

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 26, 2012
Room 152-S—Statehouse

Members Present

Senator Vicki Schmidt, Chairperson
Senator Oletha Faust-Goudeau
Senator Ralph Ostmeyer
Senator Allen Schmidt
Representative Steve Huebert
Representative Jan Pauls
Representative Ed Trimmer
Representative Caryn Tyson
Representative Valdenia Winn

Members Absent

Representative Carl Holmes, Vice-chairperson
Representative Joe Patton

Staff Present

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

Conferees

Chris Tymeson, Kansas Department of Wildlife, Parks and Tourism
Rick Scheufler, Kansas Department of Agriculture
Steve Moris, Kansas Department of Agriculture
John Wine, Kansas Insurance Department
Paul Marx, Kansas Department of Health and Environment
Dr. Elizabeth Saadi, Kansas Department of Health and Environment
Linden Appel, Kansas Department of Corrections
Walter Way, 911 Coordinating Council
Chelsea Good, Kansas Department of Agriculture
Larry Karns, Department of Labor
Jose Castillo, Department of Labor
Theresa Marcel Schwartz, Associate General Counsel, Kansas Board of Regents
Sara Rosen, University of Kansas
Matt Melvin, University of Kansas

Julene Miller, General Counsel, Kansas Board of Regents
Cheryl Magathan, Real Estate Appraisal Board
Sarah Byrne, Division of Alcoholic Beverage Control, Kansas Department of Revenue
Tuck Duncan, Kansas Wine and Spirits

Others Present

Sean Miller, Capitol Strategies
Nancy Zogleman, Polsinelli Shughart PC
Paje Routhier, Hein Law Firm
Susan Vogel, Kansas Department of Health and Environment
Elizabeth Rice, Kansas Department of Corrections
Jennifer Welch, Kansas Department of Corrections
Aaron Mays, Allstate Insurance Co.
Rob Mealy, Kearney and Associates
Jennifer Sourk, Kansas Insurance Department
Kevin Davis, Kansas Insurance Department
Mark McClafin, Kansas Insurance Department
Julie Holmes, Kansas Insurance Department
Kris Kellim, Kansas Insurance Department
Tom Whalen, Kansas Insurance Department
Jean Redeker, Kansas Board of Regents
Timothy Caroni, University of Kansas
Kathleen Smith, Kansas Department of Revenue
Scott Rothschild, Lawrence Journal World

Morning Session

Chairperson Vicki Schmidt called the meeting to order at 9:00 a.m.

The Chairperson welcomed John Wine, staff attorney, to speak to the proposed rules and regulations noticed for hearing by the Kansas Insurance Department (Attachment 1, 2, 3, and 4). KAR 40-1-20, same; subrogation clause prohibited for certain coverages; KAR 40-1-50, insurance scoring; definitions; requirements; KAR 40-1-52, written notice to claimants of payment of claim in third-party settlements; and KAR 40-2-14a, life insurance and annuities; recommendation standards.

Mr. Wine stated KAR 40-1-50 and KAR 40-1-52 are not going to be amended as had been proposed. The agency will go ahead with the public hearing on November 28, 2012, in order to get public input. In KAR 40-1-14a, the Department intends to announce at the public hearing it will amend the policy to delete the extra biennial hour of training. The Committee felt this would be a substantial change to the rule and regulation and would therefore require this regulation to come before the Committee again. Mr. Wine stated this would be done.

Walter Way was recognized by Chairperson Schmidt to speak to the proposed rule and regulation noticed for hearing by the 911 Coordinating Council. KAR 132-3-1, 911 federal grants; distribution. Mr. Way stated the Council is encouraging regional solutions.

Staff noted on page 2, (a) (2) "2011 Supp." should be inserted after KSA 12-5365. There were no other questions or comments.

Chairperson Schmidt recognized Paul Marx, Associate Chief Counsel, Health Legal Group, to speak to the proposed rule and regulation noticed for hearing by the Department of Health and Environment. KAR 28-75-100, no title.

Mr. Marx stated the purpose of this rule and regulation was to adopt by reference the agency's Health Insurance Portability and Accountability Act (HIPAA) disclosure of protected health information authorization form. Staff noted the rule and regulation needs to have a title added for identification purposes. Mr. Marx stated he would work on this.

The Chairperson asked for action on the minutes of the September 17, 2012, meeting. *Senator Allen Schmidt moved the minutes be approved as presented; Representative Pauls seconded the motion. The motion carried.*

Dr. Elizabeth Saadi was welcomed by the Chairperson to speak to the proposed rule and regulation noticed for hearing by the Bureau of Public Health Informatics, Department of Health and Environment. KAR 28-56-2, general requirements for abortion reports.

Committee members asked questions concerning the frequency of filing reports and whether these had to be written or submitted electronically. Dr. Saadi stated the reports could be filed annually, but most are filed sooner. Dr. Saadi stated anyone performing more than five abortions a year is required to report electronically; otherwise, paper reporting was acceptable.

Linden Appel, Chief Legal Counsel, was recognized by Chairperson Schmidt to address the proposed rules and regulations noticed for hearing by the Department of Corrections (KDOC). KAR 44-5-115, service fees; KAR 44-6-101, definitions; KAR 44-6-114e, guidelines release date; KAR 44-6-115a, awarding and withholding good time credits for incarcerated offenders; KAR 44-6-115b, awarding, withholding and restoring good time credits for offenders on supervised release; KAR 44-6-115c, service of post release supervision revocation incarceration penalty period; awarding, withholding, and forfeiture of good time credits for offenders service incarceration penalty period; KAR 44-6-125, good time forfeitures not restored; exceptions; limits; parole; guidelines release date; program credits; withholding of good time credits subject to restoration; KAR 44-6-127, program credits; KAR 44-6-134 jail credit time; KAR 44-6-135, prison service credit; KAR 44-6-135a, maximum sentence credit; and KAR 44-6-138, sentence begins date.

In response to a question from a Committee member, Mr. Appel stated each incident is reviewed on a case-by-case basis. In KAR 44-6-115a, a Committee member questioned the amount of credits withheld on page 2(e)(1). The amount is specific, but on page 3(a)(5), the amounts are general. A Committee member said several typographical errors need to be corrected. In KAR 44-6-115c, page 1(b) and (c), the "Kansas" should be removed before "prisoner review board." A Committee member had questions about the internal policies and practices (IPP) and internal management policies and practices (IMPP). There appears to be no input or oversight by anyone outside KDOC concerning these. Mr. Appel stated these have been referenced in KDOC rules and regulations since the 80's or 90's. The Committee member stated either the term IPP or IMPP should be used throughout the rules and regulations for consistency. A Committee member was concerned about program credit and asked if a program is discontinued because of a lack of funding, does this delay the release date for the prisoner.

Chairperson Schmidt welcomed Chelsea Good, staff attorney, to speak to the proposed rule and regulation noticed for hearing by the Department of Agriculture, Division of Animal Health. KAR 9-7-4, cattle.

Ms. Good stated this rule and regulation clarifies current testing requirements for cattle, eliminates some outdated language in the existing regulation and sets out new testing requirements regarding Trichomoniasis.

A Committee member asked where a veterinarian could obtain the training to become accredited. Dr. Brown stated Kansas State University already has trained 150 veterinarians across the state; the training is to be renewed every five years. Beginning in 2013, an online training course also will be available. A Committee member suggested “accredited” be inserted before “veterinarians” in subparagraph (c)(1)(C). A Committee member asked whether the “owner” in subparagraph (c)(4)(C) was the seller or the buyer; Mr. Brown said it would be the buyer. Also regarding that subparagraph, a Committee member asked whether the facility would be “approved” by the Division or “inspected.” Staff noted, in (c)(1)(B)(i), the definition in 9 CFR 71.1 refers to 9 CFR Part 161 and said that part also should be adopted by reference. In (c)(1)(B)(ii), the term “administrator” refers to a federal official; staff suggested incorporation by reference be modified. It was suggested the agency could have included an unlawful delegation of authority by stating the laboratory must be accredited by the American Association of Veterinary Laboratory Diagnosticians rather than by the State. Also, it was stated the requirement for a specific manufacturer's diagnostic kit was unusual, as opposed to listing requirements such a test system must meet.

The Chairperson recognized Rick Scheufler, staff attorney, to speak to the proposed rules and regulations noticed by the Department of Agriculture. KAR 4-27-2, definitions; KAR 4-27-3, licensure; plans and specifications; variances; KAR 4-27-4, food service and food safety; KAR 4-27-5, imminent health hazard; KAR 4-27-8, guest and public safety; KAR 4-27-9, guest rooms; KAR 4-27-10, dishware and utensils; KAR 4-27-11, housekeeping and laundry facilities; maintenance supplies and equipment; KAR 4-27-12, poisonous or toxic materials; KAR 4-27-15, exterior premises; KAR 4-27-16, swimming pools, recreational water facilities, and hot tubs; KAR 4-27-17, water supply systems; KAR 4-27-18, sewage systems; KAR 4-27-20, plumbing systems; KAR 4-27-21, heating, ventilation, and air-conditioning (HVAC) systems; KAR 4-28-1, definition; specialized processing; KAR 4-28-5, fees; food processing plant; KAR 4-28-23, sidewalk or street display of food products; prohibitions; KAR 4-28-32, vehicles used in transportation; and KAR 4-28-18, 4-28-19, 4-28-20, 4-28-21, 4-28-22, 4-28-24, 4-28-25, 4-28-26, 4-28-27, 4-28-28, 4-28-29, 4-28-30; KAR 28-21-2, 28-21-4, 28-21-5, KAR 28-23-1, 28-23-2, 28-23-3, 28-23-6, 28-23-7, 28-23-11, 28-23-12, and 28-23-13, Revoked.

In KAR 4-27-4, a Committee member noted in line 3, the statement “a guest house that serves food to the general public” should be clarified to read “a guest house that prepares and serves food to the general public.” Staff noted, in KAR 4-27-4, line 5, KSA 65-689 should be changed to KSA 65-688. Mr. Scheufler stated he would go back and check this. Staff noted the history section needs to be reviewed and updated throughout these rules and regulations. A Committee member noted in KAR 4-27-9, page 5, paragraphs (j)(1) and (2) seem to be in conflict with each other. Mr. Scheufler stated he would review this. In KAR 4-27-16, staff noted the initials “(RWF)” should be inserted in paragraph 1, line 3 after “recreational water facilities.” A Committee member asked if a state agency inspected pools or hot tubs. Mr. Moris stated the state inspects these only at initial licensing or during a complaint investigation. In KAR 4-28-1, a Committee member requested the definition of “specialized processing” be reviewed to see if this is used in any other regulations; Mr. Moris stated he would do this. A Committee member was concerned about whether KAR 4-28-5 covered locker plants; Mr. Moris stated a locker plant is not a food processing plant.

Staff noted in KAR 4-28-32, the language used was very broad and asked if there were any criteria to determine conditions of a vehicle that would cause products to become adulterated.

Chairperson Schmidt recognized Larry Karns, Director, Division of Workers Compensation, Department of Labor, and Jose Castillo, Department of Labor, to address the proposed rule and regulation noticed for hearing by the Department of Labor. KAR 51-9-17, release three standards for trading partner profiles; submission of data; first reports of injury.

A Committee member had a concern that it was required that all reports be forwarded electronically and this might prove burdensome for some small businesses. Mr. Castillo stated this information was provided by the workers compensation insurance carriers and not by the individual businesses. Mr. Karns stated, at present time, 50 percent of the reports are submitted electronically and 50 percent are paper copies. He stated this would be implemented in three phases. Each insurer shall be assigned to the first, second, or third period by the director. Staff noted, on page 2 (f), "on or before" should be changed to "on or after." Staff noted since this rule and regulation will become effective 15 days after publication, there needs to be clarification on the effective dates in subsection (g).

Chris Tymeson, Chief Counsel, was recognized by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Department of Wildlife, Parks and Tourism. KAR 115-9-8, migratory bird harvest information program; requirements, exemptions, and KAR 115-14-14, falconry; taking, banding, transporting, and possessing raptors.

The Committee had no questions for Mr. Tymeson.

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

Afternoon Session

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

The Chairperson welcomed Theresa Schwartz, Associate General Counsel, to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Regents (Attachment 5). KAR 88-3-8a, military personnel.

Ms. Schwartz stated the purpose of this rule and regulation is to mirror federal law by allowing in-state tuition to be made available, not only to those present in the state while serving, but also to those who may reside in another state but are assigned to a Kansas duty station.

Staff noted, on page 1, (a)(2)(C) would be clearer if changed to read "a person who: 1) is actively serving.... and; 2) either resides... ."

Chairperson Schmidt recognized Julene Miller, General Counsel, Board of Regents (Attachment 6); Sara Rosen, Senior Vice Provost for Academic Affairs; and Matt Melvin, Vice Provost for Enrollment Management, University of Kansas (Attachment 7), to address the proposed rules and regulations noticed for hearing by the Kansas Board of Regents. KAR 88-29-1, definitions; KAR 88-29-7, qualifications required for the admission of a nonresident who is under the age of 21; KAR 88-29-8, the exception window for resident freshman class admissions; KAR 88-29-8a, the exception window for resident transfer admissions; KAR 88-29-

8b, the exception window for nonresident transfer admissions; KAR 88-29-8c, the exception window for nonresident freshman class admissions; KAR 88-29a-1, definitions; KAR 88-29a-2, scope; KAR 88-29a-7, qualifications required for the admission of a nonresident who is under the age of 21; KAR 88-29a-8, the exception window for resident freshman class admissions; KAR 88-29a-8c, the exception window for nonresident freshman class admissions; KAR 88-29b-1, definitions; KAR 88-29b-2, scope; KAR 88-29b-3, categories of admission; KAR 88-29b-4, qualifications required for the admission of an applicant with 24 or more transferable college credit hours; KAR 88-29b-5, qualifications required for the admission of a Kansas resident who is under the age of 21; KAR 88-29b-6 qualifications required for the admission of a Kansas resident who is 21 or older; KAR 88-29b-7, qualifications required for the admission of a nonresident who is under the age of 21; KAR 88-29b-7a, qualifications required for the admission of a nonresident who is 21 or older; KAR 88-29b-8, the exception window for resident freshman class admissions; KAR 88-29b-8a, the exception window for resident transfer admissions; KAR 88-29b-8b, the exception window for nonresident transfer admissions; KAR 88-29b-8c, the exception window for nonresident freshman class admissions; KAR 88-29b-9, admission policies; and KAR 88-29b-10, methods for evaluating qualifications for admission.

Dr. Rosen and Dr. Melvin provided the Committee with information on the new standards of admission for the University of Kansas (KU) to become effective the summer of 2016. They believe these standards are designed to encourage student achievement and increase the number of students who go on to graduate from KU. These new standards of admission will benefit not only these students, but also the entire state.

Committee members had several questions concerning these new regulations and if they will have any effect on the other Board of Regents schools. Ms. Miller stated they had not heard complaints from any of the other schools. Staff had questions concerning the effective date and the expiration date for KAR 88-29 series. Staff suggested they may want to include an expiration or sunset date. Ms. Miller stated they would come back in and revoke these when new articles 88-29a and 29b become effective. In KAR 88-29-8, 8a, and 8b, staff suggested, in the paragraph (d), the phrase "an individual plan for success" be moved to follow "regulation to adopt." This would apply to similar provisions in 29a and 29b. The Committee had questions on how the effect of a definition of "state educational institution" in KAR 88-29a-1, differs from the definition in statute. This will have to be examined. The Committee members had concerns, since it had been the requirement that all state universities under the Board of Regents were to be consistent.

Cheryl Magathan was welcomed by the Chairperson to speak to the proposed rules and regulations noticed for hearing by the Real Estate Appraisal Board. KAR 117-20-3, registration renewal, and KAR 117-20-7, certification of annual review.

Ms. Magathan stated these rules and regulations had been before the Committee before and had a public hearing. Changes were recommended at the public hearing and the Board has made changes. There were no questions from the Committee.

Chairperson Schmidt recognized Sarah Byrne to address the proposed rules and regulations noticed for hearing by the Department of Revenue, Division of Alcoholic Beverage Control. KAR 14-13-1, definitions; KAR 14-13-2, application for retail liquor license; requirements, conditions, and restrictions on issuance of license; KAR 14-13-3, revocation; KAR 14-13-4, local occupation or license tax; display requirement; KAR 14-13-5, retailers; employees; roster; responsibility for conduct; KAR 14-13-6, change of location of business; KAR 14-13-7, licenses, loss or destruction of; duplicate license; KAR 14-13-8, transfer of retailer's stock of alcoholic liquor; application for permission; seizure and sale of abandoned alcoholic liquor; KAR 14-13-9, transactions prohibited; deliveries by retailer for sale or resale off licensed

premises; KAR 14-13-10, records of purchases and sales; retention of records; reports; KAR 14-13-11, revocation; KAR 14-13-13, prohibited conduct of retailer; KAR 14-13-15, "doing business as" names; KAR 14-13-16, tasting events; requirements; prohibitions; KAR 14-13-17, tasting events; supplier participation; requirements; prohibitions; and KAR 14-13-18, change of ownership; notice to director.

Ms. Byrne stated some of the rules and regulations were a result of Senate Sub. for HB 2689, which passed during the 2012 Legislative Session, allowing retail licensees to serve free samples of alcoholic liquor on the licensed premises and at adjacent premises. The agency took the opportunity to review other retail rules and regulations at the same time, since they had not been updated for some time.

Staff noted, in KAR 14-13-1, page 6, subsection (h), the term "mixer" had a very broad definition. In KAR 14-13-4, page 1, subsection (a), last line "local" should be inserted before "occupation" and also in subsection (b), line 3. In KAR 14-13-5, a question was asked about how long a roster had to be kept. It was stated records must to be kept three years. Ms. Bryne stated she would check the history section of this rule and regulation for authority regarding the roster. Staff noted, in KAR 14-13-9, a reference may need to be made to the Club and Drinking Establishment Act. In KAR 14-13-10, a Committee member noted, on page 3, in (e)(1), the word "but" should be changed to "and." In KAR 14-13-13, page 4, subsection (i) needs to be rewritten for clarification. The Committee had a detailed discussion about the distribution regarding mixed drinks at these tasting events as outlined in KAR 14-13-16. The ABC position is KSA 41-713 does not allow mixed drinks on a licensed premises, and it would take legislative action to change this. In KAR 14-13-16, staff noted the history section needs to be amended to add K.S.A. 2011 Supp. 75-5155. This also would apply to KAR 14-13-17. The Committee requested the letter state the Committee may take action to prepare a bill to change the statute.

Chairperson Schmidt recognized Tuck Duncan to speak in opposition to KAR 14-13-16 and KAR 14-13-17. Mr. Duncan stated, by not allowing mixed drinks to be served at the liquor stores, it defeats the purpose of the 2012 bill.

It was the consensus of the Committee that Mr. Wilke prepare a bill to clarify the definition of "mixed drinks" and where sampling can take place.

The next meeting was scheduled to be January 7, 2013. The Chairperson adjourned the meeting at 4:10 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Insurance Department. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning same, subrogation clause prohibited for certain coverages; insurance scoring, definitions, requirements; written notice to claimants of payment of claim in third-party settlements; and life insurance and annuities, recommendation standards. After discussion, the Committee had the following comment.

KAR 40-2-14a. The conferee noted that there may need to be major changes in this rule and regulation prior to its final adoption. If those major changes are indeed made, then the rule and regulation may need to be sent back through the process according to provisions of the Rules and Regulations Filing Act.

911 Coordinating Council. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning 911 federal grants, distribution. After discussion, the Committee had the following comment.

KAR 132-3-1. The Committee suggests that the reference made in paragraph (a)(2) include a reference to “2011 Supp.” in the reference to KSA 12-5365.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning general requirements for abortion reports. After discussion, the Committee had no comments.

Kansas Department of Health and Environment. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning authorization to disclose protected health information. After discussion, the Committee had the following comment.

KAR 28-75-100. The Committee suggests that the agency add a short title to this rule and regulation.

Kansas Department of Corrections. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning service fees; definitions; guidelines release date; awarding and withholding good time credits for incarcerated offenders; awarding, withholding, and restoring good time credits for offenders on supervised release; service of post release supervision revocation incarceration penalty period, awarding, withholding, and forfeiture of good time credits for offenders serving incarceration penalty period; good time forfeitures not restored, exceptions, limits, parole, guidelines release date, program credits, withholding of good time credits subject to restoration; program credits; jail credit time; prison service credit; maximum sentence credit; and jail sentence begins date. After discussion, the Committee had the following comments.

KAR 44-5-115. Paragraphs (b)(1) and (b)(3) of this proposed rule and regulation and proposed subsections KAR 44-6-115a(i) and KAR 44-6-125(g) refer to internal policies and procedures promulgated by the Secretary of Corrections. Testimony before the Committee indicated these policies and procedures were referenced as notification to interested parties. The Committee acknowledges that KSA 2011 Supp. 75-5251 specifically allows the Secretary of Corrections to adopt rules and regulations and policies for the direction and government of correctional institutions and their officers. However, the Committee believes such policies and procedures, if they are referenced in administrative rules and regulations, should be dated, adopted by reference, and available to the public and requests the agency take those actions. Also, this rule and regulation refers to “internal management policies and procedures,” and testimony indicated that is the term generally used by the agency. However, the term “internal policies and procedures” is used in proposed KAR 44-6-115a and KAR 44-6-125. The Committee requests a consistent term be used.

KAR 44-6-115a and 44-5-115b. Testimony related to changes to the amounts of good time credit that can be withheld indicated research supports those changes. The Committee requests additional information about that research, specifically whether research supports the specific changes proposed for the rules and regulations. Also, the Committee requests the agency review these proposed

rules and regulations for potential inconsistencies among amounts of good time credits to be awarded or withheld and for typographical errors.

KAR 44-6-115c. The Committee suggests the word “Kansas” be removed before “prisoner review board” in several instances in this proposed rule and regulation, to be consistent with the provisions of Executive Reorganization Order 34, issued in 2011.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning cattle (Trichomoniasis). After discussion, the Committee had the following comments.

KAR 9-7-4. In paragraph (b)(2), reference is made to a federal Animal and Plant Health Inspection Service (APHIS) document, but the language does not indicate where this document is adopted by reference. The Committee suggests such a reference be added. In paragraph (c)(1)(B), do the adoptions by reference of definitions create an unlawful delegation of authority from state to federal officials? The definition in 9 CFR 71.1 of “accredited veterinarian” includes a reference to 9 CFR Part 161. Is this portion of the Code of Federal Regulations adopted by reference elsewhere? If so, please add a cross reference to that adoption by reference. The Committee questions why in the provisions of (c)(1)(B) the kit to be used is mandated and named specifically rather than specifying standards for the test kit. The Committee notes the implicit agency endorsement of a particular brand of test kit is unusual. The Committee also is concerned that the requirement that the test be submitted to a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) may create an unlawful delegation issue. The Committee asks that the agency check to make sure that the term “accredited veterinarian” is used throughout the rule and regulation to match the defined term. Finally, the Committee suggests that the agency clarify in paragraph (c)(4)(C) whether the “seller” or the “buyer” is responsible for the expense for quarantining a bull until the bull is certified negative.

Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning licensure, plans and specifications, variances; food service and food safety; imminent health hazard; guest and public safety; guest rooms; dishware and utensils; housekeeping and laundry facilities, maintenance supplies and equipment; poisonous or toxic materials; exterior premises; swimming pools, recreational water facilities, and hot tubs; water supply systems; sewage systems; plumbing systems; heating, ventilation, and air conditioning (HVAC) systems; definition, specialized processing; fees, food processing plant; sidewalk or street display of food products, prohibitions; vehicles used in transportation; and revocations. After discussion, the Committee had the following comments.

KAR 4-27-4. The Committee suggests that this rule and regulation be modified to make it clear that the provision of food does not include prepackaged food and could be modified by the inclusion of “prepared” before the word “food.” In addition, the Committee believes that the statutory reference should be KSA 65-688 rather than KSA 65-689.

KAR 4-27-9. The Committee suggests there may be a conflict between (j)(1) and (j)(2). Please clarify.

KAR 4-27-16. The Committee suggests that the abbreviation “(RWF)” be placed after the term “recreational; water facilities” to clarify the use of the acronym “RWF” which is used throughout the rule and regulation.

KAR 4-28-32. The Committee believes that this rule and regulation is not complete since it does not indicate the conditions required to be met which would prevent the transported food from becoming adulterated. The current language is too subjective. Please review and amend as necessary.

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning military personnel. After discussion, the Committee had the following comment.

KAR 88-3-8a. The Committee suggests that on page 1, subparagraph (a)(2)(C), a clarification of the term “who” in the third line. One suggestion for clarification could include the following: “person who: (i) is actively serving in any armed service of the United States or the Kansas army or air national guard for 30 or more days immediately preceding enrollment; and (ii) either resides in Kansas or is assigned to a permanent duty station located in Kansas.”

Kansas Board of Regents. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; qualifications required for the admission of a nonresident who is under the age of 21; the exception window for resident freshman class admissions; the exception window for resident transfer admissions; the exception window for nonresident transfer admissions; the exception window for nonresident freshman class admissions; definitions; scope; qualifications required for the admission of a nonresident who is under the age of 21; the exception window for resident freshman class admissions; the exception window for nonresident freshman class admissions; definitions; scope; categories of admission; qualifications required for the admission of an applicant with 24 or more transferable college credit hours; qualifications required for the admission of a Kansas resident who is under the age of 21; qualifications required for the admission of a Kansas resident who is 21 or older; qualifications required for the admission of a nonresident who is under the age of 21; qualifications required for the admission of a nonresident who is 21 or older; the exception window for resident freshman class admissions; the exception window for resident transfer admissions; the exception window for nonresident transfer admissions; the exception window for nonresident freshman class admissions; admission policies; and methods for evaluating qualifications for admission. After discussion, the Committee had the following comments.

General: The Committee recommends the Board of Regents consider the use of the term “state educational institution,” particularly when the term is different from the statutory term, and whether the Board should consider use of an alternative term.

KAR. 88-29-1 and 88-29-7. The Committee suggests the Board of Regents consider the use of an expiration date or sunset for these regulations.

KAR 88-29-8; 8a; 8b; 8c; 29a-8; 8c; 29b-8; 8a; 8b; and 8c. The Committee suggests clarifying the language related to the “individual plan for success” making it clear that each individual student must adopt such a plan and such plan be reviewed.

KAR 88-29a-1. The Committee recommends that if the agency intends for this regulation's definitions to supersede and replace the definitions in KAR 88-29-1, consider adding the phrase "after the repeal of KAR 88-29-1" after "article 29" to ensure there is no overlap between the two sets of definitions.

KAR 88-29b. The Committee suggests that Regents institutions have the same opportunity, as the University of Kansas, to delineate admission requirements specific to each individual institution.

Kansas Real Estate Appraisal Board. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning registration renewal. After discussion, the Committee had no comments.

Kansas Department of Wildlife, Parks and Tourism. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning migratory bird harvest information program, requirements, exemptions; and falconry, taking, banding, transporting, and possessing raptors. After discussion the Committee had no comments.

Kansas Department of Revenue. Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning definitions; application for retail liquor license, requirements, conditions, and restrictions on issuance of license; local occupation or license tax, display requirement; retailers, employees, roster, responsibility for conduct; change of location of business; licenses, loss or destruction of, duplicate license; transfer of retailer's stock of alcoholic liquor application for permission, seizure and sale of abandoned alcoholic liquor; transactions prohibited, deliveries by retailer for sale or resale off licensed premises; records of purchases and sales, retention of records; prohibited conduct of retailer; "doing business as" names; tasting events, requirements, prohibitions; tasting events, supplier participation, requirements, prohibitions; change of ownership, notice to director; and revocations. After discussion, the Committee had the following comments.

KAR 14-13-1. The Committee thinks the definition of mixer in subsection (h) should, at a minimum, be clarified so that the liquid substance being used as a mixer can be consumed without harm to a human being.

KAR 14-13-4. The Committee suggests that the word "local" be placed before the word "occupation" in several places in this rule and regulation in order to make the wording consistent throughout the proposed rule and regulation.

KAR 14-13-5. The Committee suggests that reference to the agency's authority to require an employee roster be added to the history section. The Committee is also interested to know how long the rosters are kept.

KAR 14-13-9. The Committee suggests that reference be made to the corresponding defined terms in the club and drinking establishment act when reference is made to clubs, drinking establishments, and caterers.

KAR 14-13-10. In paragraph (e)(1) and (2), the Committee suggests the word "and" replace the word "but."

KAR 14-13-13. In paragraph (g)(2), the Committee suggests that language be amended so that the specialty items are examples. Specifically, the Committee suggests wording similar to the following "specialty items" including, but not

limited to, ashtrays, corkscrews, ... and other items of minimal value as approved by the director.” In addition, the Committee believes that subsection (i) is confusing, and the Committee suggests that the second “except” be replaced with “in accordance with the provisions of.”

Tasting Issue. The Committee believes that it was the intent of the Legislature to allow mixing of samples for tasting purposes on licensed retailer premises. From testimony of the conferee, the agency believes that this is not permitted under current law. The Committee has directed staff to begin the process of drafting legislation to change the provisions of the Liquor Control Act accordingly as well as address issues dealing with fines and penalties.

Kansas Department of Labor. The Joint Committee on Administrative Rules and Regulations reviewed for comment rules and regulations concerning release 3 standards for trading partner profiles, submission of data, first reports of injury. After discussion, the Committee had the following comments.

KAR 51-9-17. In subsection (f), the Committee believes the wording should be “on or after” rather than “on or before” in order to clarify that the initial compliance dates for reporting contained in paragraphs (g)(1)-(3) are the start of a continuous reporting period. The Committee believes that the requirement to file electronically may be a hardship for some businesses. The Economic Impact Statement does not estimate costs to small-volume reporters. The Committee requests information on those costs. Finally, the Committee questions the timing outlined in the rule and regulation and would like to know if this was proposed for the ease of the agency or if the timing benefits certain businesses.

Prepared by Judy Glasgow
Edited by Raney Gilliland and Jill Shelley

Approved by the Committee on:

January 7, 2013
(Date)