legislation was passed to increase the hours. The Chairperson thanked Ms. Davis for her appearance before the Committee.

The Chairperson asked the Legislative Research Department staff to review agency responsiveness to comments made by this Committee to rules and regulations that have previously come before the Committee. Raney Gilliland and Jill Shelley passed out a report (Attachment 1) showing the agencies that had appeared before the Committee and whether or not they responded to the Committee's comments. Ms. Shelley went over the report and what the responses from agencies had been since 2006.

A Committee member suggested that a letter be drafted by the Legislative Research Department expressing disappointment with agencies when no response is received and that a copy of the letter be sent to all board members of agencies with boards. Another suggestion was made that when future rules and regulations are received from agencies who have not responded to the Committee in the past, the agency then be flagged to indicate lack of response to past comments. After discussion by the Committee, it was the consensus that staff send a second letter to those boards and agencies who have not responded to the Committee, giving them 60 days to respond or be required to appear before the Committee. Mr. Gilliland and Ms. Shelley will work on this and get back to the Committee.

The Chairperson recognized Darren Root, Staff Attorney, to address the proposed rules and regulations noticed for hearing by the Department of Labor. KAR 49-5-1, definitions; KAR 49-5-2, filing of complaint, submittals, and other documents; KAR 49-5-3, service by the department; KAR 49-5-4, complaints; KAR 49-5-5, employer's response; KAR 49-5-6, investigation; KAR 49-5-7, preservation of personnel records; KAR 49-5-8, investigative report and determination; KAR 49-5-9, administrative hearing; and KAR 49-5-10, judicial review.

Mr. Root explained that the new rules and regulations are to protect a victim of domestic violence or a victim of sexual assault from discharge from employment or other retaliatory actions for taking time off work for protected activities.

A Committee member asked Mr. Root whether the Department of Labor had received any complaints of this nature in prior years and how many such complaints. Mr. Root stated that he did not know but would check and get back to the Committee. It was noted that prior to these changes this type of complaint might have been filed with the Human Rights Commission (HRC). The Committee asked that HRC be included in the inquiry. In KAR 49-5-1, staff suggested that in the definition of "(e) Secretary" that the definition be expanded to include the term "secretary's designee," since this term is used in the other rules and regulations. Staff also noted that the history section in all the rules and regulations should be reviewed and updated. There was discussion by the Committee concerning KAR 49-5-3, which states that service of documents by the Department

are deemed completed on the date the document is placed in the U.S. mail. A Committee member felt that it should be certified mail so that there could be some proof of service. After discussion, the Committee indicated the Department should look at certified mail as a method of service.

A question was raised by staff concerning who would be served if the party to be notified was a state agency. Mr. Root stated that the notice would be served by the Attorney General's Office. Mr. Root stated that if the notice is against the Department of Labor, then the hearing would be conducted by the Department of Administration.

A Committee member questioned whether the statute authorized the 60-day time limit for the filing of complaints in KAR 49-5-4(b). Mr. Root stated that there was no time limit contained in the statute.

A Committee member requested that the agency respond to the Committee detailing what authority under subsection (b) the 60 day time limit would have if it is not in statute, and how the agency would envision handling a complaint that came in after 61 or 62 days. Staff noted that in KAR 49-5-4 (a) (5) the word should be "employee" rather than "employer." Mr. Root stated that they would change this. In KAR 49-5-5, a question was raised by a Committee member as to the agency's authority for subsection (b). Mr. Root stated that this was taken from KSA 44-1133, outlining the duties of the Secretary of Labor and giving him authority to adopt rules and regulations necessary to implement the provisions of the law. A suggestion was made that if the employer ignores the complaint, that the hearing go forward to investigate the facts behind the complaint and to look at the merit of the case. In KAR 49-5-6, a Committee member noted that there was no time frame given for the completion of the investigation and when to consider the action closed. Mr. Root stated that the agency wants to complete the investigation as soon as possible. The Committee member asked that the agency consider some kind of deadline in the regulation, perhaps if no action has been taken in a certain period of time that the action would be considered closed.

Another concern brought up by Committee members was the lack of civil remedies; it was noted that there are no provisions for civil penalties included in the statute. In KAR 49-5-8 (a) (2), a suggestion was made that the word "evidence" might want to be substituted for "documentation." It was pointed out that the term "documentation" is used in the statute and that may be the reason for its use in these rules and regulations.

A concern was raised about the use of the term "preponderance of the evidence" when the courts use the "burden of proof" statement. It was requested that Mr. Root check to see what the courts were using for retaliatory cases, that the same standard be used in this case, and that Mr. Root report back to the Committee. Staff noted that the economic statement did not have any expenses associated with these rules and regulations. Mr. Root stated that this was due the fact that the agency has no idea how many complaints may be handled and what costs may be associated with them at this time.

After Mr. Root responded to all questions from the Committee, the Chairperson thanked Mr. Root for his appearance before the Committee.

Chairperson Holmes recognized Laurel Klein Searles, Staff Attorney for Kansas Coalition Against Sexual and Domestic Violence (KCSDV), as a conferee to speak to the proposed rules and regulations presented by the Department of Labor (Attachment 2).

Ms. Searles stated that the KCSDV supports the rules and regulations, but identified two problems with the changes. First, the regulations leave victims without a specific remedy, and second, the regulations do not provide for confidentiality of administrative proceedings. She asked the Committee to recommend modification of the proposed regulations to include a true enforcement

mechanism and to require confidentiality of administrative proceedings taking place under these new regulations.

A Committee member noted that the possible remedy sought by the KCSDV could be accomplished by having the organization propose a statutory amendment that would include the two items that KCSDV wishes to change.

Chairperson Holmes thanked Ms. Searles for her appearance before the Committee.

Dan McLaughlin was welcomed by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing by the State Fire Marshal's Office. Mr. McLaughlin introduced Kenya Patzer who addressed the Committee. KAR 22-1-1, municipal compliance with Kansas fire prevention code; KAR 22-1-2, compliance with certain building codes; KAR 22-1-3, adopted national standards; KAR 22-8-13, adoption of national codes; KAR 22-10-3, registration certificate; KAR 22-11-6, maternity centers; KAR 22-11-8, adult and boarding care homes; KAR 22-15-7, revoked; and KAR 22-18-3, construction requirements for school buildings.

A concern was raised about KAR 22-1-2, the adoption of the "building construction and safety code" via the National Fire Protection Association Standard No. 5000, 2006 edition, and that the State of California and the City of Phoenix had adopted this code and then repealed the adoption. A Committee member requested that the Committee be provided with other units of government that have adopted these codes and are using them. In KAR 22-1-2, a Committee member asked whether these rules and regulations were strictly for fire code or if other codes were covered. Ms. Patzer stated that these are building codes, covering construction materials. A Committee member asked if these codes cover energy efficiency standards and, if so, whether they meet the requirements of the federal government since there could be federal funds at stake. Ms. Patzer was asked to find out and report back to the Committee. A Committee member asked that the agency check with the Department of Housing and the Kansas Corporation Commission concerning federal energy efficiency standards required. Ms. Patzer stated that they would check and get back to the Committee. In KAR 22-1-3 (c), staff noted that the words "modified for different use" should be added for clarification, since these do not apply to one- and two-family dwellings. In KAR 22-18-2, staff noted that the specific date "2000" should be added in line 5 after "international building code." A Committee member noted that the energy efficiency factors also should apply in KAR 22-18-3.

After responding to all questions, Mr. McLaughlin and Ms. Patzer were thanked by the Chairperson for the presentation before the Committee.

Chairperson Holmes recessed the meeting until 1:45 p.m.

### **Afternoon Session**

Chairperson Holmes reconvened the meeting at 1:45 p.m.

The Chairperson welcomed Leo Haynos to speak to the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 3). KAR 82-14-1, definitions; KAR 82-14-2, excavator requirements; KAR 82-14-3, operator requirements; KAR 82-14-4, notification center requirements; KAR 82-14-5, tier 3 member notification requirements; and KAR 82-14-6, violation of act; enforcement procedures.

Mr. Haynos stated that these proposed rules and regulations were the result of the passage of HB 2637 during the 2008 Legislative Session. The changes become effective on July 1, 2009. The primary change was the mandatory inclusion of water and wastewater utilities for operators required to provide locates of their facilities upon request.

Staff noted that since the statute goes into effect on July 1, 2009, a subsection should be added to each of the rules and regulations stating that they will become effective July 1, 2009. A Committee member noticed that in KAR 82-14-4(e), the record retention time was changed to two years, and in KAR 82-14-5 (a), it was changed to "at least two years" and suggested that these time frames should be consistent.

After Mr. Haynos responded to all questions, Chairperson Holmes thanked Mr. Haynos for the presentation before the Committee.

Kraig Knowlton was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Administration. KAR 1-2-64, probationary employee; KAR 1-2-65, probationary status; KAR 1-7-3, probationary period required; KAR 1-7-4, duration of probationary period; KAR 1-7-6, notices relating to probationary periods and extensions; KAR 1-7-7, dismissal of probationary employee by director; KAR 1-7-10, performance reviews; KAR 1-7-11, employees entitled to appeal performance reviews; KAR 1-7-12, performance review appeal procedure; and KAR 1-14-8, computation of layoff scores.

Mr. Knowlton gave Committee members a background review of the new Performance Management Process (PMP) and the process which resulted in these new rules and regulations. These changes will be implemented on October 1, 2009.

A Committee member noted in KAR 1-2-65, the term "serving a probationary period" sounded more like correctional language and suggested that different language be used. Mr. Knowlton stated that the agency would look at that. In KAR 1-7-10, staff noted on page 3 (d), the term "unsatisfactory" should be changed back to "less than satisfactory" for consistency. Mr. Knowlton stated that he would check on this. Staff suggested that the agency look at the time frames used in KAR 1-7-12, "seven calendar days" and "within five calendar days" to see that they are not in conflict. Mr. Knowlton stated that they would look at this, also. A Committee member noted that there may need to be clarification of the term "orphan" as used in KAR 1-14-8. Mr. Knowlton stated that they would review this section.

After Mr. Knowlton responded to all questions from the Committee, Chairperson Holmes thanked Mr. Knowlton for appearing before the Committee.

Deborah Hatfield was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (KDHE), Division of Health, Bureau of Child Care and Health Facilities. KAR 28-4-1200, definitions; KAR 28-4-1201, license requirements; KAR 28-4-1202, application procedures; KAR 28-4-1203, capacity; posting requirements; validity of temporary permit or license; new application required; advertising; closure; KAR 28-4-1204, licensure; renewal; notifications; exceptions; amendments; KAR 28-4-1205, background checks; KAR 28-4-1206, administration; KAR 28-4-1207, staff requirements; KAR 28-4-1208, records; KAR 28-4-1209, notification and reporting requirements; KAR 28-4-1210, admission requirements; KAR 28-4-1211, health care; KAR 28-4-1212, health and safety requirements for the use of seclusion rooms; KAR 28-4-1213, library; recreation; work; KAR 28-4-1214, emergency plan; drills; facility security and control of residents; storage and use of hazardous substances and unsafe items; KAR 28-4-1215, environmental standards; KAR 28-4-1216, food service; KAR 28-4-1217, laundry; and KAR 28-4-1218, transportation.

Ms. Hatfield gave the Committee some background on the proposed rules and regulations for the new entity of psychiatric residential treatment facility and what areas KDHE would have jurisdiction over. KDHE has regulatory control over environment, health and safety issues, including food, safety, and background checks. The Kansas Department of Social and Rehabilitation Services will cover training programs, staff qualification, restraint, and all matters that were involved with the treatment.

In KAR 28-4-1205, a Committee member questioned the required information for an individual ten-years-of-age and older and if there would be someone there who was ten. Ms. Hatfield stated that this is the statutory language and that is why it was included. In KAR 28-4-1209 (b), staff questioned whether the "five working days" excluded Saturday, Sunday, and holidays. Ms. Hatfield stated that it did not include these days. It was suggested that the agency add "excluding Saturday, Sunday, and holidays."

A Committee member questioned KAR 28-4-1211, page 3(b) (3), concerning ordering of a prescription medication and whether there would be an authorized person available 24 hours a day to administer the medications as ordered. It was suggested that the language may need to be clarified. Ms. Hatfield stated that KDHE would take a look at this section and make sure that the language would allow for this.

A question was raised by a Committee member about KAR 28-4-1211, page 3(b) (4), about the reporting of "acute symptoms of illness or who has a chronic illness" within 24 hours. Ms. Hatfield stated that this was referring to the initial admission to the facility. It was suggested that the agency look at the language and clarify that this is what the agency is referring to. She stated that KDHE would do this. In KAR 28-4-1214, page 4, line 2, a Committee member was concerned about the use of the term "discarded." It was suggested that it be changed to "disposed of" which would include several other available options. Ms. Hatfield stated that KDHE would take a look at this. The Committee suggested that in KAR 28-4-1216, food services, that a Memorandum of Understanding between the Department of Agriculture and the Kansas Department of Health and Environment, covering these items on food safety, might be necessary. Ms. Hatfield stated that 2009 SB 203 specifically exempted these facilities from the food safety requirements under the Department of Agriculture.

There was some concern by Committee members concerning the two different agencies having authority over food safety in the different facilities and whether they will be consistent. The Committee requested that a letter be addressed to the Department of Agriculture concerning their understanding of SB 203 and the transfer of food service inspection duties to the other agencies in similar situations.

After Ms. Hatfield responded to all questions, Chairperson Holmes thanked Ms. Hatfield for her presentation before the Committee.

The next meeting will be July 6, 2009. The Chairperson adjourned the meeting at 4:00 p.m.

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

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning deer, nonresident limited-quota antlered permit application period; and doves, management unit, hunting season, shooting

hours, and bag and possession limits. Both of these regulations are exempt regulations. 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 foster child educational assistance; definitions; and expungement of name of perpetrator from central registry. After discussion, the Committee had the following comments.

KAR 30-46-17. In subsection (c)(1), the Committee is concerned that only the name would be expunged and not the record. Please consider new language which would make it clear that both the name and the record would be expunged.

Comment. Please review the history sections to ensure appropriate statutory citations for authorization and implementation.

**Kansas Board of Cosmetology.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning curricula and credits. After discussion, the Committee had no comment.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; filing of complaint, submittals, and other documents; service by the department; complaints; employer's response; investigation; preservation of personnel records; investigative report and determination; administrative hearing; and judicial review. After discussion, the Committee had the following comments.

KAR 49-5-1. The Committee suggests that the agency consider expanding the definition of the term "Secretary" to include the Secretary's designee.

KAR 49-5-3. The Committee suggests that the agency consider the use of certified or return receipt requested mail in order to decrease the occurrence of findings based on errors in mail delivery.

KAR 49-5-4. In subsection (a)(5), the Committee believes the word "employer" should really be "employee." Please make a change if deemed appropriate.

KAR 49-5-6. The Committee is concerned with the length of the investigation and believes the agency should consider some time frame for the length of time for the investigation.

Question. In KAR 49-5-5 the Committee questions the authority of the agency to deem an employer to have engaged in a prohibited practice if the employer failed to respond within the specified time frame. The Committee is concerned that this places the agency in a position of determining "guilt in fact." Please review and explain the agency's authority.

KAR 49-5-8. In subsection (a)(2), the Committee asks the agency to consider whether the word should be "documentation" or "evidence." Please review this entire set of regulations with the same consideration.

Question. The Committee notes that in subsection (b) of KAR 49-5-4, complaints are required to be filed within 60 days of the alleged occurrence. The Committee



requests information about what the agency would do if the complaint was filed on the 62<sup>nd</sup> or 63<sup>rd</sup> day after the occurrence. It also questions the agency's authority to require that a complaint be filed within 60 days.

Question. The Committee inquires as to what has occurred in the past with these types of complaints. The Committee seeks information as to what types of complaints have been made previous to the regulations, their number, and information on what happens to these types of complaints currently.

Question. The Committee is concerned about who gets served if the employer is the State of Kansas. The Committee believes that, depending upon the entity being served, that the time frame in subsection (a) of KAR 49-5-5 may be a problem. Please explain how the agency believes how this process will work if the State of Kansas is the employer or in particular if the Secretary of Labor is the employer.

Question. The Committee believes that the burden of proof should be the same in these cases as is the case in other retaliatory discharge cases. Is the burden of proof in KAR 49-5-8 different than in other similar types of cases?

Issue. The Committee is concerned with the issue of confidentiality of the records of these types of complaints and subsequent investigations. The Committee believes the agency should consider this and wonders whether the agency believes that legislation to address this issue would be advisable.

Economic Impact Statement. The Committee believes that the Economic Impact Statement should include some estimate of the cost of hearings and investigations for these types of complaints. Please update the Economic Impact Statement.

**Kansas State Fire Marshal's Office.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning municipal compliance with Kansas fire prevention code; compliance with certain building codes; adopted national standards; adoption of national codes; registration certificate; maternity centers; adult and boarding care homes; construction requirements for school buildings; and revocation. After discussion, the Committee had the following comments.

KAR 22-1-2. It came to the attention of the Committee that the State of California and the City of Phoenix no longer use the "Building Construction and Safety Code." The Committee would like to know what these two entities use as a replacement and why the State of Kansas would adopt this if there are liability issues. In addition, the Committee was informed that the agency could assist in providing information as to what entities are using each of the two proposed codes as their standard. Please provide the Committee with this information. Further, the Committee was told that the codes may include energy efficiency standards. The Committee is concerned that these standards may conflict with other standards adopted by the State of Kansas. Please provide information to the Committee regarding whether the standards conflict with any others adopted by the State or any of its legal entities. The Committee also questions whether the 2006 edition is the most stringent available and, if not, how liability has been allocated when a governmental entity does not adopt the most stringent code.

KAR 22-18-3. The Committee believes that a specific version of the code being adopted should be the one adopted by reference. Please consider specifying

whether school buildings should comply with the life safety code specified in KAR 22-1-3(o) or KAR 22-1-3(p).

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; excavator requirements; operator requirements; notification center requirements; tier 3 member notification requirements; and violation of act, enforcement procedures. After discussion, the Committee had the following comments.

KAR 82-14-5. In subsection (a), the time frame for maintenance of records is "at least two years." In other places in this set, such as KAR 82-14-4(e), it indicates "two years." Please make the time frame consistent throughout the set of regulations.

Suggestion. The Committee is concerned with the adoption of this set of regulations prior to the effective date of the authorizing statutes. Please consider adding a subsection to each regulation making the regulation effective on July 1, 2009.

**Kansas Department of Administration.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning probationary employee; probationary status; probationary period required; duration of probationary period; notices relating to probationary periods and extensions; dismissal of probationary employee by director; performance reviews; employees entitled to appeal performance reviews; performance review appeal procedure; and computation of layoff scores. After discussion, the Committee had the following comments.

KAR 1-2-65. In this regulation and others the Committee suggests the agency consider using a different phrase other than "serving a probationary period" since it gives the impression one is being punished for wrongdoing.

KAR 1-7-12. The Committee is concerned with the time frames used in this regulation and believes that clarification should be included as to whether those time frames include Saturdays, Sundays, or holidays.

KAR 1-14-8. In subsection (d)(4), the Committee believes the definition of "orphan" should be clarified to indicate that it means a child of a deceased veteran.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; license requirements; application procedures; capacity, posting requirements, validity of temporary permit or license, new application required, advertising, closure; licensure, renewal, notifications, exceptions, amendments; background checks; administration; staff requirements; records; notification and reporting requirements; admission requirements; health care; health and safety requirements for the use of seclusion rooms; library, recreation, work; emergency plan, drills, facility security and control of residents, storage and use of hazardous substances and unsafe items; environmental standards; food services; laundry; and transportation. After discussion, the Committee had the following comments.

KAR 28-4-1209. In subsection (b), the Committee believes that the time frame should be clarified by indicating whether it includes Saturdays, Sundays, and holidays.

KAR 28-4-1211. The Committee suggests the agency address the situation where a prescription is phoned-in by the medical practitioner. It also was unclear to the Committee whether the facility would have a qualified person present and authorized to place a prescription in writing when a medical practitioner phones in a prescription. In subsection (b)(4), it is unclear when the notification is to be accomplished. If the protocol is to be accomplished with admission, then perhaps the regulation should indicate the time frame.

KAR 28-4-1214. In subsection (d)(3), the Committee is concerned that unused medication would be only discarded. The Committee suggests that the agency consider the addition of "disposal" and also "otherwise properly used" if there is the opportunity to redistribute the medication to others.

Request. With respect to food safety, the Committee requests information about any type of agreement the agency may have with the Kansas Department of Agriculture to ensure food safety. Does the Department of Agriculture provide information concerning food safety issues to assist in regulations for these types of facilities?

Prepared by Judy Glasgow  
Edited by Corey Carnahan

Approved by Committee on:

July 6, 2009

(Date)

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS  
 COMMITTEE GUEST LIST

DATE: May 18, 2009

NAME	REPRESENTING
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R.S. McKenna	SRS
Briank. Dempsey	SRS
Susan McDonald	SRS
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Kenya Patzer	KSFM
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Darren Root	KDOL
JOYCE GROVER	KCSDV
Laurel Klein Seales	KCSDV
Matt Casey	GISA
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May 15, 2009

**To:** Members of the Joint Committee on Administrative Rules and Regulations

**From:** Raney Gilliland, Assistant Director for Research  
Jill Shelley, Research Analyst

**Re:** Agency Responsiveness to JCARR Comments

Since January 2006, the JCARR has heard draft regulations from 54 agencies. The attached analysis summarizes agency responsiveness to Committee requests and comments. It shows that most agencies respond in writing to Committee requests and comments in a timely manner.

The first, single-page listing shows the number of database entries by agency and the analyst's opinion as to whether, in general, there were problems with agency responsiveness. It also compares the summary presented to the Committee in January 2009 with current results. Several agencies improved their overall responsiveness, some by submitting responses to Committee concerns in previous years.

The second listing, nine pages, gives detail on that responsiveness. It lists, for each agency, the following information:

- The date the agency appeared before the Committee;
- Whether the Committee had comments;
- Whether the agency responded by letter as requested;
- Whether the response addressed each Committee comment;
- Whether final rules have been published; and
- Analyst comments for that entry.

A full printout of Committee comments and agency responses is available upon request (201 pages).

Please contact us if you have any questions.

**SUMMARY**

*as of January 2009*

*as of May 2009*

Agency	Database entries since July 2006	In general, were there problems with agency response?		Database entries since January 2006 (b)	In general, were there problems with agency response?		If a change, has responsiveness gotten better or worse?
		no	yes		no	yes	
Accountancy	3	no		5	no		
Administration	1	no		2	no		
Aging				1	no		
Agriculture	11	no		14	no		
Agriculture - Water Resources	3		with 1	5	no		
Animal Health				1	no		
Athletic Commission (Commerce)	1	no		1	no		
Attorney General	1	no		1	no		
Bank Commissioner	1	no		1	no		
Barbering	1	no		1	no		
Behavioral Sciences	8	no		10		yes	worse
Commerce	4		yes	5		yes	
Conservation Commission	3	no		5	no		
Corrections	3	no		3	no		
Cosmetology	1	no		1	no		
Credit Unions	3	no		4	no		
Dental Board	2	no		3		yes	worse
Education	4	no		6	no		
Emergency Medical Services	1	no		3	no		
Fire Marshal	1		yes	1		yes	
Governmental Ethics Commission	1	no		1	no		
Healing Arts	12		with 1	16		yes	worse
Health Care Commission				1	no		
Health Policy Authority	8	no		11	no		
Hearing Aid Examiners	1	no		1	no		
Historical Society	1	no		1	no		
Home Inspectors Registration				1	no		
Housing Resources Corporation				1	no		
Indigents Defense	3	no		3	no		
Insurance	9		yes	14	no		better
Juvenile Justice Authority	1	no		1	no		
KBI	1	no		1	no		
KCC	7		with 1	12	no		better
KDHE	17	no (a)		26	no (a)		
Labor	3	no		4	no		
Labor - Workers Comp	1	no		1	no		
Mortuary Arts	2	no		2	no		
Nursing	3		with 1	3		with 1	
Pharmacy Board	12		yes	14		yes	
Racing and Gaming	4	no		5	no		
Real Estate Appraisal	3		with 1	7		with 1	
Real Estate Commission	2		with 1	2		with 1	
Regents	3		with 1	5		with 1	
Revenue	8		yes	11		yes	
Revenue - Alcoholic Beverage Control	2	no		2	no		
Secretary of State	4		with 1	5		with 1	
Securities Commissioner	3	no		5	no		
SRS	5	no		8	no		
Tax Appeals	1	no		1	no		
Technical Professions	4	no		4	no		
Treasurer	3		yes	3	no		better
Veterans Affairs	2	no		3	no		
Veterinary Medical Examination	1		with 1	1		with 1	
Wildlife and Parks	11	no		15	no		
54	190	35, "no"		264	41, "no"		

(a) Until 2008, KDHE usually responded only in the hearing officer's report included with the final regulation.

(b) Since the January 2009 report was produced, staff has been able to further review files and add early 2006 entries to the database.

Notes:						
n/a = not applicable, because the JCARR had no comments or because the agency had not responded.						
Blanks were left when final rules have not yet been published.						
NTD = not as of 5/15/09						
JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments
2/28/2006	Accountancy	no	no	n/a	5/4/2006	
1/4/2007	Accountancy	yes	yes	yes	2/1/2007	
11/19/2007	Accountancy	yes	yes	yes	12/27/2007	
4/7/2008	Accountancy	yes	yes	yes	5/8/2008	
1/8/2009	Accountancy	no	no	n/a	5/14/2009	
5/25/2006	Administration	yes	yes	yes	6/15/06, 9/14/06	
7/9/2007	Administration	yes	yes	yes	9/6/2007	
1/8/2009	Aging	yes	yes	yes	5/7/09 for adult care homes (Art. 39); 5/15/09 for remainder	
5/25/2006	Agriculture	yes	yes	yes	8/17/2006	
11/20/2006	Agriculture	yes	yes	no	1/18/07 and 1/25/07	The response didn't address the Committee's request that comments on the regulations be received by email prior to the public hearing.
1/4/2007	Agriculture	yes	yes	no	2/8/2007	The agency's response did not address the Committee's requests to include in its notice of publication a website where the public may access proposed regulations or to allow the public to comment on the proposed regulations through email.) It fully addressed other suggestions, including withdrawing 2 of the 3 proposed regulations.
2/9/2007	Agriculture	yes	yes	yes	4/12/2007	
11/19/2007	Agriculture	yes	yes	yes	1/3/08 and 1/24/2008	(Two separate replies were received, one for feed and seed and one for weights and measures.)
12/10/2007	Agriculture	yes	yes	yes	2/14/2008	(food safety)
12/10/2007	Agriculture	yes	yes	yes	2/14/2008	(pesticides)
4/7/2008	Agriculture	yes	yes	yes	withdrawn	from the response letter: "[i]t was decided to withdraw the proposed regulations as currently drafted. ... The department will redraft the proposed regulations and reintiate the regulation adoption process."
5/28/2008	Agriculture	no	yes	n/a	7/3/2008	
5/28/2008	Agriculture	no	yes	n/a	7/3/2008	(weights and measures)
9/22/2008	Agriculture	yes	yes	yes	11/20/2008	
11/6/2008	Agriculture	yes	yes	yes		(BGH labeling)
2/13/2009	Agriculture	no	yes	n/a	4/23/2009	
4/6/2009	Agriculture	no				
10/2/2006	Agriculture - Water Resources	yes	yes	yes	11/23/2006	
3/23/2007	Agriculture - Water Resources	yes	yes	yes	5/3/2007	
5/28/2008	Agriculture - Water Resources	yes	no	n/a	10/16/2008	Most, but not all, of the Committee's suggestions were addressed by minor changes to the final regulations. (No formal response was received.)
7/7/2008	Agriculture - Water Resources	yes	yes	yes	9/18/2008	
1/8/2009	Agriculture - Water Resources	yes	yes	yes	3/5/09 for 5-3-4a, 5-14-3, 5-14-3a	(hearings and orders; IGUCAs)
2/28/2006	Animal Health	yes	yes	yes	4/6/2006	
12/10/2007	Athletic Commission (Commerce)	yes	yes	yes	3/20/2008	
9/6/2006	Attorney General	yes	yes	yes	11/9/2006	
1/14/2008	Bank Commissioner	yes	yes	yes	3/20/2008	
10/2/2006	Barbering	yes	no	n/a		The Committee had questioned the need for a proposed "excessive" increase and suggested smaller but more frequent fee increases.
1/9/2006	Behavioral Sciences	no	no	n/a	1/9/2006	
9/6/2006	Behavioral Sciences	yes	yes	yes	10/12/2006	
4/4/2007	Behavioral Sciences	yes	yes	yes	5/24/2007	
8/14/2007	Behavioral Sciences	no	no	n/a	11/15/2007	
12/10/2007	Behavioral Sciences	yes	yes	yes	3/27/2008	

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments	
5/28/2008	Behavioral Sciences	yes	yes	yes	7/24/08 for all but social workers, 12/4/08 for social workers		
8/12/2008	Behavioral Sciences	no	yes	n/a	12/4/2008		
9/22/2008	Behavioral Sciences	yes	no	n/a	1/29/2009	The Committee had comments about self-directed provisions and about whether an applicant could make up continuing education hours that were disapproved after the fact.	problem
11/6/2008	Behavioral Sciences	yes	no	n/a	1/29/2009	The Committee expressed concern about the means of notifying the regulated community about video conference sites.	minor problem
2/13/2009	Behavioral Sciences	yes	yes	yes	n/a, withdrawn	(social work educational program)	
2/28/2006	Commerce	yes	no	n/a	4/20/2006		
10/2/2006	Commerce	yes	no	n/a	12/14/2006	The Committee questioned the agency's authority to divide the maximum amount of tax credits available to community-based organizations.	problem
8/14/2007	Commerce	yes	no	n/a	11/8/2007	The Committee's comment had to do with receiving comments via the internet.	
10/8/2007	Commerce	yes	no	n/a	12/6/2007	The Committee had suggested that the agency consider a different phrase for "on a form provided by the department" so that the form could be provided electronically, and it suggested agency explore mechanisms using electronic verification other than solely using the mail.	
5/28/2008	Commerce	yes	yes	yes	7/10/2008		
1/9/2006	Conservation Commission	yes	yes	yes	3/9/2006		
7/17/2006	Conservation Commission	yes	no	n/a	9/7/2006		
4/24/2007	Conservation Commission	yes	yes	yes	7/19/2007		
7/9/2007	Conservation Commission	no	yes	n/a	9/27/2007		
8/12/2008	Conservation Commission	yes	yes	yes	9/11/2008 and 10/30/08	(two replies because there were two sets of regulations and two public hearings)	
2/9/2007	Corrections	yes	yes	yes	5/17/2007		
4/24/2007	Corrections	yes	yes	yes	7/28/2007		
5/28/2008	Corrections	yes	yes	yes	7/24/2008		
2/15/2008	Cosmetology	yes	yes	yes	3/19/2009		
10/2/2006	Credit Unions	yes	no	n/a	11/30/2006	The only comment was about including the agency's website address in the notice and indicating that comments on the regulation are accepted by email.	minor problem
10/8/2007	Credit Unions	yes	yes	yes	12/13/07 and 7/17/2008	The Committee's question was about a definition. The regulation in question was revised and came back before the Committee at its May 28, 2008, meeting.	
5/28/2008	Credit Unions	no	no	n/a	7/17/2008		
2/13/2009	Credit Unions	no	no	n/a	4/16/2009		
5/28/2008	Dental Board	no	no	n/a	withdrawn	A revised version of these proposed rules and regulations came before the JCARR on 22 Sept 08.	
9/22/2008	Dental Board	yes	no	n/a	n/a for some, 12/25/08 for the remainder	The Board did not adopt the proposed sedative and general anaesthesia regulations, KAR 71-5-7 through 71-5-14; KLRD received a letter to this effect dated 11/17/08. The regulations on practice by a dental student and by a dental hygiene student have been published as final regulations.	problem
4/6/2009	Dental Board	yes					
4/25/2006	Education	no	no	n/a	8/10/2006		
1/4/2007	Education	yes	yes	n/a	n/a	The regulations were withdrawn.	
5/22/2007	Education	yes	yes	yes	7/26/2007		
10/8/2007	Education	yes	yes	yes	3/6/2008		
4/7/2008	Education	yes	yes	yes	7/3/2008		
4/7/2009	Education	yes					
8/12/2008	Emergency Medical Services	no	yes	n/a	10/16/2008		
2/13/2009	Emergency Medical Services	yes			all but 109-5-1 on 4/30/09	comment was on 109-5-1	
4/6/2009	Emergency Medical Services	no					
9/22/2008	Fire Marshal	yes	no	no	12/11/2008	The Committee had concerns about cross references within regulations, ramifications to a regulated entity of a single violation, and the impact of a program not paying for itself.	problem



JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments	
4/7/2008	Governmental Ethics Commission	yes	yes	yes	7/3/2008		
1/9/2006	Healing Arts	yes	no	n/a	3/2/2006		
9/6/2006	Healing Arts	yes	no	n/a	11/9/06 for 2 of 3; 7/21/07 for 100-73-9	The Committee was concerned that the agency appeared to have no authority to assess a penalty upon a radiologic technologist and whether unlicensed persons are operating the equipment.	problem
10/2/2006	Healing Arts	yes	no	n/a	10/2/06 for 2 of 3	The Committee had questions about only 1 of the 3 regulations. The questioned regulation went before the Committee again 5/22/07.	
11/20/2006	Healing Arts	yes	no	n/a		This regulation doesn't appear in the Kansas Register index for either 2006 or 2007 and no final regulation is in the KLRD file - it appears to have been withdrawn.	
4/4/2007	Healing Arts	yes	no	n/a	6/21/2007	Although there was no letter, the regulations were revised to address Committee comments.	
5/22/2007	Healing Arts	yes	no	n/a	10/18/2007 for 1, 8/30/07 for another	The JCARR requested that the size of a sign to be displayed be included in the regulation. A required size could be in a referenced document, but the document is not available on the agency website. One of the three proposed regulations was not adopted.	
7/9/2007	Healing Arts	yes	no	n/a	8/2/2007	The Committee commented that the Board should consider the staggering of fees in order to relieve cash flow issues.	problem
11/19/2007	Healing Arts	yes	yes	no	3/13/2008	The Committee requested a copy of any letter sent to the regulated community; no such copy was in the file.	
1/14/2008	Healing Arts	yes	yes	yes	3/20/2008		
5/28/2008	Healing Arts	yes	yes	yes	100-69-1 and 100-69-2 on 11/6/08; 100-69-3 NTD	The Board tabled proposed KAR 100-69-3 "for further research and revision."	
7/7/2008	Healing Arts	yes	no	n/a	4/30/2009	The Committee had suggested the agency revisit the entire regulation and improve its clarity. The final regulation shows some changes in line with the suggestion.	minor problem
9/22/2008	Healing Arts	yes			NTD	(special meetings)	
11/6/2008	Healing Arts	no	no	n/a	3/12/2009	(naturopathy)	
11/6/2008	Healing Arts	yes	yes	yes	1/29/2009	(fee amounts)	
1/8/2009	Healing Arts	no	no	n/a	4/30/2009		
4/6/2009	Healing Arts	yes			respiratory therapy 4/30/09	(also supervision of PT assistants)	
1/9/2006	Health Care Commission	no	no	n/a	2/23/2006		
4/25/2006	Health Policy Authority	yes	yes	yes	5/18/06 6/15/06 7/27/06 11/2/06		
7/17/2006	Health Policy Authority	no	yes	n/a	7/27/2006		
9/6/2006	Health Policy Authority	no	n/a	n/a	11/2/2006		
11/20/2006	Health Policy Authority	yes	yes	yes	12/28/2006		
1/4/2007	Health Policy Authority	no	yes	n/a	3/1/2007		
4/4/2007	Health Policy Authority	yes	yes	yes	6/28/2007		
7/9/2007	Health Policy Authority	yes	yes	yes	7/9/2007		
2/15/2008	Health Policy Authority	yes	yes	yes	5/8/08 and 7/3/08		
5/28/2008	Health Policy Authority	yes	yes	yes	9/4/2008		
1/8/2009	Health Policy Authority	yes	yes	yes			
4/6/2009	Health Policy Authority	yes					
4/4/2007	Hearing Aid Examiners	yes	no	n/a	5/10/2007	The Committee suggested rearranging some words for clarity. (The regulation about which the Committee had a concern has not been adopted.)	
11/20/2006	Historical Society	yes	yes	yes	1/11/2007		
4/7/2009	Home Inspectors Registration	yes					
1/8/2009	Housing Resources Corporation	no	yes	n/a	2/19/2009		
7/17/2006	Indigents Defense	no	yes	n/a	10/26/2006		
8/14/2007	Indigents Defense	no	yes	n/a	11/8/2007		
8/12/2008	Indigents Defense	no	yes	n/a	12/11/2008		

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments
1/9/2006	Insurance	yes	no	n/a	2/23/06, 3/2/06, 3/16/06, 1/25/07	The Committee had questions about the definitions of certain terms and the agency's authority to regulate one product. (Note this meeting was not included in the January 2009 report.)
7/17/2006	Insurance	yes	yes, dated 2/25/09	yes	12/28/2006	The Committee requested the criteria used by the American Accreditation Health Commission and used by the Utilization Review Committee to develop certain standards. The Committee also requested the agency review its statutory authority for collecting and maintaining policies and procedures of utilization review organizations. The response states the requested changes have been superseded by later amendment.
11/20/2006	Insurance	yes	yes, dated 2/25/09	yes	12/28/2006	A comparison of the proposed to the final regulations showed that none of the suggested changes were made. The JCARR questioned the economic impact statement, a 180-day timeframe, and whether new state law had been considered. The response states the requested changes have been superseded by later amendment.
2/9/2007	Insurance	yes	yes	yes	n/a	The regulation was withdrawn.
3/16/2007	Insurance	yes	yes	yes	n/a	The regulation was withdrawn.
7/9/2007	Insurance	no	yes	n/a	9/8/07, 9/13/07	KID informed JCARR that two of the proposed regulations had been withdrawn.
8/14/2007	Insurance	no	no	n/a	9/27/2007	
11/19/2007	Insurance	yes	yes, dated 2/25/09	yes	for 3 of 4 (1/3/08 and 1/31/08)	The Committee's only comment was to ask the agency to review the history sections of the proposed regulations and communicate the changes, if any, which the agency makes. (40-3-12 has not been adopted as of 4/30/09.)
1/14/2008	Insurance	yes	yes, dated 2/25/09	yes	4/3/2008	
8/12/2008	Insurance	yes	yes	yes	40-1-48 published 11/13/08	One (40-1-37) of the two proposed regulations was withdrawn and will be redone to reflect the newest NAIC model regulation, per testimony from KID.
11/8/2008	Insurance	no	n/a	n/a	1/29/2008	
1/8/2009	Insurance	yes			3/12/09 for 40-2-28 (preneed contracts)	The Committee requested KID withdraw the other regulation heard at the 1/8/09 meeting, pending legislative action. The Committee had no comments on the preneed insurance contract regulation.
2/13/2009	Insurance	yes	yes	yes	5/7/2009	
4/7/2009	Insurance	no	yes	n/a	5/15/09 for long-term care agent training	
10/2/2006	Juvenile Justice Authority	yes	yes	yes	11/16/2006	
2/9/2007	KBI	yes	yes	yes	4/19/2007	However, the Committee asked for clarity on when a time period was to begin; the final regulations omit reference to any time period.
1/9/2006	KCC	no	no	n/a	2/2/2006	
4/25/2006	KCC	no	no	n/a	6/15/2006	
7/17/2006	KCC	no	no	n/a	9/28/2006	
10/2/2006	KCC	yes	yes	yes	12/7/2006	
11/20/2006	KCC	yes	yes	yes	1/4/2007	
4/4/2007	KCC	no	no	n/a	5/15/2007	
7/9/2007	KCC	yes	yes, 2/25/09	yes	10/11/07 and 10/18/07	No changes were made to the final regulations to address the Committee's concerns about the acceptance of an electronic signature under the Kansas Electronic Transactions Act. A response dated 2/25/09 states that the final regulation contains no signature requirement for an electronic intent to drill application. The final regulation made other JCARR-requested changes.
10/8/2007	KCC	yes	yes	yes	12/13/2007	
5/28/2008	KCC	yes	no	n/a	7/3/2008	The only comment requested correction of a spelling error; the error was corrected in the final regulation.
5/28/2008	KCC	yes	yes	yes	10/9/2008	(oil and gas)
2/13/2009	KCC	yes				
4/6/2009	KCC	yes				

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments
1/9/2006	KDHE	yes	no	yes	3/9/2006 and 3/23/06	The Secretary included a response in his cover letter to the Secretary of State's office with the final regulation. "I have adopted and hereby submit the amended radiation regulation to the Joint Committee on Administrative Rules and Regulations."
2/28/2006	KDHE	yes	in final reg packet	yes	4/13/2006	
4/25/2006	KDHE	yes	no	n/a	6/22/2006	HIV - The Committee's only comment was a compliment on updating the regulation to reflect current practice.
4/25/2006	KDHE	yes	yes	yes	8/31/2006 (surface water register) 6/15/06 (air quality)	
7/17/2006	KDHE	yes	in final reg packet	yes	10/5/06 for 28-4-501, 510, 514; 10/12/06 for others	KDHE responded completely to the comment, in the hearing officer's report but not in a separate letter to the Committee.
9/6/2006	KDHE	yes	no	n/a	3/1/2007	The Committee had concerns about uses of terms including "confined feeding facility" and "inspector" and whether certain standards had been adopted by reference.
11/20/2006	KDHE	yes	no	n/a	2/15/2007	The Committee's comment was a commendation for including a website and receiving comments via email.
3/16/2007	KDHE	yes	yes	yes	5/10/07 (water registry) 5/17/07 (lab) 5/31/07 (air)	Two separate letters providing some of the requested information/responses were included in the file. Other responses were included in the Report of the Hearing Officer and not otherwise sent to KLRD.
4/24/2007	KDHE	yes	in final reg packet	yes	7/12/2007	There was no separate letter to the Committee, but responses to each Committee concern were included in the Hearing Officer's report.
5/22/2007	KDHE	yes	in final reg packet	yes	7/5/07 for isolation and quarantine; 9/20/07 for cosmetology and tanning; 10/11/07 for solid waste	At this meeting, KDHE presented three types of regulations: isolation and quarantine; cosmetology and tanning; and solid waste management. KDHE did not respond to the Committee's comment on the isolation and quarantine regulations, but it did make the suggested change. KDHE responded completely to each comment on the cosmetology and tanning regulations, in the hearing officer's report but not in a separate letter to the Committee. KDHE responded completely to each comment on the solid waste regulations, in the hearing officer's report but not in a separate letter to the Committee.
7/9/2007	KDHE	yes	in final reg packet	yes	10/18/2007	KDHE responded completely to each comment, in the hearing officer's report but not in a separate letter to the Committee.
10/8/2007	KDHE	yes	no	yes	12/20/2007	KDHE responded in its Responsiveness Summary (attached to the final regulations packet) to both of the Committee's concerns, but not in a separate letter to the Committee.
11/19/2007	KDHE	yes	in final reg packet	yes	1/17/2008 (lodging)	
11/19/2007	KDHE	yes	in final reg packet	yes	3/13/08 (foster care)	
1/14/2008	KDHE	yes	yes	yes	2/28/2008	The Committee had questioned the agency's authority to require records retention. The response was from the Secretary.
2/15/2008	KDHE	yes	yes	no	4/10/2008	There was no separate letter to the Committee, but a response to one of the Committee's two concerns was included in the Hearing Officer's report. KDHE did not address the Committee's concern about ways to measure gains in knowledge from certain types of continuing education allowed, e.g., attendance at poster sessions.
4/7/2008	KDHE	no	yes	n/a	5/22/2008	
4/8/2008	KDHE	yes	no	yes	6/26/2008	There was no separate letter to the Committee, but responses to the Committee's concerns were included with the Hearing Officer's report in the final regulations received from the Secretary of State's Office.
9/22/2008	KDHE	yes	yes	no	11/20/2008	
11/6/2008	KDHE	yes	yes	yes	1/15/2009	
11/6/2008	KDHE	yes	yes	yes	3/5/2009	
2/13/2009	KDHE	yes	yes	yes		
4/7/2009	KDHE	no				

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments
4/7/2009	KDHE	yes	yes	yes		
4/7/2009	KDHE	yes				
4/25/2006	KDHE Mined Land Conservation and Reclamation	yes	no	n/a	11/16/2006	
9/6/2006	Labor	no	n/a	n/a	10/19/2006	
8/14/2007	Labor	yes	yes	yes	10/18/2007	
8/12/2008	Labor	yes	yes	yes	9/25/2008	
4/6/2009	Labor	no				
8/14/2007	Labor - Workers Comp	no	no	n/a	10/18/2007	
11/20/2006	Mortuary Arts	yes	yes	yes	11/20/2006	
8/14/2007	Mortuary Arts	yes	no	n/a	1/24/2008	The Committee's only comment was a commendation on promulgating the regulations promptly.
2/9/2007	Nursing	yes	yes	no	4/5/07 and 7/5/07; most heard anew in Sept. '08	The Board didn't address the Committee's general comment that "The Committee is concerned about the establishment of different protocols for the mid-level practitioners, the physicians' assistants and the advanced registered nurse practitioners, that would be created by the adoption of these regulations." The Board also didn't address this Committee request: "Request. The Committee is concerned with the authority of the Board to establish 'protocol' as defined in this set of regulations. The Committee requests that the agency review its statutory authority and explain in detail where and how it believes that statutory authority exists beyond the written protocol for the prescription of drugs. ...." Update: The JCARR heard again 22 Sept 08 many of the regulations presented 2/9/07.
9/22/2008	Nursing	yes	yes	yes	most published 2/19/09; not published were those from article 11	
8/12/2008	Nursing	yes	yes	no	10/23/2008 for all but 60-2-105 and 60-2-106 (republished November 6, 2008, to correct a clerical error in KAR 60-2-102; the effective date remained 11/7/2008.) 60-2-105 & 60-2-106 2/19/09	The Board did not address the Committee's request for information about the Board's ability to license those who have been home-schooled or who otherwise received their secondary educations at schools not approved by the Kansas State Board of Education. The JCARR had requested the Board include information about whether legislative action is needed to allow those individuals to receive licensure. 60-2-105 and 60-2-106 were sent back to the Board's education committee. They were approved at the Board's December meeting.
7/17/2006	Pharmacy Board	yes	no	n/a	10/5/2006	The Pharmacy Board showed that it discussed each comment, in the hearing officer's report but not in a separate letter to the Committee.
10/2/2006	Pharmacy Board	yes	yes	yes	11/16/2006	The Board thought that removing subsection letter references in definitions in KAR 68-16-1 would delay adoption; this may provide an opportunity for education on which changes are "major" and would require a restart to the process. The Board said it made no changes to the proposed regulations.
11/20/2006	Pharmacy Board	yes	no	n/a		The Committee's only comment was a request to include notice that public comments could be made by email prior to the hearing.
2/9/2007	Pharmacy Board	yes	yes	yes	4/12/2007	
5/22/2007	Pharmacy Board	yes	no	n/a	7/5/2007	
8/14/2007	Pharmacy Board	yes	no	n/a	n/a	The Committee heard a proposal for the regulation reviewed at the 8/14/07 meeting again 1/14/08.
10/8/2007	Pharmacy Board	yes	no	n/a	temporary regulation published 11/13/08, final 2/19/09	The Committee requested clarification regarding the basis upon which the 93-day supply of a controlled substance would be dispensed.

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments	
11/19/2007	Pharmacy Board	yes	yes	no	4/3/2008	The Board sent notice that the public hearing had been delayed because of the ice-storm-related emergency. No subsequent letter was in the file relating to the Committee's request for clarification, and no changes were made to the regulation.	minor problem
1/14/2008	Pharmacy Board	yes			NTD	(institutional drug rooms)	
4/7/2008	Pharmacy Board	no	no	n/a	68-11-2 published 10/9/08	The public hearing for 1 of the 2 proposed regs was rescheduled to 9/24/08, with a request to the Committee that it need not re-hear the regulation as no changes had been made to it. (The 8/21/08 Kansas Register includes an announcement for a public meeting on 68-7-14 [one of the two regs heard] for 12/3/08.) The other reg, 68-11-2, came to the JCARR again 9/22/08.	
8/12/2008	Pharmacy Board	yes	no	no	10/9/2008	The JCARR had requested the Board send Raney the number of the statute that allows the Board to regulate oxygen suppliers.	problem
9/22/2008	Pharmacy Board	yes			NTD		
11/6/2008	Pharmacy Board	yes	no	n/a	12/18/08 for Utilization of unused medications; 3/26/09 for others	Comments were on unused medications; the Committee questioned a term and expressed concern that this donation program and the cancer drug donation program may be contrary to the Kansas Pharmacy Act; it authorized the introduction of legislation to ensure that the two programs do not conflict with the Kansas Pharmacy Act. (2009 SB 16, approved by the Governor 4/6/09)	
1/8/2009	Pharmacy Board	yes			2/19/2009		
10/8/2007	Racing and Gaming	yes	yes	yes	1/3/2008	The response to the Committee's question at KAR 112-7-6 seems to miss the point.	
7/7/2008	Racing and Gaming	yes	yes	yes	9/11/2008		
11/6/2008	Racing and Gaming	yes	yes	yes	4/2/09 for greyhound breeding fund	(racing)	
11/6/2008	Racing and Gaming	yes	yes	yes	4/2/09 for articles 101 (facility mgr certification), 103 (employee licensing), 113 (sanctions); 4/9/09 for Art. 107 (electronic gaming machines); 4/16/09 for Articles 110 (technical standards), 111 (involuntary exclusions), 114 (rules of hearings)	112-102-2 heard again 4/6/09  The KRGC sent a separate letter on the costs associated with costs of gaming regulations, addressing how costs are split among facilities.	
4/6/2009	Racing and Gaming	no					
4/25/2006	Real Estate Appraisal	no	no	n/a	8/17/2006		
5/25/2006	Real Estate Appraisal	no	no	n/a	8/17/2006		
2/9/2007	Real Estate Appraisal	yes	no	n/a	4/26/07 and 8/2/07	The Committee requested clarifications, including clarification of which entity approves course design. The agency made no changes.	problem
11/19/2007	Real Estate Appraisal	yes	yes	yes	1/3/2008		
2/15/2008	Real Estate Appraisal	no	n/a	n/a	3/20/2008		
1/8/2009	Real Estate Appraisal	yes	yes	yes	4/2/2009		
4/6/2009	Real Estate Appraisal	no					
8/14/2007	Real Estate Commission	yes	yes	yes	11/1/2007		
8/12/2008	Real Estate Commission	yes	no	n/a	10/9/2008	The Committee had a concern regarding the Commission's restrictions on the use of the terms "realty" and "real estate" in the names of entities operating in that field.	possible problem
4/25/2006	Regents	yes	no	n/a	10/5/2006		
5/25/2006	Regents	no	no	n/a	8/3/2006		
11/20/2006	Regents	yes	yes	yes	2/18/2007	information in a table and in an attachment are not included in the database due to their formats and length; consider keeping hard copies in KLRD files	
4/24/2007	Regents	yes	yes	yes	7/12/2007		

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments	
5/22/2007	Regents	yes	no	no	9/27/2007	The final regulation addressed one Committee concern (that the student not be concurrently enrolled in high school), but there was no response to the Committee's question about whether the Board considered students who are not yet age 18.	possible problem
1/9/2006	Revenue	yes	no	n/a	3/9/2006	The Committee requested changes to references and a grammar correction.	minor problem
10/2/2006	Revenue	yes	yes	yes	11/2/2006		
11/20/2006	Revenue	yes	yes	no	1/4/2007	Revenue changed only a date in two regulations, as suggested. The agency's letter didn't address other Committee requests for clarifications.	minor problem
1/4/2007	Revenue	yes	yes	no	3/29/2007	The response fully addressed all comments except that on including a website address for review of proposed regulations.	
7/9/2007	Revenue	yes	yes	yes	10/18/2007	The renewal fee regulation was heard again 11/6/08.	
10/8/2007	Revenue	yes	no	n/a	12/13/2007	The agency revoked its regulation setting fines and penalties. The Committee was told that there would be agency guidelines, which do not have the force and effect of law, for the imposition of fines and penalties. The Committee requested that any fines and penalties within the discretion of the Secretary be established through rules and regulations.	problem
4/7/2008	Revenue	yes	yes	yes	6/5/2008	The final version of 92-12-140 only partially addresses the Committee's concern about placing the value of a donation at the lesser of fair market value or value when purchased when the item's current fair market value far exceeds the original purchase price. The final says "an independent appraisal may be necessary in determining fair market value" and retains the "lesser of" language.	
5/28/2008	Revenue	yes	no	n/a	8/14/2008	The Department did include the word "of," as requested by the JCARR, in the final regulation. (That was the only comment.)	
9/22/2008	Revenue	yes	yes	yes	1/29/2009		
1/8/2009	Revenue	yes	yes	yes	2/19/2009		
2/13/2009	Revenue	yes			5/7/2009		
10/8/2007	Revenue - Alcoholic Beverage Co	yes	yes	yes	12/13/2007		
5/28/2008	Revenue - Alcoholic Beverage Co	yes	no	n/a	8/14/2008	The Committee requested moving a phrase, for clarity. The requested change was made in the final regulation.	
1/4/2007	Secretary of State	yes	no	n/a	3/8/07 and 4/19/07	The final regulation did reflect the requested clarification.	
4/7/2008	Secretary of State	yes	no	n/a	6/19/2008	(UCC) The Committee questioned the authority of the agency to adopt rules and regulations in Article 17 until after 2008 SB 449 went into effect (7/1/08).	possible problem
4/7/2008	Secretary of State	no	no	n/a	6/19/2008	(voting)	
8/12/2008	Secretary of State	yes	yes	yes	10/16/2008	The Committee requested only a copy of a letter from the Governor, which was provided.	
1/8/2009	Secretary of State	yes	yes	yes	2/19/2009		
4/25/2006	Securities Commissioner	no	yes	n/a	8/13/2006		
7/17/2006	Securities Commissioner	yes	yes	yes	1/4/2007		
4/7/2008	Securities Commissioner	no	no	n/a	7/31/2008		
9/22/2008	Securities Commissioner	no	n/a	n/a	12/4/2008		
4/6/2009	Securities Commissioner	yes	yes	yes	4/30/2009 for exemptions, 5/7/09 for unethical practices regulations		
4/25/2006	SRS	yes	no	n/a	6/8/2006		
5/25/2006	SRS	yes	yes	yes	7/27/06 and 12/21/06		
7/17/2006	SRS	yes	yes	yes	11/23/2006		
10/2/2006	SRS	yes	yes	yes	11/16/2006		
10/8/2007	SRS	no	yes	n/a	12/13/2007		
4/7/2008	SRS	yes	yes	yes	5/15/2008		
5/28/2008	SRS	n/a			9/4/2008	(These were revocations only, in conjunction with the KHPA regulations.)	
4/7/2009	SRS	yes	yes	yes		(eligibility for General Assistance)	
8/12/2008	Tax Appeals	yes	yes	yes	10/9/2008		
11/20/2006	Technical Professions	yes	yes	yes	12/21/2006		
4/24/2007	Technical Professions	no	yes	n/a	6/14/2007		

JCARR meeting date	Agency	Committee comments?	Agency response letter in file?	Did agency address each Committee comment in its response?	Final rules have been published? (Register date)	Comments	
1/14/2008	Technical Professions	yes	yes	yes	3/13/2008		
11/6/2008	Technical Professions	yes	yes	yes	1/8/2009	The agency also sent the JCARR requested information on other states that allow continuing education credit for participation on boards.	
9/6/2006	Treasurer	yes	yes, dated 3/19/09	n/a	10/12/2006	The Committee suggested the adoption of the referenced sections of the federal Internal Revenue Code and said "the current construction may be a potential unlawful delegation." There were no changes between proposed and permanent regulations. The response says the Treasurer and AG offices "concluded that references to definitional sections were permitted without a formal adoption by reference. This can be distinguished from adopting standards or other operative language."	
4/24/2007	Treasurer	yes	yes, dated 3/19/09	n/a	6/21/2007		
8/12/2008	Treasurer	yes	yes, but dated 3/19/09	n/a	10/9/2008	The Committee requested information on the Treasurer's authority regarding housing loans for building in a floodplain and a determination of whether the program should follow HUD guidelines. The housing loan program regulation the JCARR heard, 3-3-2, was further amended before it became final.	
7/17/2006	Veterans Affairs	yes	no	n/a	11/9/2006	The final regulation includes a new subsection that addresses the JCARR's concern.	
2/9/2007	Veterans Affairs	yes	yes	yes	4/12/2007		
1/8/2009	Veterans Affairs	yes	yes	yes	4/16/2009		
4/4/2007	Veterinary Medical Examination	yes	yes	no	12/6/2007	The Committee had only one comment, about making the proposed regulation available on the agency's website. The response did not address that concern.	minor problem
2/28/2006	Wildlife and Parks	no	yes	n/a	11/9/2006		
3/29/2006	Wildlife and Parks	no	yes	n/a	5/18/2006		
10/2/2006	Wildlife and Parks	yes	yes	no (it addressed one of two)	10/9/2006	KDWP's letter did list all changes to the proposed regulations. KDWP did not make a suggested wording change.	
11/20/2006	Wildlife and Parks	yes	yes	yes	1/25/2007		
2/9/2007	Wildlife and Parks	no	yes	n/a	3/29/2007		
4/4/2007	Wildlife and Parks	no	yes	n/a	5/3/2007		
5/22/2007	Wildlife and Parks	no	yes	n/a	7/5/2007		
7/9/2007	Wildlife and Parks	yes	yes	no	8/30/2007	In its response, KDWP listed the changes between the proposed and final regulations but didn't respond to the Committee's questions regarding enforcement and how the public would be informed.	problem
10/8/2007	Wildlife and Parks	no	yes	n/a	11/1/2007		
11/19/2007	Wildlife and Parks	no	yes	n/a	1/24/2008		
2/15/2008	Wildlife and Parks	yes	yes	yes	3/27/2008		
4/7/2008	Wildlife and Parks	no	yes	n/a	5/1/2008		
5/28/2008	Wildlife and Parks	yes			8/28/08 for all but 115-20-2	(Proposed 115-20-2 did not pass on a Commission vote held August 14, 2008.)	
9/22/2008	Wildlife and Parks	no	yes	n/a	11/13/2008		
4/6/2009	Wildlife and Parks	no	yes	n/a	4/30/2009 for 2 of the regs heard		

# Kansas Coalition Against Sexual and Domestic Violence



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## Testimony Joint Committee on Administrative Rules & Regulations May 18, 2009

### Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCS DV) is a private non-profit organization whose member programs provide direct services to victims of sexual and domestic violence and stalking across the state. Member programs are located in large and small communities across Kansas and provide services such as 24-hour hotlines, emergency shelter, crisis intervention, hospital advocacy, transitional housing, court advocacy and more. On behalf of the victims and survivors of sexual and domestic violence, KCS DV offers this testimony concerning the proposed regulations from the Department of Labor.

The purpose of K.S.A 44-1131-1133 is to ensure that victims of domestic violence and sexual assault are protected in the workplace when they need to take leave to address the impact of the sexual and domestic violence. It is critical that victims be able to maintain employment while seeking services and participating in criminal and civil proceedings. The proposed regulations are an important step in providing this assurance for victims; unfortunately, they fall short in two respects: first, they leave victims without a specific remedy, and second, they do not provide for confidentiality of records.

KCS DV's first concern is that the regulations as proposed do not provide a remedy for victims even in cases where the employer is found to have violated K.S.A 44-1132. The regulations only provide a process by which the Department of Labor will make a determination as to whether an employer has violated Kansas law. According to the proposed regulations, following an investigation by the Department of Labor, the Department will issue a determination and serve it on both employer and employee. That is all. The determination is the only action that will be taken if an employer is found to have violated the law. The proposed regulations do not require the Department to require any remedial measures by employer or to award the employee any relief. KCS DV believes this would be counter to the spirit of the law, which was intended to keep help keep victims in their jobs during this very critical time.

**Joint Committee on Administrative  
Rules and Regulations  
May 18, 2009  
Attachment 2**



K.S.A. 44-1133 gives the Department of Labor authority to enforce the statute. Without regulations that direct anything beyond a letter of censure, there is no real enforcement. Without the ability to provide employees with a remedy, the Department cannot appropriately enforce the law. Receiving a letter stating that the employer has violated the law does little to provide the support a victim of sexual or domestic violence needs to recover and move forward after the violence. Without an order requiring the employer to restore the employee to her previous position, the proposed enforcement mechanism is virtually worthless to her.

KCSDV's second concern is that the regulations provide no protections for confidentiality of information disclosed during the investigation, determination, administrative hearing or judicial review. Confidentiality is essential to the safety and well-being of victims of domestic violence and sexual assault. Kansas public policy recognizes the importance of confidentiality for victims of domestic violence and sexual assault in various statutes, including the workplace protection statutes before the Committee today. Specifically, Kansas law includes confidentiality provisions in the following statutes:

- Employment Security Insurance Act for Domestic Violence Survivors (K.S.A. 44-760), enacted in 2003, requires confidentiality in unemployment proceedings. That provision can be found in K.S.A. 44-706(a)(12)(B).
- Address Confidentiality Program (Safe at Home Program) was enacted in 2006 and allows victims of domestic violence, sexual assault, stalking and trafficking to obtain a confidential address. Administered by the Kansas Secretary of State's office, this program can be found at K.S.A. 75-451-458.
- Protection from Abuse Act (K.S.A. 60-3101 *et seq.*) allows a victim of domestic violence to request that her address remain confidential; that provision can be found at K.S.A. 60-3104(e).
- Protection for Stalking Act (K.S.A. 60-31a01 *et seq.*) requires that the court keep the address and telephone number of the petitioning stalking victim confidential and that provision can be found at K.S.A. 60-31a04(3).
- Kansas Supreme Court rules require that appellate documents refer to victims of sexual assault by initials only. See Supreme Court Rule 7.043(c).
- The Uniform Child Custody Jurisdiction and Enforcement Act (K.S.A. 38-1336 *et seq.*) provides for safety and confidentiality if the health, safety, or liberty of a party or child would be jeopardized and can be found at K.S.A. 38-1356(e), with additional provisions for addressing safety at K.S.A. 38-1357(c).

K.S.A. 44-1132 itself contains a confidentiality provision, requiring employers to keep documentation of the sexual or domestic violence confidential. Additionally, SB 87, recently signed by the Governor, is designed to provide for protection of the personal information of victims of domestic violence, sexual assault, and stalking.

All of these Kansas laws send a clear message that the privacy of victims of sexual and domestic violence is an important public policy concern. Accordingly, it is essential these regulations before the Committee today reflect victims' need for confidentiality. Since the underlying employer proceedings require confidentiality, KCSDV believes it is

essential that these confidentiality measures also be reflected in the enforcement regulations as well. At the very least, the regulations should reflect an acknowledgement of the importance of confidentiality of the information provided to the employer.

KCSDV urges the Joint Committee on Administrative Rules and Regulations to modify the proposed regulations to include a true enforcement mechanism and to require confidentiality of administrative proceedings taking place under these new regulations.

Laurel Klein Searles, J.D.  
Staff Attorney  
KCSDV

### Confidentiality

Any records, required to remain confidential under K.S.A. 2007 Supp. 44-1132 and by any other law and produced by the employer shall remain confidential and shall be returned to the employer upon the conclusion of the matter.

### Enforcement

If the secretary or secretary's designee concludes that the facts establish probable cause to believe that the employer engaged in practices prohibited by K.S.A. 2007 Supp. 44-1132, the determination shall include actions the employer shall take to remedy the unlawful practice. Such actions can include, but are not limited to: (i) reinstatement of the employee by the employer, with or without back pay; (ii) reinstatement by the employer of the employee to the same job status, including hours, pay and position, as the employee enjoyed prior to the unlawful practices by the employer; (iii) implementing written policies by the employer to ensure that the unlawful practice does not continue; (iv) follow-up reporting by the employer to the secretary as to any and all actions taken by the employer in response to the determination; and (v) other remedies that will place the employee in the position the employee would have been in had the employer complied with the provisions of K.S.A. 2007 Supp. 44-1132.

**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  
May 18, 2009**

Background

The regulations before you today are designed to assist the Commission in administering the Kansas Underground Utility Damage Prevention Act. The KCC first promulgated KUUDPA regulations in 2007. Last year, with the passage of House Bill 2637, the requirements of KUUDPA were changed significantly. The primary change was the mandatory inclusion of water and wastewater utilities as operators required to provide locates of their facilities upon request. The bill defined water and wastewater operators as operators of tier 2 facilities. In addition to making them subject to KUUDPA requirements, the bill also provided a series of special provisions for tier 2 operators. The changes required by HB 2637 become effective on July 1, 2009. Over the summer and fall of 2008, KCC Staff worked with the KUUDPA stakeholders to amend the regulations in order to incorporate the HB 2637 changes into the regulations.

**K.A.R. 82-14-1 Definitions:**

In addition to the amendments required because of new legislation, Staff is also proposing to clarify several terms that are used in the KUUDPA or its associated regulations. For this purpose we included a definition of Locatable and also defined the "notification center" as the center operated by Kansas One Call, Inc. The definition section was also amended to define the various types of membership in the notification center that are allowed for tier 2 operators. We are also modifying the definition of the term "tolerance zone" in order to clearly define the limits of this measurement.

**K.A.R. 82-14-2. Excavator Requirements:**

Minor changes were made to this regulation in order to define an excavator's duties in notifying the various types of members of the notification center. Because the statute will allow different methods of notification, the regulation establishes the time period an excavator must allow the operator to perform locates for each method.

**K.A.R. 82-14-3. Operator Requirements:**

This regulation has a number of amendments in order to provide guidance to the various types of notification center members. It establishes the frequency at which a tier 2 operator may switch membership between the three options of tier 1, tier 2, and tier 3. It also addresses the recordkeeping requirements for each of the types of membership. HB 2637 recognized the difficulty in locating buried water and wastewater lines. Therefore the bill granted the Tier 2 operator (defined as all water and sewer operators, regardless of their membership election) some leeway in the accuracy requirement for providing locates of its facilities to excavators. This

regulation defines the parameters that apply to each of the accuracy variances granted to the tier 2 operator.

One significant deletion of a provision in the current regulation occurs in paragraph (s) of the regulation. In this paragraph, a request by the operator that an excavator "whiteline" an excavation site prior to marking now becomes an option any operator may use at will. This change was mandated by HB2637.

**K.A.R. 82-14-4. Notification Center Requirements:**

If a Tier 2 operator chooses to be a tier 2 or tier 3 *member* of the notification center, it essentially operates its own call center for receiving and dispatching excavators' locate requests. However, the notification center operated by Kansas One Call, Inc. will be required to provide contact information for its tier 2 or 3 member to the excavator in order that the excavator can make the subsequent notifications to the affected water or wastewater operators. This regulation is expanded to include the obligations of the notification center and its various membership categories regarding their duties to provide contact information and facility maps such that the notification process works smoothly.

**K.A.R. 82-14-5. Tier 3 member notification requirements:**

This regulation currently deals with KCC enforcement policies. In order to keep the operator requirements in sequential order, the enforcement policies have been moved to a new regulation under 82-14-6. In the proposed regulation, K.A.R. 82-14-5 is replaced to provide requirements for the call centers operated by Tier 3 members. It includes provisions for recordkeeping and providing an effective call center for excavators.

**K.A.R. 82-14-6. Violation of act; enforcement procedures:**

This new regulation contains the body of the KCC enforcement procedures currently codified in K.A.R. 82-14-5. It is also updated to clarify the manner in which the Commission may impose penalties for violations.