

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 20, 2003
Room 241-N—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U. L. "Rip" Gooch
Senator Duane Umbarger
Representative Jerry Henry
Representative Andrew Howell
Representative Jan Pauls
Representative Candy Ruff
Representative Dan Williams

Members Absent

Senator Chris Steineger
Representative Sharon Schwartz

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Judy Glasgow, Secretary

Others Present

Leland Rolfs, Kansas Department of Agriculture
Tracy Diel, Kansas Racing and Gaming Commission
Mike Butler, Kansas Department of Health and Environment
Craig Thompson, Kansas Department of Health and Environment
Ralph J. Kieffer, Kansas Department of Health and Environment
Tom Gross, Kansas Department of Health and Environment
Clark Duffy, Kansas Department of Health and Environment
Jack McKenzie, Kansas Department of Health and Environment
Dr. Duane Boline, Kansas Department of Health and Environment
David J. Samuelson, RN, University of Kansas Medical Center

Julie Ehler, Department of Agriculture
Jerry Johnson, Interim Director, Division of Motor Vehicles
Matt Moser, Division of Motor Vehicles
Diane Albert, Division of Motor Vehicles
Marcy Ralston, Manager, Driver Control Bureau, Division of Motor Vehicles
Phyllis Gilmore, Executive Director, Behavioral Sciences Regulatory Board
Lisa R. Jones, Associate General Counsel, Kansas Board of Regents
Patsy Johnson, Assistant Executive Director, Kansas State Board of Technical Professions
Kevin Barone, Hein Law Firm
Nialson Lee, Kansas Department of Social and Rehabilitation Services
Steve Weatherford, President, Kansas Development Finance Authority
Jaclyn Reish, Manager of Head Injury Program, Kansas Department of Social and Rehabilitation Services

Morning Session

Chairman Holmes called the meeting to order at 10:05 a.m. He recognized Craig Thompson, Kansas Department of Health and Environment, to address the proposed rules and regulations noticed for hearing on surface water quality standards. KAR 28-16-28d, surface water use designation and classification.

In response to a Committee member's questions concerning whether the federal standards were being followed in the classification of the surface waters, Mr. Thompson stated that the criteria used was in accordance with HB 2219. Staff noted that there should be an adoption by reference to the source noted in (d) (1) on page 4. There being no further questions, the Chairman thanked Mr. Thompson for his presentation.

Mr. Tom Gross was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing on air quality regulations. KAR 28-19-202, annual emissions fee.

Committee members expressed some concern about the fact that the fees were being increased by 20 percent, from \$20 to \$25 per ton, and the fact that there is a reduction in the amount of emission. Mr. Gross responded, noting that although the emission level has declined, the number of facilities requiring operating permits has steadily increased, generating more work, plus the fact that it takes the same amount of work to regulate the lessor emissions and hence, the necessity for the increase of fees. He also responded to questions concerning the length of time a new application would require, stating that 90 days would be the general length of time for a routine application. A large, complex facility could take from one to one and one-half years for the application to be completed.

Committee members noted that on page 4, (g) line 5, the word "may" should be changed to "shall." Mr. Gross will take this change back to the department. There being no further questions, the Chairman thanked Mr. Gross for appearing before the Committee.

Chairman Holmes introduced Dr. Duane Boline, Kansas Department of Health and Environment, Division of Health and Environmental Laboratories, to speak to the proposed rules and regulations noticed for hearing. KAR 28-15-35, conditions of accreditation; and KAR 28-15-36, requirements for accreditation of laboratories other than field laboratories.

Committee members suggested that the addition of the phrase “when used to describe a laboratory,” as used in the second definition, should also be added to the first definition. Staff suggested that where reference is made to the Clean Water Act and to the Resource Conservation and Recovery Act, there should be a reference to any amendments that may have been made, and it may be necessary to make reference to a later date. Dr. Boline responded to questions concerning conviction for a crime that is related to environmental laboratory services and involves theft or fraud. Chairman Holmes thanked Dr. Boline for appearing before the Committee.

Julie Ehler, Department of Agriculture, was recognized by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture, grain warehouse regulation fees. KAR 4-25-16, fees and charges.

Ms. Ehler stated that this regulation applies to the annual fee for warehouses with the capacity of 700,001 bushels, or greater, to change the fee for amending a warehouse license and increase the hourly rate for additional or special examinations. There were no questions from the Committee. Ms. Ehler was thanked for her presentation before the Committee.

Chairman Holmes introduced Leland Rolfs, Kansas Department of Agriculture, to address the proposed rules and regulations noticed for hearing on Groundwater Management District Board No. 4. KAR 5-24-1, definitions; KAR 5-24-2, allowable withdrawals; KAR 5-24-3, well spacing; KAR 5-24-4, tailwater control and waste; KAR 5-24-6, changes in points of diversion; KAR 5-24-8, resource development plans; and KAR 5-24-11, investigation and enforcement.

Mr. Rolfs stated that these proposed rules and regulations are cleaning up the remaining regulations left after passing the regulations required by the statutory deadline.

Mr. Rolfs responded to general questions concerning the proposed rules and regulations asked by Committee members. Staff noted that a definition of where to locate the Republican River Compact should be included in the rules and regulations. Staff also noted that in KAR 5-24-8 the history section is incomplete and needs to be updated. Committee members suggested that in KAR 5-24-11, (a), the street location, telephone number, and e-mail address be furnished, as well as the mailing address. Mr. Rolfs noted that the typing error in KAR 5-24-11, 5(c) should change “under either” to “of the” and would be corrected by the agency. There being no further questions, Chairman Holmes thanked Mr. Rolfs for his appearance before the Committee.

Jerry Johnson, Interim Director of the Division of Motor Vehicles, was introduced by Chairman Holmes. Mr. Johnson introduced Matt Moser to speak to the proposed rules and regulations noticed for hearing by Titles and Registration. KAR 92-51-24, mailing of titles; KAR 92-51-25, applications for title on used, foreign vehicles; KAR 92-51-28, printing of electronic titles; and KAR 92-51-29, eliminating title for manufactured or mobile home; fee required.

Mr. Moser answered Committee members’ questions concerning the issuance of titles and to whom the titles are mailed when the title is paid off. He stated that they do not change the title in any way and this regulation is for mailing out the titles only. He also answered questions of a general nature concerning the elimination of the manufactured or mobile home title if it is secured to a permanent foundation. Mr. Moser was thanked by the Chairman for his presentation.

Chairman Holmes recognized Diane Albert, Division of Motor Vehicles, to speak to the proposed rules and regulations noticed for hearing. KAR 92-51-34a, license plates; extension of time for new issuance.

Ms. Albert answered several general questions and comments concerning the proposed regulations. Chairman Holmes thanked Ms. Albert for appearing before the Committee.

Marcy Ralson, Manager of the Driver Control Bureau, was introduced by Chairman Holmes to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue. KAR 92-52-9, definition of moving violation. Staff noted that the new 2002 Supplement should be added to the history section.

After a thorough discussion by Committee members, *Senator Clark moved and Representative Howell seconded, that this Committee introduce a bill during the 2004 Session requiring all moving violations be specified by the statute. Motion Carried.*

Chairman Holmes recessed the meeting until 1:30 p.m.

Afternoon Session

Chairman Holmes reconvened the meeting and introduced Phyllis Gilmore, Executive Director of the Behavioral Sciences Regulatory Board, to address the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-1-10a, unprofessional conduct; KAR 102-2-7, unprofessional conduct; KAR 102-3-12a, unprofessional conduct; KAR 102-4-3a, educational requirements; KAR 102-4-6a, academically supervised practicum; KAR 102-4-12, unprofessional conduct; and KAR 102-5-12, unprofessional conduct.

Ms. Gilmore gave an overview of the proposed rules and regulations, stating that five of these were covering unprofessional conduct in each of the five fields that are governed by the Behavioral Sciences Regulatory Board. KAR 102-4-3a is the result of HB 2213, passed by the 1999 Legislature. There were no questions and Chairman Holmes thanked Ms. Gilmore for her presentation before the Committee.

Chairman Holmes introduced Lisa R. Jones, Associate General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas Board of Regents (Attachment 1). KAR 88-23-2, minimum standards; KAR 88-23-2a; enrollment agreement; and KAR 88-23-3a, certificate of approval. KAR 91-18-24; KAR 91-18-27; KAR 91-18-29; KAR 91-18-34; and KAR 91-18-40; revoked.

Committee members questioned KAR 88-23-2, page 5, which prohibits advertising in the "help wanted" classified ads if it is only an ad for training, and requested that the Board check with the federal requirements. Lisa Jones and Dr. Patricia Anderson answered the Committee's questions, stating that this had always been in the federal requirements, but they would check to see if it is prohibited by the federal government for an ad to be placed in the "help wanted" section as long as it only offered training. There being no further questions, Chairman Holmes thanked Ms. Jones and Dr. Anderson for their presentation before the Committee.

Patsy Johnson, Assistant Executive Director, was introduced by Chairman Holmes to address the proposed rules and regulations noticed for hearing by the Kansas State Board of Technical Professions (Attachment 2). KAR 66-8-5, landscape architectural examinations.

Ms. Johnson explained that the Kansas plant material identification part of the landscape architectural examination has been eliminated and in the future, the state is planning on having the

national council administer the exam. It will be given two times per year, in June and December. The national council will not administer a state plant material identification exam. Ms. Johnson answered general questions from the Committee. Chairman Holmes thanked Ms. Johnson for her appearance before the Committee.

Chairman Holmes welcomed Steve Weatherford, President of the Kansas Development Finance Authority, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Commerce. KAR 110-10-1, selection criteria for review and award of low-income housing tax credits.

Mr. Weatherford stated the proposed rules and regulations are a result of Executive Reorganization Order No. 30, issued by Governor Sebelius, and SB 285, which directed the Department of Commerce to develop and adopt rules and regulations setting forth an objective scoring matrix for the purpose of awarding housing tax credits.

Mr. Weatherford and Fred Bently answered general questions concerning the scoring matrix, how the contracts are awarded, and the information listed under the description of criteria. Staff noted that where reference is made to Section 42 of the United States Internal Revenue Code, it should be stated that it is adopted by reference as of the date of this regulation.

Mr. Weatherford, in answer to questions from the Committee members about the availability of additional information for applicants, stated that the reference manual program guide is available at the agency and is also available on the website. After discussion by Committee members, it was suggested that criteria should be broken out into separate categories to reflect more details to individual items. Chairman Holmes thanked Steve Weatherford and Fred Bently for this presentation before the Committee.

Chairman Holmes introduced Nialson Lee, Kansas Department of Social and Rehabilitation Services, to address the proposed rules and regulations noticed for hearing for the Medicaid program. KAR 30-5-64, prior authorization; KAR 30-5-116, scope of rehabilitation services; KAR 30-5-59, provider participation requirements; KAR 30-5-102, scope of optometric and optical services; and KAR 30-5-105, scope of hearing services.

Mr. Lee stated that KAR 30-5-64 added drugs under the two categories of muscle relaxants and oral antidiabetic drugs to the list of preferred drugs. A Committee member suggested that in (c) on page 4, after the word "products," a form of punctuation should be inserted. A question was raised by Committee members of whether a physician had the necessary training to perform the audiological hearing tests. Mr. Lee stated there were calibrated machines available in general physician's offices that would conduct intensive tests on hearing. Committee members noted that the website address should be included on all notices.

Chairman Holmes recognized Jaclyn Reish, Manager of Head Injury Program, to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-5-78, scope of and reimbursement for home- and community- based services for persons with head injury trauma; and KAR 30-5-300, definition.

Committee members noted in (e) page 2, KAR 30-5-78, "home- and community-based services" should be changed to "HCBS" to be in line with the rest of the changes. There being no further questions from Committee members, Chairman Holmes thanked Nialson Lee and Jaclyn Reish for their presentation before the Committee.

Chairman Holmes welcomed Tracy Diel, Racing and Gaming Commission, to address the proposed rules and regulations noticed for hearing. KAR 112-10-3, practicing veterinarians; and KAR 112-13-2, Kansas-whelped program, certification.

Mr. Diel answered questions from Committee members concerning KAR 112-10-3, which limits the use of extracorporeal shock wave therapy (ESWT) to practicing veterinarians and sets out time restrictions for the use of ESWT. In answer to questions on the reasons why someone would put their horse in jeopardy by using this treatment and then running the animal too soon, Mr. Diel stated that it may be the end of the season or the horse's final race. Mr. Diel stated that KAR 112-13-2 is based on the Iowa regulation. This request came from the Kansas Greyhound Association. There being no other questions, Chairman Holmes thanked Mr. Diel for his appearance before the Committee.

Chairman Holmes requested action on the Committee minutes for October 8, 2003. Representative Pauls noted that on page 5, paragraph 2, line 2, the word "to" should be inserted before "a" to read "be changed to a generic form." *Representative Pauls moved to approve the minutes for October 8, 2003, as amended; Senator Clark seconded the motion. The motion carried.*

COMMENTS ON PROPOSED RULES AND REGULATIONS

Kansas Racing and Gaming Commission. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning practicing veterinarians and the Kansas-whelped program. After discussion, the Committee had no comment.

Department of Revenue. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning titles and registrations. After discussion, the Committee expressed the following comments.

KAR 92-52-9. In subsection (a)(1)(FF), update the statutory citation to the 2002 Supplement.

Economic Impact. Adjust the economic impact statement to take into account the increased cost of insurance.

The Committee directed legislative staff to draft legislation to place moving violations into statute.

Department of Commerce. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning low-income housing tax credits. After discussion, the Committee expressed the following comment.

KAR 110-10-1a. Should the inclusion of the United States Internal Revenue Code, Section 42, be an adoption by reference and need to be cited as such with a specific date?

Department of Health and Environment. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning air quality and laboratories. After discussion, the Committee expressed the following comments.

KAR 28-19-202. In subsection (g), should the "may" be changed to "shall" as it relates to refunds?

KAR 28-15-35. In subsection (a)(18), delete the words "and amendments thereto" as they constitute an unlawful delegation of authority to the federal agency.

Department of Agriculture. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning grain warehouse fees and Groundwater Management District (GMD) No. 4. After discussion, the Committee had no comment on the grain warehouse fee regulation, but expressed the following comments on the GMD regulation.

KAR 5-24-1. In subsection (g), in the definition, include the name of the publisher of the document adopted by reference.

KAR 5-24-2 and 6. Include the statutory cite for the Republican River Compact.

KAR 5-24-8. In subsection (d)(2)(A), the material referenced should be specifically adopted by reference if it is not so adopted by the language in (B).

General Comments. Include the Division's website address in the notice of future hearings on rules and regulations.

Kansas Board of Regents. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning minimum standards for proprietary schools. After discussion, the Committee expressed the following comments.

KAR 88-23-2. In subsection (a)(19)(D), eliminate the prohibition on advertising in the employment or "help wanted" classified advertisements unless it is required by federal law.

KAR 88-23-2a. Rewrite the last sentence to require that the agreement be written in "plain language."

Behavioral Sciences Regulatory Board. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning unprofessional conduct, continuing education, and academic supervision. After discussion, the Committee had no comment.

Department of Social and Rehabilitation Services. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of services and reimbursements—Medicaid program, and prior authorization. After discussion, the Committee expressed the following comments.

General Comment. Would it not be helpful to include the agency website on each notice?

KAR 30-5-64. In subsection (b)(14)(C), consider placing appropriate punctuation after "products."

KAR 30-5-78. Consider changing "home- and community-based services" to "HCBS" as it was done in other places throughout the regulation.

Department of Health and Environment. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning surface water quality standards. After discussion, the Committee expressed the following comment.

KAR 28-16-28d. In subsection (d)(1), it appears that a guidance document for use in conducting use attainability analyses is being adopted by reference. The language of the regulations needs to specifically adopt the document by references.

Board of Technical Professions. At its meeting on November 20, 2003, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning landscape architectural examination. After discussion, the Committee had no comment, but did make the following observation: The Committee members believe that there may be individuals who are not complying with the provisions for landscape architectural licensing and that some of those individuals may not be aware that they are in need of a license.

Chairman Holmes announced that the next meeting would a one-day meeting on December 16, 2003. The meeting adjourned at 3:45 p.m.

Prepared by Judy Glasgow
Edited by Bill Wolff

Approved by Committee on:

December 16, 2003
(date)