

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

September 6, 2006  
Room 519-S—Statehouse

#### Members Present

Senator Vicki Schmidt, Chairperson  
Representative Carl Holmes, Vice-Chairperson  
Senator Donald Betts  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative Lance Kinzer  
Representative Jan Pauls  
Representative Sharon Schwartz  
Representative Arlen Siegfried  
Representative Josh Svaty  
Representative Mark Treaster

#### Members Absent

Senator Chris Steineger

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Judy Glasgow, Secretary

#### Others Present

Nialson Lee, Kansas Health Policy Authority  
Jamey Kendall, Kansas Department of Health and Environment  
Linda Kenney, Kansas Department of Health and Environment  
Josie Torrez, SILCK  
Derek Hein, Hein Law Firm  
John Peterson, Capital Strategies  
Reid Stacey, Kansas Health Policy Authority  
Kelly Benedict, PSWS  
Claudia Elkins, Kansas Department of Health and Environment  
Donna Parker, Kansas Department of Health and Environment

Steve Swaffar, Kansas Farm Bureau  
Shari Albrecht, Kansas Department of Health and Environment  
Mike Hutfles, Hutfles Government Relations  
Mike Murray, Embarq  
Charles Sexson, Office of the Attorney General  
Matt Goddard, Heartland Community Bankers Association  
Mary Feighny, Office of the Attorney General  
Julene Miller, Office of the Attorney General  
Don Jenkins, Kansas Department of Labor  
Steve Zink, Kansas Department of Labor  
Wayne Maichel, Kansas Department of Labor  
Phyllis Gilmore, Behavioral Sciences Regulatory Board  
Larry Buening, Board of Healing Arts  
John Harsch, Kansas Department of Health and Environment  
Scott Gates, Office of the State Treasurer

### **Morning Session**

Representative Carl Holmes, Vice-Chairperson, called the meeting to order at 9:10 a.m. on September 6, 2006.

Vice-Chairperson Holmes recognized Nialson Lee, Kansas Health Policy Authority, to speak to the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-5-108, revoked; KAR 129-5-108, scope of services for durable medical equipment, medical supplies, orthotics, and prosthetics; and KAR 129-5-1, prior authorization.

Mr. Lee noted that KAR 129-5-108 will be amended to include physician assistants. There were no questions from members of the Committee. KAR 129-5-1 is being amended to require the following drugs for prior authorization: drugs for diabetes—exenatide and pramlintide acetate and narcotics – buprenorphine-naloxone and buprenorphine. The Committee had no questions for Mr. Lee and Vice-Chairperson Holmes thanked him for his appearance before the Committee.

The Vice-Chairperson asked for action on the July 17, 2006 Committee minutes. *Representative Pauls moved that the minutes be approved as presented, Representative Svaty seconded the motion. The motion carried.*

Jamey Kendall, Bureau for Children, Youth and Families, was introduced by the Vice-Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-4-501, definitions; KAR 28-4-510, diagnosis and monitoring; and KAR 28-4-514, MSUD and PKU; financial assistance availability for certain related expenses.

Ms. Kendall stated that the regulations are a result of the enactment of 2006 House Substitute for SB 579 which amended KSA 65-180. A Committee member questioned how much of the expense had shifted from the state to the patient from the proposed change in KAR 28-4-514. Ms. Kendall stated that so far, individuals with the agency had only heard from one-half the families, so the total cost had not been determined. She indicated that nearly half of those will be covered at 100 percent. There were no other questions. The Vice-Chairperson thanked Ms. Kendall for her presentation before the Committee.

The Vice-Chairperson introduced John Harsch to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 1). KAR 28-16-56c, sewage permit fees; definitions; KAR 28-16-56d, sewage permit fees; schedules; KAR 28-18-1, definitions; KAR 28-18-2, registration and application requirements; KAR 28-18-4, filing of applications and payment of fees; KAR 28-18-8, permit; terms and conditions; KAR 28-18-9, certification; terms and conditions; KAR 28-18-11, confined feeding facilities; federal requirements; KAR 28-18-12, design and construction of animal waste management systems; KAR 28-18-13, operation of animal waste management systems; KAR 28-18-14, inspections; KAR 28-18-16, waste-retention lagoon or pond closure requirements; KAR 28-18-17, groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities; KAR 28-18a-1, definitions; KAR 28-18a-2, registration and application requirements; KAR 28-18a-4, filing of applications and payment of fees; KAR 28-18a-8, permit; terms and conditions; KAR 28-18a-9, certification; terms and conditions; KAR 28-18a-11, confined feeding facilities; federal requirements; KAR 28-18a-12, design and construction of swine waste management and swine pollution control systems; KAR 28-18a-19, operation of swine waste management and swine pollution control systems; KAR 28-18a-21, inspections; KAR 28-18a-22, swine facility closure requirements; KAR 28-18a-26, requirements for swine facility operator certification; and KAR 28-18a-33, groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities; and revocation.

Mr. Harsch gave the Committee a brief history of the proposed rules and regulations highlighting the different agencies and organizations that have been a part of the development process.

Staff noted that in KAR 28-16-56c, KAR 28-16-56d, KAR 28-18-9 and KAR 28-18a-9, the history section needs to be updated to include the 2005 Supplement. A Committee member questioned who would pay for the clean-up when the property has been condemned by the state for highway use. Mr. Harsch stated that the agency works with the owner of the property and in that case, the state agency would probably be responsible to cover the cost. In KAR 28-18-1, page 8, (o), third line, staff noted that the statement "approved state" should be clarified by definition. Also on page 19, (1) clarification is needed if it is the document that is intended to be adopted by reference. In KAR 28-18-2, page 1 (1) and KAR 28-18a-2, the term "facility" should be clarified by adding "confined animal facility." In KAR 28-18-16, page 4, (j), staff questioned whether the agency would have any authority over a property owner who was not the operator. Mr. Harsch stated he would check into this area. Staff questioned whether the term "confined feeding facility" as used in KAR 28-18a-1, page 2, (c) and page 3 (h) referred to only swine and if so the reference to KSA 65-171d may need to be changed. Staff noted the agency should adopt, by reference, the "minimum standard of design, construction, and maintenance" in KAR 28-18a-12 in order to make it enforceable. Staff suggested that the agency review the history section for authority for these regulations. A question was raised in KAR 28-18a-21, regarding the terms "department inspector" and "department employee" and how these were being used. Concern was raised by Committee members regarding what would happen in the future if biosecurity protocols were not being followed by department employees in KAR 28-18a-21, paragraph (c). Mr. Harsch stated that he would take these suggestions and comments back to the agency for study. After responding to all questions, the Chairperson thanked Mr. Harsch for his presentation before the Committee.

Chairperson Vicki Schmidt recognized Wayne Maichel, Director of Employment Security, to address the proposed rule and regulation noticed for hearing by the Kansas Department of Labor (Attachment 2). KAR 50-3-2a, waiver of requirement to register for work, exceptions.

Mr. Maichel explained the need for this proposed rule and regulation, stating there are numerous claimants who do not need to register for work and this regulation clarifies these

exceptions. After responding to the Committee's questions, Mr. Maichel was thanked for his appearance before the Committee.

Steve Zink, Department of Labor, was introduced by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Department of Labor. KAR 49-45a-1, definitions; 49-45-1, rules for construction of boilers; KAR 49-45-2, part A—ferrous material specifications; KAR 49-45-3, part B—nonferrous material specifications; KAR 49-45-4, part C—specifications for welding rods, electrodes, and filler metals; KAR 49-45-4a, part D—properties (customary); KAR 49-45-4b, part D—properties (metric); KAR 49-45-5, rules for construction of heating boilers; KAR 49-45-6, nondestructive examination; KAR 49-45-7, recommended rules for the care and operation of heating boilers; KAR 49-45-8, recommended guidelines for the care of power boilers; KAR 49-45-9, qualification standard for welding and brazing procedures, welders, brazers, and welding and brazing operators; KAR 49-45-20, national board inspection code (ANSI/NB-23); KAR 49-45-28, power piping; KAR 49-45-29, rules for construction of pressure vessels; division 1; KAR 49-45-31, rules for construction of pressure vessels; division 3—alternative rules for construction of high pressure vessels; KAR 49-45-32, uniform mechanical code; KAR 49-45-34, fiber-reinforced plastic pressure vessels; KAR 49-45-35, rules for construction and continued service of transport tanks; KAR 49-45-37, boiler and combustion systems hazards code; KAR 49-45-38, standard for the prevention of furnace explosions in fuel oil-and natural gas-fired single burner boiler-furnaces; KAR 49-47-2, application of state serial numbers; KAR 49-50-3, boiler combustion chamber vents; KAR 49-50-7, boiler blowoff equipment; general requirements; KAR 49-50-9, notification of inspection requirements; KAR 49-50-10, safety valve repair; KAR 49-50-13, reinstalled boiler or pressure vessel at same location; KAR 49-50-17, steam cleaners and hot water power washers; KAR 49-50-19, combustion safeguards and waterside control appurtenances; KAR 49-50-22, venting of atmospheric vents, gas vents, and bleed or relief lines; KAR 49-50-23, certificate of inspection; KAR 49-50-24, installer qualifications; KAR 49-51-3a, safety factors for boilers and pressure vessels; KAR 49-51-6, safety valves; KAR 49-51-11, blowoff connection; KAR 49-51-12, repairs and renewals of boiler and pressure vessel fittings and appliances; KAR 49-52-6, safety relief valve requirements for hot water boilers and hot water supply boilers; KAR 49-52-10, stop valves and check valves; KAR 49-52-14, repair and replacement of fittings and appliances; KAR 49-52-17, emergency shutoff switches; KAR 49-52-18, hot water supply boilers; and KAR 49-52-19, pool heaters; and revocations (Attachment 3).

Mr. Zink introduced Don Jenkins, Chief Boiler Inspector, Department of Labor, to address the rules and regulations. Mr. Jenkins stated that these proposed new rules and regulations are being issued to conform to the standards currently used by the industry.

Mr. Jenkins answered questions from Committee members concerning assigning state serial numbers, what the cost will be, and who will pay. Committee members questioned who and how the notification of a required inspection for the boiler would be handled. Chairperson Schmidt thanked Mr. Zink and Mr. Jenkins for their presentation before the Committee.

Scott Gates, Learning Quest Program Director, was introduced by Chairperson Schmidt to speak to the proposed rules and regulations notice for hearing by the State Treasurer's Office. KAR 3-4-1, definitions; KAR 3-4-2, eligibility requirements; KAR 3-4-3, applications; KAR 3-4-4, eligibility period; KAR 3-4-5, matching grant accounts; KAR 3-4-6, multiple accounts; and KAR 3-4-7, forfeit of matching grant funds.

Mr. Gates stated that these regulations were the result of the passage by the 2006 Legislature of SB 332, implementing a new matching grant for contributions to the Kansas Postsecondary Education Savings Program by Kansas residents.

Staff noted that in KAR 3-4-1, (2) the Internal Revenue Code section 529 and other Internal Revenue Code references may need to be adopted by a date certain. Mr. Gates responded to questions from Committee members of a general nature. Chairperson Schmidt thanked Mr. Gates for his appearance before the Committee.

Chairperson Schmidt recessed the meeting until 1:30 p.m.

### **Afternoon Session**

Chairperson Schmidt recognized Larry Buening, Executive Director, to speak to the proposed rules and regulations noticed for hearing by the State Board of Healing Arts. KAR 100-73-7, license renewal; continuing education; KAR 100-73-8, reinstatement; canceled and revoked licenses; and KAR 100-73-9, continuing education; persons exempt from licensure; and revocation.

Mr. Buening stated that these are new regulations covering licensed radiologic technologists, x-ray operators, and x-ray technologists. This group had never been regulated by the State of Kansas.

Mr. Buening responded to several general questions from Committee members concerning the licensure procedure. Staff suggested that the terms "canceled" and "expired" are used in KAR 100-73-8 interchangeably, and should be uniform throughout. Mr. Buening was thanked by the Chairperson for appearing before the Committee.

Phyllis Gilmore, Executive Director, was recognized by Chairperson Schmidt to address the proposed rules and regulations noticed for hearing by the Behavioral Sciences Regulatory Board. KAR 102-2-2a, application for licensure; KAR 102-3-4a, applications for licensure; KAR 102-4-4a, applications for licensure; KAR 102-5-4a, applications for licensure; KAR 102-2-6, program approval; KAR 102-3-3a, education requirements; KAR 102-4-1a, definitions; KAR 102-4-3a, educational requirements; and KAR 102-5-3, education requirements.

Ms. Gilmore stated that the proposed amendments to KAR 102-2-2a, KAR 102-3-4a, KAR 102-4-4a, and KAR 102-5-4a are a result of SB 470 passed by the 2006 Legislature. She stated that temporary regulations were approved covering these items. The regulations presented are identical to the temporary regulations. There were no questions from the Committee on these regulations.

It was noted by Committee members that if the physical presence is required of the core faculty member, it should be included in the list of conditions on page 1, of KAR 102-2-6. A concern was raised by a Committee member regarding the exclusion of any video technology courses and whether interactive video courses had been considered. After responding to all the Committee's questions, the Chairperson thanked Ms. Gilmore for her presentation before the Committee.

Julene Miller, Deputy Attorney General, was introduced by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Office of the Attorney General (Attachment 4). KAR 16-11-1, definitions; KAR 16-11-2, instructor certification standards; KAR 16-11-3, weapons safety and training course; instructors; KAR 16-11-4, weapons safety and training course; KAR 16-11-5, application procedure; KAR 16-11-6, renewal of license; requalification weapons safety and training course; and KAR 16-11-7, signs.

These proposed rules and regulations are the result of the Personal and Family Protection Act (concealed carry) passed by the 2006 Legislature.

A concern was raised by a Committee member in KAR 16-11-1, page 1, (b) the term "exclusively used" which would prohibit other groups from using church facilities and should be changed to "primarily used." Staff noted that on page 2, (3), the term "two square inches" should be changed to "two inches square." A Committee member expressed concern about the absence of reference to allowing video training sessions and wondered if interactive training had been considered.

The next meeting will be October 2, 2006. Chairperson Schmidt adjourned the meeting.

### **Committee Comments on Proposed Rules and Regulations**

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prior authorization and had no comment.

**Kansas Health Policy Authority.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of services for durable medical equipment, medical supplies, orthotics, and prosthetics; scope of services for durable medical equipment, medical supplies, orthotics, and prosthetics; and revocation and had no comment.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; diagnosis and monitoring; and MSUD and PKU, financial assistance availability for certain related expenses and had no comment.

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning sewage permit fees, definitions; sewage permit fees, schedules; definitions; registration and application requirements; filing of applications and payment of fees; permit, terms and conditions; certification, terms and conditions; confined feeding facilities, federal requirements; design and construction of animal waste management systems; operation of animal waste management systems; inspections; waste-retention lagoon or pond closure requirements; groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities; definitions; registration and application requirements; filing of applications and payment of fees; permit, terms and conditions; certification, terms and conditions; confined feeding facilities, federal requirements; design and construction of swine waste management and swine pollution control systems; operation of swine waste management and swine pollution control systems; inspections; swine facility closure requirements; requirements for swine facility operator certification; groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities; and revocation and had the following comments.

KAR 28-18-1. Consider clarifying the term "approved state" in subsection (o).

KAR 28-18-2. Consider the consistent use of the defined term "confined feeding facility" instead of using the term "facility."

KAR 28-18a-1. Consider limiting the statutory reference to the portion of the statute dealing with swine and not to the entire list of animal species when referring to animal unit capacity. Also, review the defined terms and determine whether the term is used in the subsequent related regulations and consider elimination if the term is not used.

KAR 28-18a-12. The Committee is concerned that the agency may be requiring the use of certain standards of design which are not adopted by reference. Consider the adoption by reference of these standards of design.

KAR 28-18a-21. Review this regulation to determine whether the term "inspector" or "employee" is the proper term to use. The Committee is concerned with personnel following the biosecurity protocols of the swine facilities. It appears that the regulation could allow an agency inspector to ignore the biosecurity protocol in order to have reasonable access to inspect a facility. Consider clarifying the circumstances under which inspectors could have access to a facility without full observance of a facility's biosecurity protocol.

**State Treasurer's Office.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; eligibility requirements; applications; eligibility period; matching grant accounts; multiple accounts; and forfeit of matching grant funds and had the following comment.

KAR 3-4-1. The Committee suggests the adoption of the referenced sections of the federal Internal Revenue Code. The Committee believes that the current construction may be a potential unlawful delegation.

**State Board of Healing Arts.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license renewal, continuing education; reinstatement, canceled and revoked licenses; continuing education, persons exempt from licensure; and revocation and had the following comments.

General Comment. The Committee is concerned with the fact the agency appears to have no authority to assess a penalty upon a radiologic technologist and whether unlicensed persons are operating the equipment.

KAR 100-73-8. Please review this regulation to determine whether the word "cancelled" or "expired" is the proper word to be used.

**State Behavioral Sciences Regulatory Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning application for licensure; applications for licensure; applications for licensure; applications for licensure; program approval; education requirements; definitions; educational requirements; and education requirements and had the following comments.

KAR 102-2-6. The Committee is concerned about the policy being proposed which establishes definitions for terms such as "core faculty member" and "in residence." The Committee inquires as to whether the Board has considered the introduction of legislation to provide a forum for the policies being adopted through the promulgation of these regulations.

KAR 102-4-1a. Consider clarifying subsections (l), (n), and (o) to make them applicable to certain acts under the Act.

**Kansas Attorney General's Office.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; instructor certification standards; weapons safety and training course, instructors; weapons safety and training course; application procedure; renewal of license, requalification weapons safety and training course; signs and had the following comments.

KAR 16-11-1. The Committee is concerned with the definition of the terms "church" and "temple" since the definition appears to require that those types of facilities be used "exclusively" as a place of worship. The Committee believes that many of these facilities would not meet the definition because of the wide variety of activities being conducted at the facilities. The Committee suggests the word "primarily" instead of "exclusively."

The Committee also suggests that in this regulation the definition of "Full frontal-view photograph" be modified to reflect the size of the photograph to be required. The Committee suggests "two inches square."

KAR 16-11-4. The Committee notes that the regulation does not address interactive video conferencing. Should the regulation address this?

Comment. The Committee wonders whether the Training Manual should contain some discussion of the caliber of the weapon being used. Perhaps the document should contain information regarding the stopping power of different weapons.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning waiver of requirement to register for work, exceptions and had no comment.

**Kansas Department of Labor.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; rules for construction of power boilers; part A—ferrous material specifications; part B—nonferrous material specifications; part C—specifications for welding rods, electrodes, and filler metals; part D—properties (customary); part D—properties (metric); rules for construction of heating boilers; nondestructive examination; recommended rules for the care and operation of heating boilers; recommended guidelines for the care of power boilers; qualification standard for welding and brazing procedures, welders, brazers, and welding and brazing operators; national board inspection code (ANSI/NB-23); power piping; rules for construction of pressure vessels, division 1; rules for construction of pressure vessels, division 3—alternative rules for construction of high-pressure vessels; uniform mechanical code; fiber-reinforced plastic pressure vessels; rules for construction and continued service of transport tanks; boiler and combustion systems hazards code; standard for the prevention of furnace explosions in fuel oil- and natural gas-fired, single-burner, boiler furnaces; application of state serial numbers; boiler combustion chamber vents; boiler blowoff equipment, general requirements; notification of inspection requirements; safety valve repair; reinstalled boiler or pressure vessel at same location; steam cleaners and hot water power washers; combustion safeguards and waterside control appurtenances; venting of atmospheric vents, gas vents, and bleed or relief lines; certificate of inspection; installer qualifications; safety factors for boilers and pressure vessels; safety valves; blowoff connection; repairs and renewals of boiler and pressure vessel fittings and appliances; safety relief valve requirements for hot water boilers and hot water supply boilers; stop valves and check



valves; repair and replacement of fittings and appliances; emergency shutoff switches; hot water supply boilers; pool heaters; and revocations and had no comment.

Prepared by Judy Glasgow  
Edited by Raney Gilliland, Martha Dorsey,  
and Melissa Calderwood

Approved by Committee on:

October 2, 2006

(date)