The Adoption of Rules & Regulations in Kansas
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An introduction to the rulemaking process in Kansas

Every resident of Kansas is affected directly or indirectly by state “laws,” many of which are actually rules and regulations adopted by a state agency and not the state legislature. If you eat or work in a restaurant, you are affected by food service regulations issued by the Kansas Department of Agriculture. If you are enrolled in a public university in Kansas, state regulations determined whether you qualify for in-state tuition. If you have a child in child care, regulations issued by the Kansas Department of Health and Environment govern all aspects of the way the child care facility is operated. In Kansas, the terms “rules” and “regulations” are used interchangeably. A regulation has the same force of law as a statute. This document discusses the rulemaking process in Kansas.

An overview of Kansas government

The government of Kansas, like the U.S. Federal Government, is divided into three branches: legislative, executive, and judicial. The state legislative branch is made up of elected officials and has the power to pass, amend, or repeal laws. The type of law created by a legislature is called a statute. The state executive branch is headed by the Governor and has the authority and responsibility to run the day-to-day operations of the state. The state government of Kansas is also made up of state agencies, such as the Kansas Department of Agriculture, the Kansas State Department of Education, and the Kansas Department of Health and Environment. One way that state agencies exercise their authority is by implementing rules and regulations. The Governor, as head of the executive branch, may also issue executive orders, which are directives from the Governor that have the force of law. The judicial branch interprets statutes and regulations through court cases.

What are statutes?

Statutes are written laws passed by the legislature. Statutes deal with specific situations and can cover many different topics; typically they command or prohibit something, or declare policy. Some statutes, called enabling statutes, grant authority to state agencies to regulate a particular setting or take certain actions. In other words, the legislature will pass generalized laws on a topic, and then will use an enabling statute to delegate power to a state agency to implement regulations to fill in the gaps.

AN EXAMPLE of language commonly used in an enabling statute is:
“The secretary of X state agency may adopt rules and regulations necessary to carry out…”
What are rules and regulations?

Rules and regulations are statements of law enacted by a state agency to implement or interpret legislation enforced or administered by the agency. The power to create regulations is given to the agency by the legislative body through an enabling statute. Regulations, which have the force of law, fill gaps in the legislation and help agencies carry out their duties.

There are two types of regulations in Kansas: temporary and permanent. A temporary regulation may be adopted if preservation of the public peace, health, safety, or welfare makes it necessary to put the regulation into effect before a permanent regulation can be properly adopted. An agency does not have to comply with the notice, public hearing, or publication requirements to pass a temporary regulation. A temporary regulation is effective for a maximum of 120 days, starting after it has been approved by the Secretary of Administration, the Attorney General, and the State Rules and Regulations Board, and has been filed in the office of the Secretary of State. A permanent regulation may only be adopted by following all the requirements outlined in the Rules and Regulations Filing Act, discussed later in this document. A properly adopted permanent regulation remains effective unless it is amended or revoked by law.


Nutrition, active play, screen time, and safety regulations govern child care facilities in Kansas.
How does a state agency adopt a regulation?

Passing a permanent regulation in Kansas is a multi-step process and requires approximately 16 to 25 weeks to complete.10

### An approximate timeline for the rulemaking process in Kansas 11

<table>
<thead>
<tr>
<th>Step</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>State agency submits proposed regulation to the Secretary of Administration</td>
<td>1 to 3 weeks</td>
</tr>
<tr>
<td>State agency submits proposed regulation to the Attorney General</td>
<td>1 to 3 weeks</td>
</tr>
<tr>
<td>State agency submits notice to the Kansas Register</td>
<td>8 days to 2 weeks</td>
</tr>
<tr>
<td>Notice published in Kansas Register</td>
<td>61-day minimum</td>
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<tr>
<td>Public comment period</td>
<td></td>
</tr>
<tr>
<td>Joint Committee on Administrative Rules and Regulations reviews and comments on proposed regulation</td>
<td></td>
</tr>
<tr>
<td>State agency conducts public hearing</td>
<td>1 to 3 weeks</td>
</tr>
<tr>
<td>State agency obtains approval for revisions; adopts regulation; files with the Secretary of State</td>
<td>1 to 3 weeks</td>
</tr>
<tr>
<td>Regulation published in Kansas Register</td>
<td>15 days</td>
</tr>
<tr>
<td><strong>Regulation takes effect</strong></td>
<td><strong>Total time: 16 to 25 weeks</strong></td>
</tr>
</tbody>
</table>

*Source: Policy and Procedure Manual for the Filing of Kansas Administrative Regulations*

The following section describes the steps a state agency must take in order to adopt a rule or regulation. The Rules and Regulations Filing Act largely governs the rulemaking process in Kansas. Please see the endnotes for specific legal citations.

### Step 1: Draft the proposed regulation

When drafting a proposed regulation, the state agency must pay close attention to the enabling statute that delegates to that agency the power to implement the regulation. Some enabling statutes grant broad rulemaking authority to the state agency. This happens when the enabling statute outlines the issues that should be addressed while also permitting the agency to go above and beyond, or when the enabling statute authorizes the agency to implement any regulations necessary to fulfill a certain goal.12 Other enabling statutes narrowly define the regulations that may be enacted, limiting the issues that the agency may address within the rulemaking process.13 A state agency cannot overstep its authority.
Step 2: Draft the economic impact statement

At the time of drafting a proposed regulation, the state agency must also prepare an economic impact statement that considers the economic impact of the proposed regulation on all governmental agencies, all persons subject to the regulation, and the general public. The economic impact statement must include:

- A brief description of the proposed regulation and its intended effect;
- Whether the proposed regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the proposed regulation exceeds the requirements of applicable federal law;
- A description of the cost, the persons who will bear the costs, and those who will be affected by the proposed regulation, including the agency proposing the regulation, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the regulation or the enforcement thereof; and
- A description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.

Environmental regulations govern issues including: waste management, pollution, and contamination.
The economic impact statement may need to be reevaluated and revised throughout the adoption process, specifically before filing with the Secretary of State. A copy of the current economic impact statement must be available by the state agency at all times. At the request of the State Rules and Regulations Board, the Joint Committee on Administrative Rules and Regulations, or the chairperson of either, the director of the budget will review the economic impact statement. The director of budget will then prepare a supplemental or revised statement.

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**Additional requirements for a proposed environmental regulation**

**ECONOMIC IMPACT STATEMENT**

In addition to the elements required in the economic impact statement mentioned earlier, the economic impact statement for the proposed environmental regulation must also address additional considerations. An environmental regulation is either a regulation proposed by the Secretary of Agriculture, the Secretary of Health and Environment, or the State Corporation Commission with a primary purpose of protecting the environment, or a regulation proposed by the Secretary of Wildlife, Parks, and Tourism relating to threatened or endangered wildlife. The economic impact statement for an environmental regulation must also include:

- A description of the capital and annual costs of compliance with the proposed regulation, and the persons who will bear those costs;
- A description of the initial and annual costs of implementing and enforcing the proposed regulation, including the estimated amount of paperwork, and the governmental agencies or other persons or entities who will bear the costs;
- A description of the costs which would likely accrue if the proposed regulation is not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulation; and
- A detailed statement of the data and methodology used in estimating the costs used in the statement.

**ENVIRONMENTAL BENEFIT STATEMENT**

The state agency must also draft an environmental benefit statement if the proposed regulation is an environmental regulation. The environmental benefit statement must include a description of the need for the regulation, and the environmental benefits that are likely to result from the regulation. The description must summarize, when applicable, research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rule and regulation or amendment.

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**Step 3: Submit proposed regulation to the Secretary of Administration for approval**

Once the state agency has drafted the regulation in accordance with the enabling statute, it must submit the proposed regulation to the Secretary of Administration for review and approval of organization, style, spelling, and grammar. A copy of any document adopted by reference by the regulation must also be submitted.
Step 4: Submit proposed regulation to the Attorney General for approval

After the Secretary of Administration approves the proposed regulation, the proposed regulation, along with any documents adopted by reference, must be submitted to the Attorney General for review and approval as to legality. If everything is in order, the Attorney General will provide written approval certifying that the regulation is legally sound and within the authority given by law to the state agency.

If a regulation, or part of a regulation, is approved by the Secretary of Administration but rejected by the Attorney General, then it must be revised as required by the Attorney General, and resubmitted to the Secretary of Administration for review and approval.

Step 5: Give notice of public hearing

After the Secretary of Administration and the state Attorney General have approved the proposed regulation, the agency must schedule a public hearing and publish a notice of that hearing in the Kansas Register. A notice of hearing with fewer than five pages must be submitted at least eight days before publication, and longer notices must be submitted at least 10 days before publication.

MORE ON THE KANSAS REGISTER

The Kansas Register is the official state newspaper and is published every Thursday. The Kansas Register can be found online at http://www.kssos.org/pubs/pubs_kansas_register.asp.

Publication of the notice in the Kansas Register constitutes notice to all parties affected by the regulation. The notice informs the public where one can obtain a copy of the proposed regulation, and states the time and place of the hearing. The hearing date must be at least 60 days after the date of the notice.

The notice of public hearing must also be provided to the Secretary of State, to the chairperson, vice chairperson, and ranking minority member of the Joint Committee on Administrative Rules and Regulations, and to the Legislative Research Department.

The notice must be issued at least 60 days before the hearing, and must contain:

✔ A summary of the substance of the proposed regulation;
✔ A summary of the economic impact statement;
✔ A summary of the environmental benefit statement, if applicable;
✔ The address where a complete copy of the proposed regulation, the complete economic impact statement, and the environmental benefit statement may be obtained;
✔ The time and place of the public hearing to be held, and the manner in which interested parties may present their views; and
✔ A specific statement that the period of 60 days’ notice constitutes a public comment period for the purpose of receiving written public comments on the proposed regulation and the address where such comments may be submitted to the state agency.
Step 6: Submit necessary documents to the Secretary of State and the Citizens Regulatory Review Board

The notice of public hearing given to the Secretary of State must be accompanied by two complete copies of the proposed regulation and two copies of the complete economic impact statement. The Secretary of State will send one copy of the regulation and economic impact statement to the Joint Committee on Administrative Rules and Regulations.

At the same time, the state agency must email the proposed regulation, the economic impact statement, and, if required, the environmental benefit statement in Microsoft Word format to the Citizens Regulatory Review Board (CRRB) at CRRB@ks.gov. After receiving the proposed regulation, CRRB may, in its discretion, review the proposed regulation for its impact on the lives of Kansas citizens and may make comment back to the Office of the Governor.

MORE ON THE JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

The Joint Committee on Administrative Rules and Regulations is responsible for reviewing proposed regulations and providing feedback to the state agency. The Joint Committee is composed of five members from the state Senate and seven members from the state House of Representatives. The Joint Committee meets regularly and its agenda and minutes are available online at http://www.kslegislature.org/li_2014/b2013_14/committees/ctte_jt_rules_regs_1/.

Step 7: Public comment period

After receiving a notice of public hearing, the Joint Committee on Administrative Rules and Regulations will review the proposed regulation. Following the review, the Joint Committee will send written comments to the state agency.

Individuals and organizations may also submit written comments during the public comment period. The state agency receiving the comments is required to give the comments made by an individual or organization during the public comment period the same weight as comments made by the Joint Committee.

How can a member of the public submit a comment?

The period between the publication of the notice and the date of the hearing is a public comment period, during which members of the public can send written comments to the agency. Written comments should be typed. Comments should be polite, no longer than necessary to explain your position, and should be as specific as possible. The notice will provide a mail address and/or an e-mail address to which the comments should be sent.
Step 8: Conduct public hearing

A representative from the state agency should start the public hearing by explaining the details of the proposed regulation, and, if requested to do so, offer a concise statement of the principal reasons for adopting the regulation. Then, “all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing.”

A sign-in sheet should be circulated to all those present so there is a record of the number of individuals in attendance. Written minutes or other records must also be kept during the public hearing. If the proposed regulation is adopted and becomes effective, the state agency must, for at least three years, keep on file the public hearing minutes, a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing, and any written comments submitted during the public comment period.

Step 9: Obtain approval for revisions

The state agency may revise the proposed regulation based on the comments received at the public hearing. The revisions will need to be approved by the Secretary of Administration and the Attorney General in the same way the initial proposed regulation was approved.

If the revisions change the subject matter or materially change the effect of the proposed regulation, and do not logically flow from the regulation as originally proposed, the state agency must restart the rulemaking process from the beginning.

Step 10: Adopt final regulation

State agencies headed by an individual may adopt an approved regulation through a written declaration of adoption signed by the agency head. State agencies headed by a board or commission may adopt an approved regulation only after receiving approval by a certified roll call vote of a majority of the total membership of the adopting commission or board.

Step 11: File adopted regulation with Secretary of State

Once the state agency has adopted the final regulation, the regulation must be filed with the Secretary of State. The filed regulation must include citations to the enabling statute that granted authority to the state agency and to the statute or statutes being implemented or interpreted by the regulation. Each regulation shall be accompanied by a copy of the economic impact statement, and, if applicable, a copy of the environmental benefits statement.

Step 12: Publish final regulation in the Kansas Register

After the final approved regulation has been submitted to the Secretary of State, it must be published in the Kansas Register. The final regulation becomes effective 15 days following publication, or such later date as clearly stated in the regulation.
Must all regulations be passed according to the Rules and Regulations Filing Act?

As a general rule, all permanent regulations must be adopted by following all the requirements outlined in the Rules and Regulations Filing Act. However, there are exceptions. None of the following are subject to the Act: 54

✔ Any policy relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution.

✔ Any parking and traffic regulations of any state educational institution under the control and supervision of the Kansas Board of Regents.

✔ Any rule and regulation relating to the emergency or security procedures of a correctional institution, as defined in subsection (d) of K.S.A. 75-5202, and amendments thereto.

✔ Any order issued by the Secretary of Corrections or any warden of a correctional institution under K.S.A. 75-5256, and amendments thereto.
Endnotes

1 Black’s Law Dictionary (9th ed. 2009).


13 Example of narrow authority: “Compressed Air Energy Storage Act. Within 18 months after the effective date of this act, the department [of Health and Environment] shall establish rules and regulations establishing requirements, procedures and standards for the monitoring of air emissions coming from compressed air energy storage wells and storage facilities to ensure the wells and facilities comply with the Kansas air quality act.” (Kan. Stat. Ann. § 66-1275 (2014)).


15 Id.


17 Id.


22 Id.


24 Id.


27 Supra note 11 at 7.

29 Supra note 11 at 17.
30 State of Kansas, Office of the Secretary of State, FAQ — Publications (2010), http://www.kssos.org/resources/resources_faq_pubs.html#REGISTER.
34 Supra note 11 at 17-18.
36 Governor of Kansas, Executive Order 11-02, https://www.crrb.ks.gov/about-us/executive-order; Supra note 11 at 18
37 Governor of Kansas, Executive Order 11-02, https://www.crrb.ks.gov/about-us/executive-order; Supra note 11 at 5
39 Supra note 11 at 5, 22.
40 Id.
41 Supra note 11 at 24.
43 Supra note 11 at 24.
45 Id.
47 “For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rule making.” (Kan. Stat. Ann. § 77-421(c)(2) (2014)).
49 Supra note 11 at 26.
52 Id.