

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

June 20, 2013

Room 152-S—Statehouse

#### Members Present

Representative Sharon Schwartz, Chairperson  
Senator Vicki Schmidt, Vice-chairperson  
Senator Oletha Faust-Goudeau  
Senator Tom Hawk  
Senator Garrett Love  
Senator Ralph Ostmeyer  
Representative Steve Huebert  
Representative Mark Kahrs  
Representative Jan Pauls  
Representative Ed Trimmer  
Representative Valdenia Winn

#### Member Absent

Representative Jerry Lunn

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Sharon Wenger, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Katherine McBride, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Gary Deeter, Committee Secretary

#### Conferees

Matt Spurgin, Staff Attorney, Kansas Department of Agriculture  
Kelly McPherron, Assistant General Counsel, Kansas Bureau of Investigation  
Leslie Moore, Director of Information Services, Kansas Bureau of Investigation  
Cheryl Magathan, Public Service Executive, Kansas Real Estate Appraisal Board  
Mary Murphy, Bureau of Family Health, Kansas Department of Health and Environment  
Kim Christiansen, Assistant Secretary/Chief Counsel, Kansas Department of Agriculture,  
representing the Kansas Water Office  
Chris Tymeson, Chief Counsel, Kansas Department of Wildlife, Parks and Tourism  
Amber Smith, Litigation Counsel, Kansas Corporation Commission

#### Others Attending

See attached list.

## Morning Session

The Chairperson called the meeting to order at 9:03 a.m. and referenced two letters from the Committee seeking the Kansas Attorney General's opinion on a possible conflict on Department of Agriculture proposed KAR 4-28-34 and statutory authority for proposed KAR 4-28-6 (Attachments 1 and 2).

*Senator Schmidt moved to approve the minutes for April 22, 2013; the motion was seconded by Representative Kahrs. The minutes were unanimously approved.*

### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Department of Agriculture**

KAR 99-25-1, adoption by reference, exceptions, availability of copies; KAR 99-25-9, adoption by reference; KAR 99-40-3, invoice disclosure requirements for wholesalers and distributors of gasoline and diesel fuel.

The Chairperson welcomed Matt Spurgin, Staff Attorney, Kansas Department of Agriculture (KDA). Mr. Spurgin noted the amended regulations brought Kansas into conformity with national standards. Members expressed concern regarding the additional costs implicit in the requirement for concrete approaches to scales. Tim Tyson, KDA Director of Weights and Measures, explained the requirement applied only to new construction, not existing scales. Mr. Spurgin replied to a question that scales are tested for accuracy at least once a year by private service companies.

### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Bureau of Investigation**

KAR 10-10-2, reporting time frame; KAR 10-10-5, electronic reporting by district courts.

Kelly McPherron, Assistant General Counsel, Kansas Bureau of Investigation (KBI), stated KAR 10-10-2 is a new regulation in response to legislation regarding electronic reporting by district courts for all case filings and dispositions. Replying to a question, Ms. McPherron stated, presently, there is no penalty for failing to follow the new regulation.

Leslie Moore, Director of Information Services, KBI, replying to another question, stated district courts now must report within 60 days. Presently, Ms. McPherron added, 80 percent of filings are reported electronically, but smaller county offices cannot justify the additional expense when they have so few filings. Further, she replied, the electronic filing program is not ready for deployment; implementation of the proposed regulation is being postponed for a year.

### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Real Estate Appraisal Board**

KAR 117-20-4, fees.

Cheryl Magathan, Public Service Executive, Kansas Real Estate Appraisal Board, stated that since the agency began oversight over appraisal management companies, the fee fund has

grown more than anticipated. The proposed rule and regulations will drop the registration renewal fee from \$1,500 to \$1,000.

The Chairperson recessed the meeting for *sine die* adjournment. The Committee resumed the hearings at 10:30 a.m.

### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Department of Health and Environment**

KAR 28-4-801, license required; KAR 28-4-814, family life; KAR 28-4-816, transportation; KAR 28-4-820, general environmental requirements; KAR 28-4-821, sleeping arrangements.

Mary Murphy, Bureau of Family Health, Kansas Department of Health and Environment, stated the five proposed amendments clarify and revise rules and regulations adopted in 2008 regarding foster homes. Ms. Murphy stated 28-4-801 expands the circumstances where a license is not required; 28-4-814 removes a requirement regarding medical consent; and 28-4-816 clarifies language regarding transportation and updates statutory references. Staff noted a 16-year-old's driver's license still has certain restrictions. Ms. Murphy noted the change from 3.5 to 4 inches in the distance between balusters (28-4-820) brings the regulation in line with current building codes.

### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Water Office**

KAR 98-1-1, definitions; KAR 98-1-2, revocation (conduct of hearing); KAR 98-2-1, notice; KAR 98-2-2, conduct of hearing; KAR 98-2-3 through 98-2-20, revocations (remainder of Article 2); KAR 98-4-1, licenses; KAR 98-4-2, permits; KAR 98-4-3, evaluation of permit application; KAR 98-4-4, reports; KAR 98-4-5, procedure for granting emergency permits; KAR 98-4-6, revocation (reports); KAR 98-4-7, revocation (procedure for granting emergency permits); KAR 98-4-8, field operations; KAR 98-4-9, revocation (procedure for suspension or revocation of licenses); KAR 98-4-10, revocation (field operations); KAR 98-5-1, revocation (definitions); KAR 98-5-2, applications; KAR 98-5-3, request to negotiate; KAR 98-5-4, contract negotiation procedures; KAR 98-5-5, assignment; KAR 98-5-6, rate charged for water; KAR 98-5-7, rate charged for surplus water; KAR 98-5-8, contract provisions; KAR 98-5-9, determination of reservoir yields through a drought with a two percent change of occurrence in any one year; KAR 98-6-1, revocation (definitions); KAR 98-6-3, contract negotiation procedures; KAR 98-6-4, calculation of charges; KAR 98-7-1, district formation; KAR 98-7-2, district membership after district formation; KAR 98-7-3, special irrigation district, organization; KAR 98-7-4, contract negotiation procedures; KAR 98-7-6, calculation of charges by water supply access district; KAR 98-8-1, application for easement; KAR 98-8-2, notice to county and other government agencies; KAR 98-8-3, review of notice of intent to grant easement.

Kim Christiansen, Assistant Secretary and Chief Counsel, Kansas Department of Agriculture, representing the Kansas Water Office (KWO), stated many of the proposed rules and regulations were instituted decades ago and have never been brought into alignment with current practices. Ms. Christiansen noted the state owns specified acre-feet of stored water, which it contracts to sell to municipalities and other entities (98-5-1 through 9). Earl Lewis, Deputy Director, KWO, explained the yield calculation (98-5-9) expands the historical data used

to determine drought conditions. Ms. Christiansen explained the assurance district rules and regulations (98-6) apply to municipal and industrial water use only; access district rules and regulations (98-7) apply to the lower Smoky Hill water district and add recreational use, an addition brought about by 2011 legislative action. She explained, for all navigable rivers in Kansas (the Missouri, Kansas, and Arkansas rivers), the state owns the river bed up to the top of the bank; 98-8 allows the KWO Director streamline easement allowances for river-edge owners.

### **Afternoon Session**

#### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Department of Wildlife, Parks and Tourism**

KAR 110-12-1, revocation (formerly Department of Commerce regulation; Agritourism Promotion Act, definitions); KAR 110-12-2, revocation (registration); KAR 110-12-3, revocation (liability insurance, costs qualifying for tax credits); KAR 110-12-4, revocation (tax credits); KAR 110-12-5, revocation (new registration form); KAR 110-12-6, revocation (contracts); KAR 115-5-1, furbearers and coyotes, legal equipment, taking methods, and general provisions; KAR 115-5-2, furbearers and coyotes, possession, disposal, and general provisions; KAR 115-6-1, fur dealer license, application, authority, possession of furs, records, and revocation; KAR 115-8-1, department lands and waters, hunting, furharvesting, and discharge of firearms; KAR 115-8-2, blinds, stands, and decoys; KAR 115-8-23, bait, hunting; KAR 115-16-5, wildlife control permit, operational requirements; KAR 115-25-9a, deer, open season, bag limit, and permits, additional considerations, Fort Riley; KAR 115-25-11, furbearers, open seasons and bag limits; KAR 115-40-1, definitions; KAR 115-40-2, registration; KAR 115-40-3, liability insurance, costs qualifying for tax credits; KAR 115-40-4, tax credits; KAR 115-40-5, new registration form; KAR 115-40-6, contracts.

Chris Tymeson, Chief Counsel, Kansas Department of Wildlife, Parks and Tourism (KDWPT), reviewed proposed rules and regulations. Regarding articles 110-12 and 115-40, Mr. Tymeson stated ERO 36 moved the rules and regulations from the Kansas Department of Commerce to KDWPT related to agritourism. Mr. Tymeson noted some minor amendments in 115-40.

#### **Review and Comment on Proposed Rules and Regulations Noticed for Hearing by the Kansas Corporation Commission**

KAR 82-4-1, definitions; KAR 82-4-3a, hours of service; KAR 82-4-3b, procedures for transportation workplace drug and alcohol testing programs; KAR 82-4-3c, testing for controlled substances and alcohol use; KAR 82-4-3d, safety fitness procedures; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers; KAR 82-4-3h, driving of commercial motor vehicles; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-3j, inspection, repair, and maintenance; KAR 82-4-3k, transportation of hazardous materials, driving and parking rules; KAR 82-4-3l, transportation of migrant workers; KAR 82-4-3m, employee safety and health standards; KAR 82-4-3n, minimum levels of financial responsibility for motor carriers; KAR 82-4-3o, imminent hazard; KAR 82-4-6d, waiver of physical requirements; KAR 82-4-8a, accessories and equipment; KAR 82-4-20, transportation of hazardous materials by motor vehicles; KAR 82-4-27, applications for certificates of convenience and

necessity and certificates of public service; KAR 82-4-29, applications for private carrier permits; KAR 82-4-39, surrender of identification cards; KAR 82-4-48a, motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations.

Amber Smith, Litigation Counsel, Kansas Corporation Commission (KCC), provided an overview of 22 motor carrier regulations, many of which are federal regulations being adopted by reference. Ms. Smith, responding to a question, stated Kansas rules and regulations must “be substantially compliant” with federal regulations in order for the state to qualify for federal funds. When she replied to a question that adoption by reference does include appendices, staff noted that such references must include such a statement in the rules and regulations. Ms. Smith commented on each regulation, after which members discussed how new hours of service for motor carriers may have a negative impact on carriers and questioned the need for adhering to federal regulations. Ms. Smith replied that a three-year window exists in complying with federal regulations before funding is affected. Mike Hoeme, Director of the Transportation Division, KCC, clarified that funding reductions are graduated in yearly increments; he also cited evidence that the regulations save lives. Responding to a question, Mr. Hoeme stated adopting the new rules and regulations will not bring in new funding, but will maintain current funds.

The meeting adjourned at 3:50 p.m. The next meeting of the Joint Committee is scheduled for Monday, July 22, 2013, at the Statehouse. Further meetings are scheduled for August 27, 2013; November 5, 2013; and January 7, 2014.

## **COMMITTEE COMMENTS ON PROPOSED RULES AND REGULATIONS**

**Kansas State Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 99-25-1, adoption by reference, exceptions, availability of copies; 99-25-9, adoption by reference; KAR 99-40-3, invoice disclosure requirements for wholesalers and distributors of gasoline and diesel fuel. After discussion, the Committee had the following comments.

Comment. With respect to KAR 99-25-1, testimony by the conferee indicated the agency would be clarifying that the concrete approach for scales would be required only for new scales or the replacement of existing scales. The Committee agrees with this modification and anticipates viewing the language.

Economic Impact Statement. The Committee believes that the Economic Impact Statement should reflect the cost for the concrete approach requirement.

**Kansas Bureau of Investigation.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 10-10-2, reporting time frame; KAR 10-10-5, electronic reporting by courts. After discussion, the Committee had the following comment.

KAR 10-10-5. The Committee is concerned that the method for electronically submitting case filings and dispositions is not specified in the proposed rule and regulation. Further, the Committee requests the submission of this rule and regulation at this time be reviewed. Adopting this rule and regulation at this time may be premature, since the actual deadline for its adoption is July 1, 2014.

**Kansas Real Estate Appraisal Board.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 117-20-4, fees. After discussion, the Committee had the following comment.

Comment. The Committee commends the Real Estate Appraisal Board for reviewing its fees and decreasing the registration renewal fee for appraisal management companies.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 28-4-801, license required; KAR 28-4-814, family life; KAR 28-4-, transportation; KAR 28-4-820, general environmental requirements; KAR 28-4-821, sleeping arrangements. After discussion, the Committee had the following comments.

KAR 28-4-816. Subsection (f)(2) should be reviewed to specify whether an individual who is 16 or 17 years of age and who possesses a valid driving permit other than a driver's license may transport a child in foster care to and from school.

KAR 28-4-820. The Committee recommends additional review of the wording found in subsection (e) to determine whether more detail could be added to the "any objects or materials that could cause injury" provision.

KAR 28-4-821. The Committee requests the agency review the prohibition on wooden dowels or similar items being used to secure sliding glass doors. The Committee noted this prohibition seems excessive given that the securing of sliding glass doors in this manner is a common practice among individuals in order to provide additional safety.

**Kansas Water Office.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 98-1-1, definitions; KAR 98-1-2, revocation (conduct of ); KAR 98-2-1, notice; KAR 98-2-2, conduct of hearing; KAR 98-2-3 through 98-2-20, revocations (remainder of Article 2); KAR 98-4-1, licenses; KAR 98-4-2, permits; KAR 98-4-3, evaluation of permit application; KAR 98-4-4, reports; KAR 98-4-5, procedure for granting emergency permits; KAR 98-4-6, revocation (reports); KAR 98-4-7, revocation (procedure for granting emergency permits); KAR 98-4-8, field operations; KAR 98-4-9, revocation (procedure for suspension or revocation of licenses); KAR 98-4-10, revocation (field operations); KAR 98-5-1, revocation (definitions); KAR 98-5-2, applications; KAR 98-5-3, request to negotiate; KAR 98-5-4, contract negotiation procedures; KAR 98-5-5, assignment; KAR 98-5-6, rate charged for water; KAR 98-5-7, rate charged for surplus water; KAR 98-5-8, contract provisions; KAR 98-5-9, determination of reservoir yields through a drought with a two percent change of occurrence in any one year; KAR 98-6-1, revocation (definitions); KAR 98-6-3, contract negotiation procedures; KAR 98-6-4, calculation of charges; KAR 98-7-1, district formation; KAR 98-7-2, district membership after district formation; KAR 98-7-3, special irrigation district, organization; KAR 98-7-4, contract negotiation procedures; KAR 98-7-6, calculation of charges by water supply access district; KAR 98-8-1, application for easement; KAR 98-8-2, notice to county and other government agencies; KAR 98-8-3, review of notice of intent to grant easement. After discussion, the Committee had the following comments.

KAR 98-1-1. In subsection (e), the Committee believes the definition of "day" conflicts with the provisions of K.S.A. 2012 Supp. 60-206(a). Please review and modify accordingly.

KAR 98-4-1. In paragraph (e)(1), the Committee believes the agency should review the November 30 deadline to determine if that date is appropriate when the licenses do not renew until January 1.

KAR 98-4-2. In paragraph (e)(4), the Committee believes the reference to "section 1400 (4)" needs to be modified in order to correct the reference. Also in this paragraph, the Committee believes the term "individual worth" needs to be clarified so that the potential permit holder will know what exactly is required. The Committee suggests the use of a term such as "profit and loss statement" or other similar known term.

KAR 98-7-4. In subsection (b), the Committee suggests the phrase "within 30 days" be followed by appropriate language such as "upon receipt of the request."

KAR 98-7-6. The Committee cannot find the authority for this rule and regulation in KSA 82a-1345. Please inform the Committee whether other statutory authority exists within the provisions of K.S.A. 2012 Supp. 82a-2301 *et seq.*

KAR 98-8-1. In paragraph (b)(2), the Committee believes it would add clarity if the rule and regulation gave examples of the types of programs in which the landowner is participating which the agency will consider acceptable. The current language allows participation in programs which are not related to easements on navigable rivers.

**Kansas State Department of Wildlife, Parks and Tourism.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 110-12-1, revocation (formerly Department of Commerce; Agritourism Promotion Act, definitions); KAR 110-12-2, revocation (registration); KAR 110-12-3, revocation (liability insurance, costs qualifying for tax credits); KAR 110-12-4, revocation (tax credits); KAR 110-12-5, revocation (new registration form); KAR 110-12-6, revocation (contracts); KAR 115-5-1, furbearers and coyotes, legal equipment, taking methods, and general provisions; KAR 115-5-2, furbearers and coyotes, possession, disposal, and general provisions; KAR 115-6-1, fur dealer license, application, authority, possession of furs, records, and revocation; KAR 115-8-1, department lands and waters, hunting, furharvesting, and discharge of firearms; KAR 115-8-2, blinds, stands, and decoys; KAR 115-8-23, bait, hunting; KAR 115-16-5, wildlife control permit, operational requirements; KAR 115-25-9a, deer, open season, bag limit, and permits, additional considerations, Fort Riley; KAR 115-25-11, furbearers, open seasons and bag limits; KAR 115-40-1, definitions; KAR 115-40-2, registration; KAR 115-40-3, liability insurance, costs qualifying for tax credits; KAR 115-40-4, tax credits; KAR 115-40-5, new registration form; KAR 115-40-6, contracts. After discussion, the Committee had no comments.

**Kansas Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning KAR 82-4-1, definitions; KAR 82-4-3a, hours of service; KAR 82--3b, procedures for transportation workplace drug and alcohol testing programs; KAR 82-4-3c, testing for controlled substances and alcohol use; KAR 82-4-3d, safety fitness procedures; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers; KAR 82-4-3h, driving of commercial motor vehicles; KAR 82-4-3i, parts and accessories necessary for safe operation; KAR 82-4-3j, inspection, repair, and maintenance; KAR 82-4-3k, transportation of hazardous materials, driving and parking rules; KAR 82-4-3l, transportation of migrant workers; KAR 82-4-3m, employee safety and health standards; KAR 82-4-3n, minimum levels of financial responsibility for motor carriers; KAR 82-4-3o, imminent hazard; KAR 82-4-6d, waiver of physical requirements; KAR 82-4-8a, accessories

and equipment; KAR 82-4-20, transportation of hazardous materials by motor vehicles; KAR 82-4-27, applications for certificates of convenience and necessity and certificates of public service; KAR 82-4-29, applications for private carrier permits; KAR 82-4-39, surrender of identification cards; KAR 82-4-48a, motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations. After discussion, the Committee had the following comments.

General Comment. Throughout this set of rules and regulations, many portions of CFRs are adopted by reference. Several appear to intend to include the appendixes. The Committee believes those appendixes, unless specifically adopted, are not included in the adoption by reference language currently appearing in the proposed rules and regulations. Please include references for those appendixes which are intended to be adopted by reference.

KAR 82-4-3a, in paragraph (k)(6)(A)(l), reference to the motor carrier safety assistance program standards. The Committee is curious to know where these standards were adopted by reference and, if they have not been, if the agency intends to adopt them by reference.

KAR 82-4-3b. In paragraph (a)(76)(A), the Committee questions the reference to "40 CFR 40.83" and wonders if the reference should be "49 CFR 40.83." The Committee asks the agency to review the entire set of rules and regulations for other similar typographical errors. In paragraph (a)(134), the Committee wonders where Appendix H has been adopted by reference.

KAR 82-4-3g. The Committee discussed with the agency representative the change needed to allow optometrists to conduct eye examinations and looks forward to reviewing the modifications to this rule and regulation which will allow this to happen.

KAR 82-4-3i. In paragraph (a)(4)(A), the Committee questions the reference to the requirements in effect at the time of manufacture of the commercial vehicle. The Committee also asks what happens if there were no federal requirements in existence at the time of manufacture. Please modify this rule and regulation to account for this possibility. In paragraph (a)(4)(F), the reference is to "392-22" and the Committee believes this reference should be to "392.22." Please review this entire set of rules and regulations for similar typographical errors.

KAR 82-4-3n. In paragraph (a)(1)(A), please explain the difference in meanings between "for-hire" and "public." Please include the rationale for change in use of terms.

KAR 82-4-6d. In paragraph (b)(2)(C), letters of recommendation are to be from at least two licensed medical examiners written on their personalized or institutional letterhead. The Committee believes both personalized and institutional letterhead can be fabricated given current technology and suggests the agency should consider a requirement of having the physician provide the individual's National Provider Identifier instead, as a more secure means of determining the validity of the letters. In paragraph (b)(2)(C)(iii), the letters of recommendation for waivers of physical requirements for specific conditions apply only to diabetes. The Committee believes there are a number of other conditions which would be similar to diabetes such as a heart condition. Please review.



KAR 82-4-8a. This rule and regulation references 40 CFR Part 82, Subpart G. Neither the Committee members nor the Committee's staff could locate where this federal rule and regulation has been adopted by reference. Please provide the location of this adoption by reference. In addition, the Committee is curious to learn why the language requiring certain numbers of fire extinguishers has been stricken from this rule and regulation and thereby lowering the number of fire extinguishers required.

Question. The Committee asks whether the KCC is the entity which designates the roads to be traveled when transporting radioactive material. Also, what authority does the KCC have with regard to the transportation of radioactive material within the State of Kansas?

Economic Impact Statement. The Committee is curious to know what the economic impact might be if this set of rules and regulations were not adopted. It is also interested in knowing whether this impact would be on existing funding, future funding, or both and believes this should be reflected in the Economic Impact Statement.

Prepared by Gary Deeter  
Edited by Raney Gilliland

Approved by the Committee on:

July 22, 2013

(Date)