

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 1, 2011
Room 152-S—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Ralph Ostmeyer
Senator Allen Schmidt
Representative Steve Huebert
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer
Representative Caryn Tyson
Representative Valdenia Winn

Members Absent

Senator Oletha Faust-Goudeau
Senator Tim Owens

Staff Present

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

Conferees

Representative Don Hill
Chris Tymeson, Kansas Department of Wildlife and Parks
Randy Forbes, Kansas Pharmacy Board
David Barfield, Department of Agriculture, Division of Water Resources
Randy Stookey, Department of Agriculture
Cheryl Whelan, Kansas State Department of Education
John Wine, Kansas Insurance Department
Carmen Allen, Kansas Board of Emergency Medical Services
John Mitchell, Department of Health and Environment
Laine Raitinger, Legislative Intern
Derek Hein, Hein Law Firm

Sean Miller, Capitol Strategies
Christina Morris, Kansas Board of Pharmacy
Debra Billingsley, Kansas Board of Pharmacy
Megan Brooks, Intern for Representative Don Hill
Max Heidrick, S and S Drug
Ken Bowers, Kansas Department of Agriculture
Tim Tyson, Kansas Department of Agriculture
Chris Wilson, Kansas Department of Agriculture
Sarah Green, Kansas Department of Agriculture
David Springe, Citizens' Utility Ratepayer Board/Citizens' Regulatory Review Board
Neil Woerman, Kansas Insurance Department
John Boyd, Kansas Insurance Department
Jeff Bottenberg
Chad Austin, Kansas Health Agency
Don Leong, Kansas Health Agency
Susan Vogel, Kansas Department of Health and Environment
Steve Haslour, Kansas Department of Health and Environment

Morning Session

Chairperson Carl Holmes called the meeting to order on March 1, 2011, at 10:00 a.m.

He welcomed Representatives Caryn Tyson and Valdenia Winn, and Senator Allen Schmidt as new members to the Committee.

The Chairperson asked for action on the minutes for the January 5, 2011, meeting. *Representative Pauls moved the minutes be approved as presented, Representative Trimmer seconded the motion, the motion passed.*

Chairperson Holmes welcomed Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks (KDWP) to address the proposed rules and regulations noticed for hearing by the KDWP. KAR 115-2-2, motor vehicle permit fees; KAR 115-2-3, camping, utility, and other fees; KAR 115-4-6b, elk; management units; KAR 115-4-11, big game and wild turkey permit applications; KAR 115-16-5, wildlife control permit; operational requirements; KAR 115-25-5, turkey; fall season, bag limit, and permits; KAR 115-25-6, turkey; spring season, bag limit, permits, and game tags; KAR 115-25-9, deer; open season, bag limit, and permits; KAR 115-25-7, antelope; open season, bag limit, and permits; KAR 115-25-8, elk; open season, bag limit, and permits; and KAR 115-7-9, weigh-in-black bass fishing tournaments.

Mr. Tymeson stated that KAR 115-4-6b is a new regulation to establish three elk units to better manage the elk population in Kansas. In KAR 115-16-5, a Committee member questioned whether there were restrictions on having sound suppression devices. Mr. Tymeson stated that the federal government regulates the granting of permits for these.

The Chairperson recognized Randy Forbes, Chief Counsel, Kansas Pharmacy Board, to speak to the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-17-1, definitions; KAR 68-17-2, status of telepharmacy branch pharmacy; KAR 68-17-3, requirements for approval of location; KAR 68-17-4, application for approval of a telepharmacy branch pharmacy; KAR 68-17-5, equipment requirements; KAR 68-17-6,

minimum operating requirements; KAR 68-17-7, minimum security requirements; KAR 68-17-8, renewal of registration; and KAR 68-17-9, fees.

Mr. Forbes stated that these were new rules and regulations for the areas in Kansas where there are no pharmacies. At this time four counties have no pharmacies.

Staff noted, in KAR 68-17-2, that the authorizations in the history section do not appear to give the agency authority to authorize branch pharmacies. Staff noted that it would be necessary to introduce legislation to amend the statute to include the additions of branches. In KAR 68-17-3, staff pointed out that it appeared that the location had to be approved prior to the approval of the application, but in KAR 68-17-4(c) the application required the location be approved again. It was felt that requiring this information might be redundant. Staff had a question concerning the history section in KAR 68-17-5.

A Committee member expressed concern on how the accounting and verification would be handled between the parent pharmacy and the branch when there was only one person at the branch. A question was raised by the Committee concerning the qualifications for a pharmacy technician. Mr. Forbes stated that there are no requirements for either age or education for a pharmacy technician. The Committee was concerned that a pharmacy technician could be the sole person working at a telepharmacy branch and that it might be someone as young as 12 who is dispensing drugs. A Committee member had a question about KAR 68-17-6, page 5, (q) concerning the schedule II controlled substances, if they would be inventoried only quarterly. Mr. Forbes stated that this was correct.

Representative Don Hill spoke to the Committee about cities that had no pharmacy, but were within 20-30 miles of a pharmacy in Emporia where he works.

The Vice-chairperson stated that in the past several years actions have been taken by the Legislature to remedy the shortage of pharmacists and pharmacies in western Kansas. She stated that the number of counties without pharmacies had been reduced from seven to four in the past two years. It was suggested that the Board of Pharmacy wait and see whether some of the measures remedy much of the shortage situation.

After a lengthy discussion by Committee members, it was the recommendation of the Committee that staff prepare a letter to the Kansas Pharmacy Board asking that it not go forward with these proposed rules and regulations. The Committee also recommended that the Board look at putting some requirements in the statute on education and age limits for pharmacy technicians.

David Barfield, Chief Engineer, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Division of Water Resources, Department of Agriculture. KAR 5-21-4, safe yield, and KAR 5-7-1, due and sufficient cause for non-use.

Mr. Barfield stated that the proposed amendment to KAR 5-7-1 adds a condition for due and sufficient cause for non-use under a water right if water use is temporarily discontinued because a contract between the water right owner (producer) and a Groundwater Management District (GMD) exists committing the producer to forego use of water authorized by a water right for a definite five to ten year period to conserve water. The non-use contract will provide additional ranking consideration for eligibility for the federal Environmental Quality Incentive Program (EQIP).

In response to a question from a Committee member, Mr. Barfield stated that 5-21-4 covers only Western Kansas Groundwater Management District No. 1. Mr. Barfield stated that there is a bill, SB 191, before the Legislature that would take the place of KAR 5-7-1 and, if that bill is passed, this rule and regulation will not be implemented.

Chairperson Holmes welcomed Randy Stookey to address the proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-3-47, adoption by reference; KAR 4-3-48, revoked; KAR 4-3-49, good manufacturing practices; adoption by reference; KAR 4-3-50, good manufacturing practices; definitions; and KAR 4-3-51, prohibited feeding stuffs; adoption by reference.

Mr. Stookey stated that these proposed rules and regulations are to update adoptions by reference. In KAR 4-3-49, staff had a question about the title "good manufacturing practices" and the fact that the sections adopted by reference did not include the part that references "good manufacturing practices." Mr. Stookey stated that he would go back and pick up these sections. In KAR 4-3-51 staff had a question concerning the last line in paragraphs (a) (1) and (2). Mr. Stookey stated that the language after "K.S.A. 65-664" was to be deleted at the public hearing in both paragraphs (1) and (2).

Cheryl Whelan, General Counsel, was recognized to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-1-200, definition of terms; KAR 91-1-201, type of licensure; KAR 91-1-202, endorsements; KAR 91-1-203, licensure requirements; KAR 91-1-204, licensure of out-of-state and foreign applicants; KAR 91-1-214, criminal history records check; KAR 91-1-230, institutional accreditation and program approval definitions; KAR 91-1-231, procedures for initial accreditation of teacher education institutions; KAR 91-1-232, on-site visits; recommendation; appeal; KAR 91-1-235, procedures for initial approval of teacher education programs; and KAR 91-1-236, procedures for renewing approval of teacher education program.

In 91-1-203, a Committee member questioned what the definition of "heritage language" was as used on page 8, paragraph (h)(1) (B) and suggested that a definition be added for clarity. In KAR 91-1-204, page 10, paragraphs (e)(3)(A)(i) and (ii), staff noted that it would be helpful to have a cross reference as to where the requirements are located. Ms. Whelan stated they could do this. A question was raised by a Committee member concerning whether the statute allowed for fingerprinting. Ms. Whelan stated that she would have to check on this.

Chairperson Holmes stated that he and Senator Vicki Schmidt had received an e-mail on action taken by the Board of Education concerning vending machines. According to the e-mail, guidelines were passed by the Board of Education requiring the removal of vending machines from school districts. Later the guideline was amended without a vote by the Board allowing vending machines to remain in locations that could be accessed only by teachers. Since guidelines are nonbinding, Chairperson Holmes wondered why the Board used them rather than going through the rules and regulation process. Ms. Whelan stated that she would have to go back to the agency and find out what had taken place and get back to the Committee.

Chairperson Holmes gave the new members an overview of the Committee's duties in regard to the rules and regulations that are heard by the Committee and what actions the Committee can take.

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

Afternoon Session

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

John Wine, Staff Attorney, was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Kansas Insurance Department (Attachment 1). KAR 40-10-16, firefighters relief act; fund allocation.

Mr. Wine stated that this is not a new procedure and has been in use the past two years. Mr. Wine stated that the Department has been working with Mr. Wilke on some clarifying language on how to best express the formula in writing in the rule and regulation. After the public comments, the Department will send the clarifying language to the Department of Administration and Attorney General before adopting this regulation.

Chairperson Holmes recognized Carmen Allen to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services. KAR 109-1-1a, definitions; KAR 109-5-1, continuing education; KAR 109-5-1a, first responder and emergency medical responder (EMR) continuing education; KAR 109-5-1b, emergency medical technician (EMT) continuing education; KAR 109-5-1d, mobile intensive care technician (MICT) and paramedic continuing education; KAR 109-5-1e, instructor-coordinator (I-C) continuing education; KAR 109-5-1f, training officer continuing education; KAR 109 5-7a, emergency medical responder (EMR) transition course approval; KAR 109-5-7b, emergency medical technician (EMT) transition course approval; KAR 109-5-7d, EMR and EMT train the trainer transition course approval; KAR 109-8-1, examination; KAR 109-10-1a, approved emergency medical responder education standards; KAR 109-10-1b, approved emergency medical technician education standards; KAR 109-10-1d, approved paramedic education standards; KAR 109-10-1e, approved instructor-coordinator standards; KAR 109-10-1f, approved training officer I education standards; KAR 109-10-1g, approved training officer II education standards; KAR 109-10-6, required training equipment and supplies; KAR 109-11-1a, emergency medical responder course approval; KAR 109-11-3a, emergency medical technician (EMT) course approval; and KAR 109-11-6a, paramedic course approval.

Staff noted that, in KAR 109-8-1, paragraph (a) (1), a cross reference should be given for material that is adopted by reference. Staff noted that, in KAR 109-11-1a, KAR 109-11-3a, and KAR 109-11-6a, it appears a word is missing in subsection (a), line 2, between "instruction" and "pursuant."

Vice-chairperson Schmidt recognized John Mitchell, Director, Division of Environment, to address the proposed rule and regulation noticed by the Department of Health and Environment, Bureau of Environmental Field Services. KAR 28-16-28g, surface water register.

Mr. Mitchell stated that this is the final installment for designating uses of surface waters as part of establishing surface water quality standards. Designated uses of surface waters are listed in the Kansas Surface Water Register. Mr. Mitchell stated that final action should be received from the Environmental Protection Agency within a year.

Staff asked whether the agency still has maps available to new members of the Committee that would be beneficial in reviewing the information. Mr. Mitchell stated that he would provide maps to those who request them.

Chairperson Holmes recognized Sean Miller, Southwest Kansas Groundwater Management District No. 3. Mr. Miller addressed the Committee and provided written testimony concerning KAR 5-21-4 and a statement in the economic impact statement ([Attachment 2](#)).

The Chairperson noted that the next meeting probably would be during the April break and notice of the exact date would be mailed.

The meeting adjourned at 2:30 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 comment rules and regulations concerning motor vehicle permit fees; camping, utility, and other fees; elk, management units; big game and wild turkey permit applications; wildlife control permit, operation requirements; turkey, fall season, bag limit, and permits (exempt); and turkey, spring season, bag limit, permits, and game tags (exempt). After discussion, the Committee had no comment.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning deer, open season, bag limit, and permits (exempt). After discussion, the Committee had no comment.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning antelope, open season, bag limit, and permits; and elk, open season, bag limit, and permits (exempt). After discussion, the Committee had no comment.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning weigh-in black bass fishing tournaments. After discussion, the Committee had no comment.

Kansas Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions (telepharmacy branch pharmacies); status of telepharmacy branch pharmacy; requirements for approval of location; application for approval of a telepharmacy branch pharmacy; equipment requirements; minimum operating requirements; minimum security requirements; renewal of registration; and fees. After discussion, the Committee had the following comments.

General Comment. The Committee strongly suggests that the agency not move forward with these rules and regulations. The Committee believes that the issues which these rules and regulations are intended to address are those involving the number of pharmacists and pharmacies. These have been addressed by other mechanisms and time is needed to determine whether the mechanisms are successful. If the agency intends to move forward, then the

Legislature should address the qualifications for a pharmacy technician. In case the agency proceeds with the adoption of these rules and regulations, then the following address issues of Committee concern within each listed rule and regulation.

KAR 68-17-2. The Committee questions the authorizing statute in the History Section of this rule and regulation and believes that the agency does not have the authority to adopt these rules and regulations. Specifically, there are statutory requirements that a pharmacist be physically present and the Committee wonders how the agency intends to enforce supervision statutes under these proposed rules and regulations.

KAR 68-17-3. The Committee questions how the mileage limitations were developed. In addition, it appears that the location of the telepharmacy must be approved before the submission of the application for the registration of a telepharmacy. The Committee believes this would create a problem for the applicant.

KAR 68-17-4. The Committee believes that subsection (c) in this rule and regulation is redundant since it appears to be covered in KAR 68-17-3. Members of the Committee expressed concern that a pharmacy technician may be the only person physically in the telepharmacy branch pharmacy.

KAR 68-17-5. The Committee is curious as to the length of time the data, video, and audio data are maintained. In addition, the Committee asks whether the equipment required by the rule and regulation is in addition to the equipment required under KSA 2010 Supp. 65-1642.

KAR 16-17-6. In paragraph (c), the Committee questions why the term "supervised" is used rather than the defined term "directly supervised." In addition, the Committee is curious as to how the prescription is to be canceled when there is no pharmacist at the telepharmacy branch pharmacy. The Committee also seeks clarity in paragraph (q), where it appears that schedule II drugs would need to be inventoried only quarterly.

Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning safe yield (GMD 1) and due and sufficient cause for non-use. After discussion, the Committee had no comment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning adoption by reference (feeding stuffs); good manufacturing practices, adoption by reference; good manufacturing practices, definitions; prohibited feeding stuffs, adoption by reference; and revocation. After discussion, the Committee had the following comments.

KAR 4-3-49. The Committee concurs with the agency's plan to make technical corrections to ensure that federal regulations regarding good manufacturing practices are adopted by reference.

KAR 4-3-51. The Committee asks that the agency strike certain portions of paragraphs (a)(1) and (a)(2) which appear to create a situation of an unlawful delegation of authority.

Kansas Department of Education. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definition of terms; type of licensure; endorsements; licensure requirements; licensure of out-of-state and foreign applicants; criminal history records check; institutional accreditation and program approval definitions; procedures for initial accreditation of teacher education institutions; on-site visits, recommendation, appeal; procedures for initial approval of teacher education programs; and procedures for renewing approval of teacher education program. After discussion, the Committee had the following comments.

KAR 91-1-203. In paragraph (h), the Committee is unclear what is meant by "heritage language" and suggests the agency establish a definition for the term.

KAR 91-1-204. In paragraphs (e)(3)(A)(i) and (e)(3)(A)(ii), reference is made to successful completion of all requirements or pedagogical assessment. The Committee believes that a cross reference to the rule and regulation where these requirements are provided would be of assistance to the reader of this rule and regulation.

Committee Question. The Committee is curious to learn whether there is specific statutory authority for the Board to require fingerprinting and whether the fee charged actually covers the full cost of the fingerprinting process.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning firefighters relief act, fund allocation. After discussion, the Committee had no comment.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; continuing education; first responder and emergency medical responder (EMR) continuing education; emergency medical technician (EMT) continuing education; mobile intensive care technician (MICT) and paramedic continuing education; instructor-coordinator (I-C) continuing education; training officer continuing education; emergency medical responder (EMR) transition course approval; emergency medical technician (EMT) transition course approval; EMR and EMT train the trainer transition course approval; examination; approved emergency medical responder education standards; approved emergency medical technician education standards; approved paramedic education standards; approved instructor-coordinator standards; approved training officer I education standards; approved training officer II education standards; required training equipment and supplies; emergency medical responder course approval; emergency medical technician (EMT) course approval; and paramedic course approval. After discussion, the Committee had the following comments.

KAR 109-8-1. In subsection (a), reference is made to certain standards. The Committee suggests that a cross reference be included to the rule and regulation location of these standards.

KAR 109-11-1a. In subsection (a), the Committee wonders whether there may be a word missing in the text between “instruction” and “pursuant.” This same language appears in KAR 109-11-3a and KAR 109-11-6a.

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

Prepared by Judy Glasgow
Edited by Jill Shelley and Raney Gilliland

Approved by the Committee on:

April 27, 2011
(Date)