



Public Health
Law Center

AT WILLIAM MITCHELL COLLEGE OF LAW



Changing the Rules

Influencing the adoption of state rules & regulations in Kansas

State rules and regulations govern many aspects of our lives, including: food safety, nutrition, and active play requirements in the child care setting; accessibility of clean water; governance of land; and training standards for teachers and nurses. This document is a brief guide for getting involved with the adoption of state regulations in Kansas. We will start with a quick review of the system of law and government in Kansas, and then look at how regulations fit into that system.

A brief overview of Kansas government

In the United States, our national government and each of our state governments are made up of three branches— the legislative branch, the executive branch, and the judicial branch. The legislative branch is responsible for writing laws, the executive branch is responsible for putting laws into effect, and the judicial branch is responsible for interpreting the meaning of laws. Each branch participates in a system of “checks and balances” to ensure that the other two branches do not exceed their constitutional authority.

In Kansas, as in most states, the legislative branch is made up of two “houses,” called the House of Representatives and the Senate. The executive branch is headed by the Governor, who is elected for a four-year term. Other elected officials who are part of the executive branch include the Attorney General, the Secretary of State, and the State Treasurer. The executive branch also includes state agencies such as



This fact sheet is funded by the Kansas Health Foundation to increase the availability of healthy foods and support active living in Kansas.

the Department of Children and Families and the Department of Health and Environment. The judicial branch is composed of district courts, the Court of Appeals, and the Supreme Court. A district court decision can be appealed to the Court of Appeals, and a decision of the Court of Appeals can be appealed to the Supreme Court.

In order for a law to take effect, it must be passed by both the House of Representatives and the Senate, and then signed by the Governor. A state law is also referred to as a “statute.”

What is a regulation?

So, what is a regulation, and how does it fit into this process? A regulation is a legal rule adopted by a state agency, and its purpose is to help put a statute into effect. An agency can only adopt a regulation when the legislature gives it the power to do so. Once it is adopted, a regulation has the same force of law as a statute. In Kansas, the terms rule and regulation are used interchangeably.

Regulations are often necessary because many of the laws passed by the legislature deal with very complex subjects. In many instances, legislators do not have the time or the technical knowledge to pass a law with enough detail to accomplish their intent. When that is the case, the legislature will give a state agency the power to adopt regulations to help put the law into effect. A regulation can also interpret the intent of the legislature by making the requirements of a statute more clear, provided that the legislature has given the agency the power to do so.

One very important thing to remember is that an agency has only the power that is granted to it by the legislature. An agency cannot adopt a regulation unless it is authorized to do so by a statute. A regulation cannot be broader or more strict than allowed by a statute, and a regulation cannot be inconsistent with a statute. Each regulation must state the specific statute

that authorizes it, and each regulation must list the statutes that it intends to put into effect.

How do I know if there are regulations that apply to me?

Every resident of Kansas is affected directly or indirectly by state regulations. If you eat or work in a restaurant, you are affected by food service regulations issued by the

Where can I find a Kansas statute?

A searchable list of all the Kansas statutes can be found at http://kslegislature.org/li_2012/b2011_12/statute. Additionally, most public libraries have a set of printed statutes, called the “Kansas Statutes Annotated.”

Where can I find Kansas regulations?

All of the regulations that have been adopted in Kansas are compiled and published in a set of books called the *Kansas Administrative Regulations*. The Kansas Secretary of State maintains a searchable database of Kansas regulations at http://www.sos.ks.gov/pubs/pubs_kar.aspx. A search of this database will find regulations both in the *Kansas Administrative Regulations* and the *Kansas Register*. Most state agency websites will contain a link to their own regulations. Most public libraries have a printed set of the *Kansas Administrative Regulations*.

This is an example of a citation to a Kansas regulation: K.A.R. 28-4-115. “K.A.R.” stands for *Kansas Administrative Regulations*, “28” is the number of the agency that issued the regulation (in this case, the Kansas Department of Health and Environment), and “4” and “115” are the article and section number of the regulation.



Kansas Department of Agriculture. If you are enrolled in a public university in Kansas, state regulations determine 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 covers all aspects of the way the child care facility is operated.

One way to look for regulations that might apply to you is to determine which agencies might regulate some aspect of your life, and then look through their published regulations. A list of Kansas agencies that have issued regulations can be accessed through the Kansas Secretary of State's website at http://www.kssos.org/Pubs/pubs_kar.aspx. On that web page you can also search Kansas regulations by subject matter or keyword.

How does the process of writing regulations start?

Passing a regulation in Kansas is a multi-step process and typically requires months to complete. A statute that authorizes a regulation can either require an agency to adopt regulations or allow the agency to decide whether to do so. When the agency is required to adopt regulations, the legislature sometimes sets a deadline for the regulations to be completed.

In most instances, the agency will begin the process of writing regulations as soon as they are authorized

How can I find a state agency?

There is a searchable list of Kansas state agencies at <http://www.kansas.gov/agencies/?c=government>. If you know a state employee's name, or if you know part of the name and which agency he or she works for, you can find the employee's contact information here: <http://www.da.ks.gov/phonebook/employee.asp>.

to do so. In cases where the agency does not quickly begin work on regulations, encouragement from the public can help start the process. Asking your state legislator to contact the agency may also be helpful. In rare cases, if an agency fails to write regulations when it is required to, a lawsuit may be filed to ask a court to order the agency to fulfill its responsibility.

When an agency begins to write regulations, it will usually contact citizens and organizations who may have an interest in the regulations. This is an important time to be involved in the process, because it is easier to make changes at this stage than after the first proposed version of the regulations

How can I find my state legislators?

If you know the name of a legislator, you can find his or her contact information here: http://www.kslegislature.org/li_2014/b2013_14/members/. If you don't know the name of your representative or senator, you can find it by entering your address here: <http://openstates.org> and <http://www.kansascounties.org/DocumentCenter/View/1513>.

is published. If you know that an agency has been authorized to adopt regulations and you would like to influence how they are written, contact the agency to find out which staff member will be responsible for them. Contact that person to let him or her know that you are interested, and ask to be notified of anything that is happening regarding the regulations. This is an excellent time to provide input into the content of the regulations.

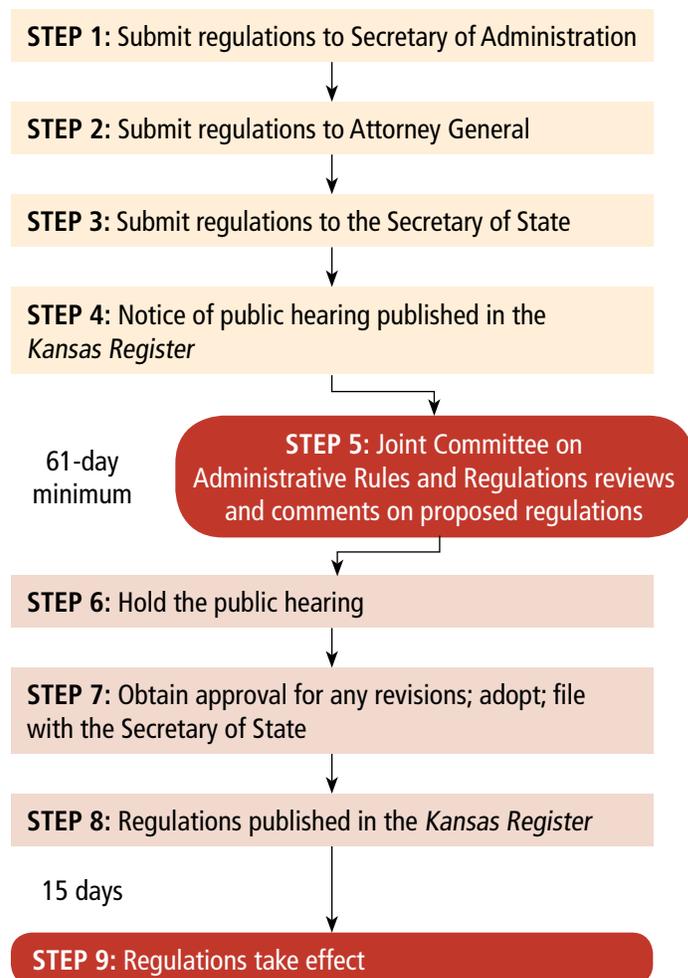
Although it may feel intimidating sometimes, do not hesitate to contact an agency staff member about a proposed regulation. An agency employee works for the agency secretary, who works for the Governor, and the Governor works for you and for all the citizens of the state. Agency staff members will almost always be friendly and helpful, but if that is not the case, do not hesitate to contact their supervisor, and if no one at the agency is helpful, do not hesitate to contact your state legislators for assistance. Legislators do not have any authority over agency employees or the process of writing regulations, but they can make inquiries on your behalf.

The regulation adoption process

When an agency has completed a draft of its proposed regulations, it will schedule a public hearing

and publish a notice of that hearing in the *Kansas Register*. The notice will tell you where you can get a copy of the proposed regulations, if you don't have one already, and will state the time and place of the hearing. The hearing date must be at least 60 days after the date of the notice. 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 comments should be sent.

How an agency adopts a regulation



SOURCE: POLICY AND PROCEDURE MANUAL FOR THE FILING OF KANSAS ADMINISTRATIVE REGULATIONS

You can also attend the hearing to explain any concerns you have about the proposed regulations or to show your support for the regulations. The hearing is usually fairly informal, and is conducted by a hearing officer who works for the agency. When you arrive at the hearing, there will be a sign-up sheet for you to list your name, what organization you represent (if any), and your contact information. If you would like to speak at the hearing, you can indicate that on the sign-up sheet. The hearing officer will announce your name when it is time for your testimony.

As with your written comments, your hearing testimony should be polite and concise, and you should refer as specifically as you can to the parts of the regulation that you support or oppose. You should always bring a written copy of your comments for the hearing officer, along with some extra copies for other interested parties. It is best not to read your written comments word for word— the hearing officer will already have a copy of them— but to summarize them in everyday language. Don't worry about an occasional mistake or about freezing up— even with a few awkward moments, an unscripted speech will usually be more engaging and persuasive, and if you get stuck you can always go back to your written comments.

After the hearing, the agency will either adopt the regulations as proposed, adopt them with minor changes, or decide to make more substantial changes. If the agency decides to make more than minor changes, the process will start all over again, and you will have additional opportunities to make written comments and to testify at a hearing. When the regulations are ready to be adopted with no changes or only minor changes, the agency will publish the final version in the *Kansas Register*.

For more information about adopting regulations

The Public Health Law Center's *The Adoption of Rules and Regulations in Kansas* provides a more detailed explanation of how regulations are adopted in Kansas.

The Kansas Department of Administration's *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* is an excellent resource, covering the intricacies of rulemaking in Kansas. This manual is available online at: <http://admin.ks.gov/docs/default-source/Chief-Counsel/ppmlegal.pdf?sfvrsn=0>.

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