

**MINUTES**

**JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

November 12, 2002  
Room 514-S—Statehouse

**Members Present**

Representative Melvin Neufeld, Vice Chairman  
Senator Karin Brownlee  
Senator Stan Clark  
Senator U. L. "Rip" Gooch  
Senator Chris Steineger  
Representative Carl Holmes  
Representative Bill Light  
Representative Janice Pauls  
Representative Tony Powell  
Representative L. Candy Ruff

**Members Absent**

Senator Dwayne Umbarger, Chairman  
Representative Laura L. McClure

**Staff Present**

William G. Wolff, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Deb Hollon, Kansas Legislative Research Department

**Others Present**

Lee Palmer, Kansas Farm Bureau  
Leslie Kaufman, Kansas Farm Bureau  
Dr. Evan Sumner, Kansas Department of Agriculture  
Dan Riley, Kansas Department of Agriculture  
George Blush, Kansas Department of Agriculture  
Brett Berry, Kansas Department of Agriculture

Joe Lentz, Kansas Department of Agriculture  
Rod Bieker, Kansas State Department of Education  
Alexa Pochowski, Kansas State Department of Education  
Dale Dennis, Kansas State Department of Education  
Tracy Diehl, Executive Director, Kansas Racing and Gaming Commission  
Bret Lawson, Kansas Corporation Commission  
Paula Lentz, Kansas Corporation Commission  
Janette Pucci, Kansas State Board of Nursing  
Sonya Allen, Office of State Bank Commissioner  
Judi Stork, Office of State Bank Commissioner  
Danny J. Vopat, Office of State Bank Commissioner  
Camille Nohe, Attorney General Office, Board of Adult Care Home  
Administrators (BACHA)  
Marla Rhoden, Kansas Department of Health and Environment/BACHA  
Sheila Walker, Director of Vehicles, Kansas Department of Revenue  
Pete Bodyk, Alcoholic Beverage Control, Kansas Department of Revenue

**Tuesday, November 12**  
**Morning Session**

Vice Chairman Neufeld called the meeting to order at 10:10 a.m. The Committee members discussed potential dates for the December meeting. The final decision was delayed until later in the day.

The Vice Chairman then asked Committee members to consider the approval of the October 7-8, 2002 minutes of the Committee. *Senator Gooch moved, Representative Holmes seconded the motion, to approve the minutes of the October 7-8 meeting. The motion carried.*

Dan Riley, Kansas Department of Agriculture (KDA), was recognized by Vice Chairman Neufeld, to speak to the proposed rules and regulations noted for hearing by the KDA on issues dealing with the Dairy Program of the KDA. KAR 4-7-804, fees for non-regulatory testing; KAR 4-7-2, health of herd for manufacturing milk; KAR 4-7-3, sanitary requirements for production of milk; KAR 4-7-4, handling requirements for milk; KAR 4-7-6, bacterial and coliform count for raw milk and cream; KAR 4-7-213, adoption by reference for production and processing; KAR 4-7-213a, revoked; KAR 4-7-214, definitions; KAR 4-7-216, enforcement for drug residues; KAR 4-7-408, revoked; KAR 4-7-507, definition of special dietary frozen desserts; KAR 4-7-510, adoption of federal regulation concerning frozen desserts; KAR 4-7-511, revoked; KAR 4-7-512, revoked; KAR 4-7-513, revoked; KAR 4-7-530, adoption by reference of federal regulations; KAR 4-7-531, adoption of definitions contained in federal regulations; KAR 4-7-532, examination of frozen dairy desserts and frozen dairy dessert mixes; KAR 4-7-533, coliform and bacteria standards for frozen dairy desserts and frozen dairy dessert mixes; KAR 4-7-715, enforcement of the grade A

pasteurized milk ordinance; KAR 4-7-716, adoption by reference; KAR 4-7-717, additional definitions; KAR 4-7-718, insertions of the word "Kansas" or the phrase "State of Kansas"; KAR 4-7-719, additions dealing with certain dairy products; KAR 4-7-720, revoked; KAR 4-7-721, revoked; KAR 4-7-722, revoked; KAR 4-7-802, revoked; KAR 4-7-804, schedule of fees for non-regulatory laboratory work; KAR 4-7-900, civil penalty; KAR 4-7-901, answer to complaint; KAR 4-7-902, amount of proposed civil penalty; KAR 4-7-903, criteria to determine dollar; KAR 4-7-904, informal settlement; KAR 4-7-905, revoked; KAR 4-7-1000, milk hauler license; and KAR 4-7-1001, revoked.

Mr. Riley was asked by staff whether there is a consistency issue with some of the regulations since some indicate that the federal regulation adopted is available in the office of the Secretary and others indicate that they are available from the agency. See KAR 4-7-213, KAR 4-7-510, KAR 4-7-716, and others. Mr. Riley indicated that he would review all of the regulations for consistency in this regard.

A member asked Mr. Riley if, in KAR 4-7-507, the statutory citation should not be stated as well as the named act, the Kansas Food, Drug and Cosmetic Act. Mr. Riley indicated that he would look at that issue.

Several members expressed concern with the elimination of language in KAR 4-7-900 with respect to deleting the requirement in a complaint document that there be a concise statement of the factual basis for each alleged violation and a specific reference to each provision of the act or implementing regulation which the respondent is alleged to have violated. The members were concerned that this language should be reviewed to ensure that it is consistent with the provisions of the Kansas Administrative Procedures Act.

Mr. Riley concluded his presentation by reviewing a rule and regulation concerning meat and poultry inspection. KAR 4-16-7a is proposing to increase the fee per hour for overtime work conducted by inspection personnel. The members had no questions on the subject.

There being no other Committee questions, the Vice Chairman thanked Mr. Riley for his appearance.

Vice Chairman Neufeld recognized Rodney Bieker, General Counsel of the Kansas Department of Education, to review proposed regulations concerning school accreditation. KAR 91-31-16 through 91-31-30, revoked; KAR 91-31-31, definitions dealing with accreditation; KAR 91-31-32, performance and quality assurance criteria; KAR 91-31-33, data submission to the Department of Education; KAR 91-31-34, requirements for local boards of education; KAR 91-31-35, graduation requirements; KAR 91-31-36, technical assistance teams; KAR 91-31-37, accreditation recommendation and appeal; KAR 91-31-38, accreditation status for each school; KAR 91-31-39, rewards for outstanding accreditation status; KAR 91-31-40, sanctions for schools not attaining certain accreditation levels; KAR 91-31-41, public disclosure of accreditation status; and KAR 91-31-42, waiver requests from one or more accreditation requirements.

Mr. Bieker said these proposed regulations govern school accreditation and several provisions are required by the new federal No Child Left Behind Act. He noted that Dale Dennis and Alexa Pochowski of the Department also were present to answer questions and make comments concerning these regulations.

As it was the noon hour, the Vice Chairman asked the conferees to return at 1:00 p.m., to continue the review. The Committee recessed for lunch at 12:05 p.m.

### **Afternoon Session**

The Vice Chairman reconvened the meeting at 1:10 p.m., and continued the review of the regulations being proposed by the Kansas Department of Education.

Several Committee members expressed concern with the regulations being proposed, particularly those members with students in their districts who are the children of people new to the United States. These members expressed the thought that perhaps the State of Kansas should implement its own regulations for students who are the children of migrant workers. Attendance recordkeeping, curriculum requirements, teacher certification, and credentials for paraprofessionals were of major concern. In general, the members expressed reservations about the program being implemented by these rules and regulations believing that the regulations would be difficult for many districts to meet. The conferees did not disagree that there would be negative impacts on many districts and schools in the districts. They informed the members, however, that an official of the federal Department of Education has indicated that there will be no waivers available to states on the implementation of the programs.

Given the apparent inflexibility of the federal government, the Committee members recommended that, in those areas where possible, the state should maximize any flexibility allowed to it. Further, in cases where there is duplication of effort, the members suggested that the Board of Education seek to eliminate the duplications.

Another member expressed concern with the fiscal note for the proposed regulations. This member stated that the total cost to the state was not included in the information and that it should be made available before the public hearing on the proposed regulations. Mr. Dennis estimated the cost of implementation in the \$12 to \$15 million range per year.

The Vice Chairman thanked the three conferees for their appearance before the Committee.

The Vice Chairman then called upon Tracy Diehl, Executive Director, the Kansas Racing and Gaming Commission, to review proposed regulations relating to greyhound racing, assistant animal health officers, and special races for horses which are Kansas-bred or Kansas-foaled. KAR 112-6-4, requirements for paddock judges and kennel masters at

greyhound races; KAR 112-10-2, requirements for assistant animal health officers employed by the agency; KAR 112-12-10, Kansas-bred or Kansas-foaled horse races.

The members had no questions for Mr. Diehl and the Vice Chairman thanked him for his appearance.

The Vice Chairman then called upon Pete Bodyk, Division of Alcohol Beverage Control, Kansas Department of Revenue, to review proposed regulations. KAR 14-12-1 through 14-12-18, revoked; KAR 14-14-6, revoked; KAR 14-14-6a, withdrawal of inventory from the warehouse for sampling to provide educational opportunities; KAR 14-15-1, definitions for beer and cereal malt beverages; KAR 14-15-2, requirement to affix keg registration tags to certain containers of beer and cereal malt beverage; applicability and instructions.

Mr. Bodyk explained that the rules and regulations proposed to revoke regulations pertaining to cereal malt beverage issues at the state level, to revoke a regulation authorizing industry seminars, to adopt a regulation that allows withdrawing liquor samples from a warehouse for industry seminars and in the course of business, and to adopt regulations pertaining to the new Beer and Cereal Malt Beverage Keg Registration Act.

A member asked how notice of the new keg registration law was implemented. Mr. Bodyk said that the industry was very cooperative in that merchants assisted in posting notices on entrance doors to establishments and distributors provided handouts to the merchants to assist them in giving notice to customers.

There were no other questions and Mr. Bodyk was thanked for his appearance before the Committee.

Representative Neufeld recognized Sheila Walker, Director of Vehicles, Kansas Department of Revenue, to review various regulations relating to titles and registration and to motor vehicle drivers' licenses. KAR 92-51-21, staggered registration system; KAR 92-51-23, transfer of license plates—rebates and refunds disallowed; KAR 92-51-24, mailing of titles; KAR 92-51-27, non-negotiable titles; KAR 92-51-34, revoked; KAR 92-51-38, unclaimed personalized, educational institution, and Shriner's license plates; KAR 91-51-39, titles and registration fees, refunds; KAR 91-51-41, permanent registration of city and county vehicles; KAR 91-51-53, vehicles exempt from apportioned registration; KAR 92-51-56, leasing rules applicable to apportioned registration; KAR 92-51-57, KAR 92-51-58, KAR 92-51-60, KAR 92-51-61, KAR 92-52-2, KAR 92-52-8, and KAR 92-52-11 all revoked; and KAR 92-52-3, failure to apply for renewal of a driver's license. Ms. Walker distributed information on these proposed regulations ([Attachment 1](#)).

The members had no questions of Ms. Walker and she was thanked for her appearance before the Committee.

The Vice Chairman recognized Bret Lawson, Assistant General Counsel, Kansas Corporation Commission, to review proposed regulations dealing with telecommunications issues. KAR 82-1-220a, expedited review of disputes between telecommunications service

providers; KAR 82-13-1, definitions relating to local exchange carriers; KAR 82-13-2, procedures to protect customers from loss of telephone service when carriers cease operations.

A member expressed confusion with the language in proposed KAR 82-1-220a (d). It was suggested that the Commission clarify the review language as proposed by the conferee.

There being no other comments or questions, Mr. Lawson was thanked for his presentation.

The next conferee recognized by Representative Neufeld was Janette Pucci, Education Specialist, Kansas State Board of Nursing, concerning the approval of schools. KAR 60-1-104, definitions; KAR 60-2-101, requirements for initial approval of a nursing education program; KAR 60-2-102, reapproval requirements for nursing education programs; KAR 60-2-103, faculty and preceptor qualifications for professional nursing education programs; KAR 60-2-104, curriculum requirements for nursing education programs; KAR 60-2-105, clinical resources; KAR 60-2-106, educational facilities for nursing education programs; KAR 60-2-108, reports to be submitted to the Board by nursing education programs; KAR 60-16-102, scope of practice for licensed practical nurses performing intravenous fluid therapy.

Ms. Pucci distributed written material which explained the proposed regulations (Attachment 2). The Committee had no comment except that the Vice Chairman commented on the vast improvement in the quality of regulations proposed by the Kansas State Board of Nursing. He thanked Ms. Pucci for her appearance before the Committee.

The Vice Chairman then called upon Sonya Allen, General Counsel, Office of the State Bank Commissioner, to address a proposed regulation concerning mortgage insurance policies on real estate loans between \$25,000 and \$50,000. KAR 17-11-18, Loans; documentation requirements.

A member expressed concern with the phrase "mortgage position" in proposed KAR 17-11-18 (b)(1)©). The member stated that the phrase should be replaced with language reflecting that it is the bank's "priority" position being protected.

Another member noted that the Economic Impact Statement is incomplete and should be amended to reflect the cost for the insurance. The conferee stated that the cost would be approximately \$50 per loan.

Since there were no other comments or questions, Ms. Allen was thanked for her appearance.

Vice Chairman Neufeld then called upon Marla Rhoden of the Kansas Department of Health and Environment to review rules and regulations from the Board of Adult Care Home Administrators dealing with the licensure of adult care home administrators. KAR 28-38-18, licensing examinations; KAR 28-38-19, qualification for licensure; KAR 28-38-20,

application for licensure; KAR 28-38-21, temporary license; KAR 28-38-22, licensure by reciprocity; KAR 28-38-23, license renewal and license reinstatement—continuing education; KAR 28-38-28, change of name or address and replacement or renewal license card; KAR 28-38-29, definitions; KAR 28-38-30, fees.

Camille Nohe of the Kansas Attorney General's Office also was present to assist with the review.

Concerning KAR 28-38-19, a member asked about the requirements for someone coming to Kansas from another jurisdiction. Ms. Rhoden explained that, if the person seeking to be an adult home administrator in Kansas did not have the prescribed practice hours, the person would need to complete additional course work. See also pointed to KAR 28-38-22 which allows for reciprocity.

Regarding KAR 28-38-23, the conferee noted that for renewal of a license, the licensee simply attests that the required number of continuing education hours have been completed rather than to have to submit a transcript as proof of course completions. She added that renewal applications will be randomly selected to confirm that the continuing education hours have been completed.

Vice Chairman Neufeld thanked Ms. Rhoden and Ms. Nohe for their appearance before the Committee.

## COMMENTS ON PROPOSED RULES AND REGULATIONS

**Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adult care home administrators. After discussion, the Committee had no comments.

**State Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning telecommunications. After discussion, the Committee expressed the following comment.

- KAR 82-1-220a. In subsection (d) clarify the language to read as described to the Committee, *i.e.*, "On the same day on which the complaint or response is filed with the commission . . . ."

**Department of Agriculture.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning dairy and meat and poultry inspection. After discussion, the Committee had no comment on the proposed meat and poultry regulations and expressed the following comment on the proposed dairy regulations.

- KAR 4-7-507. In subsection (b), insert the statutory citation for the Food, Drug and Cosmetic Act.
- KAR 4-7-510. In this regulation and throughout this set of proposed regulations use consistent language to describe how materials adopted by reference are to be available to the public.
- KAR 4-7-900. Reinsert the language proposed to be stricken in subsections (a)(2) and (3) and review these proposed rules and regulations for consistency with the Kansas Administrative Procedures Act.

**Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning alcohol beverage control, titles and registrations, and drivers' licenses. After discussion, the Committee had no comment.

**Kansas Racing and Gaming Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning paddock judges, assistant animal health officers, and Kansas-bred or Kansas-foal races. After discussion, the Committee had no comment.

**Board of Nursing.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning approval of schools. After discussion, the Committee had no comment.

**Bank Commissioner.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning loan documentation. After discussion, the Committee expressed the following comment.

- KAR 17-11-18. In subsection (b)(1)©, consider rewriting to reflect protection of the bank's "priority" position.

**Department of Education.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning school accreditation. After discussion, the Committee expressed the following comments.

- KAR 91-31-42. In subsection (a)(2), consider also including the president of the school board as a signatory to any request of a waiver.
- Economic Impact. In a revised economic impact statement, provide a cost statement for each regulation, an aggregate cost for all the regulations being proposed, and an estimate of the long-term impact of adopting the proposed rules and regulations.
- General Comment. The Joint Committee has great concern about the impact of the federal No Child Left Behind program on Kansas schools.



Every effort should be made in the rules and regulations to ensure there is no duplication of requirements imposed on those schools as state and federal requirements are adopted.

Further, the Joint Committee requests that the Department do all within its authority to mitigate against the negative effects of the federal program. Where the state can act, it should establish criteria to address Kansas needs for accountability, *e.g.*, in reporting attendance, in schools with high turnover, in the use of certified teachers, in addressing issues raised by migrant populations.

Finally, notwithstanding the apparent federal inflexibility on the implementation of the federal program, since the effective date of the rules and regulations is 2005, the Joint Committee expects that the Department will continue to press the federal authorities for changes or waivers that are reasonable and supportive of Kansas efforts to implement that program.

There being no further business to come before the Committee, the members decided to meet next on December 2 at 2:00 p.m., and on December 3 beginning at 9:00 a.m. The meeting was adjourned.

Prepared by William G. Wolff

Approved by Committee on:

December 3, 2002