

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 28, 2008  
Room 519-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative John Faber  
Representative Joe Patton  
Representative Jan Pauls  
Representative Mark Treaster  
Representative Ed Trimmer  
Representative Arlen Siegfried

#### Members Absent

Senator Chris Steineger  
Senator Donald Betts

#### Staff Present

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

Betty Wright, Kansas Dental Board  
Lane Hemsley, Kansas Dental Board  
Grant Treaster, Kansas Board of Tax Appeals  
Gage Rohlf, Kansas Board of Tax Appeals  
Diane Minear, Kansas Corporation Commission  
Clayton Kebs, Kansas Corporation Commission  
Matt Spurgin, Kansas Corporation Commission  
Gary Davenport, Kansas Corporation Commission

Mike Hoeme, Kansas Corporation Commission  
Doug Louis, Kansas Corporation Commission  
Julie Ehler, Kansas Department of Agriculture  
Becky Pfannenstiel, Kansas Department of Agriculture  
Dave Starkey, Kansas Department of Agriculture  
Randy Stookey, Kansas Department of Agriculture  
Ted Smith, Kansas Department of Revenue  
Terry Mitchell, Kansas Department of Revenue  
Sarah Byrne, Kansas Department of Revenue  
Carmen Alldritt, Kansas Department of Revenue  
Kathleen Smith, Kansas Department of Revenue  
Bob North, Department of Commerce  
Carole Jordan, Department of Commerce  
Merrill Befort, Department of Commerce  
Linden Appel, Department of Corrections  
Reid Stacey, Kansas Health Policy Authority  
Brenda Kuder, Kansas Health Policy Authority  
Kim Brink, Kansas Health Policy Authority  
Leslie Allen, Behavioral Sciences Regulatory Board  
Pamela Keller, Department of Social and Rehabilitation Services  
Amanda Barta, Kansas Department on Aging  
Dave Halferty, Kansas Department on Aging  
Brian Vazquez, Kansas Health Policy Authority  
Ray Dalton, Department of Social and Rehabilitation Services  
K. S. McKenna, Department of Social and Rehabilitation Services  
Cindy Luxem, Kansas Health Care Association  
Chris Tymeson, Kansas Department of Wildlife and Parks  
Lane Letourneau, Kansas Department of Agriculture  
Paul Graves, Kansas Department of Agriculture  
Jenny Hall, Kansas Department of Agriculture  
Ron Seeber, Hein Law Firm  
Diane Bellquist, Kansas Board of Healing Arts  
Lee Rolfs, Kansas Department of Agriculture

### **Morning Session**

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

The Chairperson called the Committee's attention to a matter concerning the Kansas Department of Transportation and a fee the Department is requiring regarding the signs posted on highways designating the locations of restaurants and hotels. The fee is based upon an estimated number of vehicles that pass by these signs. The fee was recently raised by 125 percent.

The Chairperson asked for action on the Committee minutes for April 7 and 8, 2008. *Representative Trimmer moved the minutes be approved as presented. Representative Holmes seconded the motion. Motion carried.*

The Chairperson welcomed Lane Hemsley to address the proposed rules and regulations noticed for hearing by the Kansas Dental Board. KAR 71-9-1, definitions; KAR 71-9-2, approval of educational program; KAR 71-9-3, requirements for approval of educational program; KAR 71-9-4,

notice of new location; KAR 71-10-1, definitions; KAR 71-10-2, approval of educational program; KAR 71-10-3, requirements for approval of educational program; and KAR 71-10-4, notice of new location.

Mr. Hemsley stated that the proposed rules and regulations cover the practice of allowing dental students and dental hygiene students from educational institutions outside the state to practice in Kansas under a supervisor as part of an educational program. The students will be allowed to work at clinics providing care to “dentally indigent persons,” as defined in the statutes. Mr. Hemsley stated that these rules and regulations mirror what is being practiced today and that these will set out written standards that need to be followed. After Mr. Hemsley responded to several questions of a general nature from Committee members, Chairperson Schmidt thanked him for his appearance before the Committee.

Chairperson Schmidt recognized John Smith, Administrator, to speak to the proposed rules and regulations noticed for hearing by the Department of Credit Unions. KAR 121-10-1, definitions; and KAR 121-10-2, credit union audit reporting requirements.

Mr. Smith stated that these rules and regulations will clarify the terms used in describing audit requirements for credit unions. The National Credit Union Administration (NCUA) has a supervisory committee audit rule and regulation that Kansas credit unions must meet to comply with the Kansas statute requirement of maintaining federal share (deposit) insurance; the federal rule allows Kansas to adopt a more stringent rule. The Committee had no questions, and Mr. Smith was thanked for his presentation.

Matt Spurgin, Litigation Counsel, was introduced by Chairperson Schmidt to speak to a proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-4-30a, applications for interstate registration.

Mr. Spurgin stated that the change to this regulation is needed to implement the Unified Carrier Registration (UCR) program for the State of Kansas and the fee schedule for the year 2008. This regulation adopts the fee schedule approved by the Federal Motor Carrier Safety Administration’s UCR Board of Directors. Staff noted on page 1, (b) last sentence, the word should be “adopted.” There were no questions for Mr. Spurgin. The Chairperson thanked him for his appearance before the Committee.

Chairperson Schmidt welcomed Doug Louis, Director of the Conservation Division, to speak to proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 1). KAR 82-3-107, preservation of well samples, cores, and logs; penalty; KAR 82-3-108, well location; exception; KAR 82-3-111, temporarily abandoned wells; penalty; plugging; KAR 82-3-135a, notice of application; KAR 82-3-135b, protesters; KAR 82-3-138, new pool application; and KAR 82-3-402, notice of application; objection.

Staff stated that in KAR 82-3-107, page 3 (J) (i), the item should be adopted by reference as of date certain in order to be enforceable. Staff also noted that the history section needs to be reviewed on all items to include KSA 55-604 and 55-704 as authorizing statutes. Staff was concerned that the proposed regulations were in conflict with the Open Records Act in (e)(1), and the agency should check the exception under which they are claiming the confidentiality. A Committee member suggested that in KAR 82-3-107, page 2, (c)(5), the sentence read “the Kansas geological survey may request and the operator shall provide shallow samples.” The Committee stated that the term “shallow” should be defined. The Committee requested that the agency review the penalty schedules as penalty amounts seemed very low. In KAR 82-3-111, staff stated that in page 1(b), the next to last sentence needs to be clarified to better state the intention of the agency. A Committee member said that a registered notice should go out in the 10<sup>th</sup> year to the operator stating that the well is not eligible for temporary abandonment. In KAR 82-3-135a, (b) (2), concerning

leased acreage, a Committee member stated that the adjacent owners of mineral rights to a pool should receive a copy of the application also. A Committee member suggested that KAR 82-3-135b, (c)(1) could include the use of e-mail for notification of a protest. A request was made by staff that definitions be included for "production matters" and "environmental matters." For KAR 82-3-138 a Committee member stated that the regulations should specify that the mailing would be done by official postal certified mail with return receipt. One Committee member suggested that the agency look at the penalties assessed; they appear to be very low compared to the company's investments. In response to questions from the Committee, Mr. Louis stated that there are 7,000 abandoned wells in Kansas and 500 to 700 are plugged every year. After Mr. Louis responded to all the questions from the Committee, the Chairperson thanked Mr. Louis for his presentation.

Dave Starkey, Chief Legal Counsel, was introduced by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-7-900, civil penalty; order; KAR 4-7-901, revoked; KAR 4-7-902, amount of civil penalty; KAR 4-7-903, criteria to determine dollar amount of the civil penalty; KAR 4-7-904, informal settlement; KAR 4-13-40, types of hearings; KAR 4-13-41, revoked; KAR 4-13-42, revoked; KAR 4-13-60, civil penalty; order; KAR 4-13-61, revoked; KAR 4-13-64, informal settlement; KAR 4-13-65, adjusting the amount of the civil penalty; KAR 4-15-11, civil penalty; order; KAR 4-15-12, revoked; KAR 4-15-13, criteria to determine dollar amount of civil penalty; KAR 4-15-14, informal settlement; KAR 4-20-11, civil penalties; KAR 99-27-2, civil penalty; order; KAR 99-27-3, revoked; KAR 99-27-4, informal settlement; and KAR 99-27-5, adjusting the amount of the civil penalty.

Mr. Starkey stated that these changes will bring the rules and regulations in line with the agency's statutes concerning civil penalties. Staff noted that KSA 83-501 should be added to the history section for authorization in KAR 99-27-2, KAR 99-27-4, and KAR 99-27-5. There were no other questions from Committee members on these rules and regulations, and Mr. Starkey was thanked for appearing before the Committee.

Julie Ehler, Staff Attorney, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for the hearing by the Department of Agriculture, Meat and Poultry. KAR 4-16-7a, overtime work by inspection personnel; KAR 4-16-300, civil penalty; order; KAR 4-16-301, revoked; KAR 4-16-302, amount of civil penalty; KAR 4-16-303, criteria to determine dollar amount of the civil penalty; KAR 4-16-304, informal settlement; KAR 4-16-305, adjusting the amount of the civil penalty; KAR 4-17-300, civil penalty; order; KAR 4-17-301, revoked; KAR 4-17-302, amount of civil penalty; KAR 4-17-303, criteria to determine dollar amount of the civil penalty; KAR 4-17-304, informal settlement; and KAR 4-17-305, adjusting the amount of the civil penalty.

Ms. Ehler reported that these proposed rules and regulations cover the meat and poultry division and bring them in line with the agency's statutes concerning civil penalties. There were no questions, and Ms. Ehler was thanked for her presentation before the Committee.

Sarah Byrne, Assistant Attorney General, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue, Alcoholic Beverage Control. KAR 14-8-6, revoked; KAR 14-8-7, house-to-house, door-to-door solicitation prohibited; KAR 14-8-8; KAR 14-8-12, revoked; and KAR 14-17-7, determination of Kansas residency.

Ms. Byrne stated that these regulations were being updated to reflect the U.S. Supreme Court ruling that the state's ban on the advertising of liquor prices was unconstitutional. Staff noted that in KAR 14-8-7(b), the phrase "if authorized by the director" should be moved to the beginning of the sentence for clarity. Staff noted that the history section of KAR 14-17-7 should include KSA 41-2621 in its authorizing section.

After she responded to all questions from the Committee, Ms. Byrne was thanked by the Chairperson for appearing before the Committee.

Carmen Alldritt, Division of Motor Vehicles, was recognized by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 92-52-14, definitions; KAR 92-52-15, applications for employment in a covered position; and KAR 92-52-16, third-party relationship requirement.

Ms. Alldritt stated that these rules and regulations are a result of the 2007 Legislature passing SB 9. Staff noted that in KAR 92-52-14, page 1, (a)(3), the word "of" should be added after "ensure the integrity." Ms. Alldritt responded to questions of a general nature from Committee members. Chairperson Schmidt thanked Ms. Alldritt for her presentation before the Committee.

Chairperson Schmidt introduced Carole Jordan, Director of the Community Development Division, to speak to the proposed rules and regulations noticed for hearing by the Department of Commerce (Attachments 2 and 3). KAR 110-13a-1, definitions; KAR 110-13a-2, application requirements for enterprise facilitation project funding; KAR 110-13a-3, reporting; KAR 110-19-1, definitions; KAR 110-19-2, application; additional documentation; KAR 110-19-3, secretary's review and determination; KAR 110-19-4, annual compliance and audit; KAR 110-20-1, definitions; KAR 110-20-2, application; additional documentation; KAR 110-20-3, secretary's review and determination; and KAR 110-20-4, annual compliance and audit.

A Committee member noted that in KAR 110-19-1, page 2, (f)(4), that the sentence should read "the preparation, use or marketing of." In KAR 110-19-1 and KAR 110-20-1, the definition of "qualified investment" should be reviewed so that it is not too restrictive. After Ms. Jordan responded to all questions from the Committee, she was thanked for her presentation before the Committee.

Linden Appel, Chief Legal Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Corrections. KAR 44-6-101, definitions; KAR 44-6-114e, guidelines release date; KAR 44-6-115a, awarding and withholding good time credits for incarcerated offenders; KAR 44-6-125, good time forfeitures not restored; exceptions; limits; parole; guidelines release date; KAR 44-6-127, program credits; KAR 44-6-128, adjustments of previous awards of good time credits; scope of review and decision-making procedure; effect of noncompliance with procedure; KAR 44-6-129, same; notice of proposed action; service; election of hearing or waiver; hearing officer designation; issuance and service of notice of hearing; request for witnesses; KAR 44-6-130, same; hearing procedure; written decision; service upon inmate or offender; effect of a denial of proposed action; KAR 44-6-131, same; appeal procedure; and KAR 44-6-132, entry of adjustments of good time awards in relevant departmental database or databases.

The Committee had concerns about the reference to program credits and good time credits and that there is no reference to program credits in relationship to early release. Mr. Appel stated that he would take this back to the Department and they would look at it. Another question from the Committee concerned the clarity of KAR 44-6-114e, page 16, 5<sup>th</sup> line, "the sum of the total pool of available good time credits and four months." It was suggested that the language be clarified to show that good time and program credits cannot be earned during the last four months prior to release. A question was raised about the appeal process on the awarding of good time and program time, and whether the Department should research this. After he responded to general questions from the Committee, Chairperson Schmidt thanked Mr. Appel for his presentation.

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

## Afternoon Session

The Chairperson reconvened the meeting at 1:50 p.m. Chairperson Schmidt recognized Leslie Allen, Credentialing Specialist, to address the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-7, unprofessional conduct; KAR 102-3-12a, unprofessional conduct; KAR 102-4-12, unprofessional conduct; KAR 102-5-12, unprofessional conduct; and KAR 102-6-12, unprofessional conduct.

A Committee member had a question concerning the definition of “reasonably believed” as used on page 2, (f) in KAR 102-2-7. Ms. Allen stated that there was no definition for this term and she would take the Committee’s concern back to the Board. After she answered all questions, Ms. Allen was thanked for her appearance before the Committee.

Reid Stacey, Senior Medicaid Attorney, was welcomed by the Chairperson to speak to proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-10-15a, KAR 30-10-15b, KAR 30-10-17, KAR 30-10-18, KAR 30-10-23a, KAR 30-10-23b, KAR 30-10-25, KAR 30-10-26, KAR 30-10-27, KAR 30-10-200, and KAR 30-10-210, all revoked; and KAR 129-5-108, scope of services for durable medical equipment, medical supplies, orthotics, and prosthetics.

There were no questions from the Committee.

Dave Halferty, Director of Nursing Homes, Department on Aging, addressed proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 129-10-15a; reimbursement; KAR 129-10-15b, financial data; KAR 129-10-17, cost reports; KAR 129-10-18, rates of reimbursement; KAR 129-10-23a, nonreimbursable costs; KAR 129-10-23b, costs allowed with limitations; KAR 129-10-25, real and personal property fee; KAR 129-10-26, interest expense; and KAR 129-10-27, central office costs.

Mr. Halferty stated that there were three things that the proposed rules and regulations accomplish: adding the durable medical equipment covered by the nursing home program, moving certain regulations from the Department of Social and Rehabilitation and Services (SRS) to the Kansas Health Policy Authority, and the regular review and update of regulations as needed. Staff noted that in KAR 129-10-15a(b), page 1, the reference to KAR 30-10-1a may not be needed. Mr. Halferty stated that they would look at this again. The Chairperson thanked Mr. Halferty for appearing before the Committee.

Pam Keller, SRS, Community Support and Services, appeared before the Committee to speak to proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 129-10-200, definitions for intermediate care facility for mentally retarded (ICF-MR); and KAR 129-10-210, ICF-MR reimbursement.

Staff noted that in KAR 129-10-200(c), page 1, “Agency” is defined as the Department of Social and Rehabilitation Services; this should be researched to see if this is the agency officials’ intent. On page 4 in (r) the 1983 revision of “classification in mental retardation” should be adopted by reference. Mr. Stacey stated that they would take a look at these two items before the public hearing. A Committee member had a question about the economic impact statement. Ms. Keller told the Committee that there would be no additional costs or savings from the transfer of these costs. Ms. Keller was thanked for her presentation before the Committee.

The Chairperson 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 115-25-1,

prairie chickens; open seasons, bag limits, and possession limits; KAR 115-25a-1a, quail; open seasons, bag limits, and possession limits; KAR 115-25-1b, pheasants; open seasons, bag limits, and possession limits; KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations; KAR 115-25-19, doves; management unit, hunting season, shooting hours, and bag and possession limits; KAR 115-25-21, snipe, rail, and woodcock; management unit, hunting season, shooting hours, and bag and possession limits; KAR 115-2-3, camping, utility, and other fees; KAR 115-2-5, trail access pass; requirement, fees, exceptions, and general provisions; KAR 115-8-9, camping; KAR 115-8-10, pets; provisions and restrictions; and KAR 115-20-2, certain wildlife; legal equipment, taking methods, possession, and license requirement.

In response to a Committee member's question, Mr. Tymeson stated that in KAR 115-8-10, a section could be added to include dogs that assist mobility impaired individuals. After he answered questions of a general nature, Mr. Tymeson was thanked for his appearance before the Committee.

Lee Rolfs, Staff Attorney, was introduced by Chairperson Schmidt to address the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture, Division of Water Resources. KAR 5-1-1, definitions; KAR 5-1-2, standby well; KAR 5-1-7, requirement to install a water flowmeter or other suitable water-measuring device; KAR 5-2-4, determination or certification of a domestic water right; KAR 5-3-3, storage of surface water for domestic use; KAR 5-3-4, application; KAR 5-3-5d, requirement to install a water level measurement tube; KAR 5-3-16, safe yield; exemptions for up to 15 acre-feet of groundwater; KAR 5-4-2, protection of releases from storage under low-flow conditions; KAR 5-5-6c, authorized point of diversion or place of use; KAR 5-5-13, relocation of alluvial wells; KAR 5-5-14, duties of owners of approvals of applications and water rights; KAR 5-6-2, storage of water in watershed district reservoirs; KAR 5-6-5, maximum reasonable annual quantity for storage of water for beneficial use in a reservoir; KAR 5-9-1a, term permit application; KAR 5-9-1b, approvals and extensions of term permits; KAR 5-9-1c, request to extend a term permit; KAR 5-9-1d, no water right perfected under term permit; and KAR 5-14-10, civil penalties; suspension or modification of water rights.

A Committee member had a question concerning KAR 5-1-1(r), page 4, and the definition of "relatively impermeable," and suggested that some kind of percentage be used as a qualifier to designate what the agency intended. Mr. Rolfs stated that the Department would look at this. Staff noted that on page 11, in (bbb) "thereof" needs to be added so the phrase reads "linear mile of construction trench, or part thereof, shall." Staff noted that on page 16, in (eeee), a cross reference should be included concerning where the criteria for temporary permit could be found. Staff suggested that in KAR 5-2-4, the term "noncommercial confined feeding facility" should be defined. Staff noted that in KAR 5-3-16(b)(1), the meaning needs to be clarified as to the agency's requirements. Also on page 2, subsection (c) should be clarified as to the agency's intent. A Committee member suggested that KAR 5-4-2, (c)(2) and (3) should be qualified to state that if a person has electronic mail address, fax numbers, and cell phone numbers, they be provided for quick notification. Mr. Rolfs stated that the agency would review this policy. In KAR 5-5-13, a Committee member pointed out that there should be clarification on centerline of the stream, whether it is as of today or when the well was drilled. Staff noted that KAR 5-6-2(c) should be clarified to better state the agency's requirement for maintaining the maximum quantity of water stores behind the dam. Staff also suggested that the history section should be updated. Upon responding to all the Committee's questions, Mr. Rolfs was thanked for his appearance by the Chairperson.

Chairperson Schmidt welcomed Diane Bellquist, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Healing Arts. KAR 100-69-1, approved education; KAR 100-69-2, revoked; and KAR 100-69-3, examination.

Staff suggested that KAR 100-69-3 (a)(2) be changed to show that the Board is the one that is making the approval, as shown in paragraph (1), by stating "an examination in emergency cardiac

care approved by the board and administered by ...” Ms. Bellquist was thanked for her appearance before the Committee by the Chairperson.

The Committee brought up the economic statements and asked whether there was a way that these be attached to the end of each rule and regulation for ease in reference by the Committee. The Committee asked that staff research this and get back to the Committee at the next meeting.

Staff reported that the Kansas Department of Transportation had been contacted about the signs and costs. In 1996 the Department initiated the contract for the logos and at that time the signs were put out for public information so there was no charge for them. When the contract came up for renewal this year, the Department decided that it wanted to make revenue on these so it began charging a fee for them. The question was asked if there had been any regulations regarding this, or if this is a state law, or if there was a hearing concerning this. An answer has not been received concerning these questions. The Chairperson requested that a letter be issued to the Department of Transportation requesting that no payments be submitted until the Department of Transportation can come before the Committee at the next meeting with its statutory authority.

The Chairperson asked the Committee to look at available dates for meetings during the interim. The following dates were set for the Committee:

July 9, 2008  
August 12, 2008  
September 22, 2008  
November 6, 2008  
December 17, 2008

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



## Committee Comments on Proposed Rules and Regulations

**Kansas Dental Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; approval of educational program; requirements for approval of educational program; notice of new location; definitions; approval of educational program; requirements for approval of educational program; and notice of new location and had no comments.

**Kansas Department of Credit Unions.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions and credit union audit reporting requirements and had no comments.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning applications for interstate registration; preservation of well samples, cores, and logs, penalty; well location, exception; temporarily abandoned wells, penalty, plugging; notice of application; protestors; new pool application; and notice of application, objection, and had the following comments:

### Interstate registration

KAR 82-4-30a. In the last line of subsection (b), the Committee requests the agency correct “adoped” to “adopted.”

### Injection wells

KAR 82-3-107. In subsection (c)(5), on page 2, the term “shallow” is not defined. Testimony before the Committee suggested the definition varies by situation. The Committee suggests the agency include such guidance in the regulation. Also, the Committee believes the regulation should require the operator to comply, *e.g.*, “The Kansas geological survey may request, and the operator shall provide, shallow samples ....” In subsection (d)(1)(J), on page 3, the Committee suggests that the “data format” be defined or specified. In subsection (d)(1)(J)(i), on page 3, the Committee suggests the agency adopt a specified version of the Log ASCII Standard (LAS) by reference. In subsection (e)(1), on page 3, the Committee asks whether the referenced confidentiality is allowable under the Kansas Open Records Act and, if so, under which specific provision of the Act.

KAR 82-3-111. In subsection (b), in the added sentence, the Committee believes the regulation should clearly state that an application for an exception must be approved, not just submitted.

KAR 82-3-135b. In subsection (c)(1), the Committee wonders why a protest (and multiple copies of it) must be submitted on paper. Could the protest be submitted electronically so as to avoid excessive paperwork? Also in subsection (c)(1), the Committee believes the terms “production matters” and “environmental matters” require definition.

KAR 82-3-138. In subparagraph (a)(3), the Committee suggests the mailing be “return receipt requested” from the U.S. Postal Service, as proof the document was not only mailed but also was received. The Committee also requests that the Division notify adjacent landowners and ensure that the certificate of mailing includes a “return receipt requested” document or documentation that the notice was mailed and

received. The Committee also requests consideration of that proof of mailing and receipt for the notices be required in 82-3-135a, specifically to owners of adjacent mineral rights.

General Comments: The Committee encourages the Division to review the amounts of penalties or fines. They seem very low.

**Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning civil penalty, order; amount of civil penalty; criteria to determine amount of the civil penalty; informal settlement; types of hearings; civil penalty, order; informal settlement; adjusting the amount of the proposed civil penalty; civil penalty, order; criteria to determine dollar amount of civil penalty; informal settlement; overtime work by inspection personnel; civil penalty, order; amount of civil penalty; criteria to determine dollar amount of the civil penalty; informal settlement; adjusting the amount of the civil penalty; civil penalty, order; amount of civil penalty; criteria to determine dollar amount of the civil penalty; informal settlement; adjusting the amount of the civil penalty; civil penalties; civil penalty, order; informal settlement; adjusting the amount of the civil penalty; and revocations, and had no comments.

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning house-to-house, door-to-door solicitation prohibited; determination of Kansas residency; definitions; applications for employment in a covered position; third-party relationship requirement; and revocations, and had the following comments:

KAR 14-8-7. In subsection (b), the Committee requests the phrase "if authorized by the director" be moved to the beginning of the sentence, for clarity.

KAR 92-52-14. In subsection (a)(3), the word "of" is missing; the phrase should read "the integrity of the division."

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning regional business development funds, eligible projects; definitions; application requirements for enterprise facilitation project funding; reporting; definitions; application, additional documentation; secretary's review and determination; annual compliance and audit; definitions; application, additional documentation; secretary's review and determination; and annual compliance and audit, and had the following comments:

KAR 110-13a-3. In subsection (c), the Committee thinks it is unclear what the agency intends to do once the quarterly or annual progress report is timely received. Please clarify. Also, the Committee wonders whether this subsection will allow retroactive filing.

KAR 110-19-1. In subsection (f)(4), page 2, the Committee believes the use of the product should be included, so that the phrase reads "the preparation, use, and marketing of the products."

KAR 110-19-1 and 110-20-1. In subsection (j), page 2, the Committee believes the phrase "in whole or in part" needs clarification. Does this exclude federal funding? Is there a minimum percentage of public funding to qualify? Do in-kind contributions count?

**Kansas Department of Corrections.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; guidelines release date; awarding and withholding good time credits for incarcerated offenders; good time forfeitures not restored, exceptions, limits, parole, guidelines release date; program credits; adjustments of previous awards of good time credits, scope of review and decision-making procedure, effect of noncompliance with procedure; same, notice of proposed action, service, election of hearing or waiver, hearing officer designation, issuance and service of notice of hearing, requests for witnesses; same, hearing procedure, written decision, service upon inmate or offender, effect of a denial of proposed action; same, appeal procedure; and entry of adjustment of good time awards in relevant departmental database or databases, and had the following comments:

KAR 44-6-114e. In subsection (h), page 16, both the rationale for the “four months” and how the allocation will occur are unclear, as is “... that is the sum of the total pool of available good time credits and four months.” The Committee requests the agency explain clearly, possibly using an example.

KAR 44-6-128. Is there an appeals or grievance process regarding good time or program credits? This should be described.

General Comment: Please review all regulations to ensure there is no confusion regarding program credits and good time credits. Using an example to explain how each will affect a release date might be helpful.

**Kansas Behavioral Sciences Regulatory Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning unprofessional conduct (social work); unprofessional conduct (counselors); unprofessional conduct (psychologists and psychotherapists); unprofessional conduct (marriage and family therapists); and unprofessional conduct (alcohol and drug abuse counselors), and had the following comment:

KAR 102-2-7. In subsection (f), page 2, the Committee believes “reasonably believed to be unqualified” needs clarification.

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of services for durable medical equipment, medical supplies, orthotics, and prosthetics; reimbursement; financial data; cost reports; rates of reimbursement; nonreimbursable costs; costs allowed with limitations; real and personal property fee; interest expense; central office costs; definitions for intermediate care facility for mentally retarded (ICF-MR); ICF-MR reimbursement; and revocations, and had the following comments:

KAR 129-10-15a. In subsection (b), page 1, what is the intent of including the phrase “pursuant to K.A.R. 30-10-1a”? The Committee thinks this reference to an SRS regulation might not be needed.

KAR 129-10-200. In subsection (c), page 1, the Committee believes it is confusing, in this KHPA regulation, to define “agency” as SRS. Should “Agency” mean the Kansas Department of Social and Rehabilitation Services or KHPA or both? Please clarify. Also, in subsection (r), page 4, the Committee questions whether the 1983 revision of “classification in mental retardation” is still applicable. The Committee also thinks the document needs to be adopted by reference.

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning camping, utility, and other fees; trail access pass, requirement, fees, exceptions, and general provisions; camping; pets, provisions and restrictions; and certain wildlife, legal equipment, taking methods, possession, and license requirement; prairie chickens, open seasons, bag limits, and possession limits (exempt); quail, open seasons, bag limits, and possession limits (exempt); pheasants, open seasons, bag limits, and possession limits (exempt); deer, open season, bag limit, and permits, additional considerations (exempt); doves, management unit, hunting season, shooting hours, and bag and possession limits (exempt); and snipe, rail, and woodcock, management unit, hunting season, shooting hours, and bag and possession limits (exempt), and had the following comment:

KAR 115-8-10. For subsections (c) and (d), the Committee thinks the exceptions should include pets that are used to support individuals who are mobility impaired, so that those pets are permitted in the areas described.

**Division of Water Resources, Kansas Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; standby well; requirement to install a water flowmeter or other suitable water-measuring device; determination or certification of a domestic water right; storage of surface water for domestic use; application; requirement to install a water level measurement tube; safe yield, exemptions for up to 15 acre-feet of groundwater; protection of releases from storage under low-flow conditions; authorized point of diversion or place of use; relocation of alluvial wells; duties of owners of approvals of applications and water rights; storage of water in watershed district reservoirs; maximum reasonable annual quantity for storage of water for beneficial use in a reservoir; term permit application; approvals and extensions of term permits; request to extend a term permit; no water right perfected under term permit; and civil penalties, suspension or modification of water rights, and had the following comments:

KAR 5-1-1. To add clarity to subsection (r), page 4, the Committee thinks “relatively impermeable” should be defined, for example, by describing the percentage of impermeability.

In subsection (bbb), page 11, in the last line, the Committee thinks the word “thereof” was omitted after “in part.” In subsection (eeee), page 16, the Committee thinks a cross-reference should be added to add clarity to the “criteria for a temporary permit.”

KAR 5-2-4. The Committee requests the agency include a definition of a “noncommercial confined feeding facility.”

KAR 5-3-5d. The Committee requests that the agency ensure that “maintained in a working condition” does not entail overly expensive repairs.

KAR 5-3-16. The Committee requests the agency clarify “Is not closed by regulation” in subsection (b)(1)(A) (page 1) and “has not exceeded the quantity of water” in subsection (b)(1)(B) (page 2).

KAR 5-4-2. In subsection (c)(2) and (3), the Committee suggests the agency indicate that an owner’s e-mail address or fax number is not required if the owner or representative does not have one or either, and it further suggests the agency also request a cell phone number.

KAR 5-5-13. In subsection (a), the Committee thinks the agency should clarify "centerline of stream," specifically at what date the stream centerline is determined, because a stream's centerline can move over time.

KAR 5-6-2. In subsection (c), the Committee requests the agency clarify the term "the maximum quantity of water stored behind the dam to 15 acre feet or less"; "maximum" and "or less" seem incompatible. In the history section, the Committee questions whether "modified, L. 1978, Ch. 460, May 1, 1978" needs to be included.

**Kansas Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning approved education; examination; and revocation, and had the following comment:

KAR 100-69-3. In subsection (a)(2), the Committee suggests the agency rephrase the language to indicate the Board of Healing Arts must approve the examination in emergency cardiac care, *e.g.* "an examination in emergency cardiac care. The examination shall be one approved by the board and may be administered by any of the following:".

Prepared by Judy Glasgow  
Edited by Sharon Wenger and Jill Shelley

Approved by Committee on:

July 7, 2008  
(Date)

