

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

March 13, 2015
Room 152-S—Statehouse

Members Present

Representative Sharon Schwartz, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Oletha Faust-Goudeau (a.m. only)
Senator Tom Hawk (a.m. only)
Representative Steve Huebert (a.m. only)
Representative Janice Pauls (a.m. only)
Representative Ed Trimmer
Representative Jim Ward (p.m. only)
Representative Valdenia Winn (a.m. only)

Members Absent

Senator Garrett Love
Senator Ralph Ostmeyer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Whitney Howard, Kansas Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Chris Tymeson, Chief Legal Counsel, Department of Wildlife, Parks and Tourism
Derek Smith, Department of Health and Environment
Cheryl Magathan, Real Estate Appraisal Board
Robert Large, Chief Counsel, Department of Agriculture
Tim Boese, Manager, Groundwater Management District No. 2 (GMD#2)
Randy Forbes, General Counsel, Board of Examiners in Optometry
Cindy Hermes, Director of Public Outreach, Kansas Insurance Department
Mark McClafin, Accident & Health Division, Kansas Insurance Department
Robert Vincent, Attorney, Kansas Corporation Commission
Lane Palmateer, Attorney, Kansas Corporation Commission
Jon Myers, General Counsel, Kansas Corporation Commission
Michael G. Smith, Associate Chief Counsel, Department of Health and Environment

Other Attendees

See attached list.

Morning Session

Approval of Minutes

Senator Schmidt moved to approve the minutes of February 20, 2015, as written. The motion was seconded by Representative Huebert. Motion carried without objection.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife, Parks and Tourism.

KAR 115-25-7, antelope, open season, bag limit, and permits; KAR 115-25-8, elk, open season, bag limit, and permits; KAR 115-25-9, deer, open season, bag limit, and permits.

Chris Tymeson, Chief Legal Counsel, Department of Wildlife, Parks and Tourism, appeared before the Committee to address the proposed rules and regulations. Mr. Tymeson explained the proposed rules and regulations pertain to establishment of the antelope, elk, and deer seasons and limits for this year. Mr. Tymeson indicated there has been an increase in the antelope population in the western part of the state allowing a minor increase in the number of available permits; however, a decrease in elk population in some areas has resulted in a reduction of available elk permits in a couple of areas. He said the deer population appears to be lower statewide, and the season will be reduced by a few days from approximate 100.

In response to questions from the Committee regarding endangered species, Mr. Tymeson noted species are reviewed every five years to determine whether they stay on the endangered list or are removed. Any changes to the listing are brought before the Joint Committee on Administrative Rules and Regulations. With regard to the number of vehicle accidents as a result of the increased antelope population and with deer, Mr. Tymeson said he has heard of no crashes involving antelope and explained he did not have the 2014 statistics on crashes but would research the subject and provide information to the Committee.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment.

KAR 28-4-94, background check requests for residential centers, group boarding homes, and child placement agencies.

Derek Smith, Department of Health and Environment, appeared before the Committee to address the proposed rules and regulations. Mr. Smith indicated the proposed rules and regulations are presented as a result of an audit indicating background checks for residential centers, group boarding homes and child placement agencies were not being completed in a timely manner. Responding to a question from the Committee, Mr. Smith indicated a corrective action plan has been put in place to eliminate the problem.

Review and Comment on proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board.

KAR 117-7-1, fees.

Cheryl Magathan, Real Estate Appraisal Board, appeared before the Committee to address the proposed rule and regulation, noting the proposed rule and regulation will reduce the fee for renewal of a certificate or license from \$200 to \$150 – a reduction of \$50. This is a result of an overage in the fee fund.

There were no questions from the Committee.

Review and Comment on proposed rules and regulations noticed for hearing by the Division of Water Resources, Kansas Department of Agriculture.

KAR 5-22-7, safe yield.

Robert Large, Chief Counsel, Department of Agriculture, and Tim Boese, Manager, Groundwater Management District No. 2 (GMD#2), appeared before the Committee to address the proposed rule and regulation. Mr. Large indicated the proposed rule and regulation will amend a current rule and regulation and will establish a maximum rate of diversion for a small use exemption permit to a maximum of 50 gallons per minute within the boundaries of Equus Beds Groundwater Management District No. 2.

Responding to a question from the Committee regarding the exclusion of McPherson County with reference to the aquifer recharge value in feet as referred to in (a)(5)(C), Mr. Boese indicated there is a deeper depth of water and more clay in the soil in the McPherson County area, so the recharge rate is slower.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas State Board of Examiners in Optometry.

KAR 65-5-6, continuing education; KAR 65-5-10, revocation (glaucoma licenses); KAR 65-5-11, revocation (biennial renewal) KAR 65-5-13, professional liability insurance.

Randy Forbes, General Counsel, Board of Examiners in Optometry, appeared before the Committee to address the proposed rules and regulations. Mr. Forbes noted the proposed amended permanent regulation establishing the continuing education requirements for licensed optometrists clarifies language and updates the requirements to currently used terms. KAR 65-5-13 is a new permanent regulation requiring each person licensed by the board to obtain and maintain professional liability insurance coverage of at least \$1,000,000 for each claim; however, such insurance already had been required in other law.

Responding to a question from the Committee, Gary Robbins, Executive Director, Kansas Optometric Association, indicated he is not aware of any shortage of optometrists across the state and between 80 and 90 counties have the services of an optometrist at least one day a week.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Board of Pharmacy.

KAR 68-20-31, 2,5-dimethoxy-4-methyl-n-(2 methoxybenzyl) phenethylamine included in schedule I.

Randy Forbes, General Counsel, Board of Pharmacy, appeared before the Committee to address the proposed rule and regulation. Mr. Forbes indicated the purpose of the rule and regulation is to classify the drug as a schedule I controlled substance.

There were no questions from the Committee.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Insurance Department.

KAR 40-4-29a, same, renewability of individual hospital, medical, or surgical expense policy.

Cindy Hermes, Director of Public Outreach, Kansas Insurance Department, and Mark McClafflin, Accident and Health Division, Kansas Insurance Department, appeared before the Committee to address the proposed rules and regulation ([Attachment 1](#)). Ms. Hermes indicated the proposed rule and regulation will update the notice required to be sent to individuals turning 65 or becoming Medicare eligible.

There were no questions from the Committee.

The meeting was recessed at 8:15 a.m.

Afternoon Session

The meeting reconvened at 12:05 p.m.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Corporation Commission.

KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3g, qualifications of drivers.

Robert Vincent, Litigation Counsel, Kansas Corporation Commission, appeared before the Committee to address the proposed rules and regulations ([Attachment 2](#)). Mr. Vincent stated the proposed rules and regulations are to ensure that Kansas' motor carrier regulations are compatible with the Federal Motor Carrier Safety Administration's rules and regulations. Mr. Vincent explained the funding for the motor carrier programs is based in large part on grants from the federal government making it important for the state's rules and regulations to be compatible with the federal rules and regulations.

Responding to a question from the Committee, Mr. Vincent indicated there are 700 medical examiners within the State of Kansas. If a driver is operating interstate, that driver may go to a doctor out-of-state. Mr. Vincent indicated he would provide the Committee with a map of where the medical examiners are located within the state.

KAR 82-3-100, applicability, exception; KAR 82-3-106, surface casing and cement; KAR 82-3-109, well spacing, orders and basic proration orders; KAR 82-3-203, production allowable; KAR 82-3-208, venting or flaring of casinghead gas; KAR 82-3-209, flaring of sour gas.

Lane Palmateer, Litigation Counsel, Kansas Corporation Commission, appeared before the Committee to address the proposed rules and regulations ([Attachment 3](#)). Mr. Palmateer indicated all of the regulations, except KAR 82-3-16, are being amended because of a technical clarification in the notice requirements. KAR 82-3-16 is being amended to ensure oil and gas wells are completed in a manner that will protect fresh and usable groundwater.

Responding to a question from the Committee, Mr. Palmateer indicated there should be no economic impact to the industry, although a few producers may need to change their well-drilling procedures. The agency has made an effort to not burden the industry and to streamline the regulations and make them more understandable. Mr. Palmateer stated information is also available on the agency's website.

KAR 82-2-402, revocation (trial tests, application, contents, and approval); KAR 82-2-506, revocation (electric submersible pumps, application, and approval); KAR 82-2-507, revocation (same, assessment of cost); KAR 82-3-207, oil drilling unit; KAR 82-3-312, gas allowables and drilling unit; KAR 82-3-1100, revocation (definitions: carbon dioxide [CO₂] storage facilities); KAR 82-3-1101, revocation (CO₂ storage facility, permit application); KAR 82-3-1102 (notice of application for permit and protest); KAR 82-3-1103, revocation (application required to amend permit); KAR 82-3-1104, revocation (transfer of a CO₂ storage facility permit); KAR 82-3-1105, revocation (modification, suspension, or cancellation of permit); KAR 82-3-1106, revocation (well construction requirements); KAR 82-3-1107, revocation (storage facility requirements); KAR 82-3-1108, revocation (storage facility monitoring); KAR 82-3-1109, revocation (annual review of safety plan, safety plan update); KAR 82-3-1110, revocation (safety inspection); KAR 82-3-1111, revocation (leak detector inspections and testing); KAR 82-3-1112, revocation (mechanical integrity testing); KAR 82-3-1113, revocation (report of leak, potential leak, or loss of containment); KAR 82-3-1114, revocation (temporary abandonment of storage wells); KAR 82-3-1115, revocation (temporary abandonment of a storage facility); KAR 82-3-1116, revocation (application for decommissioning and abandonment of storage facility); KAR 82-3-1117, revocation (postclosure determination); KAR 82-3-1118, revocation (plugging methods and procedures, plugging report, and plugging fee for CO₂ storage wells); KAR 82-3-1119, revocation (fees for CO₂ storage facilities and CO₂ storage wells); KAR 82-3-1120, revocation (penalties).

Jon Myers, Litigation Counsel, Kansas Corporation Commission, appeared before the Committee to address the proposed rules and regulations. Mr. Myers indicated the proposed rules and regulations clarify the size of drilling units, eliminate unnecessary references,

eliminate a provision regarding applications for electric submersible pumps, and eliminate regulations preempted by the U.S. Environmental Protection Agency's regulation of carbon dioxide storage facilities at the federal level. Mr. Myers stated, currently, there are no carbon dioxide storage facilities in the State of Kansas.

Responding to questions from the Committee, Mr. Myers stated operators are required to maintain funds to address issues with abandoned wells. Mr. Myers concluded abandoned wells are an issue of concern and could become more prevalent with a drop in oil prices. Mr. Myers estimated the abandoned well fund maintained by the state for wells drilled in 1996 and later carries a positive balance of more than \$1 million and some funds have been transferred from it to the fund for plugging earlier wells; many of those earlier wells are abandoned. The Committee expressed concern that drillers should be responsible for abandoned wells and inquired about financial assurance required in other states.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment, Division of Health Care Finance.

KAR 129-5-10, definitions; KAR 129-5-11, applicability; KAR 129-5-12, electronic and paper claims; KAR 129-5-13, date claim is deemed to be received; KAR 129-5-14, notice of denial or need for additional information, processing additional information, suspension of time periods; KAR 129-5-15, claims subject to *bona fide* dispute; KAR 129-5-16, partially paid claims; KAR 129-5-17, resubmitted claims; KAR 129-5-18, date claim is deemed to be paid; KAR 129-5-19, interest on unpaid claims; KAR 129-5-20, retroactive rate, program, and policy changes and clarifications; KAR 129-5-21, retroactive eligibility.

Michael G. Smith, Associate Chief Counsel, Department of Health and Environment, appeared before the Committee to address the proposed rules and regulations ([Attachment 4](#)). Mr. Smith explained HB 2552 was passed by the Legislature during the 2014 Legislative Session. These rules and regulations address a number of questions not expressly addressed in the statutes.

The Committee expressed concern the rules and regulations were not presented in a timely manner after passage of the legislation. Responding to questions from the Committee concerning a claim dispute, Mr. Smith stated KDHE is not the arbitrator in a claim dispute that would be handled by the courts. The Committee expressed concern with the process of getting claim disputes handled in a timely manner.

COMMITTEE COMMENTS AND RECOMMENDATIONS

Kansas Department of Wildlife, Parks and Tourism

After discussion, the Committee had the following request.

Request. Please forward to the Committee the 2014 deer-accident report for the State of Kansas as soon as it is available.

Kansas Department of Health and Environment

After discussion, the Committee had no comments.

Kansas Real Estate Appraisal Board

After discussion, the Committee had no comments.

Division of Water Resources, Kansas Department of Agriculture

After discussion, the Committee had no comments.

Kansas State Board of Examiners in Optometry

After discussion, the Committee had no comments.

Kansas Board of Pharmacy

After discussion, the Committee had no comments.

Kansas Insurance Department

After discussion, the Committee had no comments.

Kansas Corporation Commission

After discussion, the Committee had the following comments.

KAR 82-3-106. The Committee is concerned with financial assurances with respect to abandoned oil and gas wells. The Committee requests information with respect to the balances of the pre-1996 fund and the post-1996 fund. In addition, the Committee is concerned with financial assurances for those operators of oil and gas wells in the post-1996 period especially in an environment of declining oil prices. The Committee learned that other states may have greater financial assurances in place and asks whether the Commission is contemplating legislation to assure that the State of Kansas does not assume the responsibility of plugging post-1996 oil and gas wells that are abandoned.

Kansas Department of Health and Environment, Division of Health Care Finance

After discussion, the Committee had the following comments.

KAR 129-5-10. The Committee is curious as to the person or entity responsible for determining whether a clean claim is *bona fide*. The Committee also is curious as to who is responsible to monitor for patterns in payment, e.g., whether a type of provider or one of the managed care organizations has an unusually high proportion of claims that are not “clean,” and what processes, in addition to filing lawsuits, are available to protect providers when they have relatively low dollar claims.

Adjournment

The meeting was recessed at 8:05 a.m.; reconvened at 12:05 p.m. and adjourned at 1:05 pm. The next meeting of the Committee is “on call of the chair.”

Prepared by Shirley Jepson
Edited by Jill Shelley, Whitney Howard,
and Raney Gilliland

Approved by the Committee on:

May 6, 2015
(Date)