

**POLICY
AND
PROCEDURE
MANUAL**

FOR THE FILING OF



**KANSAS
ADMINISTRATIVE
REGULATIONS**

**DEPARTMENT OF ADMINISTRATION
TOPEKA, KANSAS 66612**

REVISED: May 2022

FOREWORD

This manual has been prepared in order to assist state agencies in the filing of regulations. The content has been a collective effort of the offices of the Secretary of Administration, the Attorney General, the Division of the Budget, and the Secretary of State, as well as staff for the legislative Joint Committee on Administrative Rules and Regulations.

The 2022 revision of the *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* includes references to amendments to the Rules and Regulations Filing Act through the 2022 Legislative Session.

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OVERVIEW

Regulations implement or interpret legislation administered by an agency. The statutory authority for an agency to adopt regulations is found in enabling legislation.

Statutory requirements for the filing of regulations by most executive branch agencies and for the legislative branch review of regulations are found in the Rules and Regulations Filing Act, K.S.A. 77-415 through 77-438.

There are two types of regulations: permanent and temporary. **A permanent regulation will take effect 15 days after publication in the *Kansas Register*.**

A temporary regulation may be authorized if preservation of the public peace, health, safety, or welfare makes it necessary or desirable to put a regulation into effect before a permanent regulation could take effect. See K.S.A. 77-422. **A temporary regulation takes effect and will remain effective for not more than 120 days, beginning on the date it is approved by the State Rules and Regulations Board and filed in the office of the Secretary of State. However, an agency may request one renewal of that temporary regulation, for a period of not more than 120 days.**

Due to K.S.A. 77-415 and other statutes specifically exempting a limited number of agencies from the requirements of the Rules and Regulations Filing Act, certain agencies have statutory authority to adopt regulations without complying with all requirements of the Rules and Regulations Filing Act.

The Joint Committee on Administrative Rules and Regulations (Joint Committee) is responsible for legislative oversight of regulations. All existing regulations, both permanent and temporary, are subject to review at any time by the Joint Committee. Additionally, the Joint Committee will review and comment on proposed regulations during the 60-day public comment period. See K.S.A. 77-436(c). Comments made by the Joint Committee regarding proposed

regulations should be considered with the same weight as that given to comments made by other individuals or organizations participating in the public comment and hearing process. See *State ex rel. Stephan v. House of Representatives*, 236 Kan. 45, 64 (1984). After permanent regulations are filed with the office of the Secretary of State, or temporary regulations are approved by the State Rules and Regulations Board and filed with the Secretary of State, the Joint Committee may again review the regulations. See K.S.A. 77-436(e).

SECTION 1

PROCESS FOR ADOPTING PERMANENT REGULATIONS

The consecutive steps involved in adopting any **permanent** Kansas Administrative Regulation (K.A.R.), whether new, amended, or revoked*, are as follows:

- (a) Obtain approval of the proposed regulations from the Secretary of Administration;
- (b) obtain approval of the proposed regulations from the Attorney General;
- (c) if required, obtain approval of the proposed regulations and the economic impact statement from the Budget Director. Otherwise, provide the Budget Director with a copy of the economic impact statement;
- (d) submit the notice of hearing, a copy of the proposed regulations as approved, the economic impact statement as approved, and the environmental benefit statement (if applicable) to the Secretary of State, and a copy of the notice of public hearing to the Chairperson, Vice-Chairperson, and Ranking Minority Member of the Joint Committee on Administrative Rules and Regulations and to the Kansas Legislative Research Department;
- (e) review the proposed regulations with the Joint Committee on Administrative Rules and Regulations;
- (f) hold the public hearing;
- (g) if applicable, “initiate new rulemaking proceedings” pursuant to K.S.A. 77-421(c);
- (h) as needed, revise the regulations and the economic impact statement and again obtain approval of the Secretary of Administration, the Attorney General, and, if required, the Budget Director;
- (i) adopt the regulations; and
- (j) file the regulations and associated documents with the Secretary of State.

*See K.S.A. 77-426, as amended by 2022 HB 2087, sec. 7, for an alternate process available when revoking regulations under certain conditions.

APPROVAL BY THE SECRETARY OF ADMINISTRATION, THE ATTORNEY GENERAL, and (if required) THE BUDGET DIRECTOR

(a) Submit a hard copy of the proposed regulations to the Secretary of Administration for review and approval as to organization, style, spelling, and grammar, subject to the requirements established by the Secretary in this manual. **Any document adopted by reference must be submitted with the proposed regulations. This requirement applies whether or not the document was previously adopted by reference in that regulation or a different regulation.**

Submit all proposed regulations to the following address:

Regulation Editor
c/o Department of Administration
Curtis State Office Building, Suite 500
1000 SW Jackson Street
Topeka, Kansas 66612

(b) After the proposed regulations are approved by the Secretary of Administration, submit the hard copy (original, as approved by the Secretary of Administration) of the proposed regulations to the Attorney General for review and approval as to legality. See K.S.A. 77-420. **Any document adopted by reference must be submitted with the proposed regulation. This requirement applies whether or not the document was previously adopted by reference in that regulation or a different regulation.**

The address of the Attorney General is as follows:

Office of the Attorney General
c/o LOGIC Division
Memorial Hall, Second Floor
120 SW 10th Avenue
Topeka, Kansas 66612-1597

(c) If required, submit the proposed regulations and the economic impact statement to the Budget Director for review and approval. Otherwise, provide the Budget Director with a copy of the economic impact statement.

Division of the Budget
Landon State Office Building, Room 504-N
900 SW Jackson Street
Topeka, Kansas 66612
Telephone: 785-296-2436

If approved, each page of a regulation will be stamped and dated, first by the Secretary of Administration, then by the Attorney General, and, if required, by the Budget Director. If a page is approved by the Secretary of Administration but is not approved by the Attorney General and then the regulation is revised as required by the Attorney General, the agency must resubmit that particular page, **along with a copy of the previously approved page showing the prior approval stamp**, to the Secretary of Administration for review and reapproval. The Attorney General will stamp only regulations that have already been stamped by the Secretary of Administration.

ECONOMIC IMPACT STATEMENT

(a) At the time of drafting a proposed regulation or amendment to a regulation, prepare a statement of the economic impact of the proposed regulation. An economic impact statement is required for new regulations, amended regulations, and revoked regulations. An economic impact statement is required for each proposed regulation unless it is part of a set of related regulations. In this case, a single economic impact statement may be developed for each set of related regulations. The economic impact statement must include the following items:

- (1) An analysis, a brief description of the proposed regulation, and a cost and benefit quantification of the proposed regulations and their intended effect. If the approach chosen by the Kansas agency to address the policy issue is different from that utilized by agencies of contiguous states or of the federal government, the economic impact statement shall include an explanation of why the Kansas agency's regulations differ;
- (2)(A) Whether the proposed regulations are mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program; and
- (B) whether the proposed regulations exceed the requirements of applicable federal law;

and

- (3) an analysis specifically addressing the following factors:
- (A) The extent to which the regulations will enhance or restrict business activities and growth;
 - (B) the economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, business sectors, public utility ratepayers, individuals, and local governmental units that will be affected by the proposed regulations and on the state economy as a whole;
 - (C) the businesses that would be directly affected by the proposed regulations;
 - (D) the benefits of the proposed regulations compared to the cost;
 - (E) measures taken by the agency to minimize the cost and impact of the proposed regulations on business and economic development within Kansas, local government, and individuals; and
 - (F) an estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred or passed along to businesses, local governmental units, or members of the public and a determination of whether those costs will exceed \$1,000,000 over any two-year period from April 28, 2022 through June 30, 2024 OR \$3,000,000 over any two-year period on and after July 1, 2024.

See K.S.A. 77-416.

The economic impact statement for “environmental rules and regulations” must also contain several additional items. (See page 12.)

- ❑ The economic impact statement is often of great interest to parties affected by the regulation, as well as to the Joint Committee on Administrative Rules and Regulations. Moreover, the process of evaluating the economic impact of a proposed regulation may reveal significant policy issues that agencies need to consider before the regulations are in final form. Therefore, agencies should take care in developing economic impact statements so that they are as comprehensive and informative as possible, given data that is available to the agency.
- ❑ Think broadly when trying to identify potential economic impacts of proposed regulations. Consider whether or not there are less obvious, indirect economic impacts or hidden costs. For example, the economic impact of an increase in the number of continuing education units required for renewal of a license would clearly involve registration costs for the additional training. However, the increase in required continuing education is likely to have a number of other less obvious costs, including travel costs and lost productivity due to time away from work.

(b)(1) When preparing the economic impact statement for a proposed regulation, determine whether or not the regulation would have any of the following effects:

- (A) Increases or decreases revenues of cities, counties, or school districts; or
- (B) imposes functions or responsibilities on cities, counties, or school districts that will increase their expenditures or fiscal liability.

If the regulation will have either of these effects, consult with the League of Kansas Municipalities, the Kansas Association of Counties, and the Kansas Association of School Boards, as appropriate, when preparing the economic impact statement.

The agency shall consult and solicit information from businesses, business associations, local governmental units, state agencies or institutions, and members of the public that may be affected by the proposed regulations or that may provide relevant information. See K.S.A. 77-416.

(2) Consider maintaining some documentation of the consultation, along with the other documents related to adoption of the regulations. K.S.A. 77-416 does not set out a particular method or procedure for the required consultation. It appears that, as long as advice or information from the appropriate entity is sought, reasonable time is afforded for response, and the response is considered by the agency, the agency has discretion in determining the procedure for meeting statutory requirements. One

method for complying with this requirement may be to mail or fax a copy of the proposed economic impact statement, the proposed regulations, or both to the League of Kansas Municipalities, Kansas Association of Counties, or Kansas Association of School Boards, as appropriate, along with a request for an oral or written response by a certain date. In this way, a record will be made of the consultation.

The addresses of those organizations follow:

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| <p>League of Kansas Municipalities 300 SW 8th Ave., Suite 100 Topeka, Kansas 66603 Phone #: (785) 354-9565 Fax #: (785) 354-4186</p> <p>Kansas Association of Counties 300 SW 8th Ave., Suite 300 Topeka, Kansas 66603 Phone #: (785) 272-2585 Fax #: (785) 272-3585</p> <p>Kansas Association of School Boards 1420 SW Arrowhead Rd. Topeka, Kansas 66604 Phone #: (785) 273-3600 Fax #: (785) 273-7580</p> |
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(c) In preparing the economic impact statement for any regulation, agencies may consult with other state agencies.

(d) Following the public hearing, update the economic impact statement to include a statement specifying the time and place at which the public hearing was held and the number of persons attending the hearing. A list of those attending the public hearing should not be attached to the economic impact statement but should be retained by the agency.

The State Rules and Regulations Board, Joint Committee on Administrative Rules and Regulations, or the chairperson of either the Committee or the Board may request the Director of the Budget to review the economic impact statement of any regulation and to submit a revised or supplemental statement.

Each statement prepared by the Director is to include, if possible, the following estimates:

(1) Dollar estimates of anticipated changes in revenues and expenditures of the state that are attributable to implementation of the regulation; and

(2) an estimate of the immediate and the long-range economic impact of the regulation on persons subject to the regulation and the general public. If no dollar estimate is possible, the statement must include the reasons why a dollar estimate is not provided.

ENVIRONMENTAL BENEFIT STATEMENT

(a) Certain regulations that meet the definition of “environmental rule and regulation,” as defined in K.S.A. 77-415, are subject to specialized adoption requirements. “Environmental rule and regulation” means a regulation that meets one of the following criteria:

(1) It is adopted by the Secretary of Agriculture, the Secretary of Health and Environment, or the State Corporation Commission and has as a primary purpose the protection of the environment.

(2) It is adopted by the Secretary of Wildlife and Parks and relates to threatened species or endangered species of wildlife, as defined in K.S.A. 32-958.

(b) At the time of drafting a proposed environmental regulation or an amendment to such a regulation, prepare a statement of the environmental benefit of the regulation. The environmental benefit statement must include a description of the need for the regulation and the environmental benefits that are likely to accrue as a result of the regulation. This description must include the following elements:

(1) A summary of any applicable research indicating the level of risk to the public health or the environment that is to be removed or controlled by the regulation; and

(2) if applicable, an indication of the level at which specific contaminants controlled by the

regulation are considered to be harmful according to currently available research.

The state agency may consult with other state agencies when preparing the environmental benefit statement.

(c) Reevaluate and, when necessary, update the environmental benefit statement at the time of giving notice of hearing on a proposed regulation and at the time of filing a regulation with the Secretary of State. Make a copy of the current environmental benefit statement available upon request by any interested party.

(d) The economic impact statement for environmental regulations must include several elements in addition to those required for all regulations. The economic impact statement for environmental regulations must include the following additional information:

(1) A description of the capital and annual costs of compliance with the proposed regulations;

(2) a description of the persons who will bear the capital and annual costs of compliance;

(3) a description of the initial and annual costs of implementing and enforcing the proposed regulations, including the following:

(A) A description of the estimated amount of paperwork; and

(B) a description of the state agencies, other governmental agencies, or other persons or entities who will bear the costs;

(4) a description of the costs that would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs, and those who will be affected by the failure to adopt the regulations; and

(5) a detailed statement of the data and methodology used in estimating the costs used in the statement.

PRIVATE PROPERTY PROTECTION CONSIDERATIONS

(a) The Private Property Protection Act establishes requirements for evaluating proposed regulations. See K.S.A. 77-701 et seq. The Private Property Protection Act is intended to reduce the

risk of undue or inadvertent burdens on private property rights resulting from certain lawful governmental actions.

(b) The Attorney General has established guidelines to assist state agencies in evaluating proposed governmental actions and in determining whether or not such actions may constitute a “taking.” The guidelines were published in the *Kansas Register*, Vol. 14, No. 51, p. 1690 (Dec. 21, 1995) and were based on current law as articulated by the United States Supreme Court and the Supreme Court of Kansas. Updates to these guidelines are published annually in the *Kansas Register*.

(1)(A) “Governmental action” means any of the following actions by a state agency that may constitute a taking:

- (i) Proposed legislation;
- (ii) proposed regulations or directives; or
- (iii) proposed agency guidelines and procedures concerning the process of issuing licenses or permits.

(B) “Governmental action” does not include the following:

- (i) Any activity in which the power of eminent domain is formally exercised;
- (ii) the repeal of regulations, elimination of governmental programs, or amendment of regulations, such that limitations on the use of private property are reduced or removed;
- (iii) law enforcement activities involving seizure or forfeiture of private property for violations of law or as evidence in criminal proceedings; and
- (iv) any state agency action, authorized by statute or by valid court order, in response to a violation of state law.

(2) “Private property” means any real property or interest arising from or relating to any real property in this state that is protected by the 5th or 14th Amendment of the Constitution of the United States or Section 18 of the Bill of Rights of the Constitution of the State of Kansas.

(3) “Take” or “taking” means that, due to a governmental action, private property is taken or its

use is restricted or limited by a governmental action such that compensation to the owner of the property is required by the 5th or 14th Amendment of the Constitution of the United States or Section 18 of the Bill of Rights of the Constitution of the State of Kansas.

(c) Each state agency must adhere to guidelines developed by the Attorney General regarding promulgation of regulations. Before any “governmental action” that may constitute a taking is initiated, the state agency must prepare a written report that follows the guidelines established by the Attorney General and make the report available for public inspection. Therefore, whenever an agency drafts any regulation, the regulation will need to be evaluated in light of the Attorney General's guidelines to determine whether or not the proposed regulation would be a “governmental action” that may constitute a taking. If the regulation does constitute a “governmental action” that may result in a taking, the agency must prepare a report that complies with the following, when applicable:

- (1) Clearly and specifically identifies the public health, safety, or welfare risk created by the use of the private property;
- (2) describes the manner in which the proposed regulation will substantially advance the purpose of protecting public health, safety, or welfare against the specifically identified risk;
- (3) sets forth the facts relied upon to establish and justify the need for the restrictions or limitations;
- (4) analyzes the likelihood that the regulation that constitutes a governmental action may result in a taking;
- (5) identifies any alternatives to the proposed regulation that may accomplish the following objectives:
 - (A) Fulfill the legal obligations of the state agency;
 - (B) reduce the extent of limitation of the use of the private property; and
 - (C) reduce the risk to the state that the action will be deemed a taking; and
- (6) demonstrates that any conditions imposed on issuing a permit relate directly to the public

health, safety, or welfare purpose for which the permit is to be issued, substantially advance that purpose, and are authorized by law.

(d) The agency must submit the report regarding the regulation constituting a governmental action to the Governor and the Attorney General prior to implementing the regulation and to the Secretary of State at the time of filing the adopted regulation. See K.S.A. 77-706.

(e) If there is an immediate threat to public health, safety, or welfare that constitutes an emergency requiring immediate action to eliminate the risk, the report must be prepared when the emergency action is completed, in which case the report must include a complete description of the facts relied upon by the agency in declaring the need for emergency action.

NOTICE OF PUBLIC HEARING

(a) After the regulation has been approved by the Secretary of Administration, the Attorney General, and (if required) the Budget Director, publish the notice of the public hearing in the *Kansas Register* **at least 60 days** in advance of the hearing. See K.S.A. 77-421. Publication of the notice in the *Kansas Register* constitutes notice to all parties affected by the regulations. Hearing dates should be scheduled to allow adequate time following the hearing to make any necessary revisions and to obtain approval of those revisions from the Secretary of Administration, the Attorney General, and (if required) the Budget Director.

(b) The notice of public hearing must include the following:

(1) Each regulation number, whether new, amended, or revoked, and a summary of the substance of the proposed regulations;

(2) a summary of the economic impact statement, indicating the estimated economic impact on the following:

(A) Governmental agencies or units;

(B) persons subject to the proposed regulations; and

(C) the general public;

- (3) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed regulations;
- (4) the address where a complete copy of the proposed regulations, the complete economic impact statement, and if applicable, the complete environmental benefit statement may be obtained. Include an electronic-mail address or Web site address, or both;
- (5) the date (month, day, and year), time, and place of the public hearing and the manner in which interested parties may present their views; and
- (6) a specific statement that the 60-day notice period constitutes a public comment period for the purpose of receiving written public comments on the proposed regulations and the address where such comments may be submitted.

In addition, provide the name and title of the agency head and the agency address.

- (c) In addition to these statements, ensure that your notice of public hearing is consistent with the requirements of the federal Americans with Disabilities Act (ADA) and the Kansas Architectural Accessibility Standards Act. (See page 19.)
- (d) The *Kansas Register* is published each Thursday. Submit the notice of public hearing to the Secretary of State within a reasonable period of time in advance of the desired publication date. A notice of public hearing that is under five pages in length must be submitted not later than **noon Wednesday**, eight days before publication. Generally, notice documents that are five pages or more in length should be submitted before 5:00 p.m. on the Monday 10 days before the desired publication date. Only one copy of the notice document should be submitted. In addition, please e-mail the notice in Word format to Lara.Murphy@ks.gov and also to kansasregister@ks.gov. Please note that no submission to the Secretary of State is considered filed until the Secretary of State has received the **paper** copies of all required documents.

The fee for publication in the *Kansas Register* is \$7.00 per column inch. The agency will receive a bill after publication of its public hearing notice. Further information about *Kansas Register*

publication requirements can be obtained by contacting the office of the Secretary of State at the following address:

Lara Murphy
Publications Editor
Secretary of State
Memorial Hall
120 SW 10th Ave.
Topeka, Kansas 66612-1594
Phone #: (785) 296-0082

(e) The following documents must accompany the notice of public hearing sent to the Secretary of State:

- (1) One complete copy of the proposed regulations; and
- (2) one copy of the complete economic impact statement.

(f) At the time of submitting the notice, the proposed regulations, and the economic impact statement to the Secretary of State, provide a copy of the notice of public hearing to the Chairperson, the Vice-Chairperson, and the Ranking Minority Member of the Joint Committee on Administrative Rules and Regulations and to the designee of the Director of the Kansas Legislative Research Department. See K.S.A. 77-421.

Here is the address of the Kansas Legislative Research Department:

Kansas Legislative Research Department
State Capitol, Room 68-W
Topeka, Kansas 66612

(g) As soon as possible after proposed regulations are submitted to the Secretary of State with the notice of public hearing, the Secretary of State will send the regulations and economic impact statement to the Joint Committee on Administrative Rules and Regulations. Therefore, there is no need for the agency to send to the Chairperson of the Joint Committee a set of the regulations and the economic

impact statement.

(h) The Secretary of State will maintain the proposed regulations and the economic impact statement on file for the duration of the public comment period. Following the 60-day comment period, they may be discarded.

PUBLIC NOTICE AND HEARING; GUIDELINES REGARDING ADA COMPLIANCE

In order to comply with Title II of the Americans with Disabilities Act (ADA) and the Kansas Architectural Accessibility Standards Act while in the process of adopting regulations under K.S.A. 77-421 et seq., the following guidelines apply.

(a) Ensure that the location of public hearings is physically accessible to individuals with disabilities, including the hearing room, parking, entrances, drinking fountains, and rest rooms.

(b) Designate a responsible person in your agency who will be the contact person for any requests for accommodation that may arise during the process of adopting the regulations.

(c) Include the following statement or its equivalent in the notice of hearing published in the *Kansas Register*:

“Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting _____, at _____.”

(d) In addition to the phone number of the contact person, include in the statement the agency's TTY number, if available, or the number of the Kansas Relay Center (1-800-766-3777). As a courtesy, consider including a statement identifying the location of accessible parking and accessible entrances for individuals with disabilities.

(e) The Secretary of State will make the *Kansas Register* available in an accessible format upon request of an individual with a visual impairment so that the notice of hearing will be accessible.

(f) Be prepared to arrange for resources necessary to make requested accommodations, which might include an interpreter during the public hearing for hearing-impaired individuals or, for those with visual impairments, large-print or taped versions of the regulations, economic impact statements, and other supplemental written materials. Be sure that the contact person ascertains the specific type of accommodation requested. For example, a hearing-impaired individual may prefer a specific type of sign language. Some types of accommodations may be available within the agency. The agency may be able to make the following accommodations:

- (1) Provide a reader;
- (2) make a tape of written documents;
- (3) convert documents to large print using a larger font (14-point) on a word processing program; or
- (4) enlarge documents on a copier.

In other instances, the agency will need to be prepared to make arrangements for accommodations using resources outside of the agency. A list of individuals and organizations that can provide information regarding available resources follows. It may also be helpful to note that the Kansas Relay Center can be accessed for assistance in communicating over the telephone with individuals with a hearing or speech impairment or both. (Dial 1-800-766-3777.)

ACCOMMODATIONS RESOURCE LIST

General Information and Assistance

Anthony A. Fadale, State ADA Coordinator
Kansas Department for Children and Families
Administration Building
555 S. Kansas Ave., 1st floor
Topeka, Kansas 66603
Phone #: (785) 296-1389 / FAX #: (785) 296-4960
Anthony.Fadale@ks.gov

Interpreters for Hearing-Impaired Individuals

Kansas Commission for the Deaf and Hard of Hearing
Kansas Department for Children and Families
Administration Building
555 S. Kansas Ave., 3rd floor
Topeka, Kansas 66603
Phone #: (785) 368-8034 OR 1-800-432-0698
Fax #: (785) 368-7467

Telephone Relay Services

Kansas Relay Center
1-800-766-3777

Braille

See Appendix F

Recording Print Materials

You may wish to use your agency's staff to record materials.
See Appendix F for additional resources.

Large-Print Materials

You may be able to produce large-print materials by using a larger font on
your word processor or by enlarging them on your copier.

(g) The general rule under the ADA is that all communications between public entities and the public must be accessible to people with disabilities. Subpart E of the Justice Department's Title II regulations (28 C.F.R. 35.160) says that, in a public entity's programs and activities, communications with persons who have a disability must be as effective as communications with persons who do not have disabilities. The Title II regulations do not specify how a public entity must ensure accessible communication.

(h) In the preamble to Title II, the Justice Department interprets auxiliary aids and services to be those aids and services designed to provide effective communication or, in other words, to make aurally and visually delivered information available to persons with hearing, speech, and vision impairments. In determining which aids would be most appropriate, the state agency should give

primary consideration to the request of the individual with the disability.

PUBLIC COMMENT PERIOD

- (a) Upon receiving a notice of public hearing from an agency, the Joint Committee on Administrative Rules and Regulations will schedule a review of the proposed regulations during the 60-day public comment period. As part of the review, the Joint Committee will give the agency an opportunity to explain the proposed regulations and consider other supporting or opposing statements. This review will form the basis of any public comments submitted to the agency by the Joint Committee.
- (b) Following the review and before the end of the 60-day comment period, the Joint Committee will send to the agency any written comments it has regarding the proposed regulations or an acknowledgment that the committee has reviewed the proposed regulations without comment.

When reviewing proposed regulations, the Joint Committee is participating in the public comment period, rather than carrying out its legislative oversight responsibilities. Therefore, comments made by the Joint Committee regarding proposed regulations should be considered with the same weight as that given to comments made by other individuals or organizations participating in the public comment process.

- (c) If the proposed regulations are adopted, maintain any written comments submitted during the public comment period for not less than three years after the effective date of the regulations. See K.S.A. 77-421(d). Pursuant to K.S.A. 77-421(b)(1), “prepare a concise statement of the principal reasons for adopting the rule and regulation...” (There is no submission requirement for this document.)

REVIEW BY THE JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

- (a) The Joint Committee on Administrative Rules and Regulations will review regulations before they are adopted (during the public comment period) and may also review the regulations following their adoption. See K.S.A. 77-436.

(1) The Joint Committee will provide **comments** to the agency about **proposed** regulations and may state **concerns** about **adopted** regulations. (See page 22 for more information on reviews by the Joint Committee during the public comment period.) Following its review of proposed regulations, the Joint Committee forwards a letter to the agency identifying any comments it has regarding the proposed regulations and requesting that the agency provide a written response at the time regulations are filed with the Secretary of State. The agency's response to the Joint Committee should include the following information:

- (A) A summary of comments made by the committee, individuals, and organizations;
- (B) the agency's response to those comments; and
- (C) changes made to the regulations following the hearing.

(2) Each permanent regulation filed with the Secretary of State will be submitted to the Joint Committee for review. At that time, the Joint Committee will consider the agency's written response to comments and its summary of changes to the regulation. The Joint Committee may then choose to evaluate the adopted regulation based solely on the written response, or it may elect to schedule a hearing on the regulations. If a hearing is held, the Joint Committee gives the agency involved an opportunity to explain and justify its regulations. The Joint Committee may consider supporting or opposing statements from other parties.

(b) After reviewing the agency's written response or holding a hearing on the regulations, the Joint Committee may choose to recommend modification or revocation of a regulation.

(1) The Joint Committee may choose to express its concerns through minutes adopted by the Joint Committee. A copy of the minutes in which the concerns identified by the Joint Committee are listed will be forwarded to the agency for a response. After considering the concerns expressed by the Joint Committee, the agency should prepare a letter in which it identifies those changes suggested by the Joint Committee that it will adopt, if any, and the time frame in which the agency plans to make the changes. If the agency does not concur with the concerns of the Joint Committee, the letter should

include an explanation of its position. If the agency does not respond positively to the recommendations of the Joint Committee, as contained in the statement of concerns, the Joint Committee may recommend some other action it believes appropriate, through introduction of a concurrent resolution or a bill.

(2) The Joint Committee may choose to recommend statutory changes that would redefine the scope of an agency's authority to adopt regulations, revise the substantive law in a way that requires amendments to the regulations, or establish other statutory provisions or directions for the regulations.

PUBLIC HEARING

(a) Hold a public hearing on the date stated in the notice. Circulate a sign-in sheet for all those who attend the public hearing so that the agency has a record of the number of individuals in attendance. Explain to all who attend the hearing the details of the proposed regulation and, if requested to do so, prepare a concise statement of the principal reasons for adopting the regulation. All interested parties must be given a reasonable opportunity to present their views on the regulation, either orally or in writing.

(b) If an agency receives comments about the proposed regulation before the public hearing, including comments from the Joint Committee on Administrative Rules and Regulations, the agency may determine before the hearing that the regulations will be revised before adoption. In this case, it may be helpful to orally summarize the comments and anticipated revisions during the hearing.

However, agencies must wait until AFTER the public hearing to submit any revisions to the Secretary of Administration, the Attorney General, and (if required) the Budget Director for approval.

(c) During the hearing, keep written minutes or other records, which may include sound recordings or electronically accessed media. If the proposed regulation is adopted and takes effect, maintain the following documents for not less than three years after the effective date of the

regulation, pursuant to K.S.A. 77-421:

- (1) The written minutes or other records, including a copy of the regulations as they were presented at the public hearing;
- (2) the list of all persons who appeared at the hearing and whom they represented;
- (3) any written testimony presented at the hearing; and
- (4) any written comments submitted during the 60-day public comment period.

ADOPTION OF REGULATIONS

(a) If deemed appropriate, make changes in the proposed regulation based on the comments received at the public hearing. Each change must be processed through the offices of the Secretary of Administration, the Attorney General, and (if required) the Budget Director as explained on page 6. Adequate time should be allowed after the public hearing for these reapprovals.

If an agency elects to make posthearing changes that meet the criteria specified in K.S.A. 77-421(c), “[t]he agency shall initiate new rulemaking proceedings...” pursuant to K.S.A. 77-421(a)(4).

(b) Formally adopt the regulation. Agencies headed by an individual accomplish this through a written declaration of adoption signed by the agency head. Agencies headed by a board or commission must adopt a regulation upon a certified roll call vote at an open meeting of the body. A regulation is adopted only upon a majority vote of the total membership of the adopting commission or board. See K.S.A. 77-421.

Open Meetings for Adoption of Regulations

- ❑ Upon request of any person, agencies headed by a board or commission must provide notice of the meeting at which the regulations will be adopted and a copy of the agenda, if any, relating to the business to be transacted at the meeting.
- ❑ Public meetings may be held by telephone conference call when arrangements are made so that members of the public can effectively hear the proceedings.
- ❑ No binding action can be taken by secret ballot.
- ❑ The requirements for holding an open meeting are set out in the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 et seq. Agencies may consult with the Attorney General regarding questions about open meetings.

(c) If an agency needs to adopt regulations to implement new legislation, the agency may complete all of the steps **other than adoption and filing with the Secretary of State** before the legislation takes effect. However, the formal adoption cannot occur until the effective date of all statutes authorizing the regulations. See K.S.A. 77-420a.

(d) Pursuant to K.S.A. 77-421(b)(1), “[a]t the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including...” See K.S.A. 77-421(b)(1)(A) and (B).

FILING REGULATIONS WITH THE SECRETARY OF STATE

- (a) File with the Secretary of State the following documents:
 - (1) The original and one copy of each permanent regulation adopted;
 - (2) one copy of each of the following:
 - (A) The updated economic impact statement, including a statement of the time and place of the public hearing and the number of individuals who attended the hearing. The sign-in sheet from the public hearing should **not** be filed with the Secretary of State;
 - (B) the environmental benefit statement, if applicable; and
 - (C) the takings assessment required under the Private Property Protection Act, if applicable;

and

- (3) the original written declaration of adoption or a certified copy of the roll call vote.

File regulations and associated documents by submitting them to the following address:

Lara Murphy
Publications Editor
Secretary of State
Memorial Hall
120 SW 10th Ave.
Topeka, Kansas 66612
Phone #: (785) 296-0082
Lara.Murphy@ks.gov

- (b) Provide any regulations to the Secretary of State in electronic Word format (with each regulation in a separate Word document, except for multiple revocations on the same page), in addition to the stamped original and one paper copy that are required to be filed. For new regulations and revoked regulations, be certain that the version submitted electronically is identical to the version approved by the Secretary of Administration, the Attorney General, and (if required) the Budget Director, formally adopted by the agency head, and filed with the Secretary of State. However, in the electronic Word document for each **amended** regulation, delete the stricken text and remove the underlining from the new text. Please note that no submission to the Secretary of State is considered filed until the Secretary of State has received the **paper** copies of all required documents. In addition, provide the name and title of the agency head and the agency address.

Effective July 1, 2001, K.S.A. 77-416 was amended to eliminate the requirement that the agency file with the Secretary of State a copy of any document adopted by reference in the regulations filed with the Secretary. However, agencies are still required to provide a copy of each document adopted by reference to the Secretary of Administration and the Attorney General when the regulation is submitted for their review and approval. Moreover, agencies must continue to make a copy of the document adopted by reference available upon request of any person.

**PUBLICATION OF REGULATIONS IN THE *KANSAS REGISTER*; EFFECTIVE DATE FOR
PERMANENT REGULATIONS**

- (a) The Secretary of State will publish in the *Kansas Register* the full text of all regulations adopted and filed in accordance with the Rules and Regulations Filing Act.
- (b) Each permanent regulation filed with the Secretary of State will take effect 15 days after it is published in the *Kansas Register*. See K.S.A. 77-426. As the *Kansas Register* is published each Thursday, the 15th day after publication in the *Kansas Register* will always fall on a Friday. Therefore, permanent regulations generally take effect on the third Friday following publication in the *Kansas Register* or on a later date stipulated in the body of the regulation.
- (c) In order to estimate when a permanent regulation will take effect, agencies will also need to be aware of *Kansas Register* publication deadlines for permanent regulations. The publication date is determined by the length of the regulations and the date they are filed with the Secretary of State's office. Upon filing, the regulations must be typeset by staff at the Secretary of State's office and proofread by the *Kansas Register* staff before publication in the *Kansas Register*. The date of publication will be determined at the time the agency files its permanent regulations with the Secretary of State. All regulations are published in as timely a manner as possible. Following publication, the agency will receive a bill for the publication fee, which is \$7.00 per column inch.
- (d) The Secretary of State may authorize an agency to publish a summary of any regulation or group of regulations that is lengthy and expensive to publish. See K.S.A. 75-430(a)(5). In deciding whether or not to publish regulation summaries, the Secretary of State will determine whether or not the regulations meet all of the following conditions:
- (1) The regulations are arcane or highly technical.
 - (2) The regulations are very lengthy and expensive to publish.
 - (3) The regulations are available in published form.
 - (4) The summaries sufficiently notify the public about the contents of the regulations.

Detailed guidelines for publishing summaries of regulations can be obtained from the Secretary of State's office. A request to publish summaries should be made at the time of filing the regulations with the Secretary of State. Agencies should be aware that they will still be responsible for the cost of typesetting and proofreading the full text of the regulations for publication in the K.A.R. volumes.

(e) All permanent regulations that appear in the *Kansas Register* will eventually be incorporated into the K.A.R. volumes. **Each agency needs to review the publication of its regulations in the *Kansas Register* for accuracy and notify the Secretary of State's office of any errors to ensure that the regulations are corrected before they are published in the K.A.R. volumes.** Each agency should also review the publication of its regulations in the **subsequent K.A.R. volumes, including the K.A.R. Supplement, and notify the Secretary of State's office of any errors in the published version.**

(f) See K.S.A. 45-403 for the retention requirements governing each agency's regulations.

Questions about *Kansas Register* publication deadlines, fees, or other policies regarding rules and regulations may be directed to the following address:

Lara Murphy
Publications Editor
Secretary of State
Memorial Hall
120 SW 10th Ave.
Topeka, Kansas 66612
Phone #: (785) 296-0082

TIMELINE FOR PERMANENT REGULATIONS

The following guide will help each agency plan how much time it will need to allot to each phase of the actual filing process within that agency's time frame.

(a) Agencies are encouraged to begin the drafting and review process as soon as it becomes evident that regulations must be adopted. If the authorizing or implementing statutes are new, the regulations

can be adopted and filed as soon as the statutes take effect, as specified in the bill. Many statutes take effect when the bill is published in the *Kansas Register*.

(b) Prepare the economic impact statement and, if appropriate, an environmental benefit statement and a “takings assessment.” (See pages 8, 12, and 13.) If desired or required, consult with the League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Association of School Boards, or other state agencies in preparing the economic impact statement. (See pages 10-11.)

(c) Submit a hard copy of each proposed regulation to the Secretary of Administration for review and approval. Generally, allow several weeks for possible changes and revisions. The length of time that it takes to review regulations will vary, depending on the number of regulations submitted, the length of the regulations, the type of regulations (whether new, amended, or revoked), the amount of time since the regulations were last amended or were in effect, and the number of regulations submitted by other agencies. Particularly lengthy, complex, or poorly drafted regulations require additional time to review, revise, and obtain approval. Generally, regulations will be reviewed in the order received.

(d) Submit the hard copy (original, as approved by the Secretary of Administration) of each proposed regulation to the Attorney General. Generally, allow several weeks for possible changes and revisions.

(e) If required, submit the hard copy (original, as approved by the Secretary of Administration and the Attorney General) of each proposed regulation and the economic impact statement to the Budget Director for approval. Otherwise, provide a copy of the economic impact statement to the Budget Director. (See Section 5.)

(f) Submit one paper copy of each of the following to the Secretary of State: the notice of public hearing, the proposed regulations, and the economic impact statement. Please provide the name and title of the agency head and the agency address. In addition, submit the notice of public hearing in Word format. If the notice of public hearing is less than five pages in length, it must be submitted not later than **noon** of the **Wednesday** eight days before publication. Generally, notices that are five pages or more in length should be submitted by 5:00 p.m. of the **Monday** 10 days before publication.

(g) Notice of the public hearing must be given at least 60 days before the hearing date. The *Kansas Register* is published each Thursday. Therefore, the first working day that meets the 60-day notice requirement will be the Monday that occurs 61 days following publication of the notice.

(h) Hold the public hearing, and keep either a sound or video recording or minutes of the proceeding. Following the public hearing, allow time to make any changes to the regulations deemed advisable and time for approval of revised pages by the Secretary of Administration, the Attorney General, and (if required) the Budget Director. Several weeks may be required, depending upon the extent of changes. If an agency elects to make posthearing changes that meet the criteria specified in K.S.A. 77-421(c), “[t]he agency shall initiate new rulemaking proceedings...” pursuant to K.S.A. 77-421(a)(4).

(i) Update the economic impact statement to reflect the date, time, and place of the hearing, the number of individuals in attendance, and any revisions to required information. If appropriate, update any environmental benefit statement or takings assessment associated with the regulation. Adopt the regulations. Agencies headed by a board or commission will need to coordinate completion of other steps in the process with scheduled meetings of the board or commission. Pursuant to K.S.A. 77-421(b)(1), “prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including...” (There is no submission requirement for this document.)

(j) File with the Secretary of State the original and one copy of each permanent regulation and the original of the formal adoption document, along with one copy of the economic impact statement with updated information about the hearing and any environmental benefit statement associated with the regulation. If a takings assessment is required, file a copy of the assessment with the Governor, the Attorney General, and the Secretary of State not later than the date the adopted regulation is filed with the Secretary of State.

(k) The date of publication in the *Kansas Register* will be determined at the time the agency files the regulations with the Secretary of State. Publication deadlines for the *Kansas Register* are

determined by the length of the regulations and the date that the regulations are filed with the Secretary of State. In general, regulations are published one to three weeks after filing.

(l) Permanent regulations will take effect 15 days after publication in the *Kansas Register*.

Because the *Kansas Register* is published on Thursday of each week, permanent regulations will take effect on the third Friday following publication, unless a later date is specified in the body of the regulation.

PERMANENT REGULATIONS

Step 1. Submit regulations to Secretary of Administration for approval.

Step 2. Submit regulations to Attorney General for approval.

Step 3. If required, submit regulations and economic impact statement to Budget Director for approval. Otherwise, submit a copy of economic impact statement to Budget Director.

Step 4. Submit the hearing notice packet to Secretary of State.

Step 5. Notice published in the *Kansas Register*.

Step 6. Joint Committee on Administrative Rules and Regulations reviews and comments on proposed regulations.

Step 7. Hold the public hearing.

Step 8. Obtain approval for any revisions; adopt; file with Secretary of State.

Step 9. Regulations published in the *Kansas Register*.

Step 10. Regulations take effect (typically 15 days after publication).

SECTION 2 PROCESS FOR ADOPTING TEMPORARY REGULATIONS

BASIS FOR ADOPTING TEMPORARY REGULATIONS

A temporary regulation can be adopted if preservation of the public peace, health, safety, or welfare necessitates or makes desirable putting the regulation into effect prior to the time it could be put into effect as a permanent regulation. See K.S.A. 77-422. On occasion, this basis for a temporary regulation may apply to proposed regulations that implement newly passed legislation. In this way, the temporary regulations can take effect in conjunction with the new legislation.

PROCEDURES FOR PROCESSING TEMPORARY REGULATIONS

- (a) Submit a hard copy of each proposed temporary regulation to the Secretary of Administration, as described under the process for adopting permanent regulations on page 6.
- (b) Submit the hard copy (original, as approved by the Secretary of Administration) of each proposed temporary regulation to the Attorney General, as described under the process for adopting permanent regulations on page 6.
- (c) If required, submit the hard copy (original, as approved by the Secretary of Administration and the Attorney General) of each proposed temporary regulation and the economic impact statement to the Budget Director for approval. Otherwise, provide a copy of the economic impact statement to the Budget Director.
- (d) A public hearing is not required for temporary regulations, although agencies may choose to hold a public hearing for any temporary regulations. However, given the time frame involved in holding a hearing, it typically is not feasible to hold a hearing before temporary regulations are adopted.

For additional information regarding the public hearing process, see the following:

Notice of public hearing: page 16.

Public notice and hearing; guidelines regarding ADA compliance page 19.

Public comment period: page 22.

Public hearing: page 24.

(e) Formally adopt each regulation, as described on pages 25-26 (a) and (b). Pursuant to K.S.A. 77-421(b)(1), “prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including...” (There is no submission requirement for this document.)

(f) Submit the original and **nine** copies of each temporary regulation to the Secretary of State; include the additional supporting documents described on pages 26-27. Also include **10** copies of the agency’s written testimony. The Secretary of State requests that agencies provide the original and **nine** copies of the adoption document, the economic impact statement, and the environmental benefit statement.

(g) Proposed temporary regulations are placed on the agenda of the State Rules and Regulations Board by the Secretary of State. The Board consists of the following:

(1) The Attorney General, the Secretary of State, and the Secretary of Administration, or designees of these officials;

(2) the Chairperson and Vice-Chairperson of the Joint Committee on Administrative Rules and Regulations (Joint Committee);

(3) the Ranking Minority Member of the Joint Committee or a member of the Joint Committee designated by the Minority Leader of the same house of the legislature as the Chairperson; and

(4) the Chairperson of the Senate Committee on Ways and Means in even-numbered years and

the Chairperson of the House of Representatives Committee on Appropriations in odd-numbered years.

The proposing agency appears before the board to justify the need for the proposed temporary regulations, using the statutory criterion described previously.

(h) Following approval by the State Rules and Regulations Board, the Secretary of State will file the regulations. The effective date of temporary regulations is either the date on which the State Rules and Regulations Board approves the regulations and the Secretary of State files them, or a later date stated in the regulation.

(i) Temporary regulations continue in effect for not more than 120 days. K.S.A. 77-422(c)(3) adds the following: "...for good cause, a state agency may request that a temporary rule and regulation may be renewed one time for an additional period not to exceed 120 days."

(j) The full text of temporary regulations is published in the *Kansas Register*. **Each agency whose temporary regulations have been approved by the State Rules and Regulations Board should review the publication of those temporary regulations in the *Kansas Register* for accuracy and notify the Secretary of State's office of any errors.**

(k) The Joint Committee on Administrative Rules and Regulations may review temporary regulations as they are filed. Generally, the Joint Committee will review a proposed permanent regulation that is identical in substance to the temporary regulation.

(l) See K.S.A. 45-403 for the retention requirements governing each agency's regulations.

SIMULTANEOUS APPROVAL OF TEMPORARY AND PERMANENT REGULATIONS

Agencies generally find that it is more efficient to proceed with seeking approval of the permanent form of a regulation at the same time they seek approval of the regulation on a temporary basis. To avoid any lapse in coverage when the temporary regulation expires, each agency should act

quickly to schedule its public hearing for the permanent version of the regulation and to meet in a timely manner the requirements of the Secretary of Administration, Attorney General, (if required) Budget Director, and Secretary of State for approval, submission of hearing notice, adoption, and filing the permanent regulation.

When an agency chooses to process both temporary and permanent regulations at the same time, the following procedure is used:

- (a) Submit a hard copy of the temporary and permanent versions of each regulation to the Secretary of Administration. Often the content of the temporary regulation and the permanent regulation is identical. (See page 59 for further information regarding the histories of temporary and permanent regulations that are processed together.)
- (b) Submit the hard copy (originals, as approved by the Secretary of Administration) of the temporary and the permanent versions of each regulation to the Attorney General for approval.
- (c) If required, submit the hard copy (originals, as approved by the Secretary of Administration and the Attorney General) of the temporary and permanent versions of the regulations and the economic impact statements to the Budget Director for approval. Otherwise, provide a copy of the economic impact statements to the Budget Director.
- (d) Give a 60-day notice of the public hearing for the permanent regulation(s) and, if the agency elects, for the temporary regulation(s). If a public hearing is held for the temporary regulation(s), the notice should state that the regulations are proposed on both a temporary and a permanent basis.

For additional information regarding the public hearing process, see the following:

Notice of public hearing: page 16.

Public notice and hearing; guidelines regarding ADA compliance page 19.

Public comment period: page 22.

Public hearing: page 24.

(e)(1) Adopt the temporary regulation(s), using the adoption procedures described on pages 25-26 (a) and (b). If a public hearing is not held for the temporary regulation(s), the temporary regulation(s) may be adopted following approval by the Secretary of Administration, the Attorney General, and (if required) the Budget Director and the agency's preparation of the other required documents. Note: If the underlying statutes are not yet in effect at the time of adoption of the temporary regulation(s), each temporary regulation must contain a sentence stating a delayed effective date that reflects the effective date of the underlying statutes.

Pursuant to K.S.A. 77-421(b)(1), "prepare a concise statement of the principal reasons for adopting [each] rule and regulation or amendments thereto, including...." (There is no submission requirement for this document.)

(2) After adoption of the temporary regulation(s), submit the original and **nine** copies of each temporary regulation to the Secretary of State. Include the original adoption document and **nine** copies of each additional document described on pages 26-27.

(f)(1) Following the public hearing on the permanent regulation(s), adopt the permanent regulation(s), using the adoption procedures described on pages 25-26. Pursuant to K.S.A. 77-421(b)(1), "prepare a concise statement of the principal reasons for adopting [each] rule and regulation or amendments thereto, including...." (There is no submission requirement for this document.)

(2) After adoption of the permanent regulation(s), submit the original and one copy of each permanent regulation to the Secretary of State. Include the original adoption document and one copy of each additional document described on pages 26-27.

TIMELINE FOR TEMPORARY REGULATIONS

Agencies sometimes have an effective date in mind for temporary regulations. The following guide will help agencies plan how much time they will need to allot to each phase of the actual filing

process in order to meet that target date. While this timeline presents the filing process from the beginning to the target date, you will need to figure back from that date to all other steps in the process.

- (a) Submit the hard copy of each proposed temporary regulation to the Secretary of Administration. Generally, allow several weeks for possible changes and revisions. The length of time that it takes to review regulations will vary, depending upon the length and type (new, amended, or revoked) of the regulations, the amount of time since the last amendment (for amended regulations), and the number of regulations that have been submitted by other agencies for review. Particularly lengthy, complex, or poorly drafted regulations may require more than several weeks to review, revise, and obtain approval. Generally, regulations will be reviewed in the order in which they are received.
- (b) Submit the hard copy (original, as approved by the Secretary of Administration) of each proposed temporary regulation to the Attorney General. Allow several weeks for possible changes.
- (c) If required, submit the hard copy (original, as approved by the Secretary of Administration and the Attorney General) of each proposed temporary regulation and the economic impact statement to the Budget Director for review and approval. Otherwise, provide a copy of the economic impact statement to the Budget Director.
- (d) Determine whether or not a public hearing is advisable. (See page 33.) In most cases, a public hearing is not held, due to the time frame associated with the hearing. If a public hearing is not held, proceed with adoption and filing of the regulations as described in subsection (g). If a public hearing will be held, submit the hearing notice, the approved regulations, and a copy of the economic impact statement to the Secretary of State. At the same time, send a copy of the notice of public hearing to the Chairperson of the Joint Committee on Administrative Rules and Regulations and the Legislative Research staff member assigned to the Joint Committee. If the notice of public hearing is less than five pages in length, it must be submitted not later than **noon** on the **Wednesday** eight days before publication. Generally, notices that are five pages or more in length should be submitted by 5:00 p.m. of the Monday 10 days before publication. Please provide the name and title of the agency head.

Contact the Secretary of State's office for additional information on publication.

(e) Notice of the public hearing must be given at least 60 days before the hearing date. The *Kansas Register* is published each Thursday. Therefore, the first working day that meets the 60-day notice requirement will be the Monday 61 days following publication. The Joint Committee will schedule a review of the proposed regulations at some time during the 60-day public comment period.

(f) Following the public hearing, allow time to make any changes to the regulation deemed advisable and time for approval of revised pages by the Secretary of Administration, Attorney General, and (if required) Budget Director. Allowing several weeks is advisable, depending upon the extent of the changes.

(g) Adopt the regulations. Agencies headed by a board or commission will need to coordinate completion of other steps in the process with the scheduled meetings of the board or commission. Pursuant to K.S.A. 77-421(b)(1), "prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including...." (There is no submission requirement for this document.)

(h) Submit to the Secretary of State the original and **nine** copies of each proposed temporary regulation and **nine** copies of the revised economic impact statement with information about the hearing (if applicable), the formal adoption documents, and any environmental benefit statement associated with the regulation. Also include **10** copies of the agency's written testimony. If a takings assessment is required, file a copy of the assessment with the Governor, the Attorney General, and the Secretary of State not later than the date the adopted regulation is filed with the Secretary of State. The deadline for being placed on the agenda of the State Rules and Regulations Board is normally seven days before a scheduled board meeting. Consult the Secretary of State for specific meeting dates.

(i) Present the regulations to the State Rules and Regulations Board. Be prepared to explain the proposed temporary regulation in light of the statutory criterion for temporary regulations.

TEMPORARY REGULATIONS ADOPTED WITHOUT A HEARING

- Step 1. Submit regulations to Secretary of Administration.
- Step 2. Submit regulations to Attorney General.
- Step 3. If required, submit regulations and economic impact statement to Budget Director for approval. Otherwise, provide Budget Director with a copy of the economic impact statement.
- Step 4. Adopt; submit to Secretary of State; scheduled for State Rules and Regulations Board.
- Step 5. Considered by Board; regulations take effect upon approval and filing.

TEMPORARY REGULATIONS ADOPTED WITH A HEARING

- Step 1. Submit regulations to Secretary of Administration.
- Step 2. Submit regulations to Attorney General.
- Step 3. If required, submit regulations and economic impact statement to Budget Director for approval. Otherwise, provide a copy of the economic impact statement to Budget Director.
- Step 4. Submit hearing notice packet to Secretary of State.
- Step 5. Notice published in *Kansas Register*.
- Step 6. Joint Committee on Administrative Rules and Regulations reviews and comments on proposed regulations.
- Step 7. Hold the public hearing.
- Step 8. Obtain approval for revisions; adopt; submit to the Secretary of State; schedule for the State Rules and Regulations Board.
- Step 9. Considered by Board; regulations take effect upon approval and filing.

SECTION 3

SECRETARY OF ADMINISTRATION'S REQUIREMENTS

The first step in the process for adopting regulations is submitting the hard copy of the proposed temporary or permanent regulations to the Secretary of Administration for review and approval based on “such requirements as to organization, style, orthography [spelling] and grammar as the [S]ecretary may adopt.” See K.S.A. 77-420. One of the primary goals in establishing the style and other requirements in this manual, and in reviewing regulations, is to ensure that regulations are as clear and readable as possible.

If changes in a regulation are recommended by the Secretary of Administration before that approval, the agency should provide the edited version containing the Secretary of Administration’s requested revisions, including answers to any queries raised by the editor, when resubmitting the revised regulation to the Secretary of Administration for approval.

Any change in a proposed regulation at any step of the process AFTER the approval by the Secretary of Administration requires reapproval of each revised page by the Secretary of Administration and resubmission of a copy of that previously approved regulation. The copy of the previously approved version should show the Secretary of Administration’s approval stamp on each page and should be marked (e.g., with highlighting or handwritten notations) by the agency to indicate where the latest changes in the revised version are being made.

For help with questions about drafting regulations or any of the following requirements, the agency should call the Department of Administration at (785) 296-2701 before the regulations are in a final form.

This section contains requirements, conventions, and examples from the Secretary of Administration that will assist agencies in writing regulations. These requirements, conventions, and examples are categorized according to general grammar and word choice, as well as regulatory

form and technical requirements.

Several aspects of regulatory style in some ways reflect statutory style. Therefore, some of the conventions described below vary from mainstream usage (e.g., the rules governing capitalization). Beyond these regulatory conventions, the Department of Administration strives to edit according to current standards of grammar, spelling, and usage. The primary references used by the Department of Administration staff responsible for reviewing regulations are these: *Merriam-Webster's Collegiate Dictionary*, *Random House Webster's Unabridged Dictionary*, and *The Gregg Reference Manual*.

PLEASE NOTE

The agency adopting regulations must draft the regulations, make policy decisions related to their substance, and implement them. Therefore, edits made by the Department of Administration are **not** intended to change the meaning of a regulation in any way. If any editorial revision does inadvertently change the meaning of a regulation, it is the agency's responsibility to notify the Department of Administration staff member who reviewed the regulation. The staff member will work with the agency to develop acceptable language that conveys the agency's intent.

GENERAL GRAMMAR AND WORD CHOICE

"SHALL" AND "MAY"

Use the word "shall" to impose an obligation to act; do not use the words "must" and "should" for this purpose. Use the word "may" to indicate permissible action. See the next portion titled " 'Each' and 'Any' " for more information on the use of "each" and "any" with "shall" and "may."

- (a) Do not use the word "shall" if the actor is not required to perform some act.

| | |
|---------------|--|
| AVOID: | "One or more of the application procedures shall be waived by the director if, in the director's discretion, it is determined that. . . ." |
| USE: | "One or more of the application procedures may be waived by the director if the director determines that. . . ." |

(b) Do not use “shall” or “may” as part of a condition.

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|---------------|---|
| AVOID: | “An individual with a lapsed license shall not engage in professional practice until the individual shall have reinstated the license.” |
| USE: | “An individual shall reinstate a lapsed license before engaging in professional practice.” |

(c) Do not use the expression “. . . may not” Depending on the meaning intended, use “shall,” “shall not,” or “may.”

| | |
|-------------------------|-----------------------------------|
| AVOID: | “The applicant may not” |
| USE: | “The applicant shall not” |
| UNLESS YOU MEAN: | “The applicant may” |

(d) Do not state that a regulated party “should” or “must” take some action. Such a statement is not enforceable.

“EACH” AND “ANY”

Use “each” and “any” to write in the singular. One device that avoids ambiguity is writing in the singular. In the English language, an article such as “the” or “a” is normally placed before a singular noun. However, a drafter must violate this normal practice in cases in which use of the article “a” or “an” creates an ambiguity.

AVOID: “The licensee shall make medical services available to a person 65 years old or older.”

[Can one licensee discharge this duty by providing medical services to only one person 65 years old or older?]

USE: “Each licensee shall make medical services available to each eligible person who is 65 years old or older.”

[Is it clear that the licensee cannot discharge that obligation by providing medical services to only one person 65 years old or older?]

To avoid ambiguity, follow these conventions:

- (a) Use “each...shall” to impose an obligation to act.

EXAMPLE: “Each steward shall file”

- (b) Avoid using “each” when imposing a prohibition. Use a singular article such as “a,” “an,” or “the” or write in the plural.

AVOID: “Each licensee shall not”

USE: “The licensee shall not”

—or—

“Licensees shall not”

- (c) Use “any...may” to grant a right, power, or privilege.

EXAMPLE: “Any person may request a”

- (d) Generally, do not use the word “such.” Use “the” or, if no ambiguity results, certain pronouns, including “that” and “those,” to refer to something already named in that sentence or paragraph.

| | |
|---------------|---|
| AVOID: | “The administrator shall file a report within 24 hours of the incident. The administrator shall include in such report” |
| USE: | “The administrator shall file a report within 24 hours of the incident. The administrator shall include in the report” |

ACTIVE VOICE

Use the active voice. This rule is especially effective when an agency is imposing a duty or conferring a power or privilege. The active voice eliminates confusion by forcing the agency to name an “actor” in the regulation. This makes clear to the reader who is to perform the duty or who is vested with the power or privilege. If possible, arrange the sentence to name the actor first and then the recipient.

| | |
|---------------|---|
| AVOID: | “The examination fee shall be submitted by the applicant with the completed application.” |
| USE: | “Each applicant shall submit the examination fee with the completed application.” |

SELF-DIRECTORY LANGUAGE

An exception to the rule regarding active voice is applied in order to avoid using “self-directory” or “self-regulatory” language. Self-directory provisions *regulate the agency* by stating what *the agency* shall or may do. However, the agency may wish to inform regulated parties as to what actions the agency will or may take in certain situations. The passive voice may be used in order to provide this type of information without introducing language that regulates the agency or agency head.

AVOID: “Upon review of the application, the secretary may issue a temporary license.”

USE: “Upon review of the application, a temporary license may be issued by the secretary.”

CONDITIONS

Use the terms “if” and (as appropriate) “when” to introduce a condition. Do not use the terms “where” or “should” for this purpose.

- (a) Introduce a simple condition or a condition that may or may not occur with the word “if.”

EXAMPLES:

“If either party to the proceeding does not appear at the hearing, the hearing officer may continue the hearing to a later date.”

“If a licensee accumulates more than 1,000 kilograms of hazardous waste, the licensee shall comply with the requirements of subsection (g).”

- (b) In general, introduce a condition that relates to time with the word “when.”

EXAMPLE:

“When the survey team has completed its review, the applicant shall be given written notification of each violation.”

DEFINITIONS

- (a) *Avoid unnecessary definitions.* The main purpose of a definition is to achieve clarity without needless repetition. For this reason, it is unnecessary to define ordinary words that are used in their usual dictionary meaning.

AVOID: “ ‘Trash can’ means a receptacle for waste material.”

(b) *Do not define a term that is used only once or infrequently.* If a term is used only once or infrequently, spell out the meaning of the term at those few places it appears in the regulations.

Occasionally, a term that is used infrequently must be defined if succeeding definitions necessitate an understanding of that term.

(c) *Do not include part or all of the term being defined in the text of your definition; avoid circular definitions.* A true definition should not include the term being defined as part of the definition. This forces the reader to consult a dictionary or look elsewhere in the regulations for the complete meaning.

(d) *Draft the regulations first, and then draft the definitions.*

(1) It is difficult to determine how many times a particular word or concept will be used in a set of regulations before you start drafting. If definitions are drafted before the regulations, a word that is not used could needlessly be defined.

(2) Often a concept that is used in a set of regulations is complex, and the drafter must develop a phrase to use as shorthand for the concept. If the phrase is drafted before the regulations, the phrase might not be as appropriate as one developed during the process of drafting.

(e) *In general, definitions within a definitional regulation are most accessible when arranged in alphabetical order.* It is often helpful to place all the definitions for an agency or a particular article in one definitional regulation. Definitional regulations typically are placed at the beginning of the agency’s regulations or an article. Usually, alphabetical order will provide a readily accessible organizational style for this type of regulation. However, using alphabetical order may not always be preferable; using an alternate organizing principle may enhance the clarity of the definitions in some instances.

When including a few definitions within a nondefinitional regulation (e.g., within a

subsection in a regulation that is not primarily composed of definitions), arrange them in the most effective order of presentation.

(f) *Do not use synonyms.* Do not use different terms to mean the same thing. Use the same word consistently to convey the same meaning. For example, if you first use the term “income,” do not switch later to “wage” or “salary.” Doing so might suggest that the alternate term is intended to convey a different meaning from that assigned to the original term. Therefore, use the same term throughout the regulation.

CROSS-REFERENCES

(a) *Use cross-references sparingly and carefully.* Too many cross-references can make a regulation difficult to read and understand. Include a cross-reference only when it is essential to the meaning of the provision or limits or makes an exception to the provision.

(b) *Make each cross-reference an aid for the readers.* If it is necessary to include a cross-reference, it must be as specific as possible. Cite the specific article, regulation, or subsection or paragraph within the regulation, as appropriate. See page 69 for more information on drafting references.

AVOID: “. . . as required by these regulations.”

USE: “. . . as required by K.A.R. 17-2-5.”

“. . . as required by article 2 of the department’s regulations.”

“. . . as required by article 7 of the board’s regulations.”

“. . . as specified in article 10 of the commission’s regulations.”

(c) If you amend the outline structure of a regulation, be sure to *check for cross-references* in that regulation and other regulations that also may need to be adjusted.

(d) *Consider using a cross-reference for documents adopted by reference.* If a document is adopted

by reference in one regulation, do not adopt the same document by reference in subsequent regulations of the same agency. Instead, identify the document and then add a cross-reference to the regulation in which the document was adopted by reference, e.g. “40 C.F.R. part 761, as adopted by reference in K.A.R. 28-29-108.”

GENDER-SPECIFIC TERMINOLOGY

- (a) *Avoid the use of a gender-specific pronoun when both sexes are involved.*

| | |
|---------------|--|
| AVOID: | “The applicant shall submit his completed application form.” —or— “The applicant shall submit his/her” |
| USE: | “The applicant shall submit the completed application form.” |

- (b) *Avoid the use of a gender-specific job title.*

| | |
|---------------|--------------------------|
| AVOID: | “Chairwoman or chairman” |
| USE: | “Chairperson” |

MEASUREMENTS

In general, use Fahrenheit designations for any temperature references within a regulation. An exception to this guideline is any case in which an alternate scale (e.g., centigrade or Celsius) is preferable for scientific, technical, or other substantive reasons.

WORDS AND EXPRESSIONS TO AVOID

| AVOID: | USE: |
|------------------------|-----------------------------|
| and/or | __or__, or both |
| at that time | then |
| during the time that | while |
| etc. | (no replacement—do not use) |
| for the reason that | because |
| his/her | (see page 49) |
| in cases where | “if” or “when” |
| is unable to | cannot |
| is authorized to | may |
| may, at his discretion | may |
| no later than | not later than |
| notwithstanding | (depends on context) |
| page(s) | page or pages |
| prior to | before |
| provided that | if |
| subsequent to | after |
| such | this, that, these, those |
| thereof | of it, of them (or delete) |

REGULATORY FORM AND TECHNICAL REQUIREMENTS

(a) Regulations are to be typewritten on standard typing paper (8 ½ by 11 inches) and submitted in double-spaced type, with text on only one side of each page. The pages should **not** be stapled. In general, the text should not be aligned at the **right** margin (exceptions: fee tables and other text presented in table format). Each regulation must be submitted on a separate page or pages, except when multiple, **consecutively numbered** regulations **within the same article** are being revoked. (See

Revocations, page 60.) On each page, provide a bottom margin of 1 ½ inches so that there is adequate room for the approval stamps of the Secretary of Administration, Attorney General, and, if required, Budget Director. (The top, left, and right margins can be narrower than 1 ½ inches.)

(b) Under the direction of the Secretary of State, identify each regulation with a distinguishing number before submitting the regulation to the Secretary of Administration.

Each K.A.R. number has three parts, which identify the agency, the article (a group of related regulations), and the regulation's place in that article.

EXAMPLE:

“K.A.R. 1-23-3” refers to the following:

(Agency) 1: the Department of Administration;

(Article) 23: State van pool program;

(Regulation) 3: the third regulation in Article 23—
Passenger requirements.

(c) Once a regulation has been revoked, that K.A.R. number may not be reused in the future.

(d) Multiple-page new or amended regulations must include a header showing the regulation number and the page number the UPPER RIGHT-HAND corner of each page, **except the first page**. There is no header on the first page. Headers can be single-spaced.

REGULATION TITLES

Precede each regulation with a brief title. The title should give an indication of the contents of the regulation. Type the first letter of the title in uppercase with all other letters of the title in lowercase, except for acronyms or proper names that are normally capitalized in the regulatory style. (See pages 61-62.) For these proper names, use uppercase for only the first letter. Follow the title with a period. Avoid long titles.

ORGANIZATION AND OUTLINE FORM

(a) Be certain that there is a clear internal organizational framework for each regulation and for each series of regulations.

Each regulation should generally follow this order:

- (1) The K.A.R. number;
- (2) a short title;
- (3) the most significant general requirement;
- (4) any subordinate provisions; and
- (5) the history, including the authorizing and implementing citations.

Confine each regulation to a specific, narrowly defined topic.

It is preferable to have a number of short, related regulations, rather than one long, complicated regulation. There are a number of benefits to limiting the length and complexity of each regulation.

- ❑ A short regulation is much more likely to be simple, clear, and readily understood. The outline form for long regulations is frequently confusing or inadequate and therefore contributes to poor organization of the material.
- ❑ Long regulations are more expensive to publish in the *Kansas Register* each time that the regulation is amended.
- ❑ Each time even a small amendment to the regulation is necessary, the **entire regulation is opened to review** by the Secretary of Administration, the Attorney General, (if required) the Budget Director, and the Joint Committee on Administrative Rules and Regulations and to public comments. With a long regulation it is more likely that changes unrelated to the intended amendment will be requested by those parties due to its length.

(b) If a regulation contains a number of paragraphs, its underlying organization should be made explicit by using the regulatory outline form.

When subdividing regulations through the outline form, begin with lowercase letters to designate subsections. Use standard Arabic numbers next, then capital letters, and finally lowercase Roman numerals to designate paragraphs. Surround each subcategory letter or number with parentheses

to set the letter or number apart from the text. Do not use a period after the letter or number. Indent each subcategory letter or number other than subsection (a) as you would a new paragraph, with only the **first** line of each subsection and each paragraph indented.

| INCORRECT: | CORRECT: |
|-------------------|-----------------|
| 1-5-1 | 1-5-1. ... (a) |
| A. | (b) |
| B. | (1) |
| 1. | (2) |
| 2. | (3) |
| 3. | (A) |
| a. | (B) |
| b. | (i) |
| i. | (ii) |
| ii. | |

The correct manner and sequence of using letters and numbers listed above correspond to the methods by which statutes in the state of Kansas are subcategorized. The intent of using this system is to make regulations conform in organizational style to the statutes, even though they may differ from accepted English language methods of subcategorization.

(c) When using the outline form, be sure that you do not use the first letter or number of a sequence unless there are other letters or numbers of the sequence that follow. For example, do not use an “(a)” unless there is a subsection “(b).” Do not use a “(1)” unless there is a paragraph “(2).”

(d) Avoid subdividing a regulation beyond the use of capital letters. Antecedents may easily

become confused or forgotten when a regulation is subdivided to this degree. If a subsection seems to require subdivisions past this point, reconstruct or divide the regulation to avoid further subdivisions, or break the regulation into two or more regulations.

(e) In drafting cross-references, refer to the first level of the outline form (lowercase letters) as a “subsection” and lower levels as “paragraphs.” For example, refer to “subsection (b),” but use “paragraph (b)(2)” or “paragraph (a)(1)(E).”

AMENDED REGULATIONS

(a) When amending an existing regulation, the proposed new text in the regulation must be underlined or printed in italics. While italics are permitted, underlining is preferred as it is much clearer, particularly for punctuation. Proposed deletions are shown in canceled type (strike type) and precede new material.

(b) Always determine what language is currently in effect. Check to **be sure that all existing language and punctuation are accurately retained or shown in strike type.** (However, please note that strike type and underlining are **not** used when changing a word from capital to lowercase or vice versa.) When reviewing amended and stricken language for accuracy, use a reliable source in which the current, **permanent** version of the existing regulation appears, such as the appropriate bound volume of Kansas Administrative Regulations, the most recent K.A.R. Supplement, the *Kansas Register*, or a stamped copy of the last permanent regulation filed with the office of the Secretary of State. If any discrepancy exists between the latest published version of a regulation and the double-stamped original version that was filed with the Secretary of State, the latter will control. The Secretary of State’s office can assist in verifying the correct language of regulations.

If it becomes necessary to amend a temporary regulation before it expires with another temporary regulation, refer to the language in the current temporary regulation, not the language of the permanent regulation.

(c) In the history, any revisions to the citations of authorizing and implementing statutes must be shown with strike type and underlining. However, strike type and underlining are **not** used in the portion of the history that follows the authorizing and implementing statutes. (See Histories, below.)

(d) Avoid many small deletions and additions within one or two sentences. A sentence interspersed with strike type and underlining is distracting and difficult to comprehend, and portions of the old text may be dropped inadvertently when there are a number of changes in a short space. In such a case, it is preferable to strike the existing sentence, rewrite the sentence, and underline the new provisions.

(e) Do not strike or underline letters only; the entire word should be shown in strike type, followed by the underlined new word.

DO NOT USE: “references”

USE: “~~references~~ reference”

If **only** a word’s capitalization is changed, do **not** use strike type and underlining.

EXAMPLE: “~~Upon receiving approval,~~ The applicant shall”

NEW REGULATIONS

(a) If an entire regulation is new, do not underline any of the text. Underlining is used **only** in **amended** regulations, to indicate text proposed to be added to an existing regulation.

(b) Choose a K.A.R. number that is available. Do not use the K.A.R. number of a regulation that has been revoked.

(c) Each new regulation must include a history. (See below for more details.)

HISTORIES

(a) Each time a regulation is amended, review each statute listed in the history and, as needed, update

each statutory citation. The history, which appears at the end of the regulation and is in parentheses, must include the following elements:

- (1) A citation to the specific statute or statutes that authorize adoption of the regulation;
- (2) a citation to the specific statute or statutes that are implemented or interpreted by the regulation, which in some cases may be the same as the authorizing statute;
- (3) the date the regulation first became effective. A regulation may have more than one effective date if the regulation was first adopted on a temporary basis;
- (4) the date of each temporary or permanent amendment and the number assigned by the Secretary of State for each temporary amendment to the regulation; and
- (5) one of the following notations to indicate whether the regulation is proposed to be adopted on a temporary or permanent basis, followed by a blank line for the Secretary of State to fill in with the effective date.

EXAMPLE:

(. . . ; effective P-_____.) —or— (. . . ; effective, T-_____,_____.)
(. . . ; amended P-_____.) —or— (. . . ; amended, T-_____,_____.)
(. . . ; revoked P-_____.) —or— (. . . ; revoked, T-_____,_____.)

Each item is separated by a semicolon, and the history ends with a period and parenthesis.

- (b) Cite (in a **new** regulation) or, as needed, update (in an **amended** regulation) each statute authorizing (“authorized by”) and each statute the regulation implements (“implementing”) so that each citation indicates where that statute is **currently** published or authenticated.

If the history cites a statute amended or created **that year** and the regulation is submitted to the Department of Administration for review **before** that year’s *Session Laws* are published in July, include the appropriate reference to the Senate or House Bill. (See the following box.)

EXAMPLE (amended permanent regulation implementing a newly amended statute):

... (Authorized by K.S.A. 83-1712; implementing K.S.A. 83-1725, as amended by 2021 SB 503, sec. 2; effective Sept. 22, 2006; amended P-_____.)

EXAMPLE (new permanent regulation authorized by a new statute):

... (Authorized by 2021 HB 2980, sec. 1; implementing K.S.A. 84-315; effective P-_____.)

However, if the history cites a new or newly amended statute and the regulation is submitted to the Department of Administration for review **later that same calendar year** (**after** the *Session Laws* have been published in July but **before** the statutes are authenticated pursuant to K.S.A. 77-164), include the appropriate reference to the *Session Laws*. (See the following box.)

EXAMPLE (amended permanent regulation implementing a statute amended that year):

... (Authorized by K.S.A. 83-1712; implementing K.S.A. 2020 Supp. 83-1725, as amended by L. 2021, ch. 157, sec. 3; effective Sept. 22, 2006; amended P-_____.)

EXAMPLE (new permanent regulation authorized by a new statute):

... (Authorized by L. 2021, ch. 163, sec. 5; implementing K.S.A. 84-315; effective P-_____.)

NOTE: Typically in the fall of each year following each Legislative Session, the statutes and supplements are updated with the publication of the K.S.A. Supplements and, in some years, the (re)publication of one or more hardbound volumes of statutes. The statutes and supplements are deemed to be published when authenticated pursuant to K.S.A. 77-137 and K.S.A. 77-164, respectively. If a regulation is created or amended **following** the creation or amendment of any statute cited in the history of that regulation, update each statutory citation in the history of that regulation to “K.S.A.” or to the current K.S.A. Supplement, as appropriate.

EXAMPLE (permanent regulation amended in January 2021 to implement a statute amended the **previous** year):

... (Authorized by K.S.A. 83-1712; implementing K.S.A. 2020 Supp. 83-1720; effective Sept. 22, 2006; amended P-_____.)

EXAMPLE (new permanent regulation created in January 2021 and authorized by a new statute created in the **previous** year):

... (Authorized by K.S.A. 2020 Supp. 83-725; implementing K.S.A. 84-315; effective P-_____.)

(c) In some instances, a regulation is both authorized by and implementing a particular statute. In such a case, the statute should be cited as follows:

EXAMPLE:

(Authorized by and implementing K.S.A. 83-2019; effective P-_____.)

(d) In some instances, regulations are authorized by or implement more than one statute. When this occurs, cite each authorizing statute in numerical order and each statute implemented in numerical order.

EXAMPLE:

(Authorized by K.S.A. 41-210 and 41-211; implementing K.S.A. 2020 Supp. 41-209, K.S.A. 41-211, and K.S.A. 41-213; effective P-_____.)

(e) Before 1980, only an authorizing statute citation was required. A citation to the statute or statutes that are implemented by a regulation must be added when that regulation is being amended for the first time since 1980.

(f) The portion of the history that records the date the regulation took effect and the date of each amendment is cumulative. Copy each date from the history of the existing regulation before adding the new amendment at the end of the history. **Strike type and underlining are not used in this portion of the history.**

(g) Agencies should leave blank lines for the filing and effective dates in the history, as indicated in the following examples:

EXAMPLE:

Temporary amended regulation during the adoption process:

... (Authorized by K.S.A. 83-2019c; implementing K.S.A. 83-4001c; effective May 1, 1990; amended, T-_____,_____.)

Permanent amended regulation processed with temporary regulation:

... (Authorized by K.S.A. 83-2019c; implementing K.S.A. 83-4001c; effective May 1, 1990; amended, T-_____,_____; amended P-_____.)

REVOCATIONS

(a) When revoking a regulation, the **only** text that is shown is the regulation's K.A.R. number, followed by a period and then a space, and the history with the **existing** authorization and implementation section or sections, the **existing** list of effective and amendment dates, a “P-” or “, T-” following the word “revoked” and, depending on whether the revocation is permanent or temporary, one or two blank lines for the revocation date. The statutory references in the history should **not** be updated, and the title and content of the regulation should **not** be shown. Strike type and underlining are **not** used in revocations.

EXAMPLE:

1-31-1. (Authorized by and implementing K.S.A. 1984 Supp. 75-3206; effective, E-74-4, Nov. 1, 1979; effective May 1, 1980; amended May 1, 1985; revoked P-_____.)

(b) Each revocation must be submitted on a separate page or pages. However, revocations of **consecutively** numbered regulations **within the same article** may be filed on the same page. If the histories of consecutively numbered regulations within the same article are identical, the regulations can be revoked in one entry. However, each regulation number must be listed, rather than showing just a span of regulation numbers. If the histories are different, each regulation must be revoked separately.

The following is an example of a page of revocations:

EXAMPLE:

106-1-1 and 106-1-2. (Authorized by and implementing K.S.A. 1983 Supp. 74-5616; effective, T-84-31, Nov. 22, 1983; effective May 1, 1984; revoked P-_____.)

106-1-3. (Authorized by and implementing K.S.A. 1983 Supp. 74-5616; effective, T-84-31, Nov. 22, 1983; effective May 1, 1984; amended May 1, 1985; revoked P-_____.)

106-1-4, 106-1-5, and 106-1-6. (Authorized by and implementing K.S.A. 1983 Supp. 74-5616; effective, T-84-31, Nov. 22, 1983; effective May 1, 1984; revoked P-_____.)

106-1-7 and 106-1-8. (Authorized by and implementing K.S.A. 1983 Supp. 74-5616; effective, T-84-31, Nov. 22, 1983; effective May 1, 1984; amended May 1, 1985; revoked P-_____.)

- (c) Once a regulation is revoked, that K.A.R. number may not be reused in the future.

CAPITALIZATION

Regulatory style generally follows the statutory style regarding capitalization, so many proper names normally capitalized in mainstream usage are spelled with lowercase letters in regulations.

However, certain names are always capitalized:

| | |
|---|-------------------------------|
| months, days of the week | January, Tuesday |
| specific persons | Mark Parkinson |
| geographic places | Kansas, Topeka, United States |
| historic events | World War II |
| holidays | Thanksgiving Day |
| compilations of regulations or statutes | K.A.R., K.S.A., C.F.R. |
| acronyms and initialisms | CPA, AICPA, NFPA |

Please note that names of agencies, organizations, companies, and departments, and titles of documents are generally lowercase, except as noted below:

| |
|--|
| Kansas national guard |
| American red cross |
| American institute of certified public accountants |
| social security act |
| department of revenue |

NUMBERS

In keeping with statutory style, express only in words all isolated whole numbers from one through nine and numbers that begin a sentence. Rephrase a sentence, if possible, to avoid beginning with a number. All other numbers, dates, percentages, decimals, and monies should be expressed in figures only. Do **not** write the number followed by the corresponding figure in parentheses.

EXAMPLE:

“Within 10 days of such an incident”

“The shelter structure shall be at least four feet high”

—or—

“The shelter structure shall be at least 4.5 feet high”

REFERENCES TO STATUTES AND REGULATIONS

(a) Within the body of a regulation (NOT in the history), a particular statute can usually be referenced simply by using the abbreviation “K.S.A.” before the statute number and the phrase “and amendments thereto” following the statute number. However, if the reference is to a statute or statutory provision that has been published **only** in the K.S.A. Supplements (i.e., the statute or statutory provision has never been published in the hardbound K.S.A. volumes), the reference should include the current K.S.A. Supplement and the phrase “and amendments thereto.” For **new** statutes, cite the current published version, which may be a Senate or House Bill or the *Session Laws*.

A particular Kansas Administrative Regulation can be referenced in the body of a regulation simply by using the abbreviation “K.A.R.” before the regulation number. Note that the phrase “and amendments thereto” is NOT used with any reference to a K.A.R., nor is this phrase ever used in the **history** of a regulation. For nonspecific references to a Kansas Administrative Regulation, the word “regulation” should be used, as it is the clearest and most concise term provided in K.S.A. 77-415(c)(4).

EXAMPLE:

“Fire and extended coverage insurance permitted by K.A.R. 40-5-6....”

EXAMPLE:

“Pursuant to K.S.A. 75-4403 and amendments thereto, any state employee may....”

EXAMPLE:

“...the provisions of this regulation governing....”

Reference an entire article within your agency’s regulations as follows: “. . . as required by article 2 of the department’s [or the board’s or the commission’s] regulations.”

(b) “Subsection” refers **only** to the initial subdivision of a regulation, e.g., “subsection (e).”

Further subdivisions should be referred to as “paragraphs,” e.g., “paragraph (e)(1).”

(c) When revoking a regulation, any references to that regulation in **other** regulations must be stricken or otherwise modified. If a regulation is amended in a manner that changes the regulation’s outline form, any internal references or references to the affected subdivisions that appear in another regulation must be amended in order to maintain the accuracy of the reference.

ADOPTIONS BY REFERENCE

When applicable and desirable, adopt by reference (according to Attorney General Opinion No. 77-369). Examples of material that an agency may desire to adopt by reference include standards of a national voluntary trade association or a federal regulation. Agencies may wish to consider adopting a specific version of a document by reference when the material is lengthy, highly complex, or technical or when the material cannot be readily adapted to the form, style, and organization requirements for regulations.

EXAMPLES:

“The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on February 15, 1994, are hereby adopted by reference.”

“40 C.F.R. 52.21, as in effect on July 1, 2011 and as amended by 76 fed. reg. 43507 (2011) and 77 fed. reg. 65118-65119 (2012), is adopted by reference . . .”

“The 2013 edition of NFPA 495, ‘explosive materials code,’ published by the national fire protection association (NFPA), is hereby adopted by reference . . .”

While a copy of any material adopted by reference in a regulation is not filed with the Secretary of State, the material must be available from the agency that adopted the material. In addition, a copy of any material adopted by reference must accompany the regulation when the regulation is submitted to the Secretary of Administration and the Attorney General. (See page 7.) This requirement applies whether or not the document was previously adopted by reference in an earlier version of the same regulation or in a different regulation. **Each document should be marked to show which regulation adopts that document.**

The adoption by reference must adequately indicate the date or edition of the document or must specify that the document is adopted as in effect on a certain date. Therefore, any future revision to the document will be adopted by reference only if the regulation is subsequently amended to reflect the new date or edition or the new effective date of the adopted document.

STATEMENTS TO AVOID

- (a) Do not preface regulations with a purpose clause.

AVOID: “The purpose of this regulation is to protect the interest of life insurance policy holders by establishing minimum standards”

(b) In general, do not repeat the language of a statute in a regulation. The Kansas Administrative Regulations are meant to complement, NOT duplicate, the Kansas Statutes Annotated. If a term is defined in the Kansas Statutes Annotated, do not redefine it in the K.A.R.s.

(c) Do not insert examples or notes to clarify the regulations.

AVOID: “Washing facilities, such as washrooms, basins, sinks, or showers, shall be provided for animal caretakers.”

USE: “Each licensee shall provide washing facilities for the animal caretakers. Washing facilities may include washrooms, basins, sinks, or showers.”

(d) Do not include sentences that are nonregulatory. Sentences that merely provide background information or indicate that a regulated party “should” do or “is encouraged” to do something are not regulatory.

(e) Do not include provisions that are “self-regulatory” or “self-directory,” i.e., provisions (in active voice) that direct your agency to do something. (See page 45.)

(f) Do not use the phrase “including, but not limited to” The word “including” conveys the concept that the list that follows is **not** exhaustive; therefore, “but not limited to” is redundant.

SECTION 4

ATTORNEY GENERAL'S REVIEW

(a) Review for legality. The Attorney General reviews proposed regulations, both temporary and permanent, for “legality.” In performing this duty, assistant attorneys general consider whether or not the proposed regulations meet all of the following criteria:

- (1) The state agency has the authority to adopt the proposed regulations.
- (2) The proposed regulations are within the parameters of the statutory provisions cited as being implemented.
- (3) Each regulation must conclude with a history, which must include a citation of one or more statutes that authorize the state agency to adopt the particular regulation and a citation of the specific statute(s) being implemented or interpreted. A proposed regulation will not be approved if either of these citations is omitted or is incorrect. (See page 56.)
- (4) The proposed regulations do not conflict with other statutes or constitutional provisions.
- (5) If a regulation is being amended, the attorneys will review the entire regulation for legality – not just the amendment.
- (6) Other issues of legality include whether the regulations are adequately clear and specific regarding the standard that the agency will enforce, are internally consistent, are consistent with other regulations, or merely reiterate the statute. Agencies should avoid phrases such as “and anything else the secretary may require,” “unless authorized by the board,” “any parameter specified by the commission,” or similar phrases that indicate an absence of adequate standards that provide guidance in the exercise of discretion.
- (7) Because of the need to review regulations in a timely manner, there may be instances in which, after a regulation is approved, subsequent in-depth research on a specific question of law reveals that the regulation is beyond the agency’s authority. While the Attorney General makes every effort, within time constraints, to avoid this occurrence, the Attorney General’s approval of a

regulation does not prevent the issuance of a later opinion regarding the legality of the regulation. An Attorney General opinion concluding that an existing regulation is invalid does not void the regulation; agency action, legislation, or a court order is necessary to amend, revoke, override, or strike down a regulation.

(b) Documents adopted by reference in a regulation. If a proposed regulation adopts a document by reference, the following criteria will be considered in reviewing the document:

(1) The proposed regulation adopting the document by reference adequately identifies the effective date (or the publication date) and the source of the document, including the accurate title and the name of the publisher or author.

(2) The content within the document itself will be reviewed to determine whether the agency has the authority to adopt the document and its contents. Frequently, a document contains extraneous material such as an introduction, statement of purpose and appendices. In such cases, the regulation should specifically except out this material. The agency should also except out any other material referenced in the document that meets either of the following conditions:

(A) The material referenced is outside of the agency's authority.

(B) The agency does not intend to enforce the referenced material.

E.g. "AICPA professional standards" means the standards, including definitions and interpretations, in "AICPA professional standards," volumes 1 and 2, published by the AICPA, as in effect on July 1, 2007, which are hereby adopted by reference, except for pages 5,301 through 6,209, bylaws of the AICPA, and pages 22,001 through 22,073, continuing professional education, in volume 2.

(c) The review process.

(1) Review of regulations is performed by two attorneys in the Legal Opinions & Government Counsel (LOGiC) division of the Attorney General's office. Once the review is completed, the Attorney General contacts the agency regarding any questions or concerns about the proposed

regulations. After all questions and concerns have been resolved, a letter is sent to the agency indicating approval. That letter is copied to Legislative Research and the Chair, Vice-Chair and Ranking Minority Member of the Joint Committee on Administrative Rules and Regulations.

(2) Agencies are requested to use the Regulations Transmittal Memo when submitting regulations to the Attorney General for review. This assists the review process by indicating whether the regulations are new, being amended, or revoked; revised after initial disapproval; or revised following the public hearing. [See Appendix D.]

(d) Regulations shall be reviewed by the Attorney General only after having been reviewed and approved by the Secretary of Administration.

SECTION 5 DIRECTOR OF THE BUDGET

The third step in the process for adopting regulations involves the Director of the Budget (Director). (See K.S.A. 77-420(a).)

IF the regulations are mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program (regardless of the fiscal impact of the regulations), provide a copy of the economic impact statement to the Director.

IF the total annual implementation and compliance costs of the regulations calculated from the effective date of the regulations do **not** exceed \$1.0 million over any two-year period from April 28, 2022 through June 30, 2024 or \$3.0 million over any two-year period on or after July 1, 2024, provide a copy of the economic impact statement to the Director.

IF the total annual implementation and compliance costs of the regulations calculated from the effective date of the regulations exceed \$1.0 million over any two-year period from April 28, 2022 through June 30, 2024 or \$3.0 million over any two-year period on or after July 1, 2024, submit the regulations (as approved by the Secretary of Administration and the Attorney General) and the economic impact statement to the Director for approval—after the agency has held a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent.

The form for the economic impact statement is posted on the Division of the Budget's web page under the "Agency Info" tab: <https://budget.kansas.gov/agency-info/> .

SECTION 6

REQUIREMENTS FOR FILING WITH THE SECRETARY OF STATE

- (a) Under the direction of the Secretary of State, identify each regulation with a distinguishing number. Do not use a decimal system of numbering. Do not use the number of a regulation that has been revoked.
- (b) Each regulation must be typewritten or printed on standard letter-size paper (8 ½ by 11 inches), with text on only one side of each page.
- (c) File each regulation, including those to be amended or revoked, on a separate sheet or sheets of paper, except in the case of consecutively numbered revocations. (See page 60.)
- (d) Please note that no submission to the Secretary of State is considered filed until the Secretary of State has received the **paper** copies of all required documents.
- (e) When amending an existing regulation, show the new language by underlining or using italics. While italics may be used, agencies are strongly encouraged to use underlining as it is much clearer. (Underlining should **not** be used in new regulations.) In amended regulations, all material proposed for deletion must appear in the regulation in strike type. The authorizing and implementing statutory citations in the history section are considered part of the regulation. Each change in these citations must be noted with strike type and underlining.
- (f) File one paper copy of the notice of public hearing, each **proposed** regulation, and the economic impact statement with the Secretary of State after the economic impact statement has been approved by the Director of the Budget (if required) and each regulation has been approved by the Secretary of Administration, the Attorney General, and (if required) the Budget Director. Please provide the notice of public hearing also in Word format to Lara.Murphy@ks.gov and kansasregister@ks.gov. In addition, provide the name and title of the agency head and the agency address.
- (g) File the original and one copy of each **adopted** permanent regulation in the Secretary of State's office. File the original and **nine** copies of each **adopted** temporary regulation in the

Secretary of State's office. For permanent regulations, also submit the regulations in Word format (with each regulation in a separate Word document, except for multiple revocations on the same page) to Lara.Murphy@ks.gov and kansasregister@ks.gov. For temporary regulations, also submit the regulations in both PDF and Word copies (with each regulation in a separate Word document, except for multiple revocations on the same page) to Lara.Murphy@ks.gov and kansasregister@ks.gov. For the electronic Word document of each **amended** regulation, whether temporary or permanent, delete the stricken text and remove the underlining from any new text.

(h) Accompany every regulation filed in the Secretary of State's office with the updated economic impact statement. The Secretary of State requests that agencies provide a total of **one** copy of the economic impact statement for permanent regulations and **nine** copies for temporary regulations. If a public hearing was held, include a statement in the revised economic impact statement specifying the date and time and the place at which the hearing was held and the number of individuals in attendance at the hearing. If the proposed regulation is mandated by federal statute or regulation as a requirement for participating in or implementing a federally subsidized or assisted program, state in the economic impact statement that the proposed regulation is mandated by federal law. Include a statement in the economic impact statement indicating whether or not the regulation exceeds the requirements of federal law.

(i) If the regulation is adopted by a board or commission, accompany the regulation filed in the Secretary of State's office with a certified copy of the roll call vote required for its adoption. If the adopting authority is an individual, that individual must file a written declaration of adoption. The Secretary of State requests that agencies provide, for permanent regulations, the original adoption document and, for temporary regulations, the original adoption document and **nine** copies. In addition, provide the name and title of the agency head and the agency address.

(j) If the regulation constitutes an environmental regulation, file a copy of the environmental

benefit statement. The Secretary of State requests that agencies provide a total of one copy of the environmental benefit statement for permanent regulations and **nine** copies for temporary regulations. If a takings assessment is required, file one copy of the assessment with the Secretary of State, along with the economic impact statement. In addition, file a copy of the assessment with the Governor and the Attorney General, not later than the date the regulation is filed with the Secretary of State.

(k) The Secretary of State has limited authority to correct certain errors in a regulation before publication. The errors that may be corrected by the Secretary of State are typographical in nature, including spelling and clerical errors. See K.S.A. 77-435.

(l) Once a regulation has been adopted and filed, if an agency desires to make any changes to the regulation that exceed the scope of K.S.A. 77-435, the agency must subsequently amend the regulation by following the series of steps outlined in this manual, beginning with submission of the amended regulation to the Secretary of Administration, then to the Attorney General, and (if required) to the Budget Director, and so on.

APPENDIX A
(Sample Regulations)

Sample 1
(Proposed New Regulation)

7-41-35. Registered certification authority; ITEC certificate policy. Each person who performs the duties of a registered certification authority and issues certificates used by a state agency pursuant to K.S.A. 16-1605, and amendments thereto, shall comply with the ITEC certificate policy.

(Authorized by K.S.A. 16-1605 and 16-1618; implementing K.S.A. 16-1605 and 16-1617; effective

P-_____.)

Sample 2
(Amended Permanent Regulation)

60-11-102. Categories of advanced registered nurse practitioners. The four categories of advanced registered nurse practitioners certified by the board of nursing ~~are~~ shall be the following:

- (a) Clinical nurse clinician or nurse practitioner specialist;
- (b) nurse anesthetist;
- (c) nurse-midwife; and
- (d) ~~clinical specialist nurse practitioner.~~ (Authorized by and implementing K.S.A.

~~1983 Supp.~~ 65-1113, 65-1130; effective May 1, 1984; amended P- _____.)

Sample 3
(Revocations)

94-2-1, 94-2-2, and 94-2-3. (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked P-_____.)

94-2-4. (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-8-28-03, Aug. 28, 2003; amended Dec. 5, 2003; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked P-_____.)

94-2-5. (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked P-_____.)

94-2-6 and 94-2-7. (Authorized by and implementing K.S.A. 74-2437; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; revoked P-_____.)

94-2-8. (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked P-_____.)

APPENDIX B
(Sample Notice of Hearing)

State of Kansas
Department of Administration

**Notice of Public Hearing on Proposed Administrative
Regulations**

April 15, 2009

A public hearing will be conducted on Wednesday, July 1, 2009 at 9:00 a.m. in Room 106 of the Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas to consider the adoption of proposed rules and regulations of the Division of Personnel Services, Department of Administration, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Division of Personnel Services, 900 S.W. Jackson, Room 252, Topeka, Kansas 66612 or by email to Kraig.Knowlton@da.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Kraig Knowlton at (785) 296-1082 (or TYY 1-800-766-3777). The north entrance to the Landon State Office Building is accessible. Handicapped parking is located at the south end of the Landon State Office Building, across the street from the north entrance to the building, and on Ninth Street, just around the corner from the north entrance to the building.

Summaries of the proposed regulations and their economic impact follow. (Note: Statements indicating that a regulation is “not anticipated to have any economic impact” are intended to indicate that no economic impact on the Department of Administration, other state agencies, state employees, or the general public has been identified.)

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website: <http://da.ks.gov/ps/documents/regs/default.htm>.

K.A.R. 1-2-64 – Probationary employee. This is a new regulation that defines the term “probationary employee” as any individual serving a probationary period pursuant to K.A.R. 1-7-4 (a) or (d). Since this definition simply clarifies current policy, it will have no economic impact.

K.A.R. 1-2-65 – Probationary status. Amendments to this regulation coincide with the new regulation above, and clarify that only probationary employees are in probationary status. Again, this is not a change to current policy, so these amendments will have no economic impact.

K.A.R. 1-7-3 – Probationary period required. Language is being added to clarify that under the State’s new Performance Management Process (PMP), while there are multiple criteria that receive “ratings,” it is the overall rating that is entered into the State’s payroll and accounting system that is relevant with respect to the completion of the probationary period. Similarly, language is being amended to clarify that with the five ratings of the new PMP, only those employees who receive the lowest rating at the end of a probationary period are required not to be granted permanent status.

New language also clarifies that performance reviews conducted as part of an employee’s probationary period are not required to be performed within the time period mandated for all other performance reviews in the new PMP and the effective date of the regulation is being specified to coincide with the effective date of the new PMP. Since the amendments to this regulation essentially preserve the current policies regarding probationary periods and performance reviews required by probationary periods, they will have no economic impact.

K.A.R. 1-7-4 – Duration of probationary period. All of the amendments proposed to this regulation are language changes or clarifications with no policy impact and will therefore have no economic impact.

K.A.R. 1-7-6 – Notices relating to probationary periods and extensions. All of the proposed amendments to this regulation are language changes or clarifications and do not make any substantive changes so they will have no economic impact.

K.A.R. 1-7-7 – Removal of probationary employee by director. All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy and will therefore have no economic impact.

K.A.R. 1-7-10 – Performance reviews. Language is being added to clarify that the performance management process referenced is the one authorized and directed to be developed and implemented by the 2008 Legislature. Amendments are also being proposed to emphasize that the purpose of the new process is not only to assess the effectiveness of employees, but also to clarify and inform employees of their expected performance outcomes.

Proposed language is also being added to require that only immediate supervisors who have supervised an employee for at least 90 days can complete the employee’s performance review. In addition, amendments specify that the required annual performance review be conducted on forms prescribed by DPS, but allows agencies to add additional, job-related performance criteria to those set out on the prescribed forms.

The regulation is also being amended to prescribe specific, 90-day time frames during which annual performance reviews and required midyear reviews of employees are to take place under the new PMP. Amendments also provide that if an employee receives an unsatisfactory rating on either of the essential requirements of the new PMP, the employee’s overall performance review rating must also be unsatisfactory.

The new PMP’s emphasis on greater communication between the supervisor and employee may result in many supervisors being required to devote more time to this pursuit. There has also been concern expressed that the time frames established for the completion of performance reviews and the midyear review may create a hardship on supervisors with numerous employees as well as on supervisors who have cyclical or seasonal work that falls within the periods of time set aside for

completion of these measures.

The Administration believes that the enhanced performance management and communication that will be achieved through the implementation of the new PMP will more than make up for any inconvenience or additional time spent by supervisors implementing the new process. Similarly, it is believed that the 90-day window provided for the time frames established in the regulation provides ample ability to plan and budget time accordingly to meet these requirements

The last feature of these amendments that may have an economic impact is the requirement that an employee who receives an unsatisfactory on either of the two essential requirements must receive an overall unsatisfactory performance evaluation. Those who designed the new PMP believe that these essential requirements are fundamental to being effective employees of the State of Kansas, so employees who are not able to satisfactorily complete these essential requirements should not be allowed to be considered to be performing anything other than in an unsatisfactory manner.

K.A.R. 1-7-11 – Employees entitled to appeal performance reviews. The only amendment to this regulation with substantive impact clarifies that the total amount of time that an employee’s probationary period may be extended in order to allow an appeal committee to prepare the final performance review is 60 days. Neither this nor the other technical amendments proposed to this regulation are anticipated to have any economic impact.

K.A.R. 1-7-12 – Performance review appeal procedure. Language is being added to this regulation to require that employees are to receive the date, time and place of the hearing when they are informed of names of the members of the performance review appeal committee as well as to clarify that, prior to the hearing, employees may object in writing to any individual proposed to serve as a member of the employee’s performance review appeal committee. Additional amendments require that once received, the appointing authority must inform the employee in writing that the objection is denied or appoint another member of the committee, and that all of this information is to be included as part of the documentation of the appeal. Language is also being added to include an employee’s request for an extension to the list of reasons why an appointing authority may extend the time limits associated with the appeal of a performance review. None of these proposed amendments are anticipated to have any economic impact.

K.A.R. 1-14-8 – Computation of layoff scores. Language is being added to clarify that the current values associated with the three-level rating scale are to be used for calculations involving performance review conducted on or before September 30, 2009, but proposes new values for the five ratings of the new PMP for performance reviews conducted on or after October 1, 2009. Amendments to this regulation also align the definitions utilized with respect to the preference for veterans in the case of identical layoff scores with the expanded definition of “veteran” used for the State’s Veterans’ Preference program as set out in K.S.A. 73-201. The remainder of the amendments proposed to this regulation are language changes or for the purpose of clarification and do not change current policy.

The change from three to five performance ratings will result in greater variation in layoff scores among employees, which could potentially have an economic impact on those employees who are subject to a layoff after October 1, 2009. Similarly, the adoption of the definition of “veteran” set forth in K.S.A. 73-201 will mean that more employees will be considered a veteran for the purposes of receiving a preference in the case of identical layoff scores, which could potentially have an economic impact on the employees included in that layoff. Beyond these situations, there should be no further economic impact from the proposed amendments to this regulation.

APPENDIX C
(Sample Certificate of Adoption)

KANSAS STATE EMPLOYEES HEALTH CARE COMMISSION

CERTIFICATE OF ADOPTION

I hereby certify that the Kansas State Employees Health Care Commission, by unanimous roll call vote, adopted K.A.R. 108-1-1 as a permanent regulation on the 31st day of August 2001. K.A.R. 108-1-1 is hereby filed for adoption, and the Economic Impact Statement is enclosed.

Roll Call Vote:

| <u>Person</u> | <u>HCC Position</u> | <u>Vote</u> |
|---------------|---------------------|-------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Chairperson

Date

APPENDIX D

Regulations Transmittal Memo

To: Legal Opinions and Governmental Counsel Division
Attorney General's Office

From: [Agency]

Date:

Re: K.A.R. [List Each Regulation]

[Agency] is submitting the above-referenced regulation(s) for your review. We have attached a copy of the most current version of the law (each enrolled bill, Session law, or statute) cited in the history section of each proposed regulation. We also have attached the Economic Impact Statement.

The regulation(s) status is as follows:

_____ Initial review of new, newly amended, or revoked regulation(s)

_____ 2nd or subsequent review following disapproval by Attorney General after initial review*

_____ 2nd or subsequent review following agency pre-hearing changes*

_____ Post-hearing review with changes as suggested by public comments or the Joint Committee on Rules and Regulations *

* NOTE: Please indicate changes from previously submitted version in some manner.

Any additional comments, i.e., statutory or other deadline:

The agency contact person is:

Name:
Agency:
Address:
City/State/Zip:
Phone:
E-mail:

APPENDIX E

(Guidelines for determining the content and organization of new regulations)

(a) Define content of regulations. Regulations implement or interpret legislation; the substance of a regulation is determined by its governing statute. Therefore, a thorough understanding of the legislation's scope and intent is necessary before drafting regulations. The following questions are intended for use as informal guides in compiling material to be used in a regulation and also as tools to evaluate whether or not the proposed regulation maintains a close link to the statute.

(1) *Is the statute specific and detailed, or broad and general?* These qualities have a direct effect on the content and scope of regulations. Specific, detailed statutes require less interpretation. Little flexibility is available for case-by-case situations or rapid change. Broad and general statutes necessitate greater elaboration in the regulations but give the agency more flexibility.

(2) *What is the purpose or goal of the statute?* If regulations are to implement and interpret statutes, the writer must have a clear understanding of the following characteristics of the statute:

(A) *What are the statute's general objectives or overall goal?* These are often broad value statements such as "In the interest of public health and to prevent the spread of disease. . . ."

(B) *What are the statute's operational objectives?* Operational objectives are conditions or actions that reflect achievement of the general objectives.

(C) *What are the statute's relationships among objectives?* Are they of equal weight, complementary, or prioritized? Does the proposed regulation maintain the same kind of relationship?

(3) *What is the target population?* Who is affected by the statute?

(A) There is a distinction between the immediate target population (the regulated party) and the ultimate target (the beneficiary of the regulation). In practice, these populations may be the

same.

(B) When the target and ultimate populations are different, there should be a clear, logical link between the requirements imposed on the target population and the desired effect on the ultimate population. For example, a nursing home administrator may be required to have an educational background in state health and safety regulations so that a safe, sanitary environment is provided for adult care home residents.

(4) *What is the extent and nature of the authority given to the agency by the statute?*

Common authority issues are reflected in the following questions:

(A) Does the regulation assume authority for the agency in excess of that granted by statute?

(B) Is the regulation in conflict with the governing statute in any way?

(C) Does the content of the regulation extend or modify the statute?

(D) Does the regulation's content have a reasonable relationship to statutory purpose?

(E) Has the agency followed procedural statutes?

(5) *What actions must the target group perform to carry out the purposes of the statute?*

What prohibitions are invoked? Are these actions technically and financially feasible?

(6) *Who are the enforcers?* Statutes are usually vague about who is to be responsible; this area probably will need to be clarified in the regulation. Agencies may consider the following factors in assigning responsibility for enforcement:

(A) What are the legal and administrative capabilities and capacities of the proposed enforcers?

(B) Will the enforcers be passive (regulated individuals come to the enforcers), active (as in the case of inspectors), or both?

(C) What is the relationship of the proposed enforcers to those who are regulated?

(D) Do the enforcers have the appropriate resources, expertise, and training for

functioning in that role?

(7) *What is the implementation process? What are the costs? Who is to be accountable for implementation of various aspects?*

While these questions may vary somewhat in their applicability to particular cases, a general consideration of each one, with particular attention to those that appear to be most pertinent, should simplify the tasks of conceptualizing, organizing, and writing regulations.

(b) Prepare an organizational framework for the set of regulations. While the organizational conventions for individual regulations were provided in an earlier section, the following suggestions relate to the overall organization of an entire set of regulations:

(1) It may be helpful to think in terms of various types of statements commonly found in Administrative Rules and Regulations.

(A) Definitions. Most regulations include an entire regulation or a subsection of a regulation that defines common terms used in the rest of the regulations in that series. Consider placing all definitions in a single definition regulation (or within a subsection at the beginning of a regulation), generally the first regulation of the article or series. If the statute defines words or phrases used in the regulation, do not define those words or phrases in the regulations.

(B) Specifications. These statements require that some condition be met by those regulated. They are particularly common in licensing regulations.

(C) Mandates. Mandates are statements of that which must be done.

(D) Prohibitions. Prohibitions are statements of that which must not be done.

(E) Permissions. These provisions state that which may be done.

(2) Agencies may choose other possible frameworks for organizing the regulations, including the following approaches:

(A) Classification by subject or thing being regulated;

(B) classification by sequence of events or chronology;

- (C) classification by function;
- (D) progression from general statements to specific statements; or
- (E) progression from simple to complex statements.

To fit a particular set of regulations, the writer may need to adapt the suggested types of organizational schemes or may use one or more in combination. While there is obviously no one accepted means for organizing regulations, it is very important that they reflect an easily grasped rationale for the manner in which they appear. Regulations that are next to each other should be so for a reason; they should show a logical progression based on one or more organizational frameworks.

APPENDIX F

RESOURCES FOR RECORDING PRINT MATERIALS

ORGANIZATION: Audio-Reader Network at the University of Kansas

ADDRESS: 1120 W. 11th Street
Lawrence, KS 66044

TELEPHONE: 1-800-772-8898 or (785) 864-4600

E-MAIL: reader@ku.edu

WEB SITE: <http://reader.ku.edu>

COST: Free to qualified individuals if audio files can be delivered electronically. Services also available to businesses and other organizations. Please call for details and costs.

GROUPS SERVED: Primarily individuals who are unable to read standard print, but can assist organizations and businesses on a fee basis.

TIME REQUIREMENT: Depends on size of project and present workload. Call first to discuss project.

ORGANIZATION: Alphapointe

ADDRESS: 7501 Prospect Ave.
Kansas City, MO 64132

TELEPHONE: (816) 421-5848

WEB SITE: www.alphapointe.org

COST: Please call for details.

GROUPS SERVED: Individuals, organizations, businesses, etc.

TIME REQUIREMENT: Depends on the project. If a textbook or manual, they will provide recordings in segments once completed.

COMMENTS: Work is completed by volunteers on a “first-come, first-served” basis.

RESOURCES FOR BRAILLE MATERIALS

ORGANIZATION: State Library of Kansas

ADDRESS: State Library of Kansas, Talking Books
1 Kellogg Circle
Box 4055
Emporia, KS 66801

TELEPHONE: 1-800-362-0699

WEB SITE: <http://kslib.info/153/Talking-Books>

E-MAIL: KTB@ks.gov

COST: Up to 100 embossed pages free.
Multiple copies and large requests (more than 100 embossed pages) provided at \$0.10 per single-sided embossed page.

GROUPS SERVED: State agencies and members of the general public needing copies of legislation.

TIME REQUIREMENT: Time permitting. Generally one week.

COMMENTS: Documents need to be sent in digital form. Call for instructions regarding the digital format in which documents should be submitted.

ORGANIZATION: Independence, Inc.

ADDRESS: 2001 Haskell Avenue
Lawrence, KS 66046

TELEPHONE: (785) 841-0333

WEB SITE: www.independenceinc.org

COST: Braille Fees

- \$5.00 per electronic document (includes spelling corrections, spacing, and conversion to .txt file format)
- \$30.00 per hour for major changes, editing for braille-ready text, etc.
- \$0.40 per single-sided brailled page
- \$0.80 per double-sided brailled page

Special Services

- \$1.50 per small binder
- \$3.00 per large binder

GROUPS SERVED: Any person, business, or agency.

TIME REQUIREMENT: At least two weeks to guarantee availability. However, call to discuss.

ORGANIZATION: Alphapointe

ADDRESS: 7501 Prospect Ave.
Kansas City, MO 64132

TELEPHONE: (816) 421-5848

COST: Please call for details.

GROUPS SERVED: Individuals, organization, businesses, etc.

TIME REQUIREMENT: Call to discuss the time requirement.

COMMENTS: Services are provided on a "first-come, first-served" basis