

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

May 4-5, 2010
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Representative Carl Holmes, Vice-chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger (May 5)
Representative John Faber (May 4)
Representative Steve Huebert (May 5)
Representative Shirley Palmer
Representative Joe Patton (May 4)
Representative Jan Pauls
Representative Ed Trimmer

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Andrew Schulte, Kansas Corporation Commission
Sean Miller, Capitol Strategies
Chris Tymeson, Kansas Department of Wildlife and Parks
Berend Koops, Hein Law Firm
Tom Day, Kansas Corporation Commission
Michael Wegner, Kansas Corporation Commission
Michael Schmidt, Kansas Corporation Commission
Matt Spurgin, Kansas Corporation Commission
Tom DeBaun, Kansas Corporation Commission
Gary Dawdy, Kansas Corporation Commission
Jaime Stamatson, Kansas Corporation Commission

Robert Glass, Kansas Corporation Commission
Andrew Fry, Kansas Corporation Commission
Elena Larson, Kansas Corporation Commission
Pat Renner, Kansas Corporation Commission
Theresa Schwartz, Kansas Board of Regents
Crystal Piderbaugh, Kansas Board of Regents
Carman Allen, Board of Emergency Medical Services
Julie Ehler, Kansas Department of Agriculture
Dan Tuggle, Kansas Department of Agriculture
Katie Howard, Kansas Department of Agriculture
Gary Meyer, Kansas Department of Agriculture
Randy Stookey, Kansas Department of Agriculture
George Blush, Kansas Department of Agriculture
Leslie Kaufman, Kansas Cooperative Council
Mary Jane Stankiewicz, Kansas Agriculture Retailers Association
Kevin Barone
Tuck Duncan, Kansas Wine & Spirits Wholesalers
Chris Wilson, Kansas Agriculture Aviation Association
Erik Wisner, Kansas Department of Agriculture
Sarah Byrne, Alcohol and Beverage Control, Department of Revenue
Rebecca Rice
Thomas Britt Nichols

Tuesday, May 4

Chairperson Vicki Schmidt called the meeting to order on May 4, 2010 at 8:00 a.m.

The Chairperson welcomed Chris Tymeson, Chief Counsel, to speak to the proposed rules and regulations noticed for hearing by the Wildlife and Parks Commission. KAR 115-2-1, amount of fees; KAR 115-8-1, department lands and waters: hunting, furharvesting, and discharge of firearms; KAR 115-25-9a, deer; open season, bag limit, and permits; additional considerations; and KAR 115-25-9b, deer; nonresident limited-quota antlered permit application period.

Mr. Tymeson stated that KAR 115-2-1 was being changed to reflect suggestions made by a Committee member when this rule and regulation last came before the Committee. The Chairperson thanked the agency for being responsive to concerns raised by the Committee.

Andrew Schulte was recognized by the Chairperson to address the proposed rule and regulation noticed for hearing by the Kansas Corporation Commission. KAR 82-1-219, general requirements relating to pleadings and other papers.

Mr. Schulte stated this rule and regulation will promote increased electronic filing with the Kansas Corporation Commission. The proposed amendment will produce environmental and economic benefits for the Commission and those with business before the Commission by reducing the costs and environmental burden of creating and maintaining paper records. There were no comments from the Committee.

Chairperson Schmidt asked for Committee action on the Committee's minutes from April 5, 2010. *Senator Ostmeyer moved that the minutes be approved as presented to the Committee; Senator Lee seconded the motion. The motion passed.*

The Chairperson welcomed Matt Spurgin to address proposed rules and regulations noticed for hearing by the Kansas Corporation Commission. KAR 82-17-1, definitions; KAR 82-17-2, utility requirements pursuant to the act; KAR 82-17-3, tariff requirements; KAR 82-17-4, reporting requirements; KAR 82-17-5, renewable energy credit program; KAR 82-16-1, definitions; KAR 82-16-2, renewable energy standards and report; KAR 82-16-3, administrative penalties; KAR 82-16-4, retail revenue requirement; KAR 82-16-5, certification of renewable energy resources; and KAR 82-16-6, renewable energy credit program.

Staff noted that in KAR 82-17-1, (d), (e) and (l) need to have the word "is" inserted so the sentence reads "...is hereby adopted by reference." In KAR 82-17-2, staff noted in paragraph (b) there should be a clarification of the terminology on what the utilities have on file with the Commission. The Committee had concerns regarding KAR 82-17-3, (g) and the fact there was no remedy assessed if any damage occurs. Mr. Spurgin stated this is contained in the tariffs. The Committee was concerned that the Commission is moving away from rules and regulations by using guidelines which are not enforceable. The Committee had questions concerning KAR 82-16-2, (b): why the KCC was not using calendar year dates and whether this would punish those just beginning construction for the first of the year, since there would be data for only six months. Mr. Spurgin stated that this was at the request of industry. In (b)(6), staff noted that there was no definition for "constructed" although "installed" has been used in the statute. The agency staff member stated that the agency would look at this.

Theresa Schwartz was welcomed by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents. KAR 88-24-1, eligibility to take GED test.

Ms. Schwartz stated this rule and regulation is being changed to delete the requirement that only a Kansas resident may take the test in Kansas. This change will allow persons who live in a state bordering Kansas to take the test in Kansas. Staff noted the history section needed to be changed to KSA 2009 Supp. A question was raised by a Committee member about those individuals who are homeschooled. Crystal Piderbaugh stated this was covered in another rule and regulation.

The Chairperson recognized Carman Allen to address the proposed rules and regulations noticed for hearing by the Kansas Board of Emergency Medical Services. KAR 109-5-1, continuing education; KAR 109-5-3, continuing education approval for long-term providers; and KAR 109-11-1, first responder course approval.

Ms. Allen stated that these rules and regulations had come before the Committee previously, but at the public hearing some changes had been suggested. There were no questions from the Committee.

The Chairperson recessed the Committee until 8:00 a.m. on Wednesday, April 5, 2010.

Wednesday May 5

Chairperson Vicki Schmidt reconvened the meeting on May 5, 2010, at 8:00 a.m.

The Chairperson welcomed Julie Ehler, Chief Counsel, to speak to proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-7-213, adoption by reference; and KAR 4-7-716, adoption by reference.

In KAR 4-7-716, staff questioned why the agency was still using the 17th edition of the “official methods of analysis of AOAC international,” when the 18th edition was listed on the Association of Official Analytical Chemists web site. The agency will check to make sure that it does not need to use the latest addition.

Randy Stookey was recognized by the Chairperson to address proposed rules and regulations noticed for hearing by the Department of Agriculture. KAR 4-13-25, bulk pesticide storage and handling of pesticides; definitions; KAR 4-13-25b, quantities of bulk pesticide; KAR 4-13-25c, location, design, and construction requirements of a bulk pesticide storage facility; KAR 4-13-25d, secondary containment for bulk pesticide storage; KAR 4-13-25e, requirements for mixing and loading pads for bulk pesticides; KAR 4-13-25f, requirements for bulk pesticide containers and appurtenances; KAR 4-13-25g, discharge, recovery, and reporting requirements; KAR 4-13-25h, submission of diagrams, plans, and specifications; KAR 4-13-25j, bulk pesticide storage facility inspection and maintenance requirements; KAR 4-13-25k, site closure and discontinuation of operation; KAR 4-13-25l, penalty for noncompliance with pesticide containment; KAR 4-13-25m, change in owner or operator of bulk pesticide storage facility; reporting requirements; and KAR 4-13-25i, revoked.

Mr. Stookey stated these rules and regulations were being proposed to bring Kansas into compliance with Environmental Protection Agency (EPA) requirements. Several Committee members had concerns these new rules and regulations would cause a financial hardship on small individual business owners by causing them to spend substantial funds to bring their businesses into compliance. Mr. Stookey stated these rules and regulations were already in place but were being amended to clarify the EPA requirements. In response to a question from a Committee member concerning KAR 4-13-25d,(b)(1), Mr. Stookey stated that he did not believe there were any facilities that would not be in compliance at this time. Staff suggested that KAR 4-13-25d,(b)(1) be clarified and the phrase “applies only to liquid bulk pesticide” be inserted after “steel, reinforced concrete, or any other rigid material capable of withstanding the static pressure.” In response to a question from a Committee member, there was concern raised about subsection (g) and that earthen materials and asphalt cannot be used as secondary containment, and that this could result in economic consequences to owners to replace them. Mr. Stookey stated that these rules and regulations were not mandated by federal law. In KAR 4-13-25j, staff questioned whether the term “potential violation” should be included in (b) since it was named in item (a)(11). A Committee member requested that the agency provide the Committee with a list of specific examples of violations in Kansas that would fall under these rules and regulations. A request was made by the Committee for a list of the members that were part of the working group that reviewed and approved these rules and regulations.

Chairperson Schmidt recognized Sarah Byrne, Assistant Attorney General, to speak to the proposed rules and regulations noticed for hearing by the Alcoholic Beverage Control (ABC) Division, Department of Revenue. KAR 14-6-4, containers of cereal malt beverage; statement of alcohol content required; KAR 14-11-1, definitions; KAR 14-11-4, registration of employees, salesperson permits; KAR 14-11-5, licensed warehouses; KAR 14-11-6, opened containers of domestic table wine or domestic fortified wine on the licensed premises; KAR 14-11-7, retail sales and deliveries; KAR 14-11-9, farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers; KAR 14-11-11, domestic table wine and domestic fortified wine rationing; KAR 14-11-14, prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine; KAR 14-11-15, public display of domestic table wine or domestic fortified wine; KAR 14-11-16, farm wineries and farm winery outlets selling at retail, marking prices, price or inventory control tags; shelf markings; KAR 14-11-22, special order shipping, license requirements; KAR 14-11-23, special order shipping; KAR 14-11-24, bona fide farmers’ market sales permit; KAR 14-11-25, licensee of farm winery also licensed as manufacturer; KAR 14-11-26, label approval required; KAR 14-11-27, domestic table wine and domestic fortified wine, Kansas product requirement; KAR 14-11-28, sales to minors prohibited; KAR 14-11-29, record retention, reporting

requirements; KAR 14-16-25, imposition of penalties for violations; KAR 14-19-27, storage of liquor; removal from club premises; KAR 14-19-38, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; KAR 14-19-39, extension of premises; KAR 14-20-29, storage of liquor, removal from club premises; KAR 14-20-40, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; KAR 14-20-41, extension of premises; KAR 14-21-12, storage of liquor, removal from drinking establishment premises; KAR 14-21-21, extension of premises; KAR 14-21-22, denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence, KAR 14-23-2, applications, documents required; KAR 14-23-5, events, filings, notice, prohibitions; KAR 14-23-8, purchase of alcoholic liquor; requirements and restrictions; KAR 14-23-10, removal of liquor from event premises prohibited, boundary requirement. The following are revoked: KAR 14-6-2a; KAR 14-6-3; KAR 14-11-10a; KAR 14-11-10b; KAR 14-11-10d; KAR 14-24-1; KAR 14-24-2; KAR 14-24-3; KAR 14-24-4; KAR 14-24-5; and KAR 14-24-6.

Ms. Byrne stated the KAR 14-11 rules and regulations are the result of the passage of 2009 SB 212. Other rules and regulations are being amended since they have not been reviewed since 1988. In KAR 14-11-1 (e), a Committee member suggested that the definition of "farmers market" be reviewed. It was suggested that it be further defined as "as gathering of two or more vendors." Staff noted that in KAR 14-11-1, the history section should include KSA 2009 Supp. 41-210. A Committee member noted that the economic impact statement for KAR 14-11-4 was misleading in that it stated that there would be a minimal increase in revenue in question three and that there was no economic impact noted in question four. Staff suggested that the history section be amended to include KSA 41-1127. A Committee member expressed concern that the fees and license requirements were too high in KAR 14-11-22. Ms. Byrne stated that these fees were set by the Legislature and were included in the statute. In KAR 14-23-8, staff noted there is an error in the history section and KSA 2009 Supp 41a03 needs to be changed.

The Chairperson recognized Rebecca Rice to speak in opposition to the proposed rules and regulations noticed for hearing by the ABC. ([Attachment 1](#)). Ms. Rice stated that she was not included in working group and has not had time to review these rules and regulations in depth. She requested the agency withdraw the regulations and meet with the industry to work together to develop a compromise.

Thomas Britt Nichols was recognized by the Chairperson to speak in opposition to these proposed rules and regulations ([Attachment 2](#)). Mr. Nichols stated only two of the 18 Kansas wineries were consulted about these proposed rules and regulations. No notification of the meeting or of the public hearing was given. These rules and regulations will have a substantial effect on the Kansas wine industry.

The Committee had many concerns about the rules and regulations. It was suggested that the Legislature might need to become involved to amend the statute. The Chairperson recommended that the agency appear before the Committee again on June 29, 2010. She recommended the agency schedule a meeting with the Kansas winery members and interested parties to address the concerns brought to the attention of the Committee before coming back in June.

The Chairperson stated that the next meeting of the Committee would be June 29, 2010. The meeting was adjourned at 10:00 a.m.

Committee Comments on Proposed Rules and Regulations

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; and department lands and waters: hunting, furharvesting, and discharge of firearms. After discussion, the Committee had no comment, but wants to thank the agency for being responsive to the concerns of members of the Committee.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning eligibility to take GED test. After discussion, the Committee had no comment.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (Net Metering); utility requirements pursuant to the act; tariff requirements; reporting requirements; and renewable energy credit program. After discussion, the Committee had the following comments.

KAR 82-17-1. In subsections (d), (e), and (l), the word "is" should be included after "and."

KAR 82-17-2. In subsection (b), the Committee is concerned about what is meant by the phrase "general terms and conditions" and suggests that it be clarified.

KAR 82-17-3. The Committee is concerned that the agency will be relying on the tariff which is more of a guideline rather than rules and regulations which would have the force and effect of law.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning general requirements relating to pleadings and other papers. After discussion, the Committee had no comment.

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions (Electric Utility Renewable Energy Standards), renewable energy standards and report, administrative penalties, retail revenue requirement, certification of renewable energy resources, and renewable energy credit program. After discussion, the Committee had the following comment.

KAR 82-16-2. In paragraph (b)(6), the Committee suggests clarification to the word "constructed" perhaps by amending it by adding the word "completely" before it.

Kansas Board of Emergency Medical Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing education; continuing education approval for long-term providers; and first responder course approval. After discussion, the Committee 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 (milk for manufacturing purposes); and adoption by reference (Grade A pasteurized milk). After discussion, the Committee had the following comment.

KAR 4-7-716. In subsection (a)(5), the Committee asks the agency to consider the adoption of the 18th edition of the "Official Methods of Analysis of AOAC International."

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning bulk pesticide storage and handling of pesticides, definitions; quantities of bulk pesticide; location, design, and construction requirements of a bulk pesticide storage facility; secondary containment for bulk pesticide storage; requirements for mixing and loading pads for bulk pesticides; requirements for bulk pesticide containers and appurtenances; discharge, recovery, and reporting requirements; submission of diagrams, plans, and specifications; bulk pesticide storage facility inspection and maintenance requirements; site closure and discontinuation of operation; penalty for noncompliance with pesticide containment; change in owner or operator of bulk pesticide storage facility, reporting requirements; and revocation. After discussion, the Committee had the following comments.

KAR 4-13-25d. In subsection (b)(1), the Committee wonders whether the requirements of this subsection apply to dry pesticides. If it does apply to both liquid and dry pesticides, the Committee suggests it be clarified to show which requirements apply to each type of pesticide. In addition, the Committee is unclear as to what constitutes "any other rigid material" and believes an explanation in the rule and regulation would be useful. Further, the Committee asks for a comparison of subsections (b) and (g) since it appears they may be in conflict.

KAR 4-13-25j. In subsection (b), the Committee suggests the agency consider the addition of "potential violation" to be consistent with the other portions of this regulation.

Economic Impact Statement. The Committee questions the statement included in the Economic Impact Statement that the changes are not mandated by federal law.

Kansas Department of Revenue. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning containers of cereal malt beverage, statement of alcohol content required; definitions; registration of employees, salesperson permits; licensed warehouses; opened containers of domestic table wine or domestic fortified wine on the licensed premises; retail sales and deliveries; farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers; domestic table wine and domestic fortified wine rationing; prohibited statements and restrictions in the advertising of domestic table wine and domestic fortified wine; public display of domestic table wine or domestic fortified wine; farm wineries and farm winery outlets selling at retail, marking prices, price or inventory control tags, shelf markings; special order shipping, license requirements; special order shipping; bona fide farmers' market sales permit; licensee of farm winery also licensed as manufacturer; label approval required; domestic table wine and domestic fortified wine, Kansas product requirement; sales to minors prohibited; record retention, reporting requirements; imposition of penalties for violations; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from club premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; extension of premises; storage of liquor, removal from drinking establishment premises; extension of premises; denial, revocation, or suspension of license upon request for hearing by governing body of city or county, request, evidence; applications, documents required; events, filings, notice, prohibitions; purchase of alcoholic liquor, requirements and restrictions; removal of liquor from event premises prohibited, boundary requirement; and revocations. After discussion, the Committee had the following comment.

General Comment. The Committee recognizes some of the issues raised by concerned parties at its hearing on these rules and regulations. The Committee requests that personnel from the agency meet with these concerned parties in an attempt to alleviate controversial issues with the rules and regulations. The Committee requests that the interested parties return to the Committee with a report on June 29, 2010.

Prepared by Judy Glasgow
Edited by Corey Carnahan

Approved by Committee on:

June 29, 2010

(Date)