

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 29, 2005
Room 519-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Dennis Wilson, Vice-Chairman
Senator Karin Brownlee
Senator Ralph Ostmeyer
Representative Jerry Henry
Representative Lance Kinzer
Representative Jan Pauls
Representative Candy Ruff
Representative Scott Schwab
Representative Sharon Schwartz

Members Absent

Senator Don Betts
Senator Chris Steineger

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Susan Somers, Board of Accountancy
Mary Feighny, Board of Accountancy
Faith Loretto, Department of Administration
Linda DeCoursey, Department of Administration
Jane Nohr, Kansas Bureau of Investigation
Deletria Nash, Kansas Insurance Department
Reed W. Davis, Kansas Department of Transportation
J. P. Small, Kansas Department of Transportation
Edwin Greer, Kansas Department of Transportation

Mark Stafford, State Board of Healing Arts
Tom Hatten, Kansas Department of Revenue
Richard Cram, Kansas Department of Revenue
Anne Haught, Kansas Department of Labor
George Teagarden, Kansas Animal Health Department
Mark Boranyak, Kansas Department on Aging
Greg Reeser, Kansas Department on Aging
Craig Thompson, Kansas Department of Health and Environment

Morning Session

Chairman Holmes called the meeting to order at 10:10 a.m., March 29, 2005. Chairman Holmes canvassed Committee members on dates for the next meeting and it was agreed that the Committee would meet on Monday, April 25, at 10:00 a.m. The Committee also tentatively set a meeting on sine die as the date for the meeting in May.

Chairman Homes recognized Susan Somers, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Accountancy. KAR 74-4-1a, experience requirement for attest services; KAR 74-4-8, continuing professional education programs; requirements; KAR 74-5-2, definitions; KAR 74-5-101, independence; KAR 74-5-102, integrity and objectivity; KAR 74-5-103, commissions and referral fees; KAR 74-5-104, contingent fees; KAR 74-5-201, due professional competence; KAR 74-5-202, compliance with standards; KAR 74-5-203, accounting principles; KAR 74-5-301, confidential client information; KAR 74-5-401, acts discreditable to the profession; KAR 74-5-403, advertising and other forms of solicitation; KAR 74-11-6, definitions; and KAR 74-11-15, peer review oversight.

She reviewed the history creating the need for the proposed rules and regulations by the Board. She noted that in 2002 Congress passed an act which created the Public Company Accounting Oversight Board (PCAOB) in response to accounting problems with Enron and Arthur Anderson. Ms. Somers noted that this agency promulgates rules and standards which have to be approved by the Securities and Exchange Commission for the regulation of accounting firms that perform audits for public companies. She further explained that in order for the Kansas Board of Accountancy to have jurisdiction over these accounting firms, it is necessary that the rules and standards of the PCAOB be incorporated into the Board's rules and regulations.

Ms. Somers responded to general questions from Committee members concerning the noticed rules and regulations. Chairman Holmes thanked her for her presentation before the Committee.

Jane Nohr, Assistant Attorney General, was introduced by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Bureau of Investigation. KAR 10-22-1, approved field tests.

Ms. Nohr stated that this rule and regulation was the result of suggestions made by the Committee for clarification in wording of a previously amended rule and regulation. There were no questions from the Committee and Ms. Nohr was thanked for her appearance.

Chairman Holmes recognized Linda DeCoursey, Technical Administrator, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Employees Health Care Commission (Attachment 1). KAR 108-1-1, eligibility.

Ms. DeCoursey explained that the amendment to KAR 108-1-1 would provide continued health care coverage eligibility for a small number of employees who have chosen not to participate in KPERS.

Committee members had no questions for Ms. DeCoursey and the Chairman thanked her for appearing before the Committee.

Chairman Holmes welcomed Deletria Nash, Staff Attorney for the Kansas Insurance Department, to address the proposed rules and regulations noticed for hearing (Attachment 2). KAR 40-3-46, KAR 40-3-50 revoked, and KAR 40-1-44, actuarial opinions and memorandums.

Staff noted that the statutory references in the history section should be amended to the current 2004 Supp. at the next revision. There being no further comments by the Committee, Ms. Nash was thanked for her appearance.

Richard Cram and Tom Hatten were recognized by the Chairman, to address the proposed rules and regulations noticed for hearing by the Department of Revenue (Attachments 3 and 4). KAR 14-14-12 and KAR 92-19-49a, revoked; KAR 92-19-49b, returned goods; KAR 92-19-49c, refund applications; refund claims; required forms; KAR 92-19-49d, review of refund applications; processing of refund claims; and KAR 92-19-81, abatement of final tax liabilities.

Mr. Cram stated that these regulations had come before the Committee in December 2004, but because of a scheduling error the public hearing was not held. He stated that the changes to clarify the language, recommended by the Committee at the December meeting, were incorporated in KAR 92-19-49d. He responded to general questions from Committee members concerning these proposed rules and regulations.

Staff noted that the statutory references in the history section need to be updated to the 2004 Supp., since the 2003 Supps. no longer exist. Mr. Cram stated he would make these changes.

At the conclusion of Committee questions, the Chairman thanked Mr. Cram for appearing and stated the Committee's appreciation for the Department making the changes the Committee had suggested at the December meeting.

Chairman Holmes introduced Reed Davis, Manager of Economic Analysis for the Kansas Department of Transportation, to speak to the proposed rules and regulations noticed for hearing (Attachment 5). KAR 36-41-1, definitions; KAR 36-41-2, application and supporting documents; KAR 36-41-3, access lease agreement and equipment lease agreement: restrictions and requirements; KAR 36-41-4, interest rate and service fees; and KAR 36-41-5, prevailing rates.

Mr. Davis stated that the 2004 Kansas Legislature authorized the agency to lease access to the Department's communication towers and to provide a lease program for public safety agency to acquire communication equipment. The conferee noted that regulations proposed by the Department of Transportation have received temporary approval, and a public hearing is scheduled for April 27. Mr. Davis responded to questions concerning these proposed rules and regulations.

Staff suggested that all session law references should be updated to the statutory references in both the history section and the regulations, where appropriate. Mr. Davis stated that this change would be made. The Chairman thanked Mr. Davis for his presentation.

Anne Haught, Division of Workers Compensation, was welcomed by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas Department of Labor (Attachment 6). KAR 51-9-17, release 1 standards for trading partner profiles; submission of data; first reports of injury.

Ms. Haught stated that the Kansas Department of Labor does not require electronic reporting, but would like for everyone to be able to participate. She reported that this is a secured site. The Committee noted that the website should be included in the notice and also a notation that the agency will accept comments on the proposed rules and regulations by e-mail.

The Chairman thanked Ms. Haught for her appearance before the Committee.

Afternoon Session

George Teagarden, Kansas Livestock Commissioner, was recognized by Chairman Holmes to address the Committee regarding the proposed rules and regulations noticed for hearing by the Animal Health Department. KAR 9-2-32, brucellosis: uniform methods and rules; and KAR 9-11-10, tuberculosis: uniform methods and rules.

Mr. Teagarden stated that these proposed rules and regulations adopt the most recent uniform methods and rules issued by the United States Department of Agriculture.

It was suggested that the e-mail address of the agency be published in the notice and that comments be accepted by e-mail. After responding to all questions, Mr. Teagarden was thanked for his appearance before the Committee.

Chris Tymeson, Department Attorney, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-5-4, nonresident bobcat hunting permit; tagging, disposal, legal equipment, shooting hours, and general provisions; KAR 115-11-1, controlled shooting areas; license application, issuance priority, and reporting; and KAR 115-18-10, importation and possession of certain wildlife; prohibition, permit requirement, and restrictions.

Mr. Tymeson answered general questions concerning these proposed rules and regulations noticed for hearing. He stated that there has been an increased interest in hunting bobcats as trophies. He said that this also was true of nonresident hunters who were hunting other species.

Mr. Tymeson also reviewed with the Committee exempt rules and regulations that the Department is changing. These are not subject to the Committee's review, but the agency wanted to keep the Committee informed about its activities. There being no other comments, Mr. Tymeson was thanked for his presentation.

Chairman Holmes introduced Mark Boranyak, Commissioner of Licensure, Certification, and Evaluation, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department on Aging. KAR 26-39-438, informal dispute resolution requests; KAR 26-39-439,

informal dispute resolution panel; KAR 26-39-440, informal dispute resolution process; and KAR 26-39-441, notification of final decision.

Mr. Boranyak stated that the proposed rules and regulations are new and the result of the passage of HB 2658 by the 2003 Legislature.

Staff had questions concerning KAR 26-39-439, page 2, (f)(1) on the confidentiality requirements. Mr. Boranyak and Mr. Reeser stated that these were found in the references cited in the paragraph, along with the federal Centers for Medicare and Medicaid Services (CMS) regulations. Committee members suggested that KAR 26-39-440, paragraph (2)(d), in reference to oral and written information, should be clarified, since (2)(b) states only oral presentations may be made at the hearing. Mr. Boranyak stated that written information may be presented before the hearing. A question also was raised by Committee members concerning the Departmental staff being present at the informal dispute resolution meetings, and whether this could be a conflict of interest. Mr. Boranyak stated that staff was only there to assist with technical information.

Chairman Holmes thanked Mr. Boranyak for his appearance before the Committee.

Mark Stafford, General Counsel, was recognized by the Chairman to address the proposed rules and regulations noticed for hearing by the State Board of Healing Arts. KAR 100-15-2, revoked; KAR 100-15-4, continuing education standards; definitions; KAR 100-15-5, continuing education requirement; KAR 100-15-6, documentation of continuing education; and KAR 100-15-7, category I continuing education using distance-learning media.

Mr. Stafford responded to questions from the Committee on these rules and regulations, noting there is a growing desire for distance learning. There being no other questions, Chairman Holmes thanked Mr. Stafford for his participation before the Committee.

Craig Thompson, Section Chief, was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-16-28g, surface water register.

Mr. Thompson stated that the Surface Water Register being adopted is dated November 5, 2004. He stated that during the period from April 1 through October 31, 2003, 427 streams and 45 lakes were evaluated through a Use Attainability Analysis (UAA) to determine the appropriate recreational use designation. He stated that 13 stream segments are proposed to be removed from classification, 282 stream segments are proposed as secondary contact recreation, and 132 stream segments are proposed as primary contact recreation. He further noted that five lakes are proposed to be removed from classification; one lake is proposed as secondary contact recreation; and 39 lakes are proposed as primary contact recreation and food procurement.

In response to questions concerning whether or not the Register is up to date, Mr. Thompson stated that it is about one year behind. He stated that an updated document should be available in December 2005. It was the Committee's opinion that the Register is confusing, since it does not designate which items were reviewed in 1999, which items were a part of the original survey, or which ones were updated in subsequent years. Committee members requested that the Register be prepared in a manner to designate when a UAA had been performed. Mr. Thompson stated that the data gathered from the most recent surveys is available on the Department's website.

A handout ([Attachment 7](#)) that came from the agency's website was provided by Chairman Holmes for the Committee's information. The handout consisted of a map showing drainage areas from across the state.

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

Staff called the Committee's attention to the information provided by the Department of Administration, as requested at the January hearing (Attachment 8).

The Chairman stated that the next meeting would be April 25, 2005, at 10:00 a.m. There being no further business, the meeting was adjourned.

Committee Comments on Proposed Rules and Regulations

Kansas State Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning experience requirement for attest services; continuing professional education programs, requirements; definitions; independence; integrity and objectivity; commissions and referral fees; contingent fees; due professional competence; compliance with standards; accounting principles; professional standards; confidential client information; acts discreditable to the profession; advertising and other forms of solicitation; definitions; and peer review oversight, and had no comment.

Kansas Bureau of Investigation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning approved field tests and had the following comment.

General Comment. The Committee notes with pleasure the changes made as a result of the Committee's review of these regulations in January of 2005.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning transportation of spirits by distributors; refunds and credits; returned goods; refund applications, refund claims, required forms; review of refund applications, processing of refund claims; and abatement of final tax liabilities, and had the following comments.

KAR 14-14-12. The Committee is interested in the history and necessity of this regulation.

General Comment. The Committee notes with pleasure the changes made as a result of the Committee's review of these regulations in late 2004.

Kansas Department of Transportation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application and supporting documents; access lease agreement and equipment lease agreement: restrictions and requirements; interest rate and service fees; and prevailing rates, and had the following comment.

General Comment. The Committee expresses pleasure with the agency's cooperation with local governments in the CSAEL program and its implementation.

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning nonresident bobcat hunting permit, tagging, disposal, legal equipment, shooting hours, and general provisions; controlled shooting areas, license application, issuance priority, and reporting; and importation and possession of certain wildlife, prohibition, permit requirement, and restrictions, and had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the surface water register and had the following comment and requests.

General Comment. The Committee is concerned that there is no way to determine from the Surface Water Register whether or when a stream segment has had a UAA conducted on it. The Committee requests that in any future adoption of the Surface Water Register some indicator be placed in it so that a reader may be able to tell when the UAA was accomplished.

Request. The Committee requests an explanation of the existence of wetlands on the Konza Prairie and on the Cimarron National Grasslands.

Request. The Committee requests an explanation of the existence of wetlands on the portion of Cheyenne Bottoms owned by the Nature Conservancy, but not on that portion owned by the State of Kansas.

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fire and casualty insurance, rating organizations, prospective loss costs, requirements, definitions; fire and casualty insurance, rating organizations, availability of rating information for individual insureds, charges, fees, conditions prohibited; and actuarial opinions and memorandums, and had no comment.

Kansas Animal Health Department. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning tuberculosis: uniform methods and rules; and brucellosis: uniform methods and rules, and had no comment.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning release 1 standards for trading partner profiles, submission of data, and first reports of injury, and had the following request.

Request. The Committee requests the appearance of a spokesperson from the agency at its next meeting (April 25) to discuss the pharmacy fee schedule for workers compensation.

Kansas State Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; continuing education standards, definitions; continuing education requirement; documentation of continuing education; and category I continuing education using distance-learning media, and had no comment.

Kansas Department on Aging. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning informal dispute

resolution request; informal dispute resolution panel; informal dispute resolution process; and notification of final decision, and had the following comment.

KAR 26-39-440. Consider clarifying in (2)(b) and (d) the material that has been submitted prior to the panel meeting including the written information, since the references appear to address only oral presentations.

Kansas State Employees Health Care Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility and had no comment.

Prepared by Judy Glasgow, Secretary
Edited by Raney Gilliland and Melissa Calderwood

Approved by Committee on:

April 25, 2005
(date)