

## MINUTES

### JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

October 8, 2007  
Room 519-S—Statehouse

#### Members Present

Representative Carl Holmes, Chairperson  
Senator Vicki Schmidt, Vice-Chairperson  
Senator Karin Brownlee  
Senator Ralph Ostmeyer  
Representative John Faber  
Representative Joe Patton  
Representative Jan Pauls  
Representative Arlen Siegfroid  
Representative Mark Treaster  
Representative Ed Trimmer

#### Members Absent

Senator Donald Betts  
Senator Chris Steineger

#### Staff Present

Raney Gilliland, Legislative Research Department  
Sharon Wenger, Legislative Research Department  
Jill Shelley, Legislative Research Department  
Kenneth Wilke, Revisor of Statutes Office  
Judy Glasgow, Committee Assistant

#### Others Present

Rod Bieker, Kansas Department of Education  
Colleen Riley, Kansas Department of Education  
Mark Ward, Kansas Department of Education  
Amy Thornton, Kansas Department of Wildlife and Parks  
Berend Koops, Kansas Department of Wildlife and Parks  
John P. Smith, Kansas Department of Credit Unions  
Richard Yadon, Kansas Department of Credit Unions

Deb Carlson, Hein Law Firm  
Lane Hemsley, Kansas Board of Pharmacy  
Claudia Elkins, Kansas Department of Health and Environment  
Terry Medley, Kansas Department of Health and Environment  
Karl Muedener, Kansas Department of Health and Environment  
Debra Billingsley, Kansas Board of Pharmacy  
Lewis Kimsey, Kansas Department of Social and Rehabilitation Services  
Stephen Martino, Kansas Racing and Gaming Commission  
Leo Haynos, Kansas Corporation Commission  
Tom Day, Kansas Corporation Commission  
Sarah Byrne, Kansas Department of Revenue  
Phil Wilkes, Kansas Department of Revenue  
Brice Peckem, DVM, Kansas Racing and Gaming Commission  
Frances Snell, Kansas Racing and Gaming Commission  
Stephen Durrell, Kansas Racing and Gaming Commission  
Rob Mealy, Little Government Relations Consulting

### **Morning Session**

Chairperson Carl Holmes called the meeting to order at 9:10 a.m., October 8, 2007. He asked for action on the minutes from the August 14, 2007, meeting. *Senator Vicki Schmidt moved to approve the minutes as presented, Representative Treaster seconded the motion. Motion carried.*

Chairperson Holmes welcomed Rod Bieker, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-40-1, definitions; KAR 91-40-2, FAPE; KAR 91-40-3, ancillary FAPE requirements; KAR 91-40-5, FAPE for detained or incarcerated children with disabilities; KAR 91-40-7, child find; KAR 91-40-8, evaluations; KAR 91-40-9, evaluation procedures; KAR 91-40-10, eligibility determination; KAR 91-40-11, evaluation for specific learning disability; use of response to intervention process; KAR 91-40-12; KAR 91-40-16, IEP requirements; KAR 91-40-17, IEP team meetings and participants; KAR 91-40-21, educational placement; KAR 91-40-22, agency placement in private schools or facilities; KAR 91-40-26, notice requirements; KAR 91-40-27, parental consent; KAR 91-40-28, special education mediation and due process hearings; KAR 91-40-29, qualification of special education mediators and due process hearing officers; KAR 91-40-30, expedited due process hearings; KAR 91-40-31, educational placement during proceedings; KAR 91-40-33, change in placement for disciplinary reasons; definitions; KAR 91-40-34, short-term suspensions and interim placements; suspension of gifted children; KAR 91-40-35, services required during suspensions or interim alternative educational placements; KAR 91-40-37, revoked; KAR 91-40-38, manifestation determination; appeal; KAR 91-40-39, revoked; KAR 91-40-41, private school placement by parents to obtain FAPE; KAR 91-40-42, child find and count of children with disabilities enrolled in private schools; determination of children to receive services; KAR 91-40-42a, consultation; KAR 91-40-43, services to private school children; KAR 91-40-44, allocation and expenditure of federal funds; reports; KAR 91-40-45, services plan or IEP; KAR 91-40-46, mediation and due process rights of private school children; KAR 91-40-48, use of funds and equipment; KAR 91-40-50, parental access to student records; confidentiality.

Mr. Bieker stated that these rules and regulations were the result of revised federal regulations implementing the federal Individuals with Disabilities Education Act (IDEA). He also stated that these address state special education laws that exceed federal mandates, such as

services for gifted children and children enrolled in private schools. A Committee member noted that in KAR 91-40-12 the word parent should be used consistently as singular or plural throughout the regulation. Staff noted that in KAR 91-40-26, paragraph (d) the last word should be "circumstances." A Committee member had questions concerning KAR 91-40-27, [c] and the definition of parent for exceptional child, since this is not the same as given in the definition section and if there should be two different definitions or if this should be changed to conform with the federal definition. There were general questions and discussions concerning the regulations and after responding to all, Mr. Bieker was thanked for his presentation to the Committee.

Chairperson Holmes recognized Amy Thornton, Assistant General Counsel, to address the proposed rules and regulations noticed for hearing by the Kansas Department of Wildlife and Parks. KAR 115-2-1, amount of fees; KAR 115-2-3a, cabin camping permit fees; KAR 115-7-1, fishing; legal equipment, methods of taking, and other provisions; KAR 115-7-8, weigh-in black bass fishing tournaments using tournament black bass pass; KAR 115-7-9, weigh-in-black bass fishing tournaments not using tournament black bass pass; KAR 115-18-10, importation and possession of certain wildlife; prohibition, permit requirement, and restrictions; KAR 115-18-12, trout permit; requirements, restrictions, and permit duration; KAR 115-18-20; tournament black bass pass; requirements, restrictions, and pass duration; KAR 115-25-6, turkey; spring season, bag limit, permits, and game tags (exempt); and KAR 115-25-14, fishing; creel limit, size limit, possession limit, and open season (exempt).

Ms. Thornton explained the economic statement of KAR 115-2-1, stating that there would be a loss of fees of \$90,677 for 2008 and \$19,629 for 2009. In response to questions from the Committee regarding black bass, Ms. Thornton stated that as she understood it, black bass included several species, including small mouth and large mouth. After responding to questions of a general nature from the Committee, the Chairperson thanked Ms. Thornton for appearing before the Committee.

Lewis Kimsey was introduced by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Department of Social and Rehabilitation Services, Funeral Assistance Program. KAR 30-4-98, funeral assistance program.

Mr. Kimsey stated that this regulation is being amended to reflect changes in the standards required to determine funeral assistance eligibility and the corresponding benefit level and raise the threshold for allowable funeral-related expenses. There were no questions from the Committee and Mr. Kimsey was thanked for appearing before the Committee.

Chairperson Holmes recognized Phil Wilkes to speak to the proposed rules and regulations noticed for hearing by the Department of Revenue, Policy and Research. KAR 14-8-2, prohibited statements and restrictions in the advertising of alcoholic liquor; KAR 14-8-3, public display of alcoholic liquor regulated; KAR 14-24-1, definitions; KAR 14-24-2, shipping record to accompany each shipment of wine; KAR 14-24-3, disposition of wine shipment not removed from retailer's premises; KAR 14-24-4, gallonage tax returns and payments by out-of-state permit holders; KAR 14-24-5, calculation and payment of the liquor enforcement tax; and KAR 14-24-6, report of sales by permit holders.

Mr. Wilkes answered questions of a general nature from Committee members. The Chairperson thanked Mr. Wilkes for his presentation before the Committee.

Sarah Byrne, Assistant Attorney General, was recognized by Chairperson Holmes to speak to the proposed rules and regulations noticed for hearing to be revoked by the Department of

Revenue, Policy and Research, Alcoholic Beverage Control (ABC). KAR 14-16-23, revoked; KAR 14-16-24, revoked.

Ms. Byrne explained that the revocation of KAR 14-16-23 was requested because the current structure of the ABC's progressive penalty schedule is in a grid that is used on a case-by-case basis. She stated that the statute provides the Director with the authority to order a fine of up to \$1,000 per violation, as well as the authority to revoke or suspend a license for any violation. She stated that there is currently a fine and grid that has been published in the Beverage News Magazine, and the agency is currently in the process of publishing it on the agency's website. Staff noted that the agency was in conflict with a court decision that noted that if it is not in rules and regulations it cannot be enforced. A Committee member suggested that the agency have the fine and grid schedule adopted by rules and regulations. Another concern raised by a Committee member was that this could create a climate of partiality by not having it in rules and regulations. A suggestion was made by a Committee member that once a fine had been levied against an establishment, the agency should publish the fines.

Chairperson Holmes welcomed Leo Haynos to address the proposed rules and regulations noticed for hearing by the Kansas Corporation Commission (Attachment 1). KAR 82-11-1, definitions; KAR 82-11-3, transportation of natural and other gas by pipeline; annual reports and incident reports; KAR 82-11-4, transportation of natural and other gas by pipeline; minimum safety standards; KAR 82-11-7, reporting requirements; and KAR 82-11-8, customer installations; location and monitoring responsibility.

Mr. Haynos stated that the primary purpose for amending the Kansas pipeline safety regulations is to adopt the most recent amendments to the federal regulations that pertain to pipeline safety of intrastate natural gas pipelines. The State additions were promulgated in response to natural gas incidents that have occurred in Kansas, and they are more stringent than the federal requirements. Staff suggested that in KAR 82-11-1, the term Pipeline and Hazardous Materials Safety Administration be included along with their acronym "PHMSA." Staff also noted that the definition for LNG (liquefied natural gas) facility was given in a reference to a federal regulation and if the Kansas Corporation Commission wishes to use this, it should adopt the regulation by reference. It was suggested by staff that in KAR 82-11-4, page 2, (f) the sentence "Except for pipe with external coating applied after installation" needs to be clarified as to when the coating is applied. Staff also noted on page 18, ii and iii, the time lengths need to be clarified as to when the time frame begins.

Staff noted that in KAR 82-11-4, a reference is made to 49 C.F.R. 192.7b, which includes a list of technical manufacturing specifications which they have deleted. In response to a question, Mr. Haynos stated that the Commission did, on occasion, enforce some of the items in this section. Staff stated that if the agency wants to enforce these, the Commission needs to adopt the federal regulation by reference. On page 10 (u), the record of each test to be performed under C.F.R. 192.513 should be clarified since this is a new requirement and no previous tests would be available. Mr. Haynos responded to questions of a general nature from Committee members. The Chairperson thanked Mr. Haynos for appearing before the Committee.

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

## Afternoon Session

At the request of the Chairperson, Representative Pauls reconvened the meeting at 1:35 p.m., and recognized John Smith, Administrator, to address the proposed rules and regulations noticed for hearing by the Department of Credit Unions. KAR 121-2-1, contingency plan; KAR 121-3-1, credit union services organization (CUSO); KAR 121-5-4, meaning of insolvent; KAR 121-9-1, foreign credit union; requirements for approval; KAR 121-10-1, definitions; and KAR 121-10-2, credit union audit reporting requirements.

Mr. Smith noted that KAR 121-3-1 was the result of revisions made by the 2007 Legislative Session to include additional organizational structures for credit union service organizations. In KAR 121-10-1 page 2 (e) (1) and (2), staff suggested that the agency contact Susan Somers at the Board of Accountancy for the correct language when referring to an "independent certified public accountant" since the Board changed their licensing statute this year. After responding to general questions from Committee members, he was thanked for his presentation before the Committee.

Chairperson Holmes welcomed Lyle Peterson, Agriculture Marketing Division, to address the proposed rules and regulations noticed for hearing by the Department of Commerce (Attachment 2). KAR 110-15-1, definitions; KAR 110-15-2, application; additional documentation; KAR 110-15-3, secretary's review and determination; KAR 110-15-4, annual compliance and audit; KAR 110-16-1, definitions; KAR 110-16-2, application; additional documentation; KAR 110-16-3, secretary's review and determination; KAR 110-16-4, annual compliance and audit; KAR 110-17-1, definitions; KAR 110-17-2, application; additional documentation; KAR 110-17-3, secretary's review and determination; KAR 110-17-4, annual compliance and audit; KAR 110-18-1, definitions; KAR 110-18-2, application; additional documentation; KAR 110-18-3, secretary's review and determination; and KAR 110-18-4, annual compliance and audit.

Mr. Peterson stated that these rules and regulations would implement the Kansas Energy Development Act which authorizes income tax credits, accelerated depreciation, and property tax exemptions for several types of energy related projects. Staff noted that the history section needs to be corrected in KAR 110-15-1, by adding an "r" after Supp. 74-5002. A Committee member suggested that the language in KAR 110-15-2 be amended to make the form available on the agency's website. A question also was raised about KAR 110-15-3 (b), and whether or not e-mail could be used to provide legal notice. It was suggested that the agency look into this. After responding to all questions from the Committee, Chairperson Holmes suggested to Mr. Peterson that in order for the agency to proceed immediately with any application that have been received, these rules and regulations should come before the Temporary Rules and Regulations Committee as soon as possible to be enforceable. Staff was asked to set up a meeting for the purpose of hearing these rules and regulations as temporaries.

Chairperson Holmes recognized Lane Hemsley, attorney, to speak to the proposed rules and regulations noticed for hearing by the Kansas Pharmacy Board. KAR 68-20-23, limit on amount of controlled substances dispensed.

Mr. Hemsley stated that the purpose of this regulation was to prevent diversion of controlled substances. A Committee member questioned what a day's supply was based upon, the prescriber's order or the Food and Drug Administration (FDA) approved amount. Mr. Hemsley stated that this would be based on the prescriber's order. He did state that if the Monitoring Task Force went into effect, then this regulation would be moot. Mr. Hemsley brought the Committee up to date on the number of institutional drug rooms that were discussed at the last meeting. He stated that there were 56 institutional drug rooms in Kansas, and that a vast majority of these drug rooms have not been

registered with the Board. Because of comments by the Committee and after discussing the regulations with some of the institutions, the Board has come up with various changes to the proposed regulations and these have been resubmitted for review. After responding to all Committee questions, Mr. Hemsley was thanked for appearing before the Committee.

Chairperson Holmes recognized Karl Mueldener, Bureau of Water, to address the proposed rules and regulations noticed for hearing by the Department of Health and Environment. KAR 28-18-11, confined feeding facilities; federal requirements; KAR 28-18a-11, confined feeding facilities; and federal requirements.

Mr. Mueldener noted that these rules and regulations are intended to place Kansas in compliance with a new federal compliance date for confined animal feeding facilities. Staff noted that in KAR 28-18-11, paragraph 1, the date of July 24, 2007 should be added after "fed. Reg. 40250." A question was raised by a Committee member concerning aquatic animal feeding operations and the language "concentrated animal feeding operations" used in reference to the Kansas statute. After Mr. Mueldener answered several questions of a general nature from the Committee, the Chairperson thanked him for his appearance before the Committee.

Stephen Martino, Executive Director, was introduced by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Kansas Racing and Gaming Commission. KAR 112-4-9a, financial responsibility, of licensee; KAR 112-4-14a, trainer responsibility; KAR 112-5-1, horse racetrack officials and backup officials; prohibited interests; responsibility; accountability; identification and approval; unavailability; KAR 112-6-1, greyhound racetrack officials and backup officials; prohibited interests; responsibility; accountability; identification and approval; unavailability; KAR 112-7-6, registration and eligibility; KAR 112-7-7, entries; KAR 112-7-8, coupled entries; KAR 112-7-15a, claiming; KAR 112-7-16, invalid or void claims and prohibitions on claims; KAR 112-7-18a, jockey agent; KAR 112-7-20, safety helmets required; physical examination required; KAR 112-8-9, before and during the race; KAR 112-10-12, postmortem examination; KAR 112-10-32, assistant animal health officer, greyhound; KAR 112-11-10, identification and credentials; KAR 112-11-20, greyhound racetrack facility safety standards; specifications; prohibition of chemical use on track surface; KAR 112-18-11, procedures for lost video signal.

Mr. Martino and Bryce Peckham reviewed the rules and regulations for the Committee. Staff suggested that in KAR 112-4-14a (a), the second sentence be changed to read "with regard to compliance with commission orders." A question was raised concerning (d), wondering if the horse arrived late, what the consequence would be. Mr. Peckham stated that a hearing would be held on the trainer and a fine would be levied. A Committee member suggested that a reference be made to the rule and regulation that would contain the penalties. Mr. Martino stated that this could be done. A Committee member questioned what Commission orders contained and stated that some of these items may be interpreted too broadly and should be contained in rules and regulations rather than just Commission orders. A request was made by a Committee member to have the agency provide staff with the job description of stewards designee and the number of background checks that the agency has run on stewards. In KAR 112-7-7, Committee members suggested that a clarification be provided as to when a designee can act as a steward. In KAR 112-7-20, staff suggested that the phrase "other than race horse" be inserted on line two after "mounted on any horse." In KAR 112-8-9, a Committee member suggested a clarification on (b) line 2, to note that it is any time "before or between races."

Mr. Martino passed out a list of proposed gaming regulations that are being drafted by the Commission for the addition of new slots and gaming facilities provided for under SB 66. (Attachment 3). There were no questions from the Committee.

The Chairperson thanked Mr. Martino for his presentation before the Committee.

In KAR 112-10-12, *Senator Brownlee moved to change the word “may” in (e) to “shall” and remove the words “When practical” in line 3. Senator Ostmeyer seconded the motion. The motion passed. Senator Brownlee then moved to strike paragraph (d) in KAR 112-10-12; Senator Schmidt seconded the motion. The motion passed. Senator Ostmeyer then moved to have the agency withdraw KAR 112-10-12 from going forward for approval and send it back for the agency to rework. The motion was seconded by Senator Schmidt. Motion passed.*

Chairperson Holmes requested that the two standing committees look at the statutes that cover these rules and regulations when the Legislature convenes in January.

*Representative Siegfried moved to have the Racing and Gaming Commission delay adoption of any rules and regulations promulgated under the authority of any statute amended by or contained in SB 66 passed by the 2007 Legislature until after the constitutionality of the bill has been determined by the courts. Senator Brownlee seconded the motion. The motion passed. Staff noted that the Racing and Gaming Commission was formulating rules and regulations as mandated by the Legislature and as required in SB 66.*

A Committee member expressed objections to the proposed gaming regulations as presented to the Committee by the Racing and Gaming Commission because it was wrongly titled proposed gaming regulations when in fact it was only an outline.

It was the consensus of the Committee to request that a bill be prepared requiring the Lottery Commission to have permanent rules and regulations rather than operating under temporary rules and regulations.

The Chairperson adjourned the meeting at 5:50 p.m.

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

**Kansas Department of Health and Environment.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning confined feeding facilities, federal requirements and confined feeding facilities, federal requirements, and had the following comments.

KAR 28-18-11 and KAR 28-18a-11. In both regulations, reference is made to the provisions being adopted and contain language which indicate that these provisions were amended in 2007. Please include the specific date of publication in the *Federal Register* for the 2007 revisions.

Comment. The Committee is unclear as to how Kansas law or rules and regulations apply to aquatic confined animal feeding operations and whether language should be added to reconcile state and federal language. Please clarify.

**Kansas State Department of Education.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; FAPE; ancillary FAPE requirements; FAPE for detained or incarcerated children with disabilities; child find;

evaluations; evaluation procedures; eligibility determination; evaluation for specific learning disability, use of response to intervention process; right to independent educational evaluation; IEP requirements; IEP team meetings and participants; educational placement; agency placement in private schools or facilities; notice requirements; parental consent; special education mediation and due process hearings; qualifications of special education mediators and due process hearing officers; expedited due process hearings; educational placement during proceedings; change in placement for disciplinary reasons, definitions; short-term suspensions and interim placements, suspension of gifted children; services required during suspensions or interim alternative educational placements; manifestation determination, appeal; private school placement by parents to obtain FAPE; child find and count of children with disabilities enrolled in private schools, determination of children to receive services; consultation; services to private school children; allocation and expenditure of federal funds, reports; services plan or IEP; mediation and due process rights of private school children; use of funds and equipment; parental access to student records, confidentiality; and revocations, and had the following comments.

KAR 91-40-12. The Committee noted that in this particular regulation the term "parent" was used while in other regulations in this set the term "parents" was used. The Committee questions whether there is a different meaning between the two terms. The Committee suggests that the agency review the entire set of regulations to determine whether one or the other should be used throughout this set of regulations.

KAR 91-40-26. The Committee requests that the agency correct the spelling of the word "circumstances."

KAR 91-40-27. In subsection (c), the Committee is concerned with the definition of the term "parent." The Committee questions whether there is one definition for "parent" for an "exceptional child" and another definition for other classifications of children. The Committee also is concerned about how these differences may impact the release of information or records of different classifications of children.

**Kansas Department of Wildlife and Parks.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning amount of fees; cabin camping permit fees; fishing, legal equipment, methods of taking, and other provisions; weigh-in black bass fishing tournaments using tournament black bass pass; weigh-in black bass fishing tournaments not using tournament black bass pass; importation and possession of certain wildlife, prohibition, permit requirements, and restrictions; trout permit; requirements, restrictions, and permit duration; tournament black bass pass, requirements, restrictions, and permit duration, and had no comment.

**Kansas Department of Social and Rehabilitation Services.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the funeral assistance (FA) program, and had no comment.

**Kansas Department of Credit Unions.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning contingency plan; credit union services organization (CUSO); meaning of insolvent; foreign credit union, requirements for approval; definitions; and credit union audit reporting requirements, and had the following comment.



KAR 121-10-1. The Committee suggests that the agency consult with officials at the Board of Accountancy concerning the licensing requirements contained in the definition of the term "independent certified public accountant."

**Kansas Department of Revenue.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning prohibited statements and restrictions in the advertising of alcoholic liquor; public display of alcoholic liquor regulated; definitions; shipping record to accompany each shipment of wine; disposition of wine shipment not removed from retailer's premises; gallonage tax returns and payments by out-of-state permit holders; calculation and payment of the liquor enforcement tax; report of sales by permit holders; and revocations, and had the following comment.

KAR 14-16-23. The Committee is concerned that the fines and penalties currently outlined in this regulation are proposed for revocation. The Committee was told that there would be agency guidelines, which do not have the force and effect of law, for the imposition of fines and penalties. The Committee requests that any fines and penalties within the discretion of the Secretary be established through rules and regulations.

**Kansas Department of Commerce.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; application, additional documentation; secretary's review and determination; annual compliance and audit; definitions; application, additional documentation; secretary's review and determination; annual compliance and audit; definitions; application, additional documentation; secretary's review and determination; annual compliance and audit; definitions; application, additional documentation; secretary's review and determination; and annual compliance and audit, and had the following comments.

KAR 110-15-2. The Committee suggests that the agency consider a different phrase for "on a form provided by the department" so that the form could be provided through a variety of mechanisms such as FAX or over the Internet.

KAR 110-15-3. The Committee suggests that the agency explore mechanisms using electronic verification other than solely the mail.

**State Corporation Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; transportation of natural and other gas by pipeline, annual reports and incident reports; transportation of natural and other gas by pipeline, minimum safety standards; reporting requirements; and customer installations: location and monitoring responsibility, and had the following comments.

KAR 82-11-3. The Committee suggests that the agency review this set of regulations for the use of acronyms to make sure that they are defined somewhere for reference to a reader. In addition, this regulation adopts a portion of the U.S. Code of Federal Regulations (CFR) which contains a reference to the term "LNG." The Committee believes that some mechanism to include this definition is necessary either by adopting a portion of the CFR, incorporating necessary wording into the state regulation, or by providing an appropriate cross reference.

KAR 82-11-4. This regulation adopts by reference 49 CFR part 192, except for those regulations "which include jurisdiction beyond the state of Kansas . . ." Subsection (a) of this regulation effectuates the deletion of 49 CFR 192.7(b), which is then proposed to be replaced with essentially the same language as appears in the deleted portion of the regulation. The "incorporated materials" refer to a large list of documents containing technical specifications which are incorporated (adopted) by reference in 49 CFR 192.7(c). If the agency intends to enforce any of these "incorporated materials," then perhaps these need to be properly adopted by reference.

In subsection (f), the new language referring to pipe which has been externally coated is unclear as to whether the external coating occurs before or after the installation of the pipe. Please clarify.

In subsection (u), it appears that records of tests performed under 49 CFR 192.509 and 192.511 already are required for pipelines installed after May 1, 1989. Please consider clarifying the language so that the regulation clearly state that the records of test required under 49 CFR 192.513 shall be required to be kept prospectively and not retroactively.

In subsection (dd), the quoted reference (c) (2) (ii) (and in similar constructions in other places in these regulations), clarify how the calendar year period is counted: *i.e.*, does the year in which the inspection occurs count as the first year in the three-year period?

**Kansas Pharmacy Board.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning the limit on amount of controlled substances dispensed, and had the following comment.

KAR 68-20-23. The Committee believes clarification needs to be made to this regulation regarding the basis upon which the 93-day supply of a controlled substance would be dispensed. For example, is it based upon a federal recommendation or is it based upon a doctor's prescription?

**Kansas Racing and Gaming Commission.** The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning financial responsibility of licensee; trainer responsibility; horse racetrack officials and backup officials, prohibited interests, responsibility, accountability, identification and approval, unavailability; greyhound racetrack officials and backup officials, prohibited interests, responsibility, accountability, identification and approval, unavailability; registration and eligibility; entries; coupled entries; claiming; invalid or void claims and prohibitions on claims; jockey agent; safety helmets required, physical examination required; before and during the race; postmortem examination; assistant animal health officer, greyhound; identification and credentials; greyhound racetrack facility safety standards, specifications, prohibition of chemical use on track surface; and procedures for lost video signal, and had the following comments.

KAR 112-4-14a. The Committee is unclear as to how this regulation fits into others that address trainer responsibility. Please clarify.

KAR 112-7-6. The Committee is not convinced that KSA 74-8825 is the proper implementing statute. Please review KSA 74-8812 to see whether this is a more appropriate implementing statute. Please review all of the regulations in this set to determine whether the proper implementing statute has been used.

KAR 112-7-7. The Committee is concerned about the addition of the term "steward's designee" particularly since this is not a defined term and there are no apparent qualifications for a "steward's designee." The Committee requests that this term be clarified and that the rules and regulations of the agency be reviewed for the use of this term.

KAR 112-8-9. The Committee believes that there should be clearer language in this regulation which indicates when the racing strip could be walked, especially before a race to determine track safety. In addition, the Committee questions the language "during a race" and asks the agency to consider language such as "between races."

KAR 112-10-12. The Committee asks that the agency withdraw this regulation and reconsider and revise the language to make it clear that all animals that die are to have a postmortem examination. If the agency chooses not to withdraw the regulation, the Committee requests that the agency consider striking (d) of the regulation, changing the "may" to "shall" in subsections (b) and (e), striking "if secured" in subsection (e), and striking "When practical" in subsection (e).

Prepared by Judy Glasgow  
Edited by Raney Gilliland and Sharon Wenger

Approved by Committee on:

November 19, 2007

(Date)