

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 7-8, 2002
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Melvin Neufeld, Vice Chairman
Senator Karin Brownlee
Senator U. L. "Rip" Gooch
Senator Chris Steineger
Representative Carl Holmes
Representative Bill Light
Representative Laura L. McClure
Representative Janice Pauls
Representative Tony Powell

Members Absent

Senator Stan Clark
Representative L. Candy Ruff

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Judy Glasgow, Committee Secretary

Others Present

Leslie Kaufman, Kansas Farm Bureau
Paula Lentz, Kansas Corporation Commission
Bret Lawson, Kansas Corporation Commission
Mike Hoem, Kansas Corporation Commission
Tom Hatten, Kansas Department of Revenue
Mark W. Stafford, Board of Healing Arts
Lawrence Buening, Jr., Board of Healing Arts
Whitney Damron, Kansas Bar Association
John Peterson, American Century
Sandy McAdam, Kansas Department of Health and Environment
Chris Tymeson, Kansas Department of Wildlife and Parks
Tom Mosher, Kansas Department of Wildlife and Parks
Faith Loretto, Department of Administration
Peggy Nanne, State Treasurer's Office
Blanche Parks, State Treasurer's Office
Carl Hansen, Kansas Department of Health and Environment
Ronda Sanders, Kansas Department of Health and Environment
Robin Norris, Kansas Department of Health and Environment
Barry Brooks, Kansas Department of Health and Environment
Robin Kempf, Kansas Board of Regents
Randy Forbes, Kansas Pharmacy Board
Gary Meyer, Kansas Department of Agriculture
Dan Riley, Kansas Department of Agriculture
George Blush, Kansas Department of Agriculture
Leslie Kaufman, Kansas Farm Bureau
Doug Wareham, Kansas Agribusiness Retailers Association
Chris Wilson, Kansas Agriculture Aviation Association
Janet McPherson, Kansas Farm Bureau
Susan Linn, Board of Pharmacy
Ben Burgess, Kansas Parole Board
Jennifer Hendrix, Department of Social and Rehabilitation Services
Chris Swartz, Social and Rehabilitation Services
Dennis Priest, Social and Rehabilitation Services
David Halferty, Kansas Department on Aging

Monday, October 7, 2002 Morning Session

Chairman Umbarger called the meeting to order at 10:00 a.m.

Paula Lentz, Kansas Corporation Commission (KCC), was recognized by Chairman Umbarger, to speak to the proposed rules and regulations noticed for hearing by the KCC

on Article 82-1. KAR 82-1-201, revoked; 82-1-202, conducting business before the commission; 82-1-204, definitions; 82-1-204a, classification of public utilities for filing purposes; 82-1-205, office hours; 82-1-206, communications; 82-1-207, ex parte communications in non-KAPA proceedings; 82-1-208, sessions; 82-1-212, dockets; 82-1-214, commencement of a proceeding; 82-1-215, copies of pleadings and prefiled testimony; 82-1-216, service of pleadings; 82-1-217, computation and extension of time; 82-1-218, form and contents of pleadings; 82-1-219, general regulations relating to pleadings and other papers; 82-1-220, complaints; 82-1-221, exhibits and documentary evidence; 82-1-221a, confidentiality; 82-1-221b, revoked; 82-1-222, prehearing conferences; procedure; 82-1-224, joinder of proceedings and parties; 82-1-225, intervention; 82-1-226, continuances and adjournment; 82-1-227, subpoenas; 82-1-228, hearings; 82-1-229, use of prefiled testimony; 82-1-230, hearings; evidence and procedure; 82-1-230a, settlement agreements; 82-1-231, filing requirements for rate proceedings; 82-1-231a, filing requirements for rate proceedings by rural electric distribution cooperative systems providing service to fewer than 15,000 customers; 82-1-231b, filing requirements for rate proceedings by electric, gas, water, and telecommunications utilities other than class A; 82-1-232 orders of the commission; 82-1-234a, discovery; 82-1-235, petitions for reconsideration; compliance with orders; 82-1-237, investigation and hearing; 82-1-238, transcripts; and 82-1-239, definitions.

Ms. Lentz stated that the revisions are the result of the Governor's Executive Order 00-03, requesting all agencies to review and update all regulations. She added that the updates have no economic impact.

Regarding the rules and regulations in Article 1 relating to practices and procedures of the Commission, members and staff noted the history sections throughout should be reviewed to ensure current references since these revisions have evolved over a period of several years. In KAR 82-1-208 (b), a member suggested changing the wording in the regulation to correspond with the language used in the statute, *i.e.*, chairperson rather than chair. Concerning KAR 82-1-216 (a), and perhaps in other regulations, the Commission should consider adding "e-mail" as a method of notification with a followup hard copy, since facsimile transmission is allowed.

Staff noted that these regulations attempt to address two different types of hearings, those under the general authority of the Commission, and those required under the Kansas Administrative Procedure Act. The suggestion was made that the Commission staff review the procedures to ensure that there are no conflicts in the regulations. Further, staff noted that the Open Records Act does not require the telephone number to be furnished (KAR 82-1-221a ©). Ms. Lentz stated she would take these matters back to the agency for review.

Ms. Lentz continued with her review of proposed rules and regulations noticed for hearing by the KCC, Motor Carrier Regulations KAR 82-4-2, general duty of carrier; 82-4-20, transportation of hazardous materials by motor vehicles; 82-4-21, requiring insurance; 82-4-23, general requirements; 82-4-26, general requirements for certificates, permits, and licenses; 82-4-26a, certain private motor carriers exempt from obtaining commission authority; 82-4-27, application for certificates of convenience and necessity and certificates of public service; 82-4-27a, applications for transfer of certificates of convenience and

necessity, certificates of public service, and permits; 82-4-27e, application to merge or consolidate intrastate common or contract authority; or to acquire control or management of an intrastate common or contract motor carrier operation; 82-4-28, application for contract carrier permit; 82-4-28a, application to transfer contract carrier permits; 82-4-29, application for private carrier permits; 82-5-29a, application for authorization of joint registration of equipment; 82-4-30a, application for interstate registration; 82-4-32, completing motor carrier applications; 82-4-35, preserving certificates or permits; 82-4-46, uniform system of accounts and annual reports; 82-4-49b, revoked; 82-4-49c, revoked; 82-4-49d, revoked; 82-4-49e, revoked; 82-4-63, contested and uncontested motor carrier hearings; and 82-4-65, protestants. The conferee noted that two regulations 82-4-63 and 82-4-65 were being withdrawn from the public hearing and will be presented at a future date.

A Committee member suggested, in KAR 82-4-2, that the Commission consider referring to a change of physical location rather than to a change of street address. Staff noted that the list of hazardous materials exempted by 49 CFR. should be checked against the list exempted in 82-4-20 to ensure that exempted documents correspond to the documents listed in the federal regulations being adopted by reference. Again, in this set of regulations, the history sections should be reviewed to be sure citations are current. It was also suggested that it is appropriate to cross references material already adopted by reference in another regulation.

Finally, Ms. Lentz concluded the review of proposed rules and regulations noticed for hearing by the KCC concerning Railroad Grade Crossing Protection rules 82-7-2, 82-7-3, 82-7-4, and 82-7-5, revoked; and rules for setting of electric generation facilities, KAR 82-8-1, definitions; 82-8-2, formal requirements for a permit application and supporting documents; and 82-8-3, requirements for applications.

Ms. Lentz responded to various questions concerning the proposed rules and regulations, including the requirement that unglazed paper be used. There being no further questions, the Chairman thanked Ms. Lentz for her presentation before the Committee.

Afternoon Session

Chairman Umbarger recognized Tom Hatten, who appeared before the Committee to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue (Attachment 1). KAR 92-19-5, revoked; 92-29-5a, Extension of time for filing a return; 92-19-5b, failure to file a return; estimated assessment; 92-19-22, revoked; 92-19-22a, admissions; 92-19-22b, charges for participation in recreational activities; 92-19-23, revoked; 92-19-23a, coin-operated devices, including vending machines; 92-19-36, revoked; 92-19-36a, jeopardy assessments; 92-19-50, revoked; 92-19-57, sales tax on motor fuels, special fuels, liquefied petroleum, and other fuels; and 92-19-81, abatement of final tax liabilities.

Regarding KAR 92-19-5b, Mr. Hatten responded to questions from Committee members concerning the mailing of notices of assessment. A member was concerned that regular first class mail does not ensure receipt of the notice. Members also expressed concern that the language of the regulation does not give the taxpayer access to the abatement process following the issuing of the final administrative determination. The conferee stated these comments would be reviewed by the agency.

Mr. Hatten responded to a number of general questions, including issues associated with collecting tax on persons provided "seating" through a parking lottery at local high school football games. The issue was not one the conferee was familiar with and he was thanked by the Chairman for his appearance before the Committee.

Vice Chairman Neufeld welcomed Mark Stafford, General Counsel for the State Board of Healing Arts, to address the proposed rule and regulation noticed for hearing; KAR 100-22-1, release of records.

Mr. Stafford noted that the proposed changes in this regulation are the result of 2002 SB 119, which set out the allowable charges for providing copies of patient records. He responded to questions from members concerning the use of "reasonable costs" in the regulation instead of using the rates as set forth in the statute. Mr. Stafford said the Board felt this language complied with both the federal privacy laws and with language in the state law.

Larry Buening appeared before the Committee for the State Board of Healing Arts, to address the proposed rules and regulations noticed for hearing (Attachment 2). KAR 100-49-1, approved schools of podiatry; 100-49-6, education requirements; 100-49-7, examinations; 100-49-8, continuing education; 100-49-9, additional requirements 100-54-4, fees; and 100-55-4, fees.

Mr. Buening answered questions of a general nature from Committee members concerning these regulations. Members and staff suggested that the some of the history sections should be updated and corrected. Additionally, the Committee expressed its appreciation for the manner in which several listed statutes were made applicable to podiatrists (KAR 100-49-9). Lastly, staff pointed out that KAR 100-49-4 should be modified to reflect statutory changes that become effective April 1, 2003, *i.e.*, the change from registration to licensure for occupational therapists.

There being no further questions, the Vice Chairman thanked Mr. Stafford and Mr. Buening for their presentations.

Faith Loretto, Department of Administration, Legal Section, came before the Committee on behalf of the State Treasurer to review the proposed rules and regulations noticed for hearing by the State Treasurer relating to the Kansas Postsecondary Education Savings Program. KAR 3-2-2, excess contributions; and 3-2-3, withdrawals.

Ms. Loretto explained that the amendments to the two regulations were being proposed in response to recent legislative changes in the Kansas law. The conferee

answered questions concerning the Learning Quest accounts and how these rules and regulations would simplify the ability to add to the accounts by all interested parties. The Committee had no comments specific to the proposed changes and Ms. Loretto was thanked for her presentation.

Chris Tymeson and Tom Mosher were present to address the proposed rules and regulations noticed for hearing by the Department of Wildlife and Parks. KAR 115-17-6, commercial mussel fishing license; license application and requirements, authority, reports, general provisions, and license revocation; 115-17-7, commercial harvest of mussels; legal species, seasons, size restrictions, daily limits, and possession limits; 115-17-8, commercial harvest of mussels; legal equipment, taking methods, and general provisions; 115-17-9, commercial mussel fishing; open areas; 115-17-14, commercial mussel dealer permit; permit application and requirements, authority, reports, general provisions, and permit revocation; 115-20-2, certain wildlife; legal equipment, taking methods, possession, and license requirement; and 115-30-8, boating; accident reports.

Mr. Tymeson explained that the number of mussels has declined significantly in Kansas. The proposed regulations put in place a ten-year moratorium on the commercial harvest of mussels. In response to questions about commercial harvest, Tom Mosher responded that most mussels harvested in Kansas were exported to Japan for use in the growing of pearls.

The Committee had no comment on the boating accident regulation and the Chairman thanked Mr. Tymeson and Mr. Mosher for their appearance before the Committee.

Chairman Umbarger welcomed Barry Brooks, Kansas Department of Health and Environment (KDHE), to address the proposed rules and regulations noticed for hearing. KAR 28-1-18, notification of Kansas Department of Health and Environment by laboratories of positive reaction to tests for certain diseases.

Mr. Brooks and Gail Hanson commented that the changes are to bring the Department's rules and regulations into compliance with the Center for Disease Control requirements that all blood lead test results be reported to it. Consequently, the proposed regulation requires laboratories performing such tests to report all results to KDHE. Conferees said the agency will be able to more accurately report statistics and to better utilize resources. In response to questions concerning the added number of lab reports being tracked, Mr. Brooks stated that the additional reporting will all be handled by computer and not cause additional work.

Mr. Brooks and Ms. Hanson were thanked by Chairman Umbarger for the presentation before the Committee.

Robin Kempf came before the Committee to speak to the proposed rules and regulations noticed for review by the Kansas Board of Regents (Attachment 3). KAR 91-32-1 through 91-32-9, revoked.

Ms. Kempf stated that the Board no longer performs the function of accrediting area vocational-technical schools and area vocational schools. Therefore, these regulations are being revoked. There were no questions and the Chairman thanked her for her appearance before the Committee.

Prior to recessing for the day, the Chairman requested action on the minutes of the previous meeting. *Representative Light moved, seconded by Representative Pauls, to approve the minutes of August 28, 2002 as written; the motion carried.*

Tuesday, October 8, 2002 Morning Session

Chairman Umbarger reconvened the meeting at 9:00 a.m., October 8, 2002. He introduced Susan Linn, State Board of Pharmacy, to speak to the proposed rules and regulations noticed for hearing. KAR 68-2-9, change of ownership; duty of registrant to notify board; 68-2-10, cessation of operations; 68-2-11, security; 68-2-12a, minimum requirements for library, equipment, and supplies; 68-2-20, pharmacist's function in filling a prescription; 68-7-12, responsibility of pharmacist-in-charge in other than a medical care facility pharmacy; 68-7-12a, nonresident pharmacies; 68-7-12b, incident reports; 68-9-2, automated drug delivery systems; 68-11-1, fees for examination and licensure as a pharmacist; 68-11-2, fees for premises registrations and permits; 68-12-2, resale of dispensed prescription drugs; and 68-13-1, preparation, compounding, and dispensing of parenteral products for other than immediate use.

Ms. Linn and Randy Forbes, attorney for the Board, answered questions of a general nature from Committee members. Staff suggested that, since the term "majority owner" is used in KAR 68-2-9 but not defined, perhaps it should be included in a definition section. More specifically, members were concerned with the disposition of drugs under KAR 68-2-10. In addition to requiring an explanation of the disposition of the drugs upon cessation of the operation of a pharmacy, a member said an inventory of the drugs also should be required. In KAR 68-12-2, a member was concerned about the return of drugs dispensed in a unit dose only for products separated packaged. Ms. Linn commented that a Board member had said that different drugs packaged together can be cross contaminated and not useful for redispensing. The member suggested the Board evaluate the impact this restricted return policy might have on the drug portion of the state's Medicaid Program and on the budget of the Department of Social and Rehabilitation Services (SRS).

Ms. Linn and Mr. Forbes were thanked for their explanation of the Board's proposed rules and regulations.

Chairman Umbarger recognized Ben Burgess, member of the Kansas Parole Board, to discuss the proposed rules and regulations noticed for hearing by the Kansas Parole Board. KAR 45-1-1; 45-4-4; 45-4-9; 45-6-1; 45-6-5; 45-7-1; 45-9-1; 45-9-2; 45-9-3; 45-9-4; 45-10-1; 45-11-1; 45-14-1; 45-16-2; 45-16-3; and 45-16-4; revoked. KAR 45-100-1,

definitions; 45-200-1, attendance at hearings; 45-200-2, single board member hearings; review and appeals; 45-300-1, docketing regular parole hearings; 45-300-2, absence of inmate at docketed hearing; 45-400-1, general provisions; 45-400-2, parole plan; 45-400-3, release; 45-400-4, deferred release; 45-500-1, general provisions; 45-500-2, final revocation hearings; 45-500-3, computation of time; 45-500-4, waiver of final revocation hearing; 45-600-1, general provisions; 45-700-1, application for release; 45-700-2, review and consideration of application for release; 45-800-1, general provisions; 45-900-1, procedures; 45-1000-1, restitution; 45-1000-2, transportation expenses; and 45-1000-3, manner of payments.

Concerning KAR 45-100-1, a member sought clarification of the differences between the terms "Parole" and "Postrelease supervision." Mr. Burgess noted that the two are similar but distinguished from each other by the date of the crime committed by parolee or person on postrelease supervision. The member suggested the applicable dates be inserted in each definition. Regarding KAR 45-200-1, a member wondered about Board members being prohibited from attending parole hearings. While Mr. Burgess said that would not happen, the member believed that the existing language made such a thing possible. Finally, members, Mr. Burgess and Ms. Scafe discussed the new regulation regarding release of incapacitated inmates. Since such releases can be made under the wording of the regulation without a hearing and without appeal of the decision, a member believed that any action to release a person under the new regulation should be done only upon a majority vote of the whole Board.

Mr. Burgess was thanked for his appearance before the Committee.

Dr. Wolff reviewed for the Committee rules and regulations previously reviewed and now filed by the agencies as permanent.

Accountancy, Board of
Administration, Secretary of
Aging, Department on
Agriculture, Department of
Agricultural Remediation Board
Animal Health Department
Attorney General
Bank Commissioner
Behavioral Sciences Regulatory Board
Commerce and Housing, Department of
Corrections, Department of
Emergency Medical Services
Fire Marshal
Healing Arts, Board of
Health and Environment, Department of
Human Resources, Department of

Insurance Department
Kansas Corporation Commission
Kansas Public Employee's Retirement System
Mortuary Arts, Board of
Nursing, Board of
Pharmacy, Board of
Racing and Gaming Commission
Real Estate Appraisal Board
Real Estate Commission
Revenue, Department of
Secretary of State
Securities Commissioner
Social and Rehabilitation Services
Tax Appeals, Board of
Technical Processions, Board of
Wildlife and Parks, Department of

The meeting was recessed for lunch at 12:00 Noon.

Afternoon Session

Chairman Umbarger called the meeting back to order and recognized Dan Riley, General Council for Department of Agriculture to speak to the proposed rules and regulations noticed for hearing. KAR 4-13-25, bulk pesticide storage and handling of pesticides; definitions; 4-13-25a, exemptions; 4-13-25b, quantities of bulk pesticide; 4-13-25c, location, design, and construction requirements of a bulk pesticide storage facility; 4-13-25d, secondary containment for bulk pesticide storage; 4-13-25e, requirements for mixing and loading pads for bulk pesticides; 4-13-25f, requirements for storage containers and appurtenances for bulk pesticides; 4-13-25g, discharge, recovery, and reporting requirements; 4-13-25h, submission of structural plans; 4-13-25i, compliance dates; 4-13-25j, bulk pesticide storage facility inspection and maintenance requirements; 4-13-25k, site closure and discontinuation of operation; and 4-13-25l, penalty for noncompliance with pesticide containment.

Mr. Riley and Gary Meyer replied to questions from Committee members concerning statutory authority to adopt many of the provisions presented in the regulations. Questions also were asked about who is covered and who is exempt, and what additional costs will be incurred to industry, individual farmers, aerial applicators, and county weed programs to implement the regulations. Mr. Riley responded that these regulations were for environmental protection and have been supported by the private industry itself. He noted that discussions about regulations concerning bulk pesticide containment and storage have been going on for nearly a decade. Now, he said, seems to be an appropriate time to propose the regulations.

The Chairman thanked Mr. Riley for his comments and explanations.

Chairman Umbarger recognized Janet McPherson, Assistant Director, Kansas Farm Bureau, to speak to regulations proposed by the Kansas Department of Agriculture regarding Bulk Pesticide Regulations ([Attachment 4](#)). She noted that Kansas Farm Bureau had several items which they would like addressed before enactment; one being the short time frame for owners to certify their facility. There being no questions Ms. McPherson was thanked for her appearance before the Committee.

Doug Wareham, Kansas Agri-business Retailers Association appeared before the Committee to address the bulk pesticide regulations ([Attachment 5](#)). Kansas Agri-business Retailers Association represents the primary retail agribusiness operations, and in addition represent the agri-chemical manufacturing firms and other businesses related to the crop production industry. He stated that this organization is supporting the development and establishment of pesticide regulations but do have some recommendations and comments before the regulations move forward. Chairman Umbarger thanked Mr. Wareham for his appearance before the committee.

Chris Wilson, representing the Kansas Agricultural Aviation Association, Kansas Dairy Association, and Kansas Seed Industry, addressed the Committee on the proposed bulk pesticide regulations ([Attachment 6](#)). She stated that one of the major concerns is with

the time frame for compliance and that there are approximately 125 aviation facilities that will have to comply with these regulations. Ms. Wilson responded to several questions of a general nature from Committee members. She was thanked by the Chairman for her comments before the Committee.

Chairman Umbarger stated that, due to the shortage of time and with the concurrence of the Department of Agriculture, the Rules and Regulations noticed for hearing on proposed dairy regulations would be postponed until the Committee's next meeting.

Representative Holmes called on Jennifer Hendrix, Department of Social and Rehabilitation Services, Community Services, to speak to the proposed rule and regulation noticed for hearing by the Department. KAR 30-5-308, nonsupplementation of HCBS services.

There being no questions Ms. Hendrix was thanked for her presentation before the Committee.

Chris Swartz was recognized to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation, Home Health Care Policy. KAR 30-5-64, prior authorization; 30-5-94 reimbursement for pharmacy services; 30-5-101a, revoked; and 30-5-108a, reimbursement for durable medical equipment, medical supplies, orthotics, and prosthetics.

Ms. Swartz stated that 30-5-64 was being amended to add drugs that are not on the preapproved list. She stated that this regulation would continue to be amended as drugs are removed and added to the list. It was noted that SB 444 had changed the notice time for adopting these rules and regulations to 30 days. Ms. Swartz was thanked for her comments.

Representative Holmes called on Dennis Priest, Program Administrator Integrated Services, Department of Social and Rehabilitation Services, to address the rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-6-86, poverty-level and low-income Medicare beneficiaries; determined eligibles; and 30-6-103, determined eligibles, protected income levels.

Staff noted that the history section in KAR 30-6-86 needed to be corrected. After answering some general questions, Mr. Priest was thanked for his appearance before the Committee.

David Halferty, Program Manager, Kansas Department on Aging, was recognized to address the rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services related to adult care homes. KAR 30-10-17, cost reports; 30-10-18, rates of reimbursement; and 30-10-23a, non-reimbursable costs.

Staff suggested in KAR 30-10-18 that designated cost centers be cross referenced to the cost report. There being no further questions Mr. Halferty was thanked for appearing before the Committee.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the reporting of lead blood levels. After discussion, the Committee had no comments.

Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees, podiatry, release of records, athletic trainers, and podiatrists. After discussion, the Committee had no comment on the proposed podiatry regulations and expressed the following comments regarding fees and the release of records.

- KAR 100-22-1. Cite the 2002 law in the history section (SB 119 now at *Laws of Kansas*, Chapter 165).
- KAR 100-49-9. The Committee appreciates the method used by the Board in designating applicable section by reference.
- KAR 100-49-4. This regulation should be modified to reflect statutory changes that become effective April 1, 2003 (registration to licensure).

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning rules of practice and procedure, motor carriers of persons and property, and railroad grade crossing protection. After discussion, the Committee had no comment on the railroad grade crossing regulations and expressed the following comments regarding the rules of practice and procedure, the electric generation facilities, and motor carriers.

Rules of practice and procedure:

- KAR 82-1-204a. Add to the history section the appropriate statutory authority for telecommunications.
- KAR 82-1-205. In subsection (a), rewrite if necessary to ensure staff is not restricted to in-state activities.
- KAR 82-1-208. In subsection (a), the term "published" should be broadly interpreted to cover multiple methods of notice. In subsection (b), the Committee prefers "chairperson" over "chair."
- KAR 82-1-216. In subsection (a), add as acceptable notice e-mail followed by submission of a hard copy.

- KAR 82-1-217. In subsection (a) should the method of computing time be consistent with KSA 2001 Supp. 60-206? What is a half holiday? In subsection (b), what is the authority of the Commission to reduce a time period without notice to the parties subject to the notice giving consent to the reduction?
- KAR 82-1-219. In subsection (f)(3), add e-mail as an acceptable method of submitting pleadings.
- KAR 82-1-221a. In subsection (a), include security documents as confidential information. In subsection (b) and ©), should "person" be used rather than "entity?" Also, in subsection ©), the Kansas Open Records Act does not allow telephone numbers to be required when making a request (KSA 45-220).
- KAR 82-1-227. In subsection ©)(4), clarify the language that the person requesting the subpoena is not the party but a person designated by the party and who is not a party to the proceedings.
- KAR 82-1-228. In subsection (d), KSA 7-104 has been repealed.
- **General Comment.** Since the agency has both Kansas Administrative Procedures Act (KAPA) and non-KAPA hearings, review these regulations to ensure the procedures are consistent with the requirements of the appropriate hearing process, *e.g.*, issuance of subpoenas (KAR 82-1-227) and relaxation of rules of evidence (KAR 82-1-230).

Motor Carriers:

- KAR 82-4-2. In subsection ©), consider changing "street" to "physical location."
- KAR 82-4-20. Review the items 1 through 10 to make certain that exempted documents correspond to the documents listed in the federal regulations being adopted by reference.
- KAR 82-4-23. In subsection ©), cross reference items previously adopted by reference (see also 26a.).

Electric Generation Facilities:

- KAR 82-8-2. In subsection (d), what is the purpose of requiring unglazed paper?

Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning bulk pesticide containment and storage. After discussion, the Committee expressed the following comment.

- **General Comment:** The Committee is aware of several issues associated with these proposed rules and regulations, *i.e.*, the exemptions, the fiscal impact on those who must comply, the effective date of the changes, the impact on aerial applicators, the impact on county noxious weed programs, and the statutory authority to adopt some of the provisions proposed.

Therefore, the Committee recommends that the Department give careful consideration to the comments made during the public hearing. The Committee withholds any comment at this time on the specific issues and will review the rules and regulations when filed as permanent.

The Committee requests receipt of a copy of the minutes of the public hearing held on these regulations as soon as possible following the hearing.

State Treasurer. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Kansas Postsecondary Education Savings Program. After discussion, the Committee had no comment.

Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the commercial use of wildlife (mussels) and reporting of boating accidents. After discussion, the Committee had no comment.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning accrediting area vocational-technical schools and area vocational schools. After discussion, the Committee had no comment.

Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the Kansas Retailers' Sales Tax Act. After discussion, the Committee expressed the following comments.

- KAR 92-19-5b. In subsection (b), the notice of assessment should be sent by registered mail return receipt requested. Also, clarify that access to the abatement follows the final administrative determination.
- KAR 92-19-22a. In subsection (b)(1) and (2), delete seating.

Board of Pharmacy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning pharmacies, pharmacist-in-charge, non-resident pharmacies, incident reports, automated drug delivery systems, fees, resale of medications, and compounding and dispensing parenteral products. After discussion, the Committee expressed the following comments.

- KAR 68-2-9. Since this regulation now requires notice to the Board upon a change in "majority ownership," should that term be defined.
- KAR 68-2-10. The explanation of the disposition of the stock of drugs upon cessation of operation, should include an inventory of the drugs.
- KAR 68-7-12. In subsection ©)(2) and (3), change "is" to "shall be."
- KAR 68-7-12a. In subsection (b)(3) and ©) reword to read "owner of the pharmacy or the owner's authorized representative."
- KAR 68-9-2. In subsection (b)(7) and ©)(1) change "direction" to "direct supervision."
- KAR 68-12-2. The Board should be aware of the impact of this change on the state's medical assistance program. The Committee requests the Board discuss this change with the Department of Social and Rehabilitation Services.

Kansas Parole Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions, parole hearings, dockets, parole release, parole violators, conditional release, release of functionally incapacitated inmates, discharge, executive clemency, and orders of restitution and expense. After discussion, the Committee expressed the following comments.

- KAR 45-100-1. In subsection (h) and (j), enter a date before which or after which the terms defined apply (July 1, 1993).
- KAR 45-200-1. Delete "Members of the board" from the list in subsection (a).
- KAR 45-700-2. Given the potential sensitivity of releasing an inmate under this regulation, and the fact that there is no review of the Board's decision, should a vote of the majority of the Board be required if no public hearing is held on the release?

Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning reimbursement for pharmacy services, reimbursement for chiropractic services, reimbursement for durable medical equipment, supplemental HCBS services, client eligibility

for medical assistance, adult care home program, and prior authorization. After discussion, the Committee expressed the following comments.

- KAR 30-5-308. The Committee would like more explanation regarding the HCBS nonsupplemental policy.
- KAR 30-10-18. Cross reference the designated cost centers noted in (a)(2)(A) to the cost report.

The Chairman announced that the time of the November meeting will be sent to members at a later date. The meeting was adjourned.

Prepared by Judy Glasgow
Edited by Bill Wolff

Approved by Committee on:

November 12, 2002