

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

August 16, 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
Representative John Faber
Representative Steve Huebert
Representative Shirley Palmer
Representative Jan Pauls
Representative Ed Trimmer

Members Absent

Senator Chris Steineger
Representative Joe Patton

Staff Present

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

Conferees

Jeff Cowger, Juvenile Justice Authority
Trevor Wohlford, Court of Tax Appeals
Randy Forbes, Kansas Pharmacy Board
Patricia Scalia, Board of Indigents' Defense Services
Terry Tracy, Kansas Department of Labor
Oswald Dwyer, Kansas Department of Transportation
Judy Jewsome, Kansas Corporation Commission

Tom Conley, Kansas Department of Health and Environment
Tom Gross, Kansas Department of Health and Environment
John McCannon, Kansas Corporation Commission
Susan Somers, Kansas Board of Accountancy

Others Present

Matt Casey, Gaches, Braden, and Associates
Rob Mealy, Kearney & Associates
Bruce Larkin, Court of Tax Appeals
Jody Allen, Court of Tax Appeals
J. Kubik, Court of Tax Appeals
Rebecca Crotty, Court of Tax Appeals
Jeff Bottenberg, Bottenberg and Associates
Megan Bottenberg, Kansas Department of Labor
Berend Koops, Hein Law Firm
Sean Miller, Capitol Strategies
Seth Valerius, Kansas Department of Labor
Debra Billingsley, Kansas Board of Pharmacy
John Maddox, Kansas Department of Transportation
Mike Hoeme, Kansas Corporation Commission
Gary Davenport, Kansas Corporation Commission
Tom Langer, Kansas Department of Health and Environment
Susan Vogel, Kansas Department of Health and Environment
Miles Stotts, Kansas Department of Health and Environment
Rick Brunetti, Kansas Department of Health and Environment
Chris Cardinal, Sierra Club

Morning Session

Chairperson Vicki Schmidt called the meeting to order on August 16, 2010, at 9:10 a.m. The Chairperson asked for action on the Committee's minutes from the meeting of June 29, 2010. *Representative Trimmer moved the minutes be approved as written. Representative Pauls seconded the motion. The motion carried.*

The Chairperson recognized Trevor Wohlford, Acting Executive Director, to speak to the proposed rules and regulations noticed for hearing by the Kansas Court of Tax Appeals. (Attachment 1). KAR 94-2-1; 94-2-2; 94-2-3; 94-2-4; 94-2-5; 94-2-6; 94-2-7; 94-2-8; 94-2-9; 94-2-10; 94-2-11; 94-2-12; 94-2-13; 94-2-14; 94-2-15; 94-2-16; 94-2-17; 94-2-18; 94-2-19; 94-2-20; and 94-2-21: revoked; KAR 94-5-1, court regulations and procedures; KAR 94-5-2, definitions; KAR 94-5-3, service; KAR 94-5-4, commencement of action; pleadings; KAR 94-5-5, signatures of parties or counsel; KAR 94-5-6, authorized representation; KAR 94-5-7, information and assistance to self-represented litigants; KAR 94-5-8, filing fees; KAR 94-5-9, filing procedures; time limitations; KAR 94-5-10, electronic mail filings; KAR 94-5-11, facsimile filing; KAR 94-5-12, confidentiality; KAR 94-5-13, intervention; joinder; KAR 94-5-14, consolidation; KAR 94-5-15, motion practice; KAR 94-5-16, discovery; KAR 94-5-17, subpoenas; KAR 94-5-18, stipulations; KAR 94-5-19, prehearing conferences; KAR 94-5-20, continuances; KAR 94-5-21, exchange of evidence and witness lists; KAR 94-5-22, hearing; KAR 94-5-23, evidence; KAR 94-5-24, failure to appear; and KAR 94-5-25, petitions for reconsideration.

Mr. Wohlford stated that these proposed regulations update and amend the revoked regulations and increase the filing fees to compensate for the reduction of state general funds to the agency. The Committee suggested that KAR 94-5-3 include the definition of the requested mailing address. A Committee member suggested all pleadings include the name, address, and telephone number of the party filing. In KAR 94-5-6, a Committee member noted that the definition of "authorized representative" be added for clarification. Staff noted that reference to KSA 60-220 might need to be included in KAR 94-5-13, to include permissive joinder. Mr. Wohlford stated that he would check. In KAR 94-5-21, a Committee member suggested that the new language added this year concerning days when the building might not be open because of extenuating circumstances. It was suggested that KAR 94-5-22 (b) state that the preapproval of nondisruptive items should be determined prior to the hearing date and also a statement inserted giving the judge final say during the hearing should an item become disruptive. The Committee requested that the economic impact statement be amended prior to the public hearing date to show the amount that the new fees would generate. A Committee member questioned why the agency had not raised fees across the board.

The Chairperson welcomed Randy Forbes, General Counsel, to speak to the proposed rules and regulations noticed for hearing by the Board of Pharmacy. KAR 68-23-1, definitions; KAR 68-23-2, electronic reporting; KAR 68-23-3, extension for electronic reporting; KAR 68-23-4, exemption from electronic reporting; KAR 68-23-5, denial of sale; overrides; and KAR 68-23-6, compliance date.

A Committee member suggested that KAR 68-23-3 (d)(2) be clarified to indicate that the 72 hours after the system becomes operational to transmit the information refers to time after the system has been up and running. Staff suggested that the Board review House Substitute for SB 213 for wording which was included in that bill. The Committee had questions about the override provisions and asked the Board to review them. Since the agency would like to get these rules and regulations through the public hearing, conduct training, and have them up and running by December 17, 2010, Mr. Forbes asked whether the Board could make these changes after the rules went into effect. It was suggested that he put this in writing to the Committee, stating that the agency would make the changes after implementing this set of rules and regulations.

The Chairperson recognized Jeff Cowger to speak to the proposed rule and regulation noticed for hearing by the Juvenile Justice Authority (JJA). KAR 123-2-111, trafficking in contraband.

Mr. Cowger stated that this regulation is identical to the temporary regulation that is in place. A Committee member suggested that the JJA review the statute concerning concealed carry law which allows employees at other correctional institutions to keep their permitted gun locked up in the vehicle's trunk. The Committee also suggested adding wire cutters to the list of prohibited items.

Oswald Dwyer, staff attorney, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Transportation. KAR 36-39-2, definitions; KAR 36-39-4, forms; and KAR 36-39-6, rail service financial assistance; loans and grants.

Mr. Dwyer stated that these regulations are identical to the temporary rules and regulations that are in effect. In KAR 36-39-2 (k)(1), staff states the CFR should be adopted by reference as of a date certain. Staff noted that the history section needs to be updated as the bill referenced did not pass; a different version of it did.

The Chairperson recognized Patricia Scalia, Executive Director, to address the proposed rules and regulations noticed for hearing by the Board of Indigents' Defense Services. KAR 105-4-1, determination of eligibility; KAR 105-5-2, rates of compensation; KAR 105-5-3, appellate courts; compensation; KAR 105-5-6, reasonable compensation, non-tried cases; KAR 105-5-7, reasonable compensation, tried cases; KAR 105-5-8, compensation, exceptional cases; and KAR 105-11-1, defendant reimbursement of attorney fees.

Ms. Scalia stated that these rules and regulations were approved on an emergency, temporary basis earlier this morning at the State Rules and Regulations Board meeting. She stated that the reason for these rules and regulations was to adjust the rate of compensation to a lower rate because the Board's budget appropriation will be insufficient to pay all claims.

In KAR 105-5-8(a)(1), a Committee member noted that there should be a statement clarifying the difference between "off-grid" and "non-grid," since neither type appears on the sentencing grid. It also was pointed out that the agency's public notice should include the year for reference purposes.

Dr. Terry Tracy, Director of the Division of Workers Compensation, was recognized to speak to the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 51-9-7, fees for medical and hospital services.

Dr. Tracy gave an overview of the changes that would be taking place in the compensation for medical, surgical, hospital, dental, and nursing services under the Kansas Workers Compensation Act. The Committee had several questions concerning the economic impact statement. Under Section III of the economic impact statement, a Committee member inquired from what source the increase of 0.7 percent was going to come. Dr. Tracy stated he was aware of a 0.2 percent increase. The Committee stated that since this was incorrect, then the economic statement should be changed before the public hearing. Under Section IV, it was suggested the last statement in that paragraph be omitted.

Susan Somers, Executive Director, was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Board of Accountancy. KAR 74-4-8, continuing professional education programs, requirements; KAR 74-4-9, continuing professional education controls and reporting; KAR 74-5-2, definitions; KAR 74-5-101, independence; KAR 74-5-202, compliance with standards; KAR 74-5-203, accounting principles; KAR 74-6-2, management of an office; KAR 74-11-6, definitions; KAR 74-11-7, renewal of a firm's registration; KAR 74-12-1, fees; and KAR 74-15-2, revoked.

Ms. Somers stated that the purpose of the proposed rules and regulations is for clarification, to update materials adopted by reference and to eliminate provisions as a result of legislation passed in 2009. A Committee member had a question on KAR 74-5-2 (k) and (l) and the proper way to alphabetize these terms. Staff will check with the Department of Administration.

The Chairperson recognized Judy Jewsome, Litigation Counsel, Transportation Division, to speak to the proposed rules and regulations noticed for hearing by the State Corporation Commission. KAR 82-4-1, definitions; KAR 82-4-2, general duty of carrier; KAR 82-4-3a, hours of service; KAR 82-4-3d, safety fitness procedures; KAR 82-4-3f, general motor carrier safety regulations; KAR 82-4-3n, minimum levels of financial responsibility for motor carriers; KAR 82-4-3o, imminent hazard; KAR 82-4-6a, minimum requirements of drivers; KAR 82-4-6d, waiver of physical requirements; KAR 82-4-8a, accessories and equipment; KAR 82-4-8h, marking of commercial motor vehicles; KAR 82-4-21, requiring insurance; KAR 82-4-22, intrastate insurance requirements; KAR 82-4-23, general intrastate requirements; KAR 82-4-24a, standard insurance forms; KAR 82-4-26, general requirements for certificates, permits, and licenses; KAR 82-4-26a, certain private motor carriers exempt from obtaining commission authority; KAR 82-4-27, applications for certificates of convenience and necessity and certificates of public service; KAR 82-4-27a, applications for transfer of certificates of convenience and necessity and certificates of public service; KAR 82-4-27c, applications for transfer for purposes of change in the form of a business organization; KAR 82-4-27e, application to merge or consolidate intrastate common authority, application to acquire control or management of an intrastate common motor carrier operation; KAR 82-4-32, completing motor carrier applications; KAR 82-4-33, service of process; KAR 82-4-35, preserving certificates or permits; KAR 82-4-35a, inspections of motor carrier documents; KAR 82-4-40, passengers on

property-carrying vehicles; KAR 82-4-42, emergency and occasional equipment; KAR 82-4-48, bills of lading, waybills, and freight bills; KAR 82-4-48a, motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations; KAR 82-4-53, common motor carrier rates and charges; KAR 82-4-54, tariff publication to become effective on less than 30 days notice; KAR 82-4-55, procedure for filing a request for postponement of tariff publications; KAR 82-4-56a, common motor carrier tariffs; KAR 82-4-57, powers of attorney and concurrences; KAR 82-4-58, suspension or modification of tariff regulations; KAR 82-4-63, contested and uncontested motor carrier hearings; KAR 82-4-65, protestants; KAR 82-4-77, right of independent action; and KAR 82-4-28, 82-4-28a, 82-4-28b, 82-4-31, 82-4-37, and 82-4-62, revoked.

Ms. Jewsome stated that many of the proposed changes are to adopt relevant portions of the Federal Motor Carrier Safety Administration's regulations and to make minor grammar and form corrections. Staff noted that in KAR 82-4-1(c)(4), the Commission should consider a cross-reference to KAR 82-4-20, where the listed federal regulations are adopted by reference. On page 2, in (e), the Committee questioned the use of the word "probated" and suggested that the Commission look at the history of the regulations to see if this is accurate. Staff suggested that in KAR 82-4-8a (a) (4), the staff of the agency recheck the reference to 40 CFR Part 82, subpart G, as no additional reference to this federal regulation was found. Ms. Jewsome responded to questions from several Committee members concerning "straight trucks" and "semi-trucks."

The Chairperson recognized John McCannon, Litigation Counsel, Oil and Gas Conservation Division, to speak to the proposed rules and regulations noticed for hearing by the State Corporation Commission. KAR 82-3-101a, procedures for determining location using global positioning system; and KAR 82-3-120, operator or contractor licenses, application, financial responsibility, denial of application, penalty.

Mr. McCannon responded to questions of a general nature from staff and Committee members.

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

Afternoon Session

Chairperson Vicki Schmidt reconvened the meeting at 1:30 p.m.

The Chairperson recognized Thomas Conley to address the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment. KAR 28-35-135l, definitions; KAR 28-35-135t, definitions; KAR 28-35-135w, definitions; KAR 28-35-175a, persons licensed; KAR 28-35-178b, general license, certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere; KAR 28-35-178e, americium-241 or radium-226 in the form of calibration or reference sources; KAR 28-35-178j, general license for use of radioactive material for certain in vivo clinical or laboratory testing; KAR 28-35-180b, financial assurance for decommissioning; KAR 28-35-181a, specific licenses for human use of radioactive material in medical institutions; KAR 28-35-181j, specific licenses to manufacture and distribute calibration sources containing americium-241 or radium-226; KAR 28-35-181m, specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use; KAR 28-35-181o, specific licenses to manufacture and distribute sources and devices for use as a calibration, transmission, or reference source or for certain medical uses; KAR 28-35-192b, exemptions, exempt concentrations of radioactive materials; KAR 28-35-192c, exceptions, other radioactive material; KAR 28-35-192e, exemptions, gas and aerosol detectors

containing radioactive material; KAR 28-35-192g, exemptions, exempt quantities; KAR 28-35-194a, reciprocal recognition of licenses; KAR 28-35-212a, occupational dose limits for adults; KAR 28-35-216a, testing for leakage or contamination of sealed sources; KAR 28-35-225b, disposal of certain radioactive material; KAR 28-35-231c, transfer for disposal, manifests; KAR 28-35-242, general requirements; KAR 28-35-264, general requirements; KAR 28-35-334, reports to individuals; KAR 28-35-346, leak testing of sealed sources; KAR 28-35-411, table of quantities of radioactive material, need for contingency plan; and KAR 28-35-181e and KAR 28-35-192d, revoked.

Mr. Conley stated that the proposed rules and regulations are necessary to bring Kansas regulations in compliance with Nuclear Regulatory Commission (NRC) regulations and to correct errors. Staff noted that in KAR 28-35-135t, (x) and (y) need to include a cross reference showing where the items were adopted by reference. In KAR 28-35-135w, (a) (1) (C), the listed CFR Section should be adopted by reference. KAR 28-35-175a should show a cross reference to KAR 28-35-135w. Committee members suggested that the economic impact statement be reviewed for KAR 28-35-180b, since the amount of the financial assurance in the table was changed.

Chairperson Schmidt welcomed Thomas Gross, Bureau of Air, to speak to the proposed rules and regulations noticed for hearing by the Kansas Department of Health and Environment (Attachment 2). KAR 28-19-202, annual emissions fee; KAR 28-19-517, class I operating permits, annual emissions inventory; KAR 28-19-720, new source performance standards; KAR 28-19-735, national emission standards for hazardous air pollutants, KAR 28-19-750, hazardous air pollutants; maximum achievable control technology; and KAR 28-19-750a, consolidated federal air regulations, synthetic organic chemical manufacturing industry; and KAR 28-19-728, 28-19-728a, 28-19-728b, 28-19-728c, 28-19-728d, 28-19-728e, and 28-19-728f, revoked.

The Committee asked Mr. Gross to provide a breakdown of plants subject to these rules and regulations and the emissions from each. In response to a question from a Committee member, Mr. Gross stated that the requirements in KAR 28-19-720 were not more stringent than the federal rules and regulations. He stated that he was in a continual dialogue with EPA on local issues and problems, acting as a buffer on enforcement of these rules and regulations, and had, on occasion, won concessions.

The Chairperson recognized Jill Shelley, Legislative Research Department, to update the Committee on responses from agencies from January 2009 to July 2010. Ms. Shelley provided copies for each Committee member of a summary of the responses received from agencies regarding the Committee's comments (Attachment 3). She also discussed a separate handout on recently enacted requirements or authorization for rules and regulations, which had three parts (Attachment 4): required or authorized rules and regulations, deadline listed in the enacted bill; required rules and regulations, no deadline listed in the enacted bill; and authorized rules and regulations, no deadline listed. The Committee expressed its appreciation for the furnished reports and stated that the strongly worded letters issued to each agency seemed to be obtaining results.

Committee Comments on Proposed Rules and Regulations

Kansas Court of Tax Appeals. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning court regulations and procedures; definitions; service; commencement of action, pleadings; signatures of parties or counsel; authorized representation; information and assistance to self-represented litigants; filing fees; filing procedures, time limitations; electronic mail filings; facsimile filing; confidentiality; intervention, joinder; consolidation; motion practice; discovery; subpoenas; stipulations; prehearing conferences;

continuances; exchange of evidence and witness lists; hearings; evidence; failure to appear; petitions for reconsideration; and revocations. After discussion, the Committee had the following comments.

KAR 94-5-3, 94-5-4, and KAR 94-5-5. The Committee suggests that the agency review each of these regulations and others in this set to determine if there is a need to add a definition for "mailing address" and whether there should be an additional requirement of including the address and telephone number of the person effecting service. The Committee suggests this information be placed so that it clearly applies to all filings. In addition, the Committee believes that there are some who do not have e-mail or access to a fax machine, and is concerned that those individuals and entities would continue to be able to access the agency.

KAR 94-5-6. The Committee believes the agency should consider the inclusion of a definition of an authorized representative. In the alternative, the Committee suggests that the agency make the language clear that an individual representing himself or herself would have full rights to ask questions and seek responses. If a definition of authorized representative is included, the agency should clarify who determines whether a person is an authorized representative.

KAR 94-5-8. The Committee believes that the fee increases are not reflected in the Economic Impact Statement. Please revise the Economic Impact Statement to reflect these changes. The Committee also is curious to learn why the increases were not similar across the entire fee schedule, since it appears that the lower fees were the ones with the greater percentage of increase.

KAR 94-5-10. The Committee believes the agency should clarify if and when the fee would be due if the filing were to be made by electronic mail.

KAR 94-5-13. The Committee believes the agency should consider the addition of permissive joinder.

KAR 94-5-21. The Committee suggests that the agency refer to the Civil Procedures Code for language relating to those instances when an office of the clerk of the court may be closed or is not accessible.

KAR 94-5-22. In paragraph (b), the Committee believes some additional language should be included for clarification as to what items may be used during a hearing. In addition, the Committee suggests that the agency consider what actions may be considered disruptive, subject to the judge's discretion.

Kansas State Pharmacy Board. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; electronic reporting; extension for electronic reporting; exemption from electronic reporting; denial of sale, overrides; and compliance date. After discussion, the Committee had the following comments.

Note. The first two suggestions are to be considered in an additional future review by the Board of this set of regulations. The final comment is a request for information to be submitted in advance of the Joint Committee's September meeting.

KAR 68-23-3. In paragraph (a), the Committee suggests the language be clarified so that the information is required to be submitted within 72 hours after the implementa-

tion of the system. The Committee suggests clarification on whether the requirements apply to both the pharmacy owner and to the KEMPL system.

KAR 68-23-5. The Committee encourages the Board to address the issue of requiring a pharmacy to allow its employee to override the KEMPL system for the safety of the pharmacist or under other certain circumstances. If the Board believes that it does not have the authority to permit this, perhaps legislation should be considered to permit the promulgation of such a regulation.

Concern. The Committee wishes to express its concern with the delay in the adoption of these regulations and asks the Board to suggest means to accomplish these types of tasks in a more timely manner.

Kansas Juvenile Justice Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning trafficking in contraband. After discussion, the Committee had the following comments.

KAR 123-2-111. In paragraph (b)(1), the Committee suggests that the Authority refer to the statutory language concerning concealed carry for appropriate language regarding the carry of guns and firearms in employee vehicles. In paragraph (b)(5), the Committee suggests the addition of wire cutters to the list of escape paraphernalia.

Kansas Department of Transportation. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; forms; and rail service financial assistance, loans and grants. After discussion, the Committee had the following comments.

KAR 36-39-2. The Committee suggests that 49 CFR part 1201, or the appropriate part thereof, be adopted by reference or, if it has been, then a cross reference should be made to the regulation adopting the federal regulation. Otherwise, this reference could be construed as an unlawful delegation of authority.

History Section. The history section of the regulation makes reference to an incorrect version of the bill.

Kansas State Board of Indigents' Defense Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning determination of eligibility; rates of compensation; appellate courts, compensation; reasonable compensation, non-tried cases; reasonable compensation, tried cases; compensation, exceptional cases; and defendant reimbursement of attorney fees. After discussion, the Committee had the following comments.

KAR 105-5-8. In paragraph (a)(1), please clarify whether the reference is to off-grid offenses or non-grid offenses.

Suggestion. The Committee suggests that the year be included in the notice of hearing.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning fees for medical and hospital services. After discussion, the Committee had the following comments.

Economic Impact Statement. The Committee requests that the Economic Impact Statement be revised prior to the public hearing in order to reflect costs to the regulated community.

Kansas State Board of Accountancy. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning continuing professional education programs, requirements; continuing professional education controls and reporting; definitions; independence; compliance with standards; accounting principles; management of an office; definitions; renewal of a firm's registration; fees; and revocation. After discussion, the Committee had no comment.

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; general duty of carrier; hours of service; safety fitness procedures; general motor carrier safety regulations; minimum levels of financial responsibility for motor carriers; imminent hazard; minimum requirements of drivers; waiver of physical requirements; accessories and equipment; marking of commercial motor vehicles; requiring insurance; intrastate insurance requirements; general intrastate requirements; standard insurance forms; general requirements for certificates, permits, and licenses; certain private motor carriers exempt from obtaining commission authority; applications for certificates of convenience and necessity and certificates of public service; applications for transfer of certificates of convenience and necessity and certificates of public service; applications for transfer for purposes of change in the form of a business organization; application to merge or consolidate intrastate common authority, application to acquire control or management of an intrastate common motor carrier operation; completing motor carrier applications; service of process; preserving certificates or permits; inspections of motor carrier documents; passengers on property carrying vehicles; emergency and occasional equipment; bills of lading, waybills, and freight bills; motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations; common motor carrier rates and charges; tariff publication to become effective on less than 30-day notice; procedure for filing a request for postponement of tariff publications; common motor carrier tariffs; powers of attorney and concurrences; suspension or modification of tariff regulations; contested and uncontested motor carrier hearings; protestants; right of independent action; and revocations. After discussion, the Committee had the following comments.

KAR 82-4-1. In paragraph(c)(4), reference is made to 49 CFR Part 172. This has been adopted by reference in KAR 82-4-20. Please make a cross reference to the regulation adopting the federal regulation. In subsection (e), the Committee is confused by the terminology "rebated, suspended, or probated" and wonders if the agency could clarify the meaning. In particular, should the term "probated" be "pro-rated"?

KAR 82-4-6d. In subsection (c) and in paragraphs (g)(1)(A), and (g)(1)(B), if the CFRs have been adopted by reference elsewhere, then cross references should be made to the location of the regulations containing the adoption by reference. If they have not been adopted by reference, then the agency should incorporate the appropriate language to adopt the CFRs by reference as of a date certain.

KAR 82-4-8a. In paragraph (a)(1)(4), reference is made to the adoption of 40 CFR Subpart 82 G in KAR 82-4-3i. Please review the wording, because this does not appear to be the case.

State Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning procedures for determining location using global positioning system; and operator or contractor licenses: application, financial responsibility, denial of application, penalty. After discussion, the Committee had no comment.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; definitions; definitions; persons licensed; americium-241 or radium-226 in the form of calibration or reference sources; general license for use of radioactive material for certain in vivo clinical or laboratory testing; financial assurance for decommissioning; specific licenses for human use of radioactive material in medical institutions; specific licenses to manufacture and distribute calibration sources containing americium-241 or radium-226; specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use; specific licenses to manufacture and distribute sources and devices for use as a calibration, transmission, or reference source or for certain medical uses; exemptions, exempt concentrations of radioactive materials; exceptions, other radioactive material; exemptions, gas and aerosol detectors containing radioactive material; exemptions, exempt quantities; reciprocal recognition of licenses; occupational dose limits for adults; testing for leakage or contamination of sealed sources; disposal of certain radioactive material; transfer for disposal, manifests; general requirements; general requirements; reports to individuals; leak testing of sealed sources; table of quantities of radioactive material, need for contingency plan; and revocations. After discussion, the Committee had the following comments.

KAR 28-35-135t. In subsections (x) and (y), reference is made to portions of the CFR. Please indicate through a cross reference the location of the regulation where the particular CFR has been adopted by reference. If they have not been adopted, please amend these paragraphs to adopt these portions of the CFR in the appropriate manner.

KAR 28-35-135w. Paragraph (a)(1)(c) refers to 10 CFR 20.1003. If this CFR been adopted by reference, please make the appropriate cross reference. If not, please amend the regulation so that the CFR is appropriately adopted by reference.

KAR 28-35-175a. In subsection (a), reference is made to 10 CFR 20.1003. See comment above.

KAR 28-35-178b. In paragraph (b)(7), reference is made to 10 CFR Part 110. See prior comments relative to adoptions by reference.

KAR 28-35-180b. Please incorporate the information contained in Table 1 of this regulation into the Economic Impact Statement.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning annual emissions fee; class I operating permits, annual emissions inventory; new source performance standards; national emission standards for hazardous air pollutants; hazardous air pollutants, maximum achievable control technology; consolidated federal air regulations, synthetic organic chemical

manufacturing industry; and revocations. After discussion, the Committee had the following comment.

Concern. The Committee's concern does not deal with the set of regulations presented at this time, but instead rests with the actions the agency may be forced to take in order to maintain state primacy in the area of air quality. The Committee wishes to express its concern about the federal Environmental Protection Agency (EPA) forcing standards upon states without the states having an ability to respond to unique situations. Nonetheless, the Committee encourages KDHE to continue to make the cases for exemption, where appropriate, for regulations which may not be applicable to Kansas. Additionally, the members of the Committee are concerned about the extent to which EPA intends to regulate internal combustion engines and wonders how KDHE intends to find, test, and remediate all of the various engines being used within Kansas in order to comply with EPA requirements. Finally, the Committee encourages the staff of KDHE to continue to point out discrepancies and inaccuracies in EPA data which would result in even further detrimental impact to the regulated community in the state.

Chairperson Schmidt adjourned the meeting at 4:35 p.m.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

September 20, 2010
(date)