

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 25, 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 Jan Pauls
Representative Sharon Schwartz
Representative Arlen Siegfroid
Representative Josh Svaty
Representative Mark Treaster

Members Absent

Senator Chris Steineger
Representative Lance Kinzer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Melissa Calderwood, Kansas Legislative Research Department
Kenneth Wilke, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Judy Glasgow, Secretary
Sara Zafar, Kansas Legislative Research Department Intern

Others Present

Cheryl Magathan, Real Estate Appraisal Board
Mary Prewitt, Kansas Board of Regents
Evan Sumner, Kansas Department of Agriculture
Julie Ehler, Kansas Department of Agriculture
George Blush, Kansas Department of Agriculture

Mark Boranyak, Capitol Strategies
Jennifer Lyon, Pinegar, Smith, and Association
David Owen, Homeless Come Home
George Vega, Kansas Department of Administration
Kraig Knowlton, Kansas Department of Administration
Faith Loretto, Kansas Department of Administration
Dennis Priest, Kansas Department of Social and Rehabilitation Services
Lewis Kinsey, Kansas Department of Social and Rehabilitation Services
Sarah Riley, Kansas Department of Social and Rehabilitation Services
Stacy Chamberlain, Kansas Department of Social and Rehabilitation Services
John Badger, Kansas Department of Social and Rehabilitation Services
Henry Helmke, Southwest Kansas Alcoholism and Drug Addiction Foundation, Inc.
Derek Hein, Hein Law Firm

Morning Session

The meeting was called to order by Senator Vicki Schmidt, Chairperson, at 9:05 a.m. on May 25, 2006.

Chairperson Schmidt introduced Mary Prewitt, General Counsel, to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents ([Attachment 1](#)). KAR 88-3-8, military personnel.

Ms. Prewitt explained that this rule and regulation is the result of the 2005 HB 2072 covering tuition to members of the military, their dependents, and spouses as long as they are living in Kansas and the military member's duty station assignment is in Kansas. In addition, the regulation provides that if the military member is reassigned to a duty station outside the United States, that person's spouse and dependents will continue to be eligible for resident rates so long as they continue to reside in Kansas.

In response to a question from staff, Ms. Prewitt stated that the term "active military service" means any active service in any armed service of the United States and any active federal or state service in the Kansas Army or Air National Guard, as defined and amended in 2006. There being no other questions, the Chairperson thanked Ms. Prewitt for her presentation before the Committee.

Julie Ehler, Staff Attorney, was recognized by Chairperson Schmidt to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture. KAR 4-7-213, adoption by reference; KAR 4-7-510, adoption by reference; KAR 4-7-530, adoption by reference; KAR 4-7-716, adoption by reference; KAR 4-7-717, additional definitions; and revocation.

Ms. Ehler stated that the changes in KAR 4-7-213 were to update references to the current United States Department of Agriculture's recommended requirements, titled "Milk for Manufacturing Purposes and its Production and Processing." KAR 4-7-510 and KAR 4-7-530 were updated to reference the current Code of Federal Regulations (CFR) publications. Staff noted that the history section in KAR 4-7-213 should be corrected.

Ms. Ehler continued her explanation of the proposed rules and regulations noticed for hearing by the Kansas Department of Agriculture, Meat and Poultry. KAR 4-16-1a, definitions; KAR 4-16-1c, adoption by reference; KAR 4-16-3a, exemptions; KAR 4-17-1a, definitions; KAR 4-17-1c, adoption by reference; and revocations.

Ms. Ehler responded to Committee members' questions concerning KAR 4-16-3a, and how this would be applied to custom exempt slaughter. Staff noted that the agency might wish to clarify the difference between custom slaughter and farm slaughter in this instance.

After answering all questions from the Committee, Ms. Ehler was thanked for her presentation before the Committee by the Chairperson.

Chairperson Schmidt requested action on the minutes for the April 25, 2006 meeting. *Representative Holmes moved to approve the minutes as presented and Representative Svaty seconded the motion. The motion carried.*

Raney Gilliland, Legislative Research Department staff, reviewed the following rules and regulations by agencies that have come before the Committee and have been become permanent, noting whether or not the suggestions made by the Committee have been adopted:

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| Department of Administration | State Employee's Health Care Commission |
| Kansas Department on Aging | Insurance Department |
| Animal Health Department | Kansas Department of Labor |
| Office of the Attorney General | State Board of Nursing |
| Behavioral Sciences Regulatory Board | Kansas Racing and Gaming Commission |
| State Department of Education | Real Estate Appraisal Board |
| State Board of Healing Arts | Kansas Department of Transportation |
| Kansas Department of Health and Environment | Department of Wildlife and Parks |

The Chairperson recessed the meeting until after *Sine Die* Session.

The meeting was reconvened at 11:30 a.m. The Chairperson recognized Cheryl Magathan to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-2-2, licensed classification; experience requirement; KAR 117-3-2, general classification; experience requirement; KAR 117-4-2, residential classification; experience requirement; KAR 117-6-1, continuing education; renewal requirements; and KAR 117-6-2, continuing education; approval of courses; requirements.

Ms. Magathan stated that in KAR 117-2-2 and KAR 117-3-2, the specific requirements for experience logs have been deleted and a more general statement adopted. This statement will be in a format prescribed by the Board which allows the Board to make changes as changes in other regulations occur that might affect the information needed. There were no questions from Committee members, and Ms. Magathan was thanked by the Chairperson for her presentation before the Committee.

Kraig Knowlton, Division of Personnel Services, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Administration. KAR 1-2-46, length of service; KAR 1-3-5, definitions; KAR 1-3-6, equal employment opportunity;

affirmative action; KAR 1-5-8, beginning pay; KAR 1-6-2, recruitment; KAR 1-6-22a, training classes; KAR 1-9-7b, military leave; voluntary or involuntary service with reserve component of the armed forces; KAR 1-9-25, alcohol and controlled substances tests for employees in commercial driver positions; KAR 1-9-26, preduty controlled substances testing for employees in positions assigned commercial driver functions; and revocations.

Staff noted that in KAR 1-2-46, page 2, paragraph (g), the word "vacation" needs to be added to clarify leave accrual. A Committee member requested that the agency check on the federal definition of "affirmative action" and what groups are included in minorities and provide the information to the Committee as to its application in KAR 1-3-5. Mr. Knowlton stated that he would do this. Staff noted that the definition of "equal employment opportunity," paragraph (c), is inconsistent with the discrimination act and KSA 44-1009. Mr. Knowlton stated that the agency would double check with the Human Rights Commission on this provision. Staff suggested that the agency recheck KAR 1-9-25, page 10, (f)(1), since the Kansas Open Records Act has been amended. It also was suggested that the agency staff recheck the reference to the federal act and limit the portion of the act to what is needed, rather than include reference to the entire act.

The Committee was recessed until 1:30 p.m.

Afternoon Session

The Chairperson called the meeting to order at 1:30 p.m. and recognized Dennis Priest, Assistant Director of Programs, to speak to the proposed rule and regulation noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-4-98, funeral assistance (FA) program.

Mr. Priest stated this regulation is being created to replace a similar regulation that was eliminated when the FA program was going to be transferred to the Kansas Department of Health and Environment. The program transfer did not occur, and this program has been operating without regulatory authority. This regulation will reestablish the regulatory authority for the program.

Mr. Priest answered questions of a general nature from Committee members. Chairperson Schmidt thanked him for appearing before the Committee.

Chairperson Schmidt recognized Stacy Chamberlain, Clinical Services Coordinator, and Sarah Riley to speak to the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services, Addiction and Prevention Services. KAR 30-31-1, adoption by reference; and revocations.

Ms. Chamberlain reviewed the *Standards for Licensure/Certification of Alcohol and/or Other Drug Abuse Treatment Programs*, which is being adopted by reference, for the Committee ([Attachment 2](#)); *Standards for Licensure/Certification of Alcohol and/or Other Drug Abuse Treatment Programs*, August 1, 1993 ([Attachment 3](#)); and KAR 30-31-2 ([Attachment 4](#)). The Committee previously discussed the proposed regulation and revocations at its April meeting and had requested the agency return to provide additional information.

Committee members had several questions concerning the economic impact statement and the total cost of malpractice and liability insurance that would be incurred by implementing these proposed rules and regulations to all regulated programs. There was a concern among Committee members that individual contractors had not had the opportunity to study the proposals sufficiently. A Committee member requested that a copy of the minutes from the work group meeting three years ago be furnished to the Committee. In response to a question from the Committee concerning why the agency chose to adopt these standards by adoption by reference, rather than maintain the standards in regulations, Ms. Chamberlain stated that it was the suggestion of the Department of Administration.

Chairperson Schmidt recognized Henry Helmke, Southwest Kansas Alcoholism and Drug Addiction Foundation, Inc., Liberal, Kansas (SKADAF), to speak in opposition of the proposed rules and regulations offered by the Department of Social Rehabilitation and Services concerning the alcohol and drug treatment programs (Attachment 5).

Mr. Helmke noted that two of the proposed changes that would impact his facility. He noted that to have a person on site 24 hours a day, would add \$50,000 to the annual cost of operation.

After an in-depth discussion by Committee members, the recommendation was made that the proposed rules and regulations be withdrawn and that the policy proceed through the legislative process, and that staff contact the Legislative Coordinating Council so that this matter can be assigned to an interim committee for study. A request was made by the Committee that the agency provide an accurate economic impact that these changes would have on the 240 providers to the Committee. Staff noted that since 1998, the Secretary has not been defined in the implementing statute and that a legislative change is needed to correct this oversight.

Chairperson Schmidt noted that next meeting was set for July 10, and due to conflicts would need to be changed. After discussion, it was determined that staff survey members to see if July 17 would be agreeable.

The meeting adjourned at 3:30 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning military personnel and had no comment.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning licensed classification, experience requirement; general classification, experience requirement; residential classification, experience requirement; continuing education, renewal requirements; and continuing education, approval of courses, requirements and had no comment.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning adoption by reference; adoption by reference; adoption by reference; adoption by reference; additional definitions; and

revocation (dairy regulations); and definitions; adoption by reference; exemptions; definitions; adoption by reference; and revocations (meat and poultry regulations) and had the following comment.

KAR 4-7-213. The Committee believes the agency should recheck the reference made to KSA 2005 Supp. 65-773 in the history section to make sure that this is an accurate citation.

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning funeral assistance (FA) program and adoption by reference, and revocations (alcohol and drug abuse treatment programs) and had no comment on the Funeral Assistance Program regulation and the following comments on the remaining regulation dealing with alcohol and drug abuse treatment programs.

Request. The Committee requests that this regulation and the proposed revocations be withdrawn until such time as the Legislature has had the opportunity to respond legislatively to a variety of issues upon which these regulations have an impact.

Interim Committee. The Committee intends to communicate with the Legislative Coordinating Council expressing the Committee's concerns with these regulations and ask for an interim study to address the issues raised during the Committee discussions on these regulations.

Legislation. The Committee identified that in the authorizing legislation, reference is made to "secretary." The term, however, is not defined, so there is some question as to the authority the Department of Social and Rehabilitation Services has in promulgating these regulations. It appears that the Committee will respond to this issue through the introduction of legislation for consideration by the 2007 Legislature.

Request. The Committee requests a revised economic impact statement that addresses specific costs to the treatment programs, including but not limited to, the required general liability and malpractice insurance, expanded staffing requirements (from on-call hours to 24-7 on-site employee hours), and the increased application fee cited in R03-802 of the proposed 2006 standards.

Kansas Department of Administration. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning length of service; definitions; equal employment opportunity, affirmative action; beginning pay; recruitment; training classes; military leave, voluntary or involuntary service with reserve component of the armed forces; alcohol and controlled substances tests for employees in commercial driver positions; preduty controlled substances testing for employees in positions assigned commercial driver functions; and revocations and had the following comments.

KAR 1-2-46. The Committee believes that leave accrual only applies to vacation leave and not to sick leave. The Committee suggests the inclusion of the word "vacation" before leave accrual for clarification.

KAR 1-3-5. The Committee questions what constitutes minority in the definition of "affirmative action." Consider inclusion of what constitutes a minority. In subsection (c), it appears there is inconsistency with the list of characteristics of individuals with that contained in KSA 44-1009. Consider making the list consistent.

KAR 1-9-25 and KAR 1-9-26. In subsection (a) of both regulations, the Committee is concerned about the adoption by reference to the entire federal Omnibus Transportation Employees Act of 1991 and wonders whether it may be more appropriate to only adopt by reference that portion which applies to the appropriate subject matter of each regulation. In addition, the Committee requests that the agency recheck the citation to this federal act since it may have been recodified.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

July 17, 2006

(Date)