

**REPORT OF THE JUDICIAL COUNCIL  
ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE**

**BACKGROUND**

In June 2008, the Judicial Council's Administrative Procedure Advisory Committee requested that the Judicial Council assign it the task of studying the Rules and Regulations Filing Act, K.S.A. 77-415 *et seq.* The Committee was particularly interested in finding ways to improve notice and public participation in rulemaking and to take advantage of technology by utilizing internet and electronic transmission of information. The Judicial Council agreed and made the requested assignment.

**COMMITTEE MEMBERSHIP**

The members of the Administrative Procedure Advisory Committee taking part in this study were:

**Carol L. Foreman**, Chair, Topeka; Deputy Secretary of the Department of Administration

**Yvonne Anderson**, Topeka; General Counsel for the Kansas Department of Health and Environment

**Martha Coffman**, Lawrence; Chief Advisory Counsel for the Kansas Corporation Commission

**Tracy T. Diel**, Topeka; Director of the Office of Administrative Hearings

**James G. Flaherty**, Ottawa; practicing attorney

**Jack Glaves**, Wichita; practicing attorney

**Hon. Steve Leben**, Fairway; Kansas Court of Appeals Judge

**Prof. Richard E. Levy**, Lawrence; Professor at the University of Kansas School of Law

**Camille A. Nohe**, Topeka; Assistant Attorney General

**Hon. Eric Rosen**, Topeka; Kansas Supreme Court Justice

**Steve A. Schwarm**, Topeka; practicing attorney

**John S. Seeber**, Wichita; practicing attorney

**Mark W. Stafford**, Topeka; practicing attorney

The Committee invited two additional persons with rulemaking expertise to serve on a temporary basis during the study of rulemaking statutes:

**Rep. Janice Pauls**, Hutchinson; State Representative from the 102<sup>nd</sup> District and ranking Democrat on the Joint Committee on Rules and Regulations

**Diane Minear**, Tonganoxie; Legal Counsel for the Secretary of State

## **METHOD OF STUDY**

In conducting its study of the rules and regulations filing act, the Administrative Procedure Advisory Committee held 8 meetings during 2009. The Committee solicited input from a variety of sources, including legal counsel for state agencies and other attorneys practicing in the area of administrative law.

## **COMMITTEE RECOMMENDATIONS**

The Committee proposes the adoption of a number of amendments to the Rules and Regulations Filing Act, K.S.A. 77-415 *et seq.*, which are reflected in the “redline” version of those statutes appended to this report. The redline version includes comments explaining the reasons for each of the individual amendments, many of which are technical or intended for purposes of clarification. Most of the Committee’s proposed changes to the Rules and Regulations Filing Act fall into two main categories: (1) amendments to improve public access to and notice of the rulemaking process and (2) amendments to give the Secretary of State’s office more flexibility in the filing and publication of rules and regulations.

Improving transparency of agency action was an important overarching goal of the Committee. This includes both making the agency's views of the law and the public's obligations under the law as broadly available as possible. It also includes promoting public access to and participation in the rulemaking process, which the Committee believes is an important means of improving the content of rules and regulations as well as holding agencies accountable. Amendments that improve public access to and notice of the rulemaking process include:

- New Section 1, which allows agencies to publish non-binding "guidance documents" to provide helpful information to both the public and agency staff.
- Amendments to K.S.A. 77-421(b), which require an agency to prepare a concise statement of its principal reasons for adopting or amending a rule, including the agency's reasons for not accepting substantial arguments made in testimony and reasons for any substantial change between the text of the proposed rule and the version finally adopted.
- New subsection (c) of K.S.A. 77-421, which provides guidance on when an agency is required to reinstate the rulemaking process, including providing notice and another public comment period, because of changes to a proposed rule.

Current provisions impose strict publication requirements on the Secretary of State's office and prescribe the precise form for various filings. These requirements are increasingly inappropriate as information technology develops, and impose some unnecessary costs on both the Secretary of State and the agencies. Although that office does not plan dramatic changes in the short term, increasing flexibility for the Secretary of State's office concerning the filing and publication of rules and regulations will permit the office to develop alternatives that will produce substantial cost savings in the long run. To ensure that there is some accountability in this process, the Secretary of State is to adopt rules and regulations specifying filing and publication requirements. Amendments that give the Secretary of State's office more flexibility in the filing and publication of rules and regulations include:

- Amendment to K.S.A. 77-415a, which gives the Secretary of State authority to adopt its own rules and regulations necessary for the execution of its functions under the act.

- Amendments to K.S.A. 77-416(a) and 77-418, which remove specific technical requirements about how proposed rules are to be filed with the Secretary of State's office. Instead the Secretary of State's office may set those technical requirements itself.
- Amendments to K.S.A. 77-419, 77-428, 77-429, 77-430a, and 77-431 which delete requirements that rules and regulations must be published in written form. Although the Secretary of State does not intend to completely discontinue print publication in the near future, the amendments give the Secretary of State the option to move toward electronic publication, which will reduce costs.
- Amendments to K.S.A. 77-430, which allow the Secretary of State to distribute copies of the Kansas administrative regulations to certain entities in an electronic or paper medium and only upon request.

### **Issues raised by state agency counsel**

The Committee received several responses to its request for input from state agency counsel regarding the Rules and Regulations Filing Act. The Committee considered each of the responses, and either made the requested change or rejected it for the reasons set out below.

Matt Spurgin, Litigation Counsel for the Kansas Corporation Commission, suggested it would be helpful if the Committee drafted amendments to clarify when changes to a proposed regulation rise to the level that the agency must initiate new rulemaking proceedings. The Committee agreed that some guidance in this area was needed and proposes adding a new subsection (c) to K.S.A. 77-421. The amendment provides that if an agency proposes to adopt a final rule or regulation that (1) differs in subject matter or effect in material respects from the rule as originally proposed and (2) is not a logical outgrowth of the rule as originally proposed, then the agency must initiate new rulemaking proceedings including notice and an additional public comment period of not less than 30 days.

Patrick Hurley, Chief Counsel for the Department of Administration, suggested that the two-

step process of submitting proposed rules and regulations to the Secretary of Administration for editing and then to the Attorney General for substantive review might be shortened by moving both roles to the AG's office. However, the Committee also heard from Deputy Attorney General Mary Feighny that transferring the Secretary of Administration's rule review function to the AG's office would pose personnel, budgetary, and logistical problems. The Committee found that both review steps are important. The Committee recommends no substantive change in this area.

Mr. Hurley also suggested that an electronic approval process, rather than the paper approval process articulated in K.S.A. 77-416 and 77-418, would be more efficient and would be more easily managed if set out by regulation rather than by statute. The Committee agreed, and recommends amendments that would allow the Secretary of State's Office to set the technical requirements for the filing of rules and regulations. Under the Committee's recommended amendments, the Secretary of State would have the flexibility to require proposed rules and regulations to be submitted electronically.

John Campbell, General Counsel for the Kansas Insurance Department, suggested that the 60-day notice period seems longer than necessary to obtain public comments and that the comment period should be shortened to 30 days. The Committee found that, if the notice period were shortened, the joint legislative committee might not have enough time to schedule meetings and provide its comments before the public hearing. Also, the Committee did not wish to restrict public participation in the rulemaking process by shortening the period for public comment. Accordingly, the Committee does not recommend shortening the 60-day notice period.

### **Remaining issue for study: exempt rules and regulations**

The issue of "exempt" rules and regulations remains on the Committee's agenda for further study. K.S.A. 77-415(4) defines "rule and regulation" to mean "a standard, statement of policy or general order . . . of general application and having the effect of law, issued or adopted by a state agency to implement or interpret legislation enforced or administered by such state agency or to govern the organization or procedure of such state agency." The statute then provides a laundry list

of rules and regulations which are not rules and regulations for purposes of the act – in other words, “exempt” rules and regulations.

The Committee found the Rules and Regulations Filing Act to be unclear as to what process is required to adopt an “exempt” rule and regulation. K.S.A. 77-421a provides that “exempt” rules and regulations “shall be adopted in the manner prescribed by K.S.A. 77-421 and amendments thereto after notice has been given and a hearing held in the manner prescribed by K.S.A. 77-421 and amendments thereto.” The Committee believes this provision can be interpreted in two different ways. One possible interpretation of the statute is that any exempt rule and regulation listed in K.S.A. 77-415(4) must be adopted using the process set out by K.S.A. 77-421. Another possible interpretation is that K.S.A. 77-421 must be followed only if an agency wants the exempt rule and regulation to be an actual rule and regulation, in other words, to have the force and effect of law.

A related problem is that the list of “exempt” rules and regulations in K.S.A. 77-415(4) actually contains two different categories of rules: 1) policy statements that are not rules and regulations at all, and 2) specific types of rules and regulations that are subject to only a limited rulemaking process. However, the act treats both of these categories in the same manner.

The Committee plans to further study the problems relating to “exempt” rules and regulations and will bring a recommendation to the Judicial Council as soon as possible.

**Chapter 77.--STATUTES; ADMINISTRATIVE RULES AND REGULATIONS AND  
PROCEDURE**

**Article 4.--RULES AND REGULATIONS**

**New Section 1.**

(a) A state agency may issue a guidance document without following the procedures set forth in this act for the adoption of rules and regulations. "Guidance document" means a record of general applicability, designated by an agency as a guidance document, that lacks the force of law but states the agency's current approach to, or interpretation of, law, or general statements of policy that describe how and when the agency will exercise discretionary functions.

(b) A state agency that proposes to rely on a guidance document to the detriment of a person in any administrative proceeding must afford the person a fair opportunity to contest the legality or wisdom of positions taken in the document. The agency may not use a guidance document to foreclose consideration of issues raised in the document.

(c) A guidance document may contain binding instructions to state agency staff members if at an appropriate stage in the administrative process, the agency's procedures provide affected persons an adequate opportunity to contest positions taken in the document.

(d) If a state agency proposes to act in an adjudication at variance with a position expressed in a guidance document, it shall provide a reasonable explanation for the variance. If an affected person in an adjudication may have reasonably relied on the agency's position, the explanation must include

1 a reasonable justification for the agency's conclusion that the need for the variance outweighs the  
2 affected person's reliance interests.

3 (e) Each state agency shall maintain an index of all of its currently effective guidance documents,  
4 publish the index on its website, make all guidance documents available to the public, and file the  
5 index in the manner prescribed by the secretary of state. The agency may not rely on a guidance  
6 document or cite it as precedent against any party to a proceeding unless the guidance document is  
7 published on the agency website.

8 (f) A guidance document may be considered by a presiding officer or agency head in an agency  
9 adjudication but it does not bind the presiding officer or the agency head in the exercise of  
10 discretion.

### 11 **Comment**

12 This section is designed to encourage agencies to advise the public of its current opinions  
13 and approaches by using guidance documents (also often called interpretive rules or policy  
14 statements). A guidance document, in contrast to a rule, lacks the force of law. The section  
15 recognizes the agencies' need to use such documents to guide both agency employees and the public.  
16 Agency law often needs interpretation, and agency discretion needs some channeling. The public  
17 has an interest in knowing the agency's position on these matters, and increasing public knowledge  
18 reduces unintentional violations and lowers transaction costs. For example, a company may find that  
19 an agency has a guidance document and that the company can reasonably comply with the  
20 document's interpretation of a statute or regulation. In that case, the company may proceed based  
21 on the guidance document rather than engaging in extensive legal consultations, regulatory  
22 proceedings, or even litigation.

23 This section strengthens agencies' abilities to fulfill these legitimate objectives by explicitly  
24 excusing them from having to comply with formal rulemaking procedures before issuing nonbinding

1 statements. Meanwhile, the section incorporates safeguards to ensure that agencies will not use  
2 guidance documents in a manner that would undermine the public's interest in administrative  
3 openness and accountability. The section also encourages broad public accessibility to guidance  
4 documents through agency websites.

5 This section is based upon section 310 of the Revised Model State Administrative Procedure  
6 Act (Draft of September 30, 2009). These comments are based upon the comments to section 310  
7 in the draft Model Act.

8 The Committee recommends that this new section be placed in the Kansas Statutes at K.S.A.  
9 77-421c.

10

1 **77-415a. Secretary of state to file and publish rules and regulations.** The secretary of state shall  
2 file and publish all rules and regulations as provided by article 4 of chapter 77 of the Kansas Statutes  
3 Annotated. The secretary of state may adopt rules and regulations necessary for the execution of  
4 its functions under this act.

5 **History:** L. 1988, ch. 366, § 1; June 1.

6 **Comment**

7 The amendment to this section is part of a series of amendments intended to provide more  
8 flexibility for the Secretary of State’s office regarding the filing and publication of rules and  
9 regulations. Other amendments remove specific requirements from the statutes about the exact  
10 number of copies of proposed rules and regulations required to be filed with the Secretary of State’s  
11 Office. Instead, the Secretary of State may set those technical requirements by rules and regulations.  
12 The amendment to K.S.A. 77-415a gives the Secretary of State authority to adopt such rules and  
13 regulations.

1 **77-415b. Rules and regulations transferred from office of revisor of statutes to office of**  
2 **secretary of state; rules and regulations continued in effect; expiration of existing temporary**  
3 **rules and regulations.** (a) All rules and regulations of state agencies which are in force and effect  
4 at the time this act takes effect shall continue to be effective and shall be deemed to be duly filed  
5 with the secretary of state as provided for by this act until revised, amended, revoked or nullified  
6 pursuant to law.

7 ~~(b) All temporary rules and regulations filed prior to the effective date of this act and which are in~~  
8 ~~effect on the effective date of this act shall expire on October 1, 1988.~~

9 ~~(c) On the effective date of this act, all rules and regulations of state agencies lawfully filed with the~~  
10 ~~office of the revisor of statutes prior to the effective date of this act and all records pertaining to such~~  
11 ~~rules and regulations shall be transferred to the office of the secretary of state.~~

12 **History:** L. 1988, ch. 366, § 2; June 1.

13 **Comment**

14 Subsections (b) and (c) are deleted because their provisions are no longer necessary.

1 **77-416. Filing rules and regulations; numbering; citation of statutory authority; economic**  
2 **impact statement; documents adopted by reference; review of economic impact statement by**  
3 **director of the budget; environmental benefit and economic impact statement; authority of**  
4 **secretary of state.** (a) Every state agency shall file with the secretary of state every rule and

5 regulation adopted by it and every amendment and revocation thereof in the manner prescribed by  
6 the secretary of state. ~~Every rule and regulation, other than a temporary rule and regulation, filed in~~  
7 ~~the office of the secretary of state shall be filed in triplicate, and nine copies of every temporary rule~~  
8 ~~and regulation shall be filed in the office of the secretary of state, and~~ Each section rule and  
9 regulation shall include a citation to the statutory section or sections being implemented or  
10 interpreted and a citation of the authority pursuant to which it, or any part thereof, was adopted.  
11 Every rule and regulation filed in the office of the secretary of state shall be accompanied by a copy  
12 of the economic impact statement required by subsection (b); and a copy of the environmental  
13 benefit statement if required by subsection (d). A copy of any document adopted by reference in a  
14 rule and regulation shall be available from the state agency which adopted the rule and regulation  
15 upon request by any person interested therein. The state agency, under the direction of the secretary  
16 of state, shall number each section with a distinguishing number and, in making a compilation of  
17 the rules and regulations, the sections shall be arranged in numerical order. A decimal system of  
18 numbering shall be prohibited.

19 (b) At the time of drafting a proposed rule and regulation or amendment to an existing rule and  
20 regulation, the state agency shall ~~prepare a statement of~~ consider the economic impact of such  
21 proposed rule and regulation or amendment upon all governmental agencies or units and all persons  
22 which will be subject thereto and upon the general public. Prior to giving notice of hearing on a

1 ~~proposed rule and regulation, the state agency shall prepare an~~ ~~The~~ economic impact statement  
2 ~~which~~ shall include: (1) A brief description of the proposed rules and regulations and what is  
3 intended to be accomplished by their adoption; (2) whether the proposed rule and regulation is  
4 mandated by federal law as a requirement for participating in or implementing a federally subsidized  
5 or assisted program and whether the proposed rules and regulations exceed the requirements of  
6 applicable federal law; (3) a description of the cost, the persons who will bear the costs and those  
7 who will be affected by the proposed rules and regulations, including the agency proposing the rules  
8 and regulations, other governmental agencies or units, private citizens and consumers of the  
9 products or services which are the subject of the rules and regulations or the enforcement thereof;  
10 and (4) a description of any less costly or less intrusive methods that were considered by the state  
11 agency for achieving the stated purpose of the rules and regulations and why such methods were  
12 rejected in favor of the proposed rules and regulations. The state agency may consult with other state  
13 agencies when preparing the economic impact statement. The state agency shall consult with the  
14 League of Kansas municipalities, Kansas association of counties and the Kansas association of  
15 school boards, as appropriate, when preparing the economic impact statement of a proposed rule and  
16 regulation which increases or decreases revenues of cities, counties or school districts or imposes  
17 functions or responsibilities on cities, counties or school districts which will increase their  
18 expenditures or fiscal liability. The state agency shall reevaluate and, when necessary, update the  
19 statement ~~at the time of giving notice of hearing on a proposed rule and regulation and~~ at the time  
20 of filing a rule and regulation with the secretary of state. If a public hearing was held prior to the  
21 adoption of the rule and regulation, a state agency at the time of filing a rule and regulation with the  
22 secretary of state shall include as a part of the economic impact statement a statement specifying the

1 time and place at which the hearing was held and the attendance at the hearing. A copy of the current  
2 economic impact statement shall be available from the state agency upon request by any party  
3 interested therein.

4 (c) Upon request of the state rules and regulations board, the joint committee on administrative rules  
5 and regulations or the chairperson of either committee or board, the director of the budget shall  
6 review the economic impact statement prepared by any state agency and shall prepare a  
7 supplemental or revised statement. If possible, the supplemental or revised statement shall include  
8 a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It  
9 also shall include a statement, if determinable or reasonably foreseeable, of the immediate and long-  
10 range economic impact of the rule and regulation upon persons subject thereto, small employers and  
11 the general public. If, after careful investigation, it is determined that no dollar estimate is possible,  
12 the statement shall set forth the reasons why no dollar estimate can be given. Every state agency is  
13 directed to cooperate with the division of the budget in the preparation of any statement pursuant  
14 to this subsection when, and to the extent, requested by the director of the budget.

15 (d) At the time of drafting a proposed environmental rule and regulation or amendment to an  
16 existing environmental rule and regulation, the state agency shall prepare a statement of consider  
17 the environmental benefit of such proposed rule and regulation or amendment. Prior to giving notice  
18 of hearing on a proposed rule and regulation, the state agency shall prepare an ~~The~~ environmental  
19 benefit statement which shall include a description of the need for and the environmental benefits  
20 which will likely accrue as the result of the proposed rule and regulation or amendment. The  
21 description shall summarize, when applicable, research indicating the level of risk to the public  
22 health or the environment being removed or controlled by the proposed rule and regulation or

1 amendment. When specific contaminants are to be controlled by the proposed rule and regulation  
2 or amendment, the description shall indicate the level at which the contaminants are considered  
3 harmful according to currently available research. The state agency may consult with other state  
4 agencies when preparing the environmental benefit statement. The state agency shall reevaluate and,  
5 when necessary, update the statement ~~at the time of giving notice of hearing on a proposed rule and~~  
6 ~~regulation and~~ at the time of filing a rule and regulation with the secretary of state. A copy of the  
7 current environmental benefit statement shall be available from the state agency upon request by any  
8 party interested therein.

9 (e) In addition to the requirements of subsection (b), the economic impact statement for all  
10 environmental rules and regulations shall include: (1) A description of the capital and annual costs  
11 of compliance with the proposed rules and regulations, and the persons who will bear those costs;  
12 (2) a description of the initial and annual costs of implementing and enforcing the proposed rules  
13 and regulations, including the estimated amount of paperwork, and the state agencies, other  
14 governmental agencies or other persons or entities who will bear the costs; (3) a description of the  
15 costs which would likely accrue if the proposed rules and regulations are not adopted, the persons  
16 who will bear the costs and those who will be affected by the failure to adopt the rules and  
17 regulations; and (4) a detailed statement of the data and methodology used in estimating the costs  
18 used in the statement.

19 ~~(f) On and after the effective date of this act, the secretary of state shall have the discretion to return~~  
20 ~~to the appropriate state agency or otherwise dispose of any document or other material which has~~  
21 ~~been adopted previously by reference and filed with the secretary of state.~~

22 **History:** L. 1965, ch. 506, § 2; L. 1976, ch. 415, § 1; L. 1977, ch. 321, § 2; L. 1979, ch. 304, § 1;

1 L. 1980, ch. 304, § 1; L. 1981, ch. 366, § 1; L. 1982, ch. 386, § 2; L. 1983, ch. 307, § 2; L. 1984, ch.  
2 346, § 1; L. 1988, ch. 366, § 29; L. 1994, ch. 232, § 4; L. 1995, ch. 171, § 2; L. 2001, ch. 11, § 1;  
3 L. 2008, ch. 25, § 2; July 1.

#### 4 **Comment**

5 The amendments to subsection (a) are part of a series of amendments intended to build in  
6 more flexibility for the Secretary of State’s office by allowing the Secretary of State to decide how  
7 many copies of each rule and regulation to require. The amendments remove specific requirements  
8 from the statutes about the exact number of copies of proposed rules and regulations required to be  
9 filed with the Secretary of State’s Office. Instead, the Secretary of State may set those technical  
10 requirements by adopting rules and regulations.

11 The amendments to subsection (b) affect the timing of when an economic impact statement  
12 is prepared and when it is updated. The statute currently requires an economic impact statement to  
13 be prepared at the time of drafting of a proposed rule and updated, if necessary, at the time of giving  
14 notice of hearing and again when the final rule is adopted. The Committee found that actual agency  
15 practice in this area does not conform to the requirements of the statute.

16 Under the amendments, the agency must consider the economic impact at the time of  
17 drafting a proposed rule or regulation; the agency must prepare the economic impact statement prior  
18 to giving notice of hearing on the proposed rule or regulation; and the agency must reevaluate and,  
19 if necessary, update the economic impact statement at the time of filing the rule or regulation with  
20 the Secretary of State.

21 The amendments to subsection (d) affect the timing of when an environmental impact  
22 statement is prepared and when it is updated. They parallel the amendments to subsection (b)  
23 relating to the economic impact statement.

24 Subsection (f) deals with a different subject matter than the rest of K.S.A. 77-416a. The  
25 Committee felt the substance of subsection (f) should be moved to new subsection (b) in K.S.A. 77-  
26 417.

1 **77-417. Duties of secretary of state.** (a) The secretary of state shall: (1) Endorse on each rule and  
2 regulation filed, the time and date of the filing thereof; (2) maintain a file of such rules and  
3 regulations for public inspection; (3) keep a complete record of all amendments and revocations of  
4 rules and regulations; (4) index the rules and regulations so filed; and (5) publish the rules and  
5 regulations as hereinafter provided.

6 (b) The secretary of state shall have the discretion to return to the appropriate state agency or  
7 otherwise dispose of any document or other material which has been adopted previously by  
8 reference and filed with the secretary of state.

9 **History:** L. 1965, ch. 506, § 3; L. 1977, ch. 321, § 3; L. 1988, ch. 366, § 30; June 1.

10 **Comment**

11 New subsection (b) was moved from existing K.S.A. 77-416a(f). Because the provision  
12 addresses a power of the secretary of state’s office, the Committee believed the provision belongs  
13 in this section rather than the preceding one.

1 **77-418. Filing rules and regulations, form; revocation of consecutively numbered regulations.**

2 All rules and regulations adopted ~~and filed~~ by every state agency shall be ~~typewritten,~~  
3 ~~mimeographed, multilithed, or printed on standard letter size (8 ½ by 11 inches) paper, the kind,~~  
4 ~~grade, and durability thereof to be subject to the approval of~~ filed with the secretary of state in a  
5 form and manner approved by the secretary of state. ~~If any rule and regulation is amended or~~  
6 ~~revoked after the same has been adopted and filed, each rule and regulation amended or revoked~~  
7 ~~shall be filed on a separate sheet or sheets of paper, except this filing requirement may be complied~~  
8 ~~with for consecutively numbered rules and regulations which are being revoked by filing with the~~  
9 ~~secretary of state a statement clearly identifying the consecutively numbered rules and regulations.~~  
10 ~~Such statement shall clearly express that the consecutively numbered rules and regulations are being~~  
11 ~~revoked and shall specify the effective date of the revocation of such rules and regulations. If a rule~~  
12 ~~and regulation is filed with the secretary of state on more than one page, each page of such rule and~~  
13 ~~regulation, subsequent to the first page, shall be consecutively numbered at the top of each page, and~~  
14 ~~the number of the rule and regulation shall be placed in the upper right hand corner of each page.~~

15 **History:** L. 1965, ch. 506, § 4; L. 1977, ch. 321, § 4; L. 1979, ch. 304, § 2; L. 1980, ch. 304, § 2;  
16 L. 1988, ch. 366, § 31; June 1.

17 **Comment**

18 The amendment deletes unnecessary technical detail on how rules and regulations are to be  
19 filed, and leaves those details to the Secretary of State's office.

1 **77-419. Revival or amendment of regulations; filing and publication.** ~~No section of any To~~  
2 ~~revive or amend a~~ rule and regulation ~~shall be revived or amended unless~~, the new rule and  
3 regulation ~~contains~~ must contain the entire section revived or amended; ~~and any section so amended~~  
4 ~~shall be revoked~~. For the purpose of filing in the office of the secretary of state and for submission  
5 to the joint committee on administrative rules and regulations ~~and to the legislature~~ as provided in  
6 K.S.A. 77-426, and amendments thereto, a rule and regulation amending an existing regulation shall  
7 indicate the new matter contained therein by underlining or printing in italics the new matter, and  
8 material to be deleted from such rule and regulation shall be shown in ~~cancelled~~ strike-through type.  
9 The secretary of state in preparing such rules and regulations for publication in the Kansas  
10 administrative regulations shall omit all material shown in ~~cancelled~~ strike-through type ~~and such~~  
11 ~~rules and regulations shall be printed in Roman style type~~. The secretary of state shall not file any  
12 regulation which amends or revives a regulation unless the regulation so amending or reviving  
13 conforms to the provisions of this section.

14 **History:** L. 1965, ch. 506, § 5; L. 1974, ch. 421, § 5; L. 1975, ch. 484, § 1; L. 1975, ch. 485, § 1;  
15 L. 1975, ch. 486, § 1; L. 1977, ch. 321, § 5; L. 1988, ch. 366, § 32; June 1.

#### 16 **Comment**

17 The amendments in lines 1-4 are intended to clarify the meaning of the statute.

18 The amendment in line 5 strikes the phrase, “and to the legislature” because the cross-  
19 reference, K.S.A. 77-426, does not require rules to be submitted to the legislature.

20 In lines 9 and 11, the term “strike-through” type is preferred over the term “cancelled” type.  
21 The last amendment on line 11 deletes unnecessary technical detail about how rules and regulations  
22 are to be printed.

**77-420. Approval of rules and regulations by secretary of administration and attorney general; requirements for filing with secretary of state.**

(a) Every rule and regulation proposed to be adopted by any state agency, before being submitted to the attorney general under this section, shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar subject to such requirements as to organization, style, orthography and grammar as the secretary may adopt. Every rule and regulation submitted to the secretary of administration under this subsection (a) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection (a) shall be stamped as approved and the date of such approval shall be indicated therein.

(b) Every rule and regulation proposed by any state agency which has been approved by the secretary of administration as provided in subsection (a) before being adopted or filed shall be submitted to the attorney general for an opinion as to the legality of the same, including whether the making of such rule and regulation is within the authority conferred by law on the state agency. ~~and~~

The attorney general shall promptly furnish an opinion as to the legality of the proposed rule and regulation so submitted. Every rule and regulation submitted to the attorney general under this subsection (b) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the attorney general under this subsection (b) shall be stamped as approved and the date of such approval shall be indicated therein.

(c) No rule and regulation shall be filed by the secretary of state unless:

1 (1) The organization, style, orthography and grammar have been approved by the secretary of  
2 administration;

3 (2) the rule and regulation has been approved in writing by the attorney general as to legality;

4 ~~(3) the attorney general finds that the making of such rule and regulation is within the authority~~  
5 ~~conferred by law on the state agency submitting the same;~~

6 ~~(4 3)~~ the rule and regulation has been formally adopted by the state agency after it has been  
7 approved by the secretary of administration and the attorney general and is accompanied by a  
8 certified or other formal statement of adoption when adoption is by an executive officer of a state  
9 agency, or by a certified copy of the roll call vote required for its adoption by K.S.A. 77-421, and  
10 amendments thereto, when adoption is by a board, commission, authority or other similar body;

11 ~~(5 4)~~ the rule and regulation to be filed is accompanied by a copy of the economic impact statement  
12 as provided by K.S.A. 77-416, and amendments thereto; ~~and~~

13 ~~(6 5)~~ the rule and regulation to be filed is accompanied by a copy of the environmental benefit  
14 statement required by K.S.A. 77-416 and amendments thereto, if applicable; ~~and~~

15 ~~(7) the rule and regulation is accompanied by a copy of any document which is adopted by reference~~  
16 ~~by such rule and regulation unless specifically exempt by the state rules and regulations board~~  
17 ~~pursuant to subsection (a) of K.S.A. 77-416, and amendments thereto.~~



1 **77-421. Notice and hearing; adoption procedure.** (a) (1) Except as provided by subsection (a)(2)  
2 or subsection (a)(3), prior to the adoption of any permanent rule and regulation or any temporary  
3 rule and regulation which is required to be adopted as a temporary rule and regulation in order to  
4 comply with the requirements of the statute authorizing the same and after any such rule and  
5 regulation has been approved by the secretary of administration and the attorney general, the  
6 adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register  
7 and to the secretary of state and to the joint committee on administrative rules and regulations  
8 established by K.S.A. 77-436, and amendments thereto. The notice shall be mailed provided to the  
9 secretary of state and to the chairperson of the joint committee and shall be published in the Kansas  
10 register. A complete copy of all proposed rules and regulations and the complete economic impact  
11 statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to  
12 the secretary of state. The notice shall contain: (A) A summary of the substance of the proposed  
13 rules and regulations; (B) a summary of the economic impact statement indicating the estimated  
14 economic impact on governmental agencies or units, persons subject to the proposed rules and  
15 regulations and the general public; (C) a summary of the environmental benefit statement, if  
16 applicable, indicating the need for the proposed rules and regulations; (D) the address where a  
17 complete copy of the proposed rules and regulations, the complete economic impact statement, the  
18 environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto,  
19 may be obtained; (E) the time and place of the public hearing to be held; the manner in which  
20 interested parties may present their views; and (F) a specific statement that the period of 60 days'  
21 notice constitutes a public comment period for the purpose of receiving written public comments  
22 on the proposed rules and regulations and the address where such comments may be submitted to

1 the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties  
2 affected by the rules and regulations.

3 (2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel,  
4 possession, size or length limits for the taking or possession of wildlife and after such rule and  
5 regulation has been approved by the secretary of administration and the attorney general, the  
6 secretary of the department of wildlife and parks shall give at least 30 days' notice of its intended  
7 action in the Kansas register and to the secretary of state and to the joint committee on  
8 administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto.  
9 All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the  
10 statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes  
11 a public comment period on such rules and regulations.

12 (3) Prior to adopting any rule and regulation which establishes any permanent prior authorization  
13 on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which  
14 concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state  
15 medicaid plan, and after such rule and regulation has been approved by the secretary of  
16 administration and the attorney general, the secretary of social and rehabilitation services shall give  
17 at least 30 days' notice of such secretary's intended action in the Kansas register and to the secretary  
18 of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A.  
19 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules  
20 and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period  
21 of 30 days' notice constitutes a public comment period on such rules and regulations.

1 (b) On the date of the hearing, all interested parties shall be given reasonable opportunity to present  
2 their views or arguments on adoption of the rule and regulation, either orally or in writing. When  
3 requested to do so, At the time it adopts or amends a rule or regulation, the state agency shall  
4 prepare a concise statement of the principal reasons for adopting the rule and regulation or  
5 amendment thereto, including (1) the agency's reasons for not accepting substantial arguments made  
6 in testimony and comments; and (2) the reasons for any substantial change between the text of the  
7 proposed adopted or amended rule or regulation contained in the published notice of the proposed  
8 adoption or amendment of the rule or regulation and the text of the rule or regulation as finally  
9 adopted. Whenever a state agency is required by any other statute to give notice and hold a hearing  
10 before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of  
11 following the requirements or statutory procedure set out in such other law, may give notice and  
12 hold hearings on proposed rules and regulations in the manner prescribed by this section.  
13 Notwithstanding the other provisions of this section, the Kansas parole board and the secretary of  
14 corrections, may give notice or an opportunity to be heard to any inmate in the custody of the  
15 secretary of corrections with regard to the adoption of any rule and regulation, but the secretary shall  
16 not be required to give such notice or opportunity.

17 (c) If a state agency proposes to adopt a final rule or regulation that (1) differs in subject matter or  
18 effect in material respects from the rule or regulation as originally proposed and (2) is not a logical  
19 outgrowth of the original, the agency shall initiate new rulemaking proceedings under this act except  
20 that the period for public comment may be shortened to no less than 30 days. For purposes of this  
21 provision, a rule or regulation is not the logical outgrowth of the original rule or regulation if a

1 person affected by the final rule or regulation was not put on notice that his or her interests were  
2 affected in the rulemaking.

3 (d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a  
4 proposed rule and regulation, the agency shall cause written minutes or other records, including a  
5 record maintained on sound recording tape or on any electronically accessed media or any  
6 combination of written or electronically accessed media records of the hearing to be made. If the  
7 proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for  
8 not less than three years after its effective date, such minutes or other records, together with any  
9 recording or transcript made of the hearing and a list of all persons who appeared at the hearing and  
10 who they represented, any written testimony presented at the hearing and any written comments  
11 submitted during the public comment period.

12 ~~(d)~~ (e) No rule and regulation shall be adopted by a board, commission, authority or other similar  
13 body except at a meeting which is open to the public and notwithstanding any other provision of law  
14 to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other  
15 similar body unless it receives approval by roll call vote of a majority of the total membership  
16 thereof.

17 **History:** L. 1965, ch. 506, § 7; L. 1967, ch. 485, § 1; L. 1972, ch. 354, § 2; L. 1976, ch. 415, § 2;  
18 L. 1977, ch. 321, § 7; L. 1978, ch. 120, § 25; L. 1980, ch. 304, § 4; L. 1981, ch. 324, § 33; L. 1982,  
19 ch. 386, § 4; L. 1983, ch. 307, § 4; L. 1987, ch. 362, § 1; L. 1988, ch. 366, § 34; L. 1995, ch. 171,  
20 § 4; L. 1998, ch. 82, § 1; L. 2002, ch. 180, § 9; June 6.

1 **Comment**

2 This section has been amended in several respects. Two amendments are minor and require  
3 little discussion. The amendment to subsection (a) gives more flexibility to agencies by allowing  
4 notice of hearing to be provided to the secretary of state and to the chairperson of the joint  
5 committee by means other than mailing. For instance, notice might be provided by e-mail. The  
6 amendment to subsection (d)—subsection (c) under current law—clarifies that, if a recording or  
7 transcript of a hearing on the adoption of a proposed rule or regulation is made, the agency must  
8 maintain that recording or transcript for three years from the effective date of the rule or regulation.  
9 The amendment to subsection (b) and the addition of proposed new subsection (c) warrant more  
10 extended explanation.

11 **Subsection (b)**—The amendment to subsection (b) requires that, whenever an agency adopts  
12 or amends a rule or regulation, the agency must provide an explanation of the reasons for adopting  
13 the rule or regulation, the reasons for rejecting any substantial arguments, and the reasons for any  
14 substantial change from the version of the rule or regulation originally proposed. The language of  
15 the amendment is adapted from section 312 of the Revised Model State Administrative Procedure  
16 Act. The language changes current law in two ways. First, K.S.A. 77-421(b) currently requires the  
17 agency to provide an explanation on request, and this language would make it mandatory.  
18 Challenges to a rule or its application may arise after the rulemaking is complete and may be raised  
19 by persons who do not participate in the rulemaking process. In such cases, there may be no request  
20 and the benefits of an agency explanation are lost. Second, the current language does not address  
21 the extent to which the agency must address arguments made during the course of the proceeding  
22 or changes in the substance from the rule as originally proposed. The proposed language concerning  
23 those issues comes from the model act, but the Committee did not include a third component of the  
24 explanation required by the model act—that the explanation must include “[t]he summary of any  
25 regulatory analysis,” such as the economic impact statement prepared under K.S.A. 77-416. This  
26 requirement was omitted from proposed K.S.A. 77-421(b) because K.S.A. 77-416 already addresses  
27 the preparation and handling of the economic impact statement, and preparation of a separate  
28 summary as part of the explanation seemed unnecessary and unduly burdensome.

1           The proposed changes to subsection (b) represent a compromise between two competing sets  
2 of concerns. On the one hand, it is arguably incumbent upon all agencies to explain why they adopt  
3 rules (or amendments to rules). Because an agency’s statutory authority often affords it substantial  
4 policy making discretion, verifying that an agency has acted within its statutory authority does not  
5 ensure that the agency has exercised its authority in a reasonable manner. Requiring an agency to  
6 provide reasons for adopting a rule will help to hold agencies accountable by ensuring there is  
7 reasonable basis in the record for determining that the adoption of the rule or regulation furthers the  
8 underlying statutory policy. In addition, the inclusion of an explanation facilitates review of the  
9 regulation by the Joint Committee on Rules and Regulations and by courts, who must determine  
10 whether the rule is arbitrary and capricious or unreasonable under K.S.A. 77-621(c)(8).

11           On the other hand, requiring agencies to prepare an explanation for their rules and  
12 regulations in every case may impose unnecessary and undesirable burdens on agencies. Many rules  
13 and regulations (or amendments) are not controversial or are expressly required by statute. For such  
14 regulations, the preparation of an explanation is arguably not needed and will consume limited  
15 agency resources that might be used more effectively to further other aspects of the agency’s  
16 mission. In addition, there is concern that the requirement will fuel litigation, and make the  
17 rulemaking process longer and more costly. A similar requirement at the federal level has arguably  
18 contributed to this problem for federal rulemaking. Insofar as most agencies are struggling to fulfill  
19 their statutory missions with limited resources, additional procedural requirements that consume  
20 agency resources must be approached with caution.

21           The proposed changes are intended to provide the benefits of having agencies give the  
22 reasons for their rules, while minimizing the burdens on agencies to the extent possible. Thus, if a  
23 regulation directly follows from statutory requirements, the explanation would ordinarily be very  
24 limited. But when the agency regulation involves policy judgments based upon uncertain data and  
25 information, the agency would have to explain why it resolved contested issues in the manner in  
26 which it did. In particular, the agency would have to explain why it rejected substantial arguments,  
27 and why it made substantial changes from the rule, regulation, or amendment as originally proposed.  
28 It is to be emphasized that this requirement applies only to substantial arguments or objections, and  
29 does not require the agency to respond to objections that lack a plausible basis in fact or policy or

1 that do not go to the substance of the rule, and that the agency need not respond separately to  
2 multiple comments that raise substantially similar arguments or concerns. Likewise, the agency is  
3 not required to explain technical or stylistic changes or other minor amendments to the rule as  
4 originally proposed that do not significantly affect the substance of the rule.

5 The issue is one that divided the members of the committee. All the members of the  
6 committee agree, however, that the issue represents an important policy choice that ultimately rests  
7 with the Legislature.

8 **Subsection (c)**--New subsection (c), as proposed, is intended to address an area of  
9 uncertainty under current law—whether and when agencies that wish to adopt rules that differ  
10 significantly from the rules originally proposed must have the revised rule approved under K.S.A.  
11 77-420 and provide additional notice and hearing under K.S.A. 77-421. There is a large body of  
12 case law in other jurisdictions, including the federal courts, holding that when a final rule differs so  
13 significantly from the original rule that it is not the “logical outgrowth” of the original rule, a new  
14 notice and additional public comment or hearing must be provided. The underlying rationale for  
15 this rule is to ensure that those affected by the final rule were “on notice” that their interests were  
16 at stake in the rulemaking so that they could protect their interests by participating in the rulemaking  
17 proceeding. At the same time, it is natural and appropriate for agencies to change their proposed  
18 rules in response to input from the rulemaking process, and changes in response to public input  
19 should not be discouraged. In addition, affected persons should be expected to participate in the  
20 original rulemaking proceeding when the content of the rule and related notice are sufficient to  
21 apprise them that an issue will be addressed in the rulemaking.

22 At present, there is considerable uncertainty in Kansas regarding whether and under what  
23 circumstances agencies are required to provide a new notice and rulemaking hearing as a result of  
24 changes in a rule. The committee therefore considered it desirable to provide further guidance, and  
25 proposes new subsection (c) to accomplish this objective. Under new subsection (c), an agency must  
26 begin new rulemaking proceedings if it proposes to adopt a final rule or regulation that (1) differs  
27 in subject matter or effect in material respects from the rule originally proposed and (2) is not a  
28 logical outgrowth of the original. However, the period for public comment may be shortened to no  
29 less than 30 days. Notice is the key to determining when a final rule is the “logical outgrowth” of

1 the original proposed rule. A final rule is not considered to be the logical outgrowth of the original  
2 if a person affected by the final rule was not put on notice that his or her interests were affected in  
3 the original rulemaking proceeding. This provision reflects the Committee's view that not every  
4 substantial change in a rule should require the agency to initiate a new rulemaking proceeding  
5 because many substantial changes are the natural product of the rulemaking process and resolve  
6 issues that were raised by the original rule and notice, so that affected persons had ample  
7 opportunity to participate in the rulemaking process.

8

1 **77-422. Temporary rules and regulations; requirements and grounds for adoption;**  
2 **numbering; effective date; expiration.**

3 (a) A rule and regulation may be adopted by a state agency  
4 as a temporary rule and regulation if the state agency and the state rules and regulations board finds  
5 that the preservation of the public peace, health, safety or welfare necessitates or makes desirable  
6 putting such rule and regulation into effect prior to the time it could be put into effect if the agency  
7 were to comply with the notice, hearing and publication requirements of this act or prior to the  
8 effective date prescribed by K.S.A. 77-426, and amendments thereto.

9 (b) Temporary rules and regulations may be adopted without the giving of notice and the holding  
10 of a hearing thereon.

11 (c) A temporary rule and regulation shall take effect: (1) After approval by the secretary of  
12 administration and the attorney general as provided by K.S.A. 77-420, and amendments thereto; (2)  
13 after approval by the state rules and regulations board as provided by K.S.A. 77-423, and  
14 amendments thereto; and (3) upon filing with the secretary of state. The effective date of all or  
15 specific parts of a temporary rule and regulation may be delayed to a date later than its filing date  
16 if the delayed effective date of such rule and regulation, or specific parts thereof, is clearly expressed  
17 in the body of such rule and regulation. A temporary rule and regulation shall be effective for ~~a~~  
~~period not to exceed 120~~ not longer than 180 days renewable once up to an additional 180 days.

18 (d) A temporary rule and regulation which amends an existing rule and regulation shall have the  
19 effect of suspending the force and effect of the existing rule and regulation until such time as the  
20 temporary rule and regulation is no longer effective. In such case, at the time the temporary rule and  
21 regulation ceases to be effective, the existing permanent rule and regulation which was amended by

1 the temporary rule and regulation shall be in full force and effect unless such existing rule and  
2 regulation is otherwise amended, revoked or suspended as provided by law.

3 (e) Temporary rules and regulations shall be numbered in accordance with the numbering  
4 arrangement approved by the secretary of state and otherwise shall conform to the approval,  
5 adoption and filing requirements of this act, insofar as the same can be made applicable.

6 **History:** L. 1965, ch. 506, § 8; L. 1974, ch. 421, § 1; L. 1975, ch. 484, § 2; L. 1975, ch. 485, § 2;  
7 L. 1975, ch. 486, § 2; L. 1976, ch. 415, § 3; L. 1977, ch. 321, § 8; L. 1980, ch. 304, § 5; L. 1981, ch.  
8 366, § 2; L. 1981, ch. 324, § 34; L. 1985, ch. 307, § 2; L. 1986, ch. 361, § 1; L. 1988, ch. 366, § 35;  
9 L. 1998, ch. 82, § 2; July 1.

10 **Comment**

11 The amendments to subsection (c) extend the time that temporary rule or regulation is  
12 effective from 120 to 180 days and allow a temporary rule or regulation to be renewed once for up  
13 to an additional 180 days. The Committee believes the amendments are necessary in order to give  
14 agencies sufficient time to complete the permanent rulemaking process while still carefully  
15 considering public input. Also, the amendments clarify that an agency cannot rely indefinitely on  
16 a temporary rule or regulation.

1 **77-423. State board; creation; membership; powers and duties.** There is hereby created a state  
2 rules and regulations board consisting of the attorney general or the attorney general's designee, the  
3 secretary of state or the secretary of state's designee, the secretary of administration or the secretary  
4 of administration's designee, the chairperson of the joint committee on administrative rules and  
5 regulations or a member of the joint committee designated by the chairperson from the same house  
6 of the legislature as the chairperson and the vice-chairperson of the joint committee on  
7 administrative rules and regulations or a member of the joint committee designated by the vice-  
8 chairperson from the same house of the legislature as the vice-chairperson. If a member is  
9 designated to serve on the board by the chairperson or vice-chairperson of the joint committee, the  
10 designated member shall serve in lieu of the designating officer on a temporary or permanent basis  
11 as specified by the designating officer. The attorney general shall be the chairperson of the board.  
12 The secretary of state shall serve as the secretary to the board. The state rules and regulations board  
13 shall determine whether a rule and regulation should be adopted as a temporary rule and regulation,  
14 shall determine the rules and regulations to be published in the Kansas administrative regulations  
15 and in the annual supplement to such regulations as provided for in this act and shall perform such  
16 other duties as may be required by this act.

17 **History:** L. 1965, ch. 506, § 9; L. 1975, ch. 484, § 3; L. 1975, ch. 485, § 3; L. 1975, ch. 486, § 3;  
18 L. 1977, ch. 321, § 9; L. 1979, ch. 304, § 4; L. 1981, ch. 366, § 3; L. 1988, ch. 366, § 36; June 1.

### 19 **Comment**

20 The amendments clarify that the attorney general, secretary of state, and secretary of  
21 administration may name designees to serve on the state rules and regulations board. Naming of  
22 designees is already occurring in practice.

1 **77-424. State rules and regulations board to determine which rules and regulations**  
2 **published in Kansas administrative regulations or annual supplement; reference to rules**  
3 **and regulations not published; publication of jointly adopted rules and regulations.** The  
4 state rules and regulations board shall meet as soon as possible after January 1 each year to  
5 determine which rules and regulations filed during the preceding calendar year are to be  
6 published in the Kansas administrative regulations or annual supplement thereto. For the purpose  
7 of avoiding unwarranted expense, the board may authorize and direct the secretary of state to  
8 withhold publication of any technical rule and regulation of any state agency where such rules  
9 and regulations are of limited public interest and are or will be available in published form. In  
10 every such case where the rules and regulations are not published in the Kansas administrative  
11 regulations or annual supplement, reference shall be made by the secretary of state to the rules  
12 and regulations omitted therefrom, and shall state how such rules and regulations may be  
13 obtained and that the rules and regulations so omitted are on file in the office of the secretary of  
14 state. ~~Rules and regulations adopted jointly by two or more agencies shall not be published in~~  
15 ~~more than one place in the compilation or supplement thereto.~~

16 **History:** L. 1965, ch. 506, § 10; L. 1975, ch. 484, § 5; L. 1975, ch. 485, § 5; L. 1975, ch. 486, §  
17 5; L. 1976, ch. 415, § 4; L. 1977, ch. 321, § 10; L. 1982, ch. 386, § 6; L. 1983, ch. 307, § 6; L.  
18 1988, ch. 366, § 37; L. 2006, ch. 55, § 1; July 1.

### 19 **Comment**

20 The last sentence of this section prohibits publication of rules and regulations adopted jointly  
21 by two or more agencies in more than one place in the Kansas administrative regulations. The

1 Committee believes this prohibition is unnecessary and recommends striking the sentence. The  
2 amendment would allow, but not require, a rule adopted jointly by two or more agencies to be  
3 published in more than one place in the Kansas administrative regulations. Publication in more than  
4 one place would still require approval by the state rules and regulations board.

1 **77-428. Annual supplements; publication; contents; authentication.** (a) At the beginning of each  
2 calendar year the secretary of state, as soon as possible, shall assemble all rules and regulations,  
3 except temporary rules and regulations, filed during the preceding year in accordance with the  
4 provisions of this act. The state rules and regulations board shall determine which of such rules and  
5 regulations are to be published in the Kansas administrative regulations or annual supplement as  
6 provided in this act.

7 (b) Annual supplements shall be cumulative and shall include all rules and regulations published in  
8 the annual supplement in the next preceding year which remain in force and effect on the effective  
9 date of the current supplement, together with all rules and regulations, other than temporary rules  
10 and regulations, which were regularly adopted and filed in the office of the secretary of state in the  
11 year next preceding the year when such annual supplement is published and which were approved  
12 for publication by the state rules and regulations board.

13 (c) The secretary of state shall prepare annual supplements to the rules and regulations and material  
14 to be published therewith, ~~in one or more paperbound volumes~~ in the form determined by the  
15 secretary of state. The annual supplement of rules and regulations shall be published and shall  
16 include a general index of all rules and regulations contained therein and such notes, cross references  
17 and explanatory materials as will facilitate the use of such supplements. ~~All rules and regulations~~  
18 ~~and material published in the annual supplement shall be delivered to and published by the director~~  
19 ~~of printing.~~ Authentication of all supplement volumes shall be in the manner provided in K.S.A. 77-  
20 429, and amendments thereto. The director of printing shall print the number of copies requisitioned  
21 by the secretary of state.

22 **History:** L. 1965, ch. 506, § 14; L. 1974, ch. 421, § 4; L. 1975, ch. 484, § 6; L. 1975, ch. 485, § 6;

1 L. 1975, ch. 486, § 6; L. 1976, ch. 417, § 1; L. 1976, ch. 415, § 7; L. 1976, ch. 418, § 2; L. 1977, ch.  
2 321, § 14; L. 1978, ch. 387, § 2; L. 1980, ch. 304, § 6; L. 1983, ch. 307, § 7; L. 1988, ch. 366, § 40;  
3 June 1.

#### 4 **Comment**

5 The amendments to this section are part of a series of amendments intended to provide more  
6 flexibility to the Secretary of State's office by eliminating the requirement that regulations be  
7 published in written form. Although the Secretary of State does not intend to completely  
8 discontinue print publication in the near future, the amendments give the Secretary of State's office  
9 the ability to move toward electronic publication of the regulations, which will reduce costs.

1 **77-429. Authentications.** Before ~~any copies of the~~ Kansas administrative regulations or the annual  
2 supplement thereto shall be ~~printed by the division of printing or sold and delivered~~ published by  
3 the secretary of state, they shall be examined and compared by the attorney general and the secretary  
4 of state, and if they contain all rules and regulations approved for printing publication by the board,  
5 and otherwise comply with the terms of this act, they shall so certify ~~in writing~~ and after such  
6 authentication they shall be deemed and held to be "Kansas administrative regulations" and evidence  
7 in all courts having jurisdiction in the state; and such authentication shall ~~be printed on~~ accompany  
8 each electronic or printed copy of Kansas administrative regulations and annual supplement thereto.

9 **History:** L. 1965, ch. 506, § 15; L. 1977, ch. 321, § 16; July 1.

#### 10 **Comment**

11 The amendments to this section are part of a series of amendments intended to provide more  
12 flexibility to the Secretary of State's office by eliminating the requirement that regulations be  
13 published in written form.

1 **77-430. Kansas administrative regulations; printing, distribution and sale; sale price fixed by**  
2 **secretary of state; disposition of receipts.** (a) The secretary of state shall publish and make  
3 available by request the Kansas administrative regulations, in an electronic or paper medium, shall  
4 be printed by the director of printing and delivered to the secretary of state who shall dispose of  
5 them as follows to the following:

6 ~~First, the secretary of state shall deposit in~~ (1) The supreme court law library and the state library;  
7 such number of copies as the state law librarian and the state librarian, respectively, shall request  
8 for use in the law library and the state library, for purposes of the publication collection and  
9 depository system established under K.S.A. 75-2566, and amendments thereto, and for the purpose  
10 of exchange. The secretary of state shall distribute to

11 (2) The law schools and law libraries of the University of Kansas school of law and to Washburn  
12 university; school of law the number of copies as the librarians of the schools of law, respectively,  
13 certify to the secretary of state as necessary for the purpose of exchange. The secretary of state shall  
14 retain two copies for use in the secretary of state's office.

15 ~~Second, the secretary of state shall distribute:~~

16 ~~(1) One copy to~~ (3) each member of the legislature at the time of taking office, after election or  
17 appointment, for the member's first term of office as a member of either house of the legislature  
18 which commences on or after the second Monday of January in 1991, except that a term of office  
19 as a member of either house of the legislature, whether a complete or partial term of office, shall not  
20 be construed for purposes of this distribution to be the member's first term of office if such term of  
21 office is part of a continuous period of service as a member of either house of the legislature or both  
22 houses of the legislature, in any combination of consecutive terms of office;

1 ~~(2) (4) one copy each to~~ the governor, lieutenant governor, attorney general and state historical  
2 society library;

3 ~~(3) (5) to the several offices of the judicial branch of state government, the number of copies~~  
4 ~~necessary to conduct the official business of such offices, as requested by the chief justice of the~~  
5 ~~supreme court;~~

6 ~~(4) two copies to the Washburn university school of law, for use in the law library, and two copies~~  
7 ~~to the university of Kansas school of law, for use in the law library;~~

8 ~~(5) (6) one copy to~~ each county law library, ~~upon request by the librarian thereof;~~

9 ~~(6) (7) one copy to~~ the city library in each city of the first and second ~~classes, upon request by the~~  
10 ~~librarian thereof; and~~

11 ~~(7) (8) one copy to~~ each county library; ~~upon request by the librarian thereof.~~

12 ~~Third, the secretary of state shall distribute to the several offices of the legislative branch of~~  
13 ~~government, the number of copies necessary to conduct the official business of such offices, as~~  
14 ~~follows: (1) To (9) the office of revisor of statutes as the revisor of statutes shall request; (2) to (10)~~  
15 ~~the legislative research department as the director of legislative research shall request;~~

16 ~~(3) to (11) the division of post audit as the post auditor shall request; and (4) to~~

17 ~~(12) the division of legislative administrative services as the director of legislative administrative~~  
18 ~~services shall request.~~

19 ~~Fourth, the balance of the Kansas administrative regulations after such distribution shall be kept by~~  
20 ~~the secretary of state for sale as provided by this section.~~

1 (b) The Kansas administrative regulations may be purchased in complete sets or in single volumes.  
2 Single volumes of the Kansas administrative regulations shall be sold by the secretary of state at the  
3 per volume price fixed by the secretary of state under this section. Complete sets of the Kansas  
4 administrative regulations shall be sold by the secretary of state at the per set price fixed therefor  
5 by the secretary of state under this section. ~~Copies may be delivered by postpaid mail by the~~  
6 ~~secretary of state.~~

7 (c) All moneys received from such sales shall be remitted to the state treasurer in accordance with  
8 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance,  
9 the state treasurer shall deposit the entire amount in the state treasury to the credit of the information  
10 and services fee fund of the secretary of state.

11 (d) The secretary of state shall fix by rules and regulations the per volume and complete set prices  
12 of the Kansas administrative regulations sold under this section to recover the costs of ~~printing and~~  
13 ~~binding publishing~~ such volumes, whether in printed or electronic form. The secretary of state shall  
14 revise such prices from time to time for the purposes of covering and recovering such costs.

15 **History:** L. 1965, ch. 506, § 16; L. 1974, ch. 135, § 19; L. 1975, ch. 488, § 1; L. 1976, ch. 415, §  
16 8; L. 1976, ch. 418, § 3; L. 1976, ch. 416, § 2; L. 1980, ch. 304, § 7; L. 1983, ch. 307, § 8; L. 1988,  
17 ch. 367, § 1; L. 1990, ch. 339, § 7; L. 2001, ch. 5, § 439; L. 2006, ch. 15, § 3; July 1.

18  
19 **Comment**

20 This statute sets out which entities receive free printed copies of the Kansas administrative  
21 regulations. The proposed amendments would make such copies available only upon request and  
22 would allow copies to be provided in an electronic or paper medium. Eliminating distribution of

1 unnecessary copies will reduce costs.

1 **77-430a. Kansas administrative regulations; replacement volumes; publication, printing,**  
2 **distribution and sale.** (a) The secretary of state shall edit and prepare for ~~printing and~~ publication

3 volumes of rules and regulations which replace existing volumes of the Kansas administrative  
4 regulations within the limitations of available appropriations therefor. Replacement volumes shall  
5 be published ~~and printed~~ in the same format and in accordance with the same ~~printing~~ specifications  
6 used in the volume replaced and shall be authenticated as required by K.S.A. 77-429, and  
7 amendments thereto. Replacement volumes of the Kansas administrative regulations shall be ~~printed~~  
8 ~~published~~ by the ~~director of printing and delivered to the~~ secretary of state who shall distribute and  
9 sell such replacement volumes in the same manner as provided in K.S.A. 77-430, and amendments  
10 thereto, for the distribution and sale of other volumes of the Kansas administrative regulations,  
11 except that each member of the senate or house of representatives shall receive, ~~upon request,~~ one  
12 copy of each replacement volume for the purpose of updating the set of the Kansas administrative  
13 regulations received at the time of taking office for the member's first term of office as a member  
14 of either house of the legislature as provided in K.S.A. 77-430, and amendments thereto.

15 (b) ~~Whenever it shall become necessary to print additional copies of any volume of the Kansas~~  
16 ~~administrative regulations, the secretary of state shall requisition the necessary number of copies~~  
17 ~~from the director of printing.~~ Moneys received from the sale of replacement volumes under this  
18 section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
19 and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the  
20 entire amount in the state treasury to the credit of the information and services fee fund of the  
21 secretary of state.

22 (c) The secretary of state shall fix by rules and regulations the per volume price, or the complete set

1 price if more than one replacement volume is published, of any replacement volume of the Kansas  
2 administrative regulations sold under this section to recover the costs of publishing such volumes,  
3 whether in printed or electronic form. The secretary of state shall revise such prices from time to  
4 time for the purposes of covering and recovering such costs.

5 **History:** L. 1976, ch. 418, § 6; L. 1983, ch. 307, § 9; L. 1988, ch. 366, § 41; L. 1990, ch. 339, § 8;  
6 July 1.

### 7 **Comment**

8 The amendments to this section are part of a series of amendments intended to provide more  
9 flexibility to the Secretary of State's office by eliminating the requirement that regulations be  
10 published in written form.

11 New language in subsections (b) and (c) relating to money received from sale of replacement  
12 volumes and fixing the price of replacement volumes is parallel to the provisions of K.S.A. 77-  
13 421(b) and (c).

1 **77-431. Annual supplements to Kansas administrative regulations; printing, distribution and**  
2 **sale; sale price fixed by secretary of state; disposition of receipts.** (a) Copies of The secretary of  
3 state shall publish and make available the annual supplements to the Kansas administrative  
4 regulations, shall be printed and delivered to the secretary of state who shall distribute them as  
5 follows:

6 First, The secretary of state shall transmit the same number of copies of each annual supplement in  
7 the same manner as provided in the first, second and third clauses of subsection (a) of K.S.A. 77-  
8 430, and amendments thereto, for distribution of Kansas administrative regulations, except that each  
9 member of the senate or house of representatives shall receive, upon request, one copy of each  
10 annual supplement for the purpose of updating the set of the Kansas administrative regulations  
11 received at the time of taking office for the member's first term of office as a member of either house  
12 of the legislature as provided in K.S.A. 77-430, and amendments thereto.

13 Second, the balance of annual supplement volumes after such distribution shall be kept by the  
14 secretary of state for sale at the per supplement volume price, or the complete set price if more than  
15 one volume is published for any annual supplement, which is fixed by the secretary of state under  
16 this section. The secretary of state may publish the supplements to the Kansas administrative  
17 regulations in an electronic or paper medium.

18 (b) Moneys received from the sale of supplements under this section shall be remitted to the state  
19 treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
20 receipt of each such remittance, the state treasurer shall deposit the entire amount in the state  
21 treasury to the credit of the information and services fee fund of the secretary of state.

22 (c) The secretary of state shall fix by rules and regulations the per volume price, or the complete set

1 price if more than one volume is published, for each annual supplement to the Kansas administrative  
2 regulations sold under this section to recover the costs of printing and binding publishing, whether  
3 in printed or electronic form. The secretary of state shall revise such prices from time to time for the  
4 purposes of covering and recovering such costs.

5 **History:** L. 1965, ch. 506, § 17; L. 1976, ch. 415, § 9; L. 1976, ch. 418, § 4; L. 1978, ch. 387, § 3;  
6 L. 1983, ch. 307, § 10; L. 1990, ch. 339, § 9; L. 2001, ch. 5, § 440; L. 2006, ch. 15, § 4; July 1.

7 **Comment**

8 The amendments to this section are part of a series of amendments intended to provide more  
9 flexibility to the Secretary of State’s office by eliminating the requirement that regulations be  
10 published in written form.

1 **77-435. Editing of rules and regulations by secretary of state.** In publishing the material in the  
2 Kansas administrative regulations and latest supplements thereto, the secretary of state shall not alter  
3 the sense, meaning or effect of any rule and regulation but may correct manifest orthographical,  
4 clerical or typographical errors and may edit the rules and regulations in the following manner:

5 (a) ~~By inserting the correct references in lieu of any internal cross-references to session laws or other~~  
6 ~~outdated statutory references or outdated references to other rules and regulations sections.~~

7 ~~(b)~~ By changing descriptive-subject-word headings of sections, subsections or subparts of a rule and  
8 regulation in order to briefly and clearly indicate the subject matter of such sections.

9 ~~(c) Wherever a board, commission, commissioner, department or other agency or officer of the state~~  
10 ~~government has been abolished by statute and the powers, duties and jurisdiction thereof transferred~~  
11 ~~to some other board, commission, commissioner, department or other agency or officer now in~~  
12 ~~existence, the secretary of state may edit the rules and regulations affected thereby by striking out~~  
13 ~~the name of the abolished board, commission, commissioner, department or other agency or officer~~  
14 ~~and inserting in lieu thereof the name of the proper board, commission, commissioner, department~~  
15 ~~or other agency or officer.~~

16 ~~(d)~~ (b) Where a pronoun of only masculine or only feminine gender appears a pronoun of the  
17 opposite gender may be added, or language may be changed for the same purpose, so long as the  
18 opening limitation of this section is not violated.

19 ~~(e)~~ (c) By striking the word "that" wherever it appears as the first word of any section in the Kansas  
20 administrative regulations or the latest supplement thereto.

21 ~~(f)~~ (d) By correcting doublets.

1 The secretary of state may submit to the state rules and regulations board, for the board's approval,  
2 any proposed changes made pursuant to the provisions of this section. No change made pursuant to  
3 the provisions of this section shall effect any change in the substantive meaning of the rule and  
4 regulation section, and any error made by the secretary of state in editing the rules and regulations  
5 as authorized by this section shall be construed as a clerical error only.

6 **History:** L. 1977, ch. 321, § 15; L. 1988, ch. 366, § 43; L. 1998, ch. 82, § 3; July 1.

7 **Comment**

8 Subsections (a) and (c) are stricken because they describe editing powers that the Secretary  
9 of State's office does not currently exercise and does not intend to exercise in the future.

1 **77-436. Joint committee on administrative rules and regulations; creation, membership and**  
2 **chairperson; meetings and quorum; duties; compensation and expense allowances.** (a) There

3 is hereby established a joint committee on administrative rules and regulations which shall consist  
4 of five senators and seven members of the house of representatives. The five senator members shall  
5 be appointed as follows: Three by the committee on organization, calendar and rules and two by the  
6 minority leader of the senate. The seven representative members shall be appointed as follows: Four  
7 by the speaker of the house of representatives and three by the minority leader of the house of  
8 representatives. The committee on organization, calendar and rules shall designate a senator member  
9 to be chairperson or vice-chairperson of the joint committee as provided in this section. The speaker  
10 of the house of representatives shall designate a representative member to be chairperson or vice-  
11 chairperson of the joint committee as provided in this section.

12 (b) A quorum of the joint committee on administrative rules and regulations shall be seven. All  
13 actions of the committee may be taken by a majority of those present when there is a quorum. In  
14 odd-numbered years the chairperson of the joint committee shall be the designated member of the  
15 house of representatives from the convening of the regular session in that year until the convening  
16 of the regular session in the next ensuing year. In even-numbered years the chairperson of the joint  
17 committee shall be the designated member of the senate from the convening of the regular session  
18 of that year until the convening of the regular session of the next ensuing year. The vice-chairperson  
19 shall exercise all of the powers of the chairperson in the absence of the chairperson.

20 (c) All proposed rules and regulations shall be reviewed by the joint committee on administrative  
21 rules and regulations during the public comment period required by K.S.A. 77-421, and amendments  
22 thereto. ~~All proposed forms used by state agencies and~~ All proposed rules and regulations

1 specifically excluded from the definition of rule and regulation under subsection (4) of K.S.A. 77-  
2 415, and amendments thereto, shall be subject to review by the joint committee. The committee may  
3 introduce such legislation as it deems necessary in performing its functions of reviewing  
4 administrative rules and regulations and agency forms.

5 (d) All rules and regulations filed each year in the office of secretary of state ~~and all forms used by~~  
6 ~~state agencies~~ and all rules and regulations specifically excluded from the definition of rule and  
7 regulation under subsection (4) of K.S.A. 77-415, and amendments thereto, shall be subject to  
8 review by the joint committee. The committee may introduce such legislation as it deems necessary  
9 in performing its functions of reviewing administrative rules and regulations and agency forms.

10 (e) The joint committee shall meet on call of the chairperson as authorized by the legislative  
11 coordinating council. All such meetings shall be held in Topeka, unless authorized to be held in a  
12 different place by the legislative coordinating council. Members of the joint committee shall receive  
13 compensation and travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-  
14 3212, and amendments thereto, when attending meetings of such committee authorized by the  
15 legislative coordinating council.

16 (f) Amounts paid under authority of this section shall be paid from appropriations for legislative  
17 expense and vouchers therefor shall be prepared by the director of legislative administrative services  
18 and approved by the chairperson or vice-chairperson of the legislative coordinating council.

19 **History:** L. 1977, ch. 321, § 19; L. 1980, ch. 304, § 8; L. 1981, ch. 366, § 4; L. 1983, ch. 307, § 5;  
20 L. 1988, ch. 368, § 1; L. 1988, ch. 366, § 44; L. 1995, ch. 93, § 4; July 1.

**Comment**

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The amendments eliminate review of forms by the joint committee on rules and regulations. The amendment reflects the current practice of the joint committee on rules and regulations, which does not review forms used by an agency unless the forms are part of a rule or regulation.