

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

July 7, 2008
Room 519-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Karin Brownlee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative Joe Patton
Representative Jan Pauls
Representative Arlen Siegfroid
Representative Ed Trimmer

Members Absent

Senator Donald Betts
Representative John Faber
Representative Mark Treaster

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes

Others Present

Teri Canfield, Kansas Racing and Gaming Commission
Bob Krehbiel, Kansas Racing and Gaming Commission
Bill Smith, Kansas Racing and Gaming Commission
David Schultz, Kansas Racing and Gaming Commission
Brandi Baer, Kansas Racing and Gaming Commission
Mike Deines, Kansas Racing and Gaming Commission
Don Brownlee, Kansas Racing and Gaming Commission
Cheryl Dolejsi, Kansas Racing and Gaming Commission

Patrick Martin, Kansas Racing and Gaming Commission
Charles LaBoy, Kansas Racing and Gaming Commission
Kevin Mullally, Gaming Laboratories International
Jean Holthaus, Department of Social and Rehabilitation Services
Diane Belquist, Kansas Board of Healing Arts
Matt Scherer, Kansas Department of Agriculture

Morning Session

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m., July 7, 2008. She welcomed Diane Belquist, Acting General Counsel, to address the proposed rules and regulations regarding physician assistants noticed for hearing by the Board of Healing Arts: KAR 100-28a-10, supervision and direction; adequacy.

Committee members asked for clarification of when a physician needs to report activity regarding a physician assistant to the Board, and they further requested clarification of “threatened litigation” as used in proposed KAR 100-28a-10(f). Ms. Belquist stated that the Board would like to know the reason any time a physician’s assistant leaves a physician’s employment. Upon further review, Committee members commented that this regulation needed further modification.

Committee members had no further questions for Ms. Belquist, and the Chairperson thanked her for her appearance before the Committee.

The Chairperson asked for action on the minutes of the May 28, 2008, meeting that were before the Committee. The Committee further discussed an issue from that meeting: reimbursement to nursing facilities for durable medical equipment, specifically whether the change in reimbursement method (from direct to including it as part of a facility’s basic rate) is a federal mandate; if the change is a mandate, the specific citation for that mandate; and the time lag from the time the facility incurs the expense to when its payments will reflect reimbursement for that expense. The Chairperson requested staff send a letter to the Kansas Health Policy Authority requesting a response on the specific questions. *Senator Ostmeyer moved to approve the minutes as presented; Representative Trimmer seconded the motion; the motion passed.*

The Chairperson recognized Matt Scherer, Water Structures Program Manager, Division of Water Resources, to speak to the proposed rules and regulations noticed for hearing by the Department of Agriculture:

- Under Article 40, design of earth dams – KAR 5-40-24, dam breach analysis.
- Under Article 45, design of levees – KAR 5-45-1, levees and floodplain fills, definitions; KAR 5-45-4, levees and floodplain fills, preparer of maps, plans, profiles, and specifications; KAR 5-45-19, unconsolidated material storage stockpiles and safety berms; KAR 5-45-20, application to place an unconsolidated material storage stockpile or safety berm; KAR 5-45-21, safety berm; KAR 5-45-22, unconsolidated material storage stockpile; and KAR 5-45-23, use of geometric analysis.

Mr. Scherer explained that the change to KAR 5-40-24 was to correct an error: a distance was listed as a minimum when it should have been a maximum. He further explained that the changes

to the levee regulations were intended to make it easier for affected parties to prove their projects will not significantly affect floodwaters. He explained that there are two types of structures in floodplains, safety berms (required by Mine Health and Safety to ensure vehicles will not fall into pits), typically made of sand berms, and stockpiles of materials removed to allow removal of underlying sand or other material.

Mr. Scherer responded to several general questions from Committee members, including whether the base flood referenced in 5-45-1 is the same as a 1 percent chance flood. (Answer: yes)

Staff suggested the agency change “administrating” in the third line of proposed KAR 5-45-1 to “administering.” Staff further suggested that the referenced National Flood Insurance Act in proposed KAR 5-45-1(k) and the Code of Federal Regulations portions in proposed KAR 5-45-20 be incorporated by reference, to make them enforceable by the agency.

The Chairperson then thanked Mr. Scherer for his presentation to the Committee.

The Chairperson recognized Patrick Martin, Assistant Attorney General assigned to the Racing and Gaming Commission, to speak to the proposed rules and regulations noticed for hearing by the Racing and Gaming Commission:

- Under Article 100, general provisions and definitions – KAR 112-100-1, definitions; KAR 112-100-2, duty to disclose material and complete information; KAR 112-100-3, duty to submit to background investigations and to cooperate; KAR 112-100-4, knowledge of the law and regulations; KAR 112-100-5, display of credentials; KAR 112-100-6, loss of badges; and KAR 112-100-7, nontransferability.
- Under Article 104, minimum internal control system – KAR 112-104-1, definitions, internal control system; KAR 112-104-2, facility manager’s organization; KAR 112-104-3, accounting records; KAR 112-104-4, forms, records, and documents; KAR 112-104-5, standard financial reports; KAR 112-104-6, annual audit, other reports, currency transaction reporting, suspicious transaction reporting; KAR 112-104-7, meter readings and related statistical reports; KAR 112-104-8, retention, storage and destruction of books, records and documents; KAR 112-104-9, complimentaries; KAR 112-104-10, personal check cashing; KAR 112-104-11, wire transfers; KAR 112-104-12, cash equivalents; KAR 112-104-13, patron deposits; KAR 112-104-14, cage; KAR 112-104-15, count room requirements; KAR 112-104-16, accounting controls for the cage; KAR 112-104-17, bill validators and bill validator canisters; KAR 112-104-18, transportation of bill validator canister to and from bill validators; KAR 112-104-19, unsecured currency, gaming tickets, and coupons; KAR 112-104-20, counting and recording bill validator canisters; KAR 112-104-21, jackpot payouts; KAR 112-104-22, annuity jackpots; KAR 112-104-23, merchandise jackpots; KAR 112-104-24, internal audit standards; 112-104-25, information technology standards; KAR 112-104-26, gaming facility; KAR 112-104-27, acceptance of tips or gratuities from patrons; KAR 112-104-28, automated teller machines; KAR 112-104-29, waiver of requirements; KAR 112-104-30, gaming day; KAR 112-104-31, signature; KAR 112-104-32, unclaimed winnings; and KAR 112-104-33, disputes.
- Under Article 105, security – KAR 112-105-1, security department; KAR 112-105-2, security plan; KAR 112-105-3, emergency operations plan; KAR 112-105-4, security department staffing; KAR 112-105-5, reports; KAR 112-105-6, security detention area; and KAR 112-105-7, communications system.

- Under Article 106, surveillance – KAR 112-106-1, surveillance system; KAR 112-106-2, surveillance system plan; KAR 112-106-3, surveillance department; KAR 112-106-4, surveillance department staffing; KAR 112-106-5, surveillance room; KAR 112-106-6, monitoring; and KAR 112-106-7, retention of surveillance recordings.
- Under Article 112, responsible gaming – KAR 112-112-1, office of responsible gaming; KAR 112-112-2, definition; KAR 112-112-3, responsible gaming plan; KAR 112-112-4, self-exclusion list; KAR 112-112-5, requirements for placement on the self-exclusion list; KAR 112-112-6, mandatory surrenders to the state; KAR 112-112-7, confidentiality of the self-exclusion list; KAR 112-112-8, facility manager conduct regarding self-excluded persons; and KAR 112-112-9, procedure for removal from the self-exclusion list.

Mr. Martin began his presentation by stating that the Kansas Expanded Lottery Act (ELA), 2007 SB 66, requires the Commission to meet or exceed industry standards. This is codified at 2007 Supp. KSA 74-8734(c): “(c) The lottery commission shall adopt standards to promote the integrity of the gaming and finances of lottery gaming facilities, which shall apply to all management contracts, shall meet or exceed industry standards for monitoring and controlling the gaming and finances of gaming facilities and shall give the executive director sufficient authority to monitor and control the gaming operation and to ensure its integrity and security.” To do that, the agency has “gotten smart and gotten help,” he said, with the help including that of Kevin Mullally, general counsel and director of government affairs for Gaming Laboratories International, who Mr. Martin introduced to the Committee. Mr. Martin said that, in developing the proposed rules and regulations, the Commission has tried to remain consistent with a conservative, prudent approach, to maximize economic benefits to the state and minimize the risk of social harm. The proposed regulations represent a collection of best practices given the regulatory structure given to the Commission, he said. Mr. Mullally praised the quality of the Commission staff.

Mr. Martin responded to questions about the timing of further proposed rules and regulations by stating the following:

- The proposed rules and regulations presented at this meeting are about a third of the total.
- The next four articles of proposed regulations are undergoing internal review but should be ready for review by the Attorney General’s Office within the next three weeks. Mr. Martin will tell the Committee as soon as he knows whether that group could be ready for an August 12 JCARR meeting.
- The third “wave” of proposed regulations will be ready approximately two weeks after the second wave.
- There will be “clean-up” proposed regulations following the third wave.

In response to a general question about the economic impact of the proposed regulations on the regulated community, which was not included in the economic impact statement, Mr. Martin and Mr. Mullally responded that (a) the ELA requires the regulated community to pay to meet adopted standards and (b) the costs would be too variable to determine. For example, one facility could

include a movie theater and a hotel in addition to gaming facilities and be quite large, whereas another could choose a different configuration and be significantly smaller.

Staff stated that, because 2007 Supp. KSA 74-8733 makes the ELA part of and supplemental to the Kansas Lottery Act, the definitions in proposed KAR 112-100-1(b), (c), and (g) were in conflict with the statute. Mr. Martin responded that the Commission respectfully disagrees, that these definitions are used only in these regulations, and that the proposed definitions were approved by the Attorney General's Office.

Staff requested to know the Commission's authority to license, as the term is used in proposed KAR 112-100-2. Mr. Martin responded that, although the term "license" is not used clearly in the ELA, 2007 Supp. KSA 74-8751 establishes certification requirements for certain persons and 2007 Supp. KSA 74-8772 gives the Commission broad authority: "The Kansas Racing and Gaming Commission shall adopt such rules and regulations as the Commission deems necessary to carry out the duties and functions of the Commission pursuant to" the ELA. (Photocopies of 2007 Supp. KSA 74-8772 were distributed to the Committee.) Further, Mr. Martin said, the Commission views "license," "certify," and "credential" as interchangeable and used interchangeably in other statutes. He also pointed out that proposed KAR 112-100-2 does not require a license but includes that term with others in a general requirement for an applicant to provide accurate information. He further stated that "license" is the standard term used in the gaming industry and that whether and how "license" should be used in additional proposed ELA rules and regulations was still being debated by Commission staff and with staff of the Attorney General's Office.

Committee members stated that a term not used in the ELA should not be used in the proposed rules and regulations and suggested the Commission use "certificate," a term clearly used in the ELA. Committee members also requested that staff request further information from the Attorney General's Office on this issue.

Committee members also asked how quickly they could get copies of the next group of proposed rules and regulations. Mr. Martin responded that the Commission posts proposed rules and regulations on its website as soon as they are double stamped (stamped by both the Department of Administration and the Attorney General's Office) and certainly could be made available to Committee members at that time.

Committee members and staff had these additional concerns regarding proposed rules and regulations in Article 100:

- In 112-100-5 and 112-100-6, staff suggested the Commission consider using the term "natural person" rather than "person" which, per proposed KAR 112-100-1, includes entities that are not natural persons.
- In 112-100-6, a Committee member suggested additional details of the procedures be included.

In the morning discussion of proposed rules and regulations in Article 104, Committee members and staff expressed these concerns:

- A Committee member asked whether any of the definitions in proposed KAR 112-104-1 were unique to Kansas. Mr. LaBoy answered that on the definition for "generally accepted accounting principles" (GAAP) was unique. Staff said that the proposed GAAP definition appeared to be an unlawful delegation of authority, as there is no date certain version of documents mentioned in subsection (a)(17)(A),

and that Kansas courts have consistently upheld this position. Committee members also questioned who will determine whether GAAP have been followed and said that having no certain version of these documents could open the state to liability for arbitrary and capricious behavior. Mr. LaBoy responded that certain elements of GAAP apply differently to certain types and sizes of companies. Committee members suggested the Commission meet with the Board of Accountancy on this issue.

- A Committee member suggested the Commission add “no cost” to the second sentence of proposed KAR 112-104-1(a)(8).
- A Committee member suggested the Commission review the proposed definitions in proposed KAR 112-100-1, including in (a)(10), for mixing of singular and plural.
- For proposed KAR 112-104-2(f)(3), staff asked whether the “five days” excluded weekends and holidays and, if it did not, stated that the proposed regulation would be in conflict with the Rules of Civil Procedure, specifically KSA 60-206(a): “. . . When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. . . .” (This conflict would not exist should the Legislature specifically exclude an action from that provision.)
- For proposed KAR 112-104-3(c)(10), staff stated the Commission will need to adopt by reference 31 CFR 103 as of a date certain, to avoid problems with unlawful delegation. (In response to a concern regarding proposed KAR 112-104-6(n)(3), staff said the adoption of 31 CFR 103 could be accomplished in one regulation, with reference to it in others.)
- A Committee member asked what happens to records required under the proposed regulations. Mr. LaBoy responded that the casino manager must submit records to a CPA firm before Commission staff receive the information. See KAR 112-104-8.
- Staff asked about the standards to be followed in proposed KAR 112-104-5(b). Mr. LaBoy said that the proposed regulation was written to accommodate both a computer system that will be available to facility managers and paper forms that may have to be used before the computer system is available.
- A Committee member asked for the source of “20 percent” as used in proposed KAR 112-104-5(g). The answer was that it was a number used in other jurisdictions.
- A Committee member asked whether the records envisioned in proposed KAR 112-104-6 would be open records. Mr. Martin responded that the records would be considered proprietary and are excluded under 2007 Supp. KSA 74-8752(e). Legislative Post Audit is bound by the same duties of confidentiality that apply to the agency, per the Post Audit Act.
- A Committee member asked whether audit reports submitted by the various managers under proposed KAR 112-104-6 would be readily comparable. Mr. LaBoy stated that GAAP requires that reports from independent CPAs follow a tried and true format, so the reports should be fairly comparable.

- Staff asked for the source of the Commission's authority to require record retention as envisioned in proposed KAR 112-104-8(d). Mr. Martin referred to the general responsibilities granted in 2007 Supp. KSA 74-8734(c), to "meet or exceed industry standards." For this proposed regulation, Committee members also requested clarification of how an unalterable computer document could be stored and the cost to the industry for that storage. Commission staff stated the facility managers could store "picture files" (e.g., jpeg files) and that storage costs would be minimal.
- For proposed KAR 112-104-9, Committee members requested the Commission consider making it more clear that facility managers must track all complimentarys of \$599.99 or less. Staff suggested the Commission include a cross reference to the definition of the term "level I employee" as used in 112-104-9(g)(2)(C) and that the Commission look at the requirements of the Governmental Ethics Act, specifically KSA 46-237, as to how limits on complimentarys apply to state officers and employees.

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

Afternoon Session

The Chairperson reconvened the meeting at 1:37 p.m.

In the afternoon discussion of proposed rules and regulations in Article 104, Committee members and staff expressed these concerns:

- In response to Committee members' questions on proposed KAR 112-104-10, it was stated that Kansas law does not limit individual losses, and that 2007 Supp. KSA 74-8756 makes it illegal for anyone connected with a facility manager to extend credit, which could include taking bad checks over an extended period of time. Also, by checking the validity of each check, the Commission was ensuring the state would receive the amount of each check, even if a check turned out to be bad. A Committee member suggested the Commission consider refusing to take any company checks, to further reduce risks.
- In response to a Committee member's question about the costs to the industry of the requirements in proposed KAR 112-104-14, Mr. Martin stated that a few but certainly not a majority of industry representatives have raised concerns.
- For proposed KAR 112-104-20, subsection (g), staff suggested the Commission consider moving the parenthetical phrase to the front of the sentence, for clarity.
- In response to a staff question regarding proposed KAR 112-104-22, it was stated that the contract between the facility manager and the Lottery will cover contingencies, such as payment of an annuity jackpot if the facility manager ceases business, and contemplates certain safeguards.

- On proposed KAR 112-104-24, staff asked how the Commission will determine adequacy of audits when no specific standards are cited. Mr. LaBoy responded that the Commission sought to give guidance without being unduly restrictive as to how a facility manager would meet general internal audit standards.
- On proposed KAR 112-104-25, staff asked whether the Commission intends to require a facility manager to meet certain information technology standards. Mr. LaBoy replied that the Commission will rely on the expertise of its IT security staff.
- On proposed KAR 112-104-29, staff asked for the source of the Commission's authority to waive other requirements, as other statutes have included specific authority to waive requirements and SB 66 did not. Mr. Martin said this falls under the general authority of KSA 74-8772, and Mr. Mullally added that the Commission wishes to allow the regulated community to respond quickly to changes in technology and to be innovative in how it meets the basic requirements for ensuring integrity and security. Committee members suggested the Commission could achieve that goal by using temporary rules and regulations and by anticipating and making regular updates to rules and regulations. They further said that a regulation allowing waiver of other requirements essentially makes other requirements merely standards. A Committee member asked whether requests for waivers would be subject to the Kansas Open Records Act, and said that scrutiny would allow oversight of the Commission on these waivers; the response was that the requests probably would not be open, under the provisions of 2007 Supp. KSA 74-8752.

In discussion of proposed rules and regulations in Article 105, Committee members and staff expressed these concerns:

- Under proposed KAR 112-105-3, a Committee member asked about measures the facility managers will take to keep explosives and unlicensed firearms out. Mr. Brownlee responded that a facility manager will hire trained security guards, who will look for things out of the ordinary, and that Commission staff will be on site. A Committee member also asked about security for electronic systems. Mr. Martin responded that IT security will be addressed in Articles 107 and 110. Anticipated measures will involve encryption, systems testing by GLI, and systems being subject to IT security audits by a subcontractor.
- Under proposed KAR 112-105-5(d), a Committee member asked why the minimum record retention time was only one year. The response was that one year tended to be the industry standard, and that additional records (such as arrest reports) would be available from additional agencies for significant incidents.
- Under proposed KAR 112-105-6, staff asked whether including a detention area opens the state to any potential liability for false arrest. Mr. Brownlee responded that the security officers (who must be employed directly by the facility) will not have power of arrest, and that facilities need an area to interview people out of sight of the rest of the patrons.
- Mr. Martin stated that Article 106, surveillance, is an example of where the Commission plans to exceed industry standards. In discussion of proposed rules

and regulations in Article 106, Committee members and staff expressed these concerns:

- Under proposed KAR 112-106-1, a Committee member suggested that the Commission consider placing security cameras outside restroom entrances.
- For proposed KAR 112-106-2, in (d), staff asked whether, if the Commission does not approve a change, that disapproval is appealable. Mr. Martin responded that it would be.
- For proposed KAR 112-106-5, staff asked whether the Commission intended any minimum size for the surveillance room. Mr. Martin said that practical circumstances, such as space needed to accommodate all required equipment, will govern.

Mr. Martin stated that Article 112 is intended to flesh out the state's responsible gaming plan for those who voluntarily place themselves on an exclusion list. (He also said that involuntary exclusion will be discussed in Article 111, in the third wave.) Mr. Deines stated that a coalition that includes private entities and SRS has been working and will continue to work on responsible gaming strategies for Kansas. Mr. Mullally stated that Kansas will be the first state with a full program to help problem gamblers in place before casinos open, and Kansas has done more than other states to fund such a program. Among the ways the Kansas program will reduce the likelihood that someone who has signed up for the self-exclusion list will be refused service at a gambling facility will be to revoke players' cards, refuse to take checks for gambling, deny jackpots, and potentially arrest that person for trespassing. In response to a Committee member's question about comparing those on the self-exclusion list with those offered complimentaries (proposed KAR 112-104-9), to ensure problem gamblers do not get incentives to return to a Kansas gambling facility, it was stated that those on the self-exclusion list would be removed from all marketing lists.

In discussion of proposed rules and regulations in Article 112, Committee members and staff expressed these concerns:

- For proposed KAR 112-112-2, a Committee member asked why "fair association" was included. Mr. Martin responded that the Commission wanted to be broad and will regulate only those fair associations regulated under the parimutuel statutes.
- For proposed KAR 112-112-3, under subsection (a), staff observed that it would appear to be up to the Racing and Gaming Commission to determine whether a facility's contract with the Lottery Commission was inconsistent with the regulations. Mr. Martin responded that interactions among staff and at Commission meetings were expected to prevent any such inconsistency.
- In discussion of proposed KAR 112-112-4, a Committee member asked whether those on the self-exclusion list will be excluded from all facilities. Mr. Deines said that a real-time computer-based database is expected to be available to all facilities and updated as soon as any name is added or deleted.
- In discussion of proposed KAR 112-112-5, staff asked the source of the Commission's authority for subsection (c) and said that the provision cited, KSA 45-221(a)(30), would close the record without including this provision in the regulation. (The staff member made a similar point for 112-112-7(a)(2).) Mr. Martin stated that the Commission wished to make clear in the regulations that these records would be closed, to encourage sign-up for the self-exclusion list.

In response to a Committee member's question, Mr. Deines said the questions for the application are being developed but are likely to include whether the applicant is completing the form of his own free will and whether the applicant is under the influence of alcohol or drugs. The applicant will not have to show that he or she has a gambling problem. Each application must be made in person. He further explained that the executive director might refuse an application if the applicant was under undue influence (perhaps from a spouse) or was intoxicated.

- For proposed KAR 112-112-7, staff commented that subsection (a)(1) does not include grounds for the Commission to disapprove a plan and that the last sentence does not appear to allow the Commission to disapprove a plan, which likely is not the Commission's intent. Staff asked, in regard to subsection (d), the authority for keeping an identity confidential in a proceeding. Mr. Martin referred to the broad delegation of powers of 2007 Supp. KSA 74-8772 and said there was a similar provision in regard to parimutuel activities. He also said the Commission envisioned using revocation, suspension, or a fine in lieu of those. Staff said usually this must be specifically legislatively delegated.
- In response to questions about procedures for removal from the self-exclusion list, proposed KAR 112-112-9, Mr. Martin said that four or five other states have ways to get off of a self-exclusion list, but that Kansas' is the most robust. Researchers have estimated that 1.5 percent to 3 percent of the population might have a problem with gambling. Approximately 17,000 people have signed up for a similar list in Missouri, about 1,700 in New Jersey. Mr. Deines said a 12-hour curriculum is being developed in concert with Coalition on Problem Gambling; there will be no charge to participants. Mr. Martin further said that the removal provisions will be novel to Kansas, although the other proposed regulations in this article were based on those of other states; that these lists are confidential in other states; and that the Commission does not plan to share names on the voluntary self-exclusion list with other states.

The Chairperson thanked Mr. Martin, Mr. Mullally, and staff members from the Racing and Gaming Commission for their appearance before the Committee.

After further discussion, Committee members directed staff to send letters to the Office of the Attorney General and the Kansas Health Policy Authority and to make the following comments on the proposed rules and regulations. The next meeting is scheduled for August 12, 2008. Chairperson Schmidt adjourned the meeting at 4:15 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Healing Arts. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning supervision and direction, adequacy.

KAR 100-28a-10. The Committee suggests that the agency revisit this entire regulation to add clarity and not proceed with the final adoption of this regulation. If this suggestion is not taken, then the Committee believes that clarity should be added to how a physician would actually "ensure" that a physician assistant would be properly licensed. In addition, the Committee believes that further definition of what would constitute "threatened litigation" would assist in the administration of the regulation. Finally, the Committee suggests that clarity be added to the termination of the physician assistant's employment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning dam breach analysis; levees and floodplain fills, definitions; levees and floodplain fills, preparer of maps, plans, profiles, and specifications; unconsolidated material storage stockpiles and safety beams; application to place an unconsolidated material storage stockpile or safety berm; safety berm; unconsolidated material storage stockpile; and use of geometric analysis.

KAR 5-45-1. The Committee suggests replacing the word "administrating" with the word "administering." Further, the Committee believes that in the definition section under the term "floodway," the references to United States Code and to federal regulation should be adopted by reference.

KAR 5-45-20. The Committee believes that under section (b) the federal regulation should be adopted by reference. Also, the version of 44 CFR 60.3 referenced in this regulation is different from the version referenced in KAR 5-45-1(k). The version adopted should be the same for both regulations. Only one adoption by reference is required. That adoption by reference may be cross-referenced elsewhere, as needed.

KAR 5-45-22. The Committee suggests clarification regarding when this regulation applies.

KAR 5-45-23. The Committee suggests that the language in subsection(a) needs to clarify whether the distance limitation extends to a maximum of 1,320 feet in both directions (upstream and downstream) or whether the 1,320 feet is the total length of the boundary, *i.e.*, 660 feet upstream and 660 feet downstream.

Kansas Racing and Gaming Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the following.

General Provisions and Definitions

- Definitions; duty to disclose material and complete information; duty to submit to background investigations and to cooperate; knowledge of the law and regulations; display of credentials; loss of badges; and nontransferability.

Minimum Internal Control System

- Definitions, internal control system; facility manager's organization; accounting records; forms, records, and documents; standard financial reports; annual audit, other reports, currency transaction reporting, suspicious transaction reporting; meter readings and related statistical reports; retention, storage, and destruction of books, records and documents; complimentary; personal check cashing; wire transfers; cash equivalents; patron deposits; cage; count room requirements; accounting controls for the cage; bill validators and bill validator canisters; transportation of bill validator canister to and from bill validators, storage; unsecured currency, gaming tickets, and coupons; counting and recording bill validator canisters; jackpot payouts; annuity jackpots; merchandise jackpots; internal audit standards; information technology standards; gaming facility; acceptance of tips or gratuities from patrons; automated teller machines; waiver of requirements; gaming day; signature; unclaimed winnings; and disputes.

Security

- Security department; security plan; emergency operations plan; security department staffing; reports; security detention area; and communications system.

Surveillance

- Surveillance system; surveillance system plan; surveillance department; surveillance department staffing; surveillance room; monitoring; and retention of surveillance recordings.

Responsible Gaming

- Office of responsible gaming; definition; responsible gaming plan; self-exclusion list; requirements for placement on the self-exclusion list; mandatory surrenders to the state; confidentiality of the self-exclusion list; facility manager conduct regarding self-excluded persons; and procedure for removal from the self-exclusion list.

After discussion, the Committee had the following comments.

KAR 112-100-1. The Committee is concerned that definitions in subsections (b), (c), and (g) may be in conflict with the statutory definitions for the corresponding terms in the enacting statute due to the provisions of KSA 2007 Supp.74-8733 and KSA 2007 Supp. 74-8702.

KAR 112-100-2. The Committee questions the statutory authority for the agency to license any person or entity. Because the word "license" is not used in 2007 SB 66, Committee members and Committee staff do not believe the Legislature authorized the Racing and Gaming Commission to "license" any individual or entity pursuant to that act.

The Committee requests definitions for the terms "certificate" and "license" as used in this regulation.

KAR 112-100-5. The Committee notes that the term “person,” as defined in KAR 112-100-1 includes legal entities in addition to natural persons, and those legal entities would not wear badges. The Committee suggests the Commission use the term “natural person” in this rule and regulation.

KAR 112-100-6. The Committee thinks that a lost or destroyed Commission-issued badge should be invalidated immediately, rather than waiting 24 hours.

KAR 112-104-1. The Committee notes the term in subsection (a)(8) “at no cost or at a reduced cost” should be used to describe each complimentary item and the Commission may wish to modify the second sentence similarly. In addition, singular and plural terms should have singular or plural agreement in definitions, e.g., in (a)(10).

The Committee questions how the adherence to “generally accepted accounting principles – GAAP”, in subsection (a)(17), will be ensured since no documents setting forth the “generally accepted accounting principles” to be used are being adopted by reference. The Committee requests the agency contact the Board of Accountancy for a definition of GAAP. The Committee questions how different versions of GAAP will be kept current in the regulation.

KAR 112-104-2. The Committee thinks that the five days described in 112-104-2(f)(3) on page 6 should be better defined as either calendar or business days. Further, the Committee believes that KSA 2007 Supp. 60-206(a) requires that Saturdays, Sundays, and holidays are not to be included if the time period is less than 11 days.

KAR 112-104-3. The Committee notes that 31 CFR Part 103 referenced in subsection (c)(10) should be adopted by reference as of a date certain and then providing a cross reference to this adoption by reference in other regulations as necessary.

KAR 112-104-5. The Committee questions whether there are established standards for the reporting required in this regulation and, if so, how those standards can be accessed.

KAR 112-104-6. The Committee requests the adoption date of the CFR, as noted in the comment for KAR 112-104-3, be cross-referenced here. The Committee further suggests the Commission consider including guidelines for the annual and other audit reports, so that the facility managers’ information may more easily be compared.

KAR 112-104-8. The Committee questions the agency’s authority to require record retention and requests the Commission cite the source for that authority.

KAR 112-104-9. The Committee notes that “level I employee” (used in subsections (g)(2)(C) and (I)) is not defined in the regulation. Commission staff said that the term will be defined in a different article. The Committee suggests, if this is the case, that the definition be cross-referenced in this regulation and in all other regulations in which this term is used, such as KAR 112-104-27.

The Committee notes the seeming conflict between establishment of a system to track complimentary and the portion of the regulation (b) that does not require complimentary valued at \$599.99 or less to have certain information recorded.

The Committee requests the agency review KSA 46-237, the State Governmental Ethics Law, and determine whether any additional requirements should be added to this regulation.

KAR 112-104-10. The Committee requests the agency consider whether business checks should be accepted and whether it is acceptable to prohibit them.

KAR 112-104-20. The Committee requests that the phrases within subsection (g) be reordered for clarity.

KAR 112-104-22. The Committee notes the trust agreement elements are not described.

The Committee questions whether the state could become liable for payment of a jackpot should a facility become bankrupt. A response to this concern is requested.

KAR 112-104-24. The Committee is concerned that the terms “standards, conventions, and rules governing audits” used in subsection (a) are not defined and questions how such undefined standards could be met. Any industry benchmarks should be incorporated by reference in the regulations.

KAR 112-104-25. The Committee notes that the “information technology standards” referenced in subsection (a) are not defined. What information technology standards are required to be met?

KAR 112-104-29. The Committee requests information regarding the basis of the agency’s authority to waive requirements. The Committee has a great concern that this authority to waive regulations could make void any regulations. The Committee also wishes to know whether waivers are subject to Open Records Act requirements.

KAR 112-105-3. The Committee asks whether the use of a metal detector and the searching of bags to detect firearms has been considered as a requirement.

KAR 112-105-6. The Committee requests information regarding the basis for the agency’s authority to detain individuals.

KAR 112-106-1. The Committee requests the agency consider requiring restroom entrance area surveillance. The Committee also asks whether the Commission has considered requiring the use of facial-recognition equipment and software as part of a surveillance system.

KAR 112-106-5. The Committee notes that the size of the surveillance room is not described as is routinely done in regulations from other agencies.

KAR 112-112-3. The Committee questions how the agency can approve a responsible gaming plan that must be consistent with the contractual obligations the facility manager has with another state agency, the Kansas Lottery.

KAR 112-112-5. The Committee requests information regarding the authority of the agency to close a record, as included in subsection (c).

KAR 112-112-7. The Committee notes that the final sentence in subsection (a)(1) implies automatic approval. The Committee questions whether that sentence allows the Commission to disapprove a confidentiality plan and, if so, what procedure is then to be followed. The Committee requests information regarding the authority of the agency to keep the identity of those on the self-exclusion list private. The Committee also requests information on the possibility of sharing lists with states having similar protections on open records.

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Approved by Committee on:

August 12, 2008
(Date)

