

**REVISED
MINUTES**

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 10, 2015
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 Jerry Lunn
Representative Janice Pauls
Representative Ed Trimmer
Representative Jim Ward

Members Absent

Representative Steve Huebert
Representative Valdenia Winn

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
Tamera Lawrence, Office of Revisor of Statutes
Jenna Seematter, Office of Revisor of Statutes
Shirley Jepson, Committee Assistant

Conferees

Lacey Hane, Attorney, Division of Vehicles, Department of Revenue
Dean Reynoldson, Director, Alcoholic Beverage Control Division, Department of Revenue
Josh Ney, Securities Commissioner, Office of the Kansas Securities Commissioner
Bryan Caskey, Director of Elections, Secretary of State's Office
Jon Myers, Litigation Counsel, Kansas Corporation Commission
Scott Ekberg, 911 Administrator, 911 Coordinating Council
Chiquita Coggs, Executive Director, Board of Cosmetology
Philip Michael, Staff Attorney, Department of Administration
Tom Gross, Bureau of Air, Department of Health and Environment

Theresa Schwartz, Associate General Counsel, Kansas Board of Regents
Robin Jennison, Secretary, Department of Wildlife, Parks and Tourism
Kevin Jones, Department of Wildlife, Parks and Tourism
Mike Myers, Department of Wildlife, Parks and Tourism

Other Attendees

[See attached list](#)

Morning Session

The meeting was opened at 10:05 a.m. by Chairperson Schwartz.

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

KAR 92-56-1, ignition interlock device, definitions; KAR 92-56-2, ignition interlock device, certification and standards.

Lacey Hane, Attorney, Division of Vehicles, Department of Revenue, appeared before the Committee to address the proposed rules and regulations. Ms. Hane stated KAR 92-56-1 modifies and adds defined terms to Article 56 of Chapter 92 of the Kansas Administrative Regulations.

Ms. Hane stated KAR 92-56-2 modifies required technical specifications for the State-approved breath alcohol ignition interlock device (BAIID) installation and manages the BAIID manufacturer once it is approved to do business within the State. Ms. Hane noted, currently, a driver can have the calibration interval extended from 30 days to 60 days. The Department has determined it is more appropriate and in keeping with current practice to change this interval to require that all drivers visit their BAIID providers every 30 days for calibration to provide more efficient program oversight.

Responding to questions from the Committee, Ms. Hane indicated the form of the random alert to a driver that retesting is required depends on the manufacturer: some indicators are lights; and others are audible signals. The retesting does not have to be done immediately, giving the driver several minutes to get to a safe location – off the road or elsewhere – to do the retesting. Ms. Hane felt this program, approved in statutes, allows drivers who have been charged to continue to drive legally. If the occupant does not do the retesting, an alert is sent to the Division of Vehicles, a patrol officer, or similar agency.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Department of Revenue, Alcoholic Beverage Control Division.

KAR 14-19-40, class A clubs, automated devices; KAR 14-20-42, class B clubs, automated devices; KAR 14-21-23, drinking establishments, automated devices.

Dean Reynoldson, Director, Alcoholic Beverage Control Division, Department of Revenue, appeared before the Committee to address the proposed rules and regulations concerning the manner in which wine can be dispensed from automated devices, as well as to establish additional criteria licensees must follow in order to use these automated devices. The three identical regulations are in response to the enactment of 2015 HB 2223. These regulations are put in place to ensure that customers' access to wine from the automated devices is subject to the same level of responsibility and safety currently observed in face-to-face interactions with a licensee's employees. Mr. Reynoldson explained the use of a "smart card": a prepaid access card purchased by the customer with proper identification, from the licensee. The card is deemed active during the one day's business hours, if the access card contains monetary credit with a limit to dispense 15 ounces of wine, or roughly three drinks. The card can be reactivated on another business day. Identification is required to obtain or reactivate the "smart card" on a subsequent day to avoid distribution to a minor or another individual.

Responding to questions from the Committee, Mr. Reynoldson indicated a business day ends at 2:00 a.m. The Committee noted the automated device is expensive, which may limit use. Committee members expressed concern that the cards could be "handed-off" to another individual; however, Mr. Reynoldson noted the requirement of constant video monitoring of the automated device and a licensee can be charged with a violation if the licensee does not adhere to the rules requiring identification.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Office of the Securities Commissioner.

KAR 81-3-2, broker-dealer and agent registration fees; KAR 81-14-2, investment advisers, investment adviser representatives, and federal covered investment advisers, registration fees; revocation of rules and regulations authorized under the Land Sales Practices Act repealed in 2014: KAR 81-21-1, revocation (was Definitions); KAR 81-22-1, revocation (was Registration policy); KAR 81-22-3, revocation (was Amendments to registration procedure); KAR 81-23-3, revocation (was Forms); KAR 81-24-2, revocation (was Notice of deficiency); KAR 81-24-3, revocation (was Safeguards and assurances); KAR 81-25-4, revocation (was Form of public offering statement); KAR 81-26-1, revocation (was Contracts); KAR 81-26-2, revocation (was Deeds); KAR 81-27-1, revocation (was Advertising general policy); KAR 81-27-2, revocation (was Approval or disapproval); KAR 81-29-1, revocation (was Annual reports); KAR 81-29-2, revocation (was Final report).

Josh Ney, Securities Commissioner, Office of the Securities Commissioner, appeared before the Committee to address the proposed rules and regulations. Mr. Ney stated KAR 81-3-2 and KAR 82-14-2 are amendments that specify registration and notice filing fee rates for broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers. The proposed amendments would increase the annual registration fee from \$55 to \$60 only for agents and investment adviser representatives. This increase is estimated to increase revenues by \$670,000, annually. Mr. Ney stated this increase is to assure the agency has a stable budget going forward due to the automatic transfer from the fee fund into the State General Fund (SGF). Mr. Ney indicated the agency proposes to hire two additional investigative officers.

Although Committee members noted they were aware of the transfer of fee funds into the SGF through the budgeting process, there was concern that the increases would fund other programs through transfer from the fee fund.

Natalie Scott, Office of Revisor of Statutes, requested the agency include a definition of “IARD” as used in the proposed rules and regulations. Responding to a question from the Committee, Ms. Scott noted there is a cap of \$100, in statute, on the annual registration fee that is being raised by these rules and regulations.

The Committee requested additional information on the percent of the state budget funded through the transfer of fee funds; amounts of transfers from the fee fund to the SGF; information on past fee increases for the agency; and how other states handle fee fund transfers.

Mr. Ney stated the balance of the proposed rules and regulations, KAR 81-21-1 through KAR 81-29-2, are regulations that are being revoked after the repeal of the Uniform Land Sales Practices Act, effective July 1, 2014, that authorized them. Ms. Scott informed the Committee additional regulations were authorized by the Uniform Land Sales Practices Act and should be repealed.

Representative Ward, Senator Hawk, and Senator Schmidt asked to be recorded as opposing fee increases to send money to the State General Fund.

Review and Comment on proposed rules and regulations noticed for hearing by the Kansas Secretary of State.

KAR 7-23-14, assessing documents submitted as evidence of United States citizenship; KAR 7-23-15, incomplete applications for voter registration.

Bryan Caskey, Director of Elections, Secretary of State’s Office, appeared before the Committee to address the proposed rules and regulations. Mr. Caskey stated the proposed rules and regulations detail the process by which county election officers and the Secretary of State should assess documents submitted as evidence of U.S. citizenship and the procedure to follow when a voter registration application is submitted to the county election office and a determination is made that the application is not complete.

Responding to a question from the Committee, Mr. Caskey noted, if a citizen was “grandfathered” into the voting system and removes registration in one county and moves to another Kansas county, the voter will not be required to provide “proof of citizenship” when re-registering in the new county. Mr. Caskey stated the policy in place requires county election officials to make at least three attempts to contact those individuals who have failed to provide “proof of citizenship” or whose applications are otherwise not complete when they register, to get the proper documentation needed.

Representative Ward, Senator Faust-Goudeau, Senator Schmidt, and Senator Hawk requested they be recorded opposing the time limit of 90 days in KAR 7-23-15 for an applicant to finish and provide all information for a registration application.

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

KAR 82-3-304, tests of gas wells.

Jon Myers, Litigation Counsel, Kansas Corporation Commission, appeared before the Committee to address the proposed rule and regulation. Mr. Myers stated the proposed amendment makes three major changes, along with some smaller changes; lengthens the amount of time operators have to submit initial 24-hour shut-in pressure tests on new gas wells; increases the amount of gas a well must be capable of producing before triggering certain annual testing requirements; and eliminates the need for operators to file annual exemptions for gas wells incapable of producing enough gas to trigger the annual testing requirements, which in turn eliminates the need for an annual shut-in pressure test.

Committee members suggested clarification of certain wording in the rule and regulation's subsection (c).

Review and Comment on proposed rules and regulations noticed for hearing by the 911 Coordinating Council.

KAR 132-1-1, fees.

Scott Ekberg, 911 Administrator, 911 Coordinating Council, appeared before the Committee to address the proposed rule and regulation. Mr. Ekberg stated the proposed rule and regulation set the 911 fee for each 911 subscriber account at \$0.60 per month. Current law sets this fee at \$0.53 but allows the 911 Coordinating Council to increase the fee by Kansas administrative regulation. Mr. Ekberg explained the Council is in the process of providing a "statewide posted next generation 911 platform" that will be available around the state to those 911 centers that want to participate in the statewide system. The Council is using state grant funds derived from prepaid wireless fees to cover costs. To maintain the system and continue upgrades, a flat fee of \$18,000, annually, is charged to each county. Mr. Ekberg indicated, when the Council looked at the counties' cost, there was concern the counties might not have sufficient funds to pay the \$18,000. The Council deemed it necessary to raise the fee for each 911 subscriber account in order to have the funding available. Mr. Ekberg noted the future will bring a number of significant changes to the 911 system and the cost is not known at this time. It is believed the increase to \$.60 will cover the cost of the first step. Senator Hawk asked the minutes reflect his support for the additional services using new technologies that will be more readily available to local public answering points by increasing the fee.

Responding to questions from the Committee, Mr. Ekberg stated the current rate of \$0.53 brings in approximately \$28.0 million per year. It is estimated the raise to \$0.60 will provide an additional \$2.7 million, annually. The annual report provides a breakdown of the Council's expenses.

Representative Ward requested he be recorded as opposing a fee increase.

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

KAR 69-11-1, fees; KAR 69-15-1, definitions; KAR 69-15-14, cosmetic tattoo, tattoo, and body piercing establishment licensing and renewal; KAR 69-15-30, fees.

Chiquita Coggs, Executive Director, Board of Cosmetology, appeared before the Committee to address the proposed rules and regulations. Ms. Coggs stated the proposed rules and regulations would increase the fee for examination for cosmetologist, esthetician, nail technician, and electrologist apprentices from \$50 to \$75; remove the definition of “mobile facility” and all references to “mobile facility” contained in the definition of “establishments”; eliminate mobile facilities as a type of establishment licensed by the Board; and increase the examination fees for tattoo artist, cosmetic tattoo artist, and body piercer apprentices. Ms. Coggs stated the Board of Cosmetology is not currently authorized to issue licenses for mobile tattoo facilities and no mobile facilities are currently licensed in the state.

Approval of Minutes

Senator Faust-Goudeau moved to approve the minutes of May 6, 2015, as written. The motion was seconded by Representative Trimmer. The motion was approved on a voice vote.

The meeting was recessed at noon.

Afternoon Session

The meeting reconvened at 1:30 p.m.

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

KAR 1-45-22, parking fees for state parking garage.

Philip Michael, Department of Administration, appeared before the Committee to address the proposed rule and regulation. Mr. Michael stated the proposed rule and regulation removes the current State garage parking fee formula and allows for contractually set parking fees. The rule and regulation also removes the annual 2 percent increase and the monthly rate, instead proposing that this rate be set annually in contract. The purpose is to allow the flexibility to set and keep State garage parking rates at a stable market-competitive rate, on an annual basis, to ensure continued garage occupancy. It is anticipated this will lower the monthly fee. Mr. Michael noted use of the State garage has declined and the rate decrease is expected to improve usage.

Responding to questions from the Committee, Mr. Michael indicated State parking garage fees currently are used for maintenance and repair of the garage, with the excess going toward the combined debt service obligations of the parking garage and the Curtis State Office Building. The combined debt service obligations is over \$3 million, annually. Mr. Michael stated the parking garage is owned by the Topeka Public Building Commission and operated and maintained by the State of Kansas. Mr. Michael did not know why there has been a decline in

usage of the parking garage and did not know where those leaving the garage are parking. The Committee noted it might be as a result of decline in the number of State workers in downtown Topeka. Mr. Michael noted the public does not have access to the parking garage.

The Committee voiced concern that the proposed rule and regulation includes no limit on how high the parking fee could be raised in future years.

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

KAR 28-19-274, nitrogen oxides, allocations.

Tom Gross, Bureau of Air, Division of Environment, Department of Health and Environment, appeared before the Committee to address the proposed rule and regulation. Mr. Gross stated the purpose of the proposed regulation regarding nitrogen oxide allocations is to replace the provision for allowance allocations for the Kansas Transport Rule (TR) Nitrogen Oxide (NOx) Annual Trading Program for the 2017-2019 control periods under the U.S. Environmental Protection Agency (USEPA) Cross-State Air Pollution Rule. Mr. Gross noted the regulation would ensure that NOx units not used by Kansas electric generation units, otherwise forfeited, can be sold on the open trading market.

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

KAR 88-3-8a, military personnel and veterans; KAR 88-3-12, revocation (was Discharged or retired from active military service in Kansas); KAR 88-26-7, residence determination for state aid purposes.

Theresa Schwartz, Associate General Counsel, Kansas Board of Regents, appeared before the Committee to address the proposed rules and regulations ([Attachment 1](#)). Ms. Schwartz noted the rules and regulations were necessitated by the enactment of 2015 HB 2154, Sections 3 and 4. The law now allows Kansas universities and colleges to consider those individuals who are current members of the armed forces, qualified veterans of the armed forces, and the spouses and dependent children of both as Kansas residents for tuition and fee purposes. Ms. Schwartz noted the law went into effect on July 1, 2015. The state's colleges and universities are complying with the new requirements.

Vice-chairperson Schmidt noted the State Rule and Regulation Board approved the proposed rules and regulations as temporary earlier in the day in order to facilitate the process with the start of a new school year.

The Committee proposed the phrase "written evidence" used in the proposed rules and regulations be changed to "documentation." Ms. Schwartz noted she did not object but requested the change be made after the public hearing, so as not to delay the rule and regulation's effective date. Ms. Schwartz said she believes this would be considered clarifying language and not a substantive change.

Review and Comment on proposed rules and regulation noticed for hearing by the Kansas Wildlife, Parks and Tourism Commission.

KAR 115-1-1, definitions; KAR 115-2-1, amount of fees; KAR 115-4-11, big game and wild turkey permit applications; KAR 115-4-13, deer permits, descriptions and restrictions; KAR 115-7-1, fishing, legal equipment, methods of taking, and other provisions; KAR 115-7-10, fishing, special provisions; KAR 115-25-14, fishing, creel limit, size limit, possession limit, and open season.

Robin Jennison, Secretary, Department of Wildlife, Parks and Tourism, assisted by Kevin Jones and Mike Miller, appeared before the Committee to address the proposed rules and regulations.

Mr. Jones addressed the proposed rules and regulations regarding definitions and permit and license requirements for hunting and fishing.

Mr. Miller explained a spreadsheet of data concerning permit and license sales for 2014 and 2015 ([Attachment 2](#)).

Secretary Jennison addressed the Committee and provided additional information on the proposed fee structure and modernization of the fee structure ([Attachment 3](#)). Secretary Jennison expressed a need to lease more land from Kansas landowners for “walk-in hunting,” noting this is an important asset for in-state as well as out-of-state hunters. The Secretary noted general hunting and fishing fees have not been increased since 2002 and prices for deer and turkey permits have not been increased since 1984. Secretary Jennison said he believes the fee increases will place the agency in good shape financially.

Secretary Jennison indicated zebra mussels could present a major problem for the state’s waters and reservoirs in the near future.

In response to a question from the Committee regarding locations of Wildlife, Parks and Tourism offices, Secretary Jennison noted the Department currently pays rent for the Topeka office; however, the agency is in negotiations with the Department of Administration to possibly purchase the building. Responding to a question concerning combining the Pratt and Topeka offices, the Secretary said he believes this would not be in the best interest of the State.

The Committee expressed concerns that hunting license fees are being raised so soon after Kansas law was passed requiring people ages 65 to 74 to purchase hunting and fishing licenses (2012 SB 314). Committee members explained that many seniors, at the time, expressed a concern that future fees would be raised for their children or grandchildren and they did not wish for this to happen. The Committee expressed concern that the fee increase is proposed so soon after increasing the minimum age to 75 for those exempt from purchasing hunting and fishing licenses.

Staff reminded the Committee that any regulation in Article 25 is exempt from review by the Joint Committee according to current statute.

The Committee requested information on the number of acres of land owned by the Department of Wildlife, Parks and Tourism.

Staff Review of 2014 - 2015 JCARR Report

The Kansas Legislative Research Department (KLRD) provided copies of the "Report on Oversight Activities of the Joint Committee on Administrative Rules and Regulations, July 2014-June 2015" (copy available from KLRD and at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-JCARR.html>).

Raney Gilliland, KLRD, advised the Committee that all agencies have responded to comments made by the Committee.

Schedule for Interim Committee Meetings

After discussion the Committee set the following interim meeting dates:

- September 28, 2015; and
- November 16, 2015.

COMMITTEE DISCUSSION AND RECOMMENDATIONS

Department of Revenue, Division of Vehicles

After discussion, the Committee had the following comment:

KAR 92-56-2. Because this proposed rule and regulation would remove an exception to a 30-day calibration period interval, the Committee suggests "except as allowed by KAR 92-56-2" should be removed from KAR 92-56-4, which was not proposed for amendment in this set.

Department of Revenue, Division of Alcoholic Beverage Control

After discussion, the Committee had the following comment:

KAR 14-19-40, 14-20-42, and 14-21-23. The Committee requests information on additional controls the Division has considered to prevent a patron of legal age from providing an active access card to an underage person.

Office of the Securities Commissioner

After discussion, the Committee had the following comment:

KAR 81-14-2. The Committee suggests the agency define "IARD" in rules and regulations or requests to know the rule and regulation or statute in which it is defined.

Secretary of State

After discussion, the Committee had the following comments:

KAR 7-23-14. Noting KAR 7-23-14(a)(2)(B) and KAR 7-23-14(a)(5)(B) allow an applicant for voter registration to provide an affidavit when proving citizenship under certain circumstances, the Committee asks whether an affidavit process could be allowed under additional circumstances and, if so, under which circumstances.

KAR 7-23-15. The Committee expresses its concern that not all county election officers contact potential voters whose applications are incomplete in the manner recommended by the State Election Director (two mail contacts and one telephone contact, according to testimony) and suggests the minimum contact requirements be included in rule and regulation.

Corporation Commission

After discussion, the Committee had the following comment:

KAR 82-3-304. The Committee requests the Commission clarify the meaning of “supervision” in subsection (c) and suggests the Commission may intend that the Division review reports, monitor well tests, or both.

911 Coordinating Council

After discussion, the Committee had the following comment:

KAR 132-1-1. The Committee appreciates the Council looking ahead to future technological advancements for 911 services.

Board of Cosmetology

After discussion, the Committee had no comments.

Department of Administration

After discussion, the Committee had the following comment:

KAR 1-45-22. The Committee commends the Department for removing annual rate increases and potentially decreasing rates for state employee use of the parking garage in question. The Committee requests the Department place a parking fee cap in subsection (b) in addition to stating the rates will be established by annual contract, that suggested cap being \$60 a month for state agencies and \$30 a pay period for state employees.

The Committee believes such a cap would give state employees more assurance that rates no longer in rule and regulation will not be increased.

Department of Health and Environment, Bureau of Air

After discussion, the Committee had no comments.

Board of Regents

After discussion, the Committee had the following comment:

KAR 88-3-8a. The Committee suggests the Board clarify what is requested by using the term “documentation” rather than “written evidence” in subsection (d).

Department of Wildlife, Parks and Tourism

After discussion, the Committee had the following comment:

KAR 115-2-1. The Committee believes the proposed fee increases are excessive and would discourage hunting and fishing in Kansas, and it requests the Commission consider lowering the amounts currently proposed or phasing in the increases over several years.

Adjournment

The meeting was adjourned at 4:30 p.m. The next meeting of the Committee is scheduled for September 28, 2015.

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

Approved by the Committee on:

(September 28, 2015)