

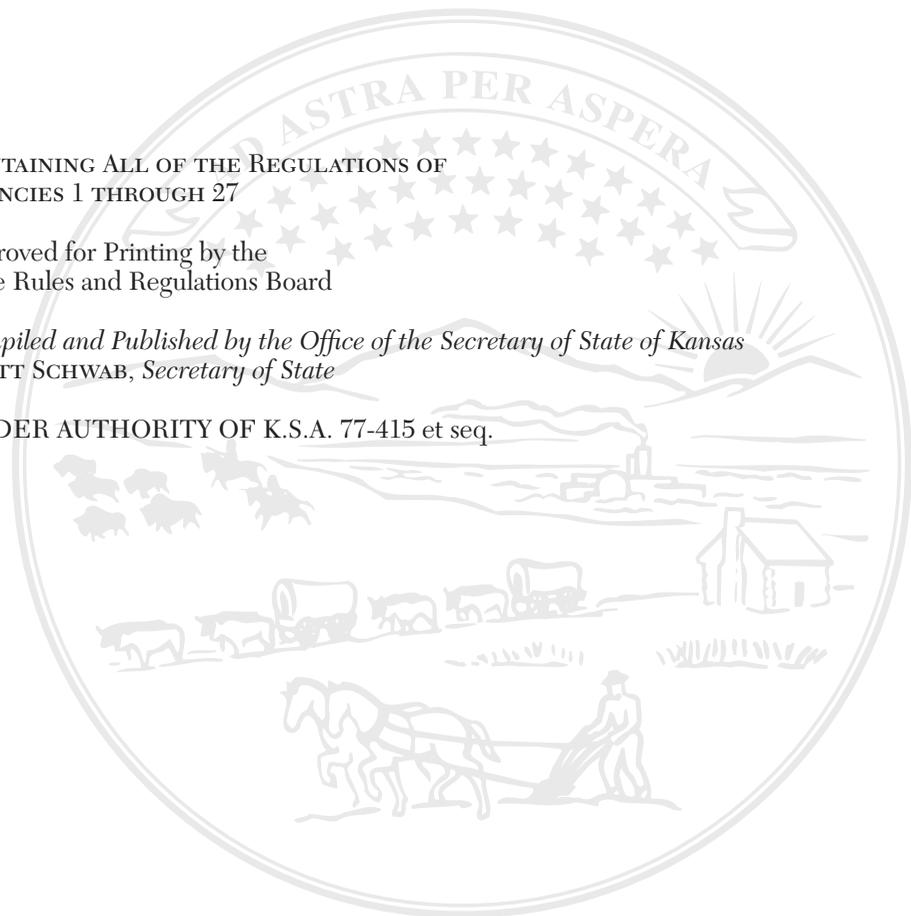
Kansas Administrative Regulations

CONTAINING ALL OF THE REGULATIONS OF
AGENCIES 1 THROUGH 27

Approved for Printing by the
State Rules and Regulations Board

Compiled and Published by the Office of the Secretary of State of Kansas
SCOTT SCHWAB, *Secretary of State*

UNDER AUTHORITY OF K.S.A. 77-415 et seq.



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AUTHENTICATION OF RULES AND REGULATIONS

THIS IS TO CERTIFY That we, Derek Schmidt, Attorney General of and for the State of Kansas, and Scott Schwab, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2022 Volume 1 of the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agencies 1 through 27 approved for printing by the State Rules and Regulations Board and otherwise complies with K.S.A. 77-415 *et seq.* and acts amendatory thereof.

Done at Topeka, Kansas, this 15th day of September, 2022.



DEREK SCHMIDT,
Attorney General



SCOTT SCHWAB,
Secretary of State

[SEAL]

EXPLANATORY PREFACE

This volume has been compiled and published in accordance with K.S.A. 77-430a and other applicable laws.

ARRANGEMENT OF RULES AND REGULATIONS

Administrative rules and regulations of the various state agencies are arranged in accordance with a three-part system of numbers divided by hyphens. The first number indicates the agency; the second number indicates the article (a group of regulations of such agency upon the same subject); the last number indicates the specific section or regulation within the article. For example, "1-4-11" refers to agency No. 1, article No. 4 and section No. 11.

The law requires that agencies cite the statutory authority for the regulation and the section(s) of the statutes which the regulation implements. This is published at the end of the text of the regulation. In addition, the Secretary of State includes a history of the regulation which indicates the original effective date of the regulation and each subsequent amendment.

SALES

Volumes of the Kansas Administrative Regulations are sold by the Publications Division of the Office of the Secretary of State, First Floor, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, 785-296-4557.

SCOTT SCHWAB, *Secretary of State*

COMMENTARY

This volume has been compiled and published in accordance with K.S.A. 77-430a and other applicable laws.

The 2022 Volumes contain rules and regulations filed before January 1, 2022. The volumes replace the 2009 Volumes and 2021 Supplement. Regulations filed on and after January 1, 2022, may be located by checking the Kansas Register, Kansas' official state newspaper. An index appears at the back of each Kansas Register and lists the volume and page number of the Register issue that contains the most recent version of the regulations filed after December 31, 2021.

To find the most recent version of a regulation:

First, check the table of contents in the most current issue of the Kansas Register

Then, check the Index to Regulations in the most current Kansas Register

Next, check the current K.A.R. Supplement

Finally, check the current K.A.R. Volume

If the regulation is found at any of these steps, stop. Consider that version the most recent. The most current regulations, proposed regulations open for public comment, and published regulations with a future effective date may also be found in the online K.A.R. at https://sos.ks.gov/publications/pubs_kar.aspx.

To determine the authorizing and implementing statute(s), the effective date, or to see when a regulation was amended or revoked, check the history found at the end of each regulation. The authorizing and implementing statute(s) are listed first followed by any subsequent action. For example, in "amended, T-7-12-11-90, Dec. 31, 1990" the "T" means temporary, the "7" is the number assigned to the agency in the K.A.R. Volumes, and 12-11-90 is the date that the regulation was filed. Following the last comma is the effective date. Therefore, the amendment was filed as a temporary regulation on December 11, 1990, and the amendment became effective on December 31, 1990. A temporary regulation becomes effective upon approval by the State Rules and Regulations Board and filing in the Secretary of State's Office or at a later date when specified in the body of the regulation. A temporary regulation lasts 120 days unless it is amended or revoked within 120 days. If the "T number" is not included in an action on a regulation, the regulation was filed as a permanent regulation. A permanent regulation is effective 15 days following publication in the Kansas Register or at a later date specified in the body of the regulation. Prior to July 1, 1995, a permanent regulation became effective 45 days following publication in the Kansas Register or at a later date specified in the body of the regulation. The regulation remains in effect until amended or revoked.

Any questions regarding the publication or use of the K.A.R. Volumes or questions regarding the regulation filing procedure may be directed to the Kansas Administrative Regulations Editor at 785-296-0082. For purchasing inquiries call 785-296-4557. Questions concerning the subject matter of a regulation should be directed to the agency administering the regulation.

Issues of the Kansas Register may be viewed and downloaded at <https://sos.ks.gov/publications/kansas-register.html>.

SCOTT SCHWAB, *Secretary of State*

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Article 1.—PURPOSE, ADOPTION AND AMENDMENT OF REGULATIONS; PERSONNEL POLICIES

1-1-1. State human resource program, responsibilities, regulations, and guidelines.

(a) The Kansas civil service act shall be administered by the director to establish a complete human resource program that provides an effective, diverse, responsible, and quality workforce. The regulations in articles 1 through 14 and any associated guidelines shall apply only to classified employees unless otherwise specifically stated.

(b) The central personnel office for the state as one employer shall be the division of personnel services.

(c) The statewide human resource program shall be managed by the director in partnership with the human resource directors and staff of other state agencies. Agencies shall be provided with opportunities to share in the responsibility of developing regulations and implementing the resulting programs. Each human resource duty that is delegated to an appointing authority by the di-

rector shall be the responsibility of the appointing authority. The appointing authority shall comply with statewide personnel regulations and statutes.

(d) The human resource regulations and bulletins shall be made available to each agency by the director.

(e) Each agency shall make available for inspection all human resource regulations and bulletins to all employees in a manner that is both known to employees and available at all times.

(f) Standards of health and safety in state agencies and a comprehensive health and safety program for the state service shall be established by the director, in cooperation with appropriate agency administrators.

(g) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended May 31, 1996; amended June 5, 2005.)

1-1-2 and 1-1-3. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-1-4. (Authorized by K.S.A. 75-3747; implementing K.S.A. 1982 Supp. 75-3746; effective May 1, 1983; revoked May 31, 1996.)

1-1-5. Pilot projects. (a) Plans for pilot projects within the state employee workforce may be developed by the director for the purpose of determining whether a specified change in human resource management policies or procedures or a new human resources program would result in improved statewide human resource management. The plan shall specifically delineate any provisions of one or more personnel regulations relating to state agencies and state employees that are to be suspended with respect to participants in the pilot project and shall include findings that each proposed suspension of a regulation meets all of the following criteria:

(1) Suspension of the regulation is necessary to implement a pilot project that is expected to accomplish one or more of the following purposes:

(A) To provide a means to recruit, select, develop, or maintain an effective and responsible workforce;

(B) to provide personnel administration practices that meet the social, economic, and program needs of the people of the state of Kansas;

(C) to facilitate the administration of personnel actions based on merit principles and fitness to perform the work required;

(D) to provide fair and equal opportunity for public service; or

(E) to provide improvements and economies in the organization and operation of state agencies.

(2) Suspension of the regulation will not be in conflict with the civil service act or any other statute of the state of Kansas.

(3) Suspension of the regulation will not be in conflict with any applicable federal statutes or regulations.

(4) Suspension of the regulation will not result in any personnel administration actions made on the basis of race, national origin or ancestry, religion, political affiliation, or other nonmerit factors.

(b) The plan for a pilot project shall be subject to review by the secretary of administration. The pilot project may be approved, modified and approved, or rejected by the secretary. Each plan that is either approved or modified and approved by the secretary shall be submitted to the governor.

(c) Implementation of the pilot project may be authorized by the governor in the form of an executive directive, which may place additional limitations or conditions on implementation of

the pilot project as the governor deems advisable. The executive directive shall stipulate any provisions of one or more personnel regulations relating to state agencies and state employees that are suspended for participants in the pilot project. Such a suspension of provisions of one or more regulations shall be effective only for pilot project participants and only for the duration of the pilot project. (Authorized by K.S.A. 75-3706 and 75-3747; implementing K.S.A. 75-2925, 75-3707, and 75-3746; effective Oct. 1, 1999.)

Article 2.—DEFINITIONS

1-2-1. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1988 Supp. 75-3747; implementing K.S.A. 75-2938; effective May 1, 1979; amended May 1, 1981; revoked, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; revoked Dec. 17, 1995.)

1-2-3. Act. Act means the Kansas civil service act. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-4. Agency. “Agency” means a unit of state government assigned a unique department identification number by the division of accounts and reports, except that for the purpose of the civil service act and these regulations, the university of Kansas at Lawrence and the university of Kansas medical center at Kansas City and Wichita, shall be considered as separate agencies. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1981; amended Dec. 17, 1995.)

1-2-5. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-7. Allocation. Allocation means the assignment of an individual position to an appropriate class. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-8. Applicant. “Applicant” means a person who registers personal information and qualifications with the state and who applies for a specific vacancy. (Authorized by K.S.A. 75-3706 and K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 1996 Supp. 75-2939 and K.S.A. 75-3746; effective Dec. 17, 1995; amended Aug. 1, 1997.)

1-2-9. Appointing authority. (a) “Appointing authority” means a person or group of persons empowered by the constitution, by statute, or by lawfully delegated authority to make human resource decisions that affect state service, including designees of the appointing authority as provided in subsection (b).

(b) Any appointing authority may select an employee or group of employees to act as the designee of the appointing authority to make specified human resource decisions that affect state service.

(c) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended Dec. 17, 1995; amended June 5, 2005.)

1-2-11. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-13. Budgeted position. Budgeted position means a position in the agency budget as approved by the legislature, which shall not be filled until the duties and responsibilities to be assigned to the position are actually decided upon by the employing agency and the position has been allocated to the proper class. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-14. Candidate. “Candidate” means an applicant who has been certified to the pool as eligible by the appointing authority or by the director, by virtue of meeting both the required selection criteria for a class of positions and the required selection criteria for a specific position. (Authorized by K.S.A. 75-3706 and K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 1996 Supp. 75-2939, 75-2942, and 75-2943; effective Dec. 17, 1995; amended Aug. 1, 1997.)

1-2-15. Career path. A career path identifies optimum alternative paths of employee progression to positions requiring successively higher levels of skill and the consequent promotional opportunities. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-17. Class. “Class” means one or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with clarity to designate each position allocated to the class, that the same required selection criteria are needed for per-

formance of the duties of positions in the class, that the same assessments may be used to select employees for positions in the class, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended Dec. 17, 1995.)

1-2-19. Classified service. Classified service means all positions in the state service, except those which are specifically placed in the unclassified service by K.S.A. 75-2935, as amended, or other sections of the statutes. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-20. Commercial driver position. “Commercial driver position” means any position which is subject to the State of Kansas alcohol and controlled substances testing program established under the federal omnibus transportation employees testing act of 1991, 49 U.S.C. Appx. § 2717. Commercial driver positions shall be limited to those positions which require:

(a) a commercial driver’s license as defined in the Kansas uniform commercial drivers’ license act, K.S.A. 8-2,125 *et seq.*, as amended; and

(b) operation of a commercial motor vehicle:
(1) with a gross vehicle weight of over 26,000 pounds; or

(2) designed to carry 16 or more passengers, including the driver. (Authorized by K.S.A. 1994 Supp. 75-3747, implementing K.S.A. 75-3746, 75-2940 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995.)

1-2-23. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked, T-86-17, June 17, 1985; revoked May 1, 1986.)

1-2-24. (Authorized by and implementing K.S.A. 75-3747; effective May 1, 1979; revoked, T-86-17, June 17, 1985; revoked May 1, 1986.)

1-2-25. Compensatory time. “Compensatory time” means time off, in lieu of monetary payment for overtime worked, given pursuant to K.A.R. 1-5-24. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended, T-86-17, June 17, 1985; amended, T-86-36,

Dec. 11, 1985; amended May 1, 1986; amended, T-87-11, May 1, 1986; amended May 1, 1987; amended, T-89-1, May 1, 1988; amended Oct. 1, 1988; amended June 5, 2005.)

1-2-25a. Holiday compensatory time. “Holiday compensatory time” means leave given in accordance with K.A.R. 1-9-2 to employees who work on holidays and who are compensated for this holiday work by receiving time off at a later date, at the rate of one and a half hours off for one hour worked. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective June 5, 2005.)

1-2-26. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-27. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-29. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-30. This regulation shall be revoked on and after June 5, 2005. (Authorized by and implementing K.S.A. 1998 Supp. 75-4362 and K.S.A. 75-4363; effective April 13, 1992; amended July 26, 1993; amended Oct. 1, 1999; revoked June 5, 2005.)

1-2-31. Demotion. “Demotion” means the movement of an employee from a position in one class to a position in another class having a lower pay grade, either on an involuntary basis for disciplinary purposes or on a voluntary basis. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 2004 Supp. 75-2949, K.S.A. 75-2949d, 75-3707, and 75-3746; effective May 1, 1979; amended Dec. 17, 1995; amended June 7, 2002; amended June 5, 2005.)

1-2-32. Director. Director means the director of personnel services. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-33. Division. Division means the state division of personnel services, including the di-

rector and the employees thereof. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-34. Disability. Disability means, with respect to an individual: (a) a physical or mental impairment that substantially limits one or more major life activities;

(b) a record of such an impairment; or

(c) being regarded as having such an impairment. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective Aug. 3, 1992.)

1-2-35. Candidate pool. “Candidate pool” means a pool of candidates certified as eligible for a vacancy by the appointing authority or by the director, and from which the appointing authority must hire an individual to fill that vacancy. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 1996 Supp. 75-2939, 75-2942, and 75-2943; effective May 1, 1979; amended Dec. 17, 1995; amended Aug. 1, 1997.)

1-2-37. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-39. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-41. Established position. Established position means a position which is in the budget as approved by the legislature, and which has been allocated. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-42. Exempt employee. “Exempt employee” means an employee who is in a position that is determined by the director, or by an appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, not to be eligible for overtime pay under 29 U.S.C. § 213, as amended on October 31, 1998 and hereby adopted by reference. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995; amended June 7, 2002.)

1-2-42a. Non-exempt employee. “Non-exempt employee” means an employee who is in a position that is determined by the director, or by an appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, to be eligible for overtime pay under 29 U.S.C. §

213, as amended on October 31, 1998 and hereby adopted by reference. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995; amended June 7, 2002.)

1-2-43. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-43a. Incumbent. “Incumbent” means the employee occupying a particular position. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective June 5, 2005.)

1-2-44. In pay status. “In pay status” means time worked, and time off work for which the employee is compensated because of a holiday, the use of any kind of leave with pay, or the use of compensatory time or holiday compensatory time. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707, 75-3746, and 75-5507; effective Dec. 17, 1995; amended June 5, 2005.)

1-2-45. Intern program. Intern program means an entrance level career development program which applies scholastic achievement or potential to guided participation in utilizing professional and managerial techniques within a specific occupational field. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-46. Length of service. (a) “Length of service” shall mean total time worked in the classified service or unclassified service, including time spent on an appointment to a position pursuant to K.S.A. 75-2935(1)(i), and amendments thereto. Length of service shall exclude the following:

(1) Time worked as a temporary employee in accordance with the provisions of K.A.R. 1-6-25;

(2) time worked as a student employed by any board of regents institution;

(3) time worked as a resident worker in an institution of mental health as defined in K.S.A. 76-12a01 and amendments thereto or in a state veteran’s home operated by the Kansas commission on veteran’s affairs; and

(4) time worked as an inmate.

(b) Time spent on military leave and time off while receiving workers compensation wage replacement for loss of work time shall be con-

sidered to be time worked in the classified or unclassified service. Time on leave while receiving workers compensation wage replacement for a disability attributable to state employment before May 1, 1983, shall not be credited.

(c) Within educational institutions under the control and supervision of the state board of regents or the state board of education, time spent on leave of absence, if imposed by the educational institution based on employment customs arising from an academic or school calendar requiring less than a full calendar year of service, shall be considered to be time worked in the classified service. However, length of service based on this leave of absence shall not be transferable to other state agencies. For the purposes of layoff, employees of these institutions shall be credited only for actual time worked.

(d)(1) Length of service for computing vacation leave accrual rates and for layoff or compensation purposes shall not be recalculated using prior versions of this regulation for employees who have no break in service.

(2) Length of service for determining vacation leave accrual rates and for layoff or compensation purposes for an individual returning to state service shall be the amount of length of service on record on December 17, 1995, or on the date the individual left state service, whichever date is later.

(e) Authorized leave without pay over 30 consecutive days shall not count toward length of service. However, authorized leave without pay for 30 consecutive days or less shall not be considered a break in service.

(f) Increased rates of vacation leave earnings based on length of service shall not be retroactive.

(g) For purposes of vacation leave accrual, layoff, and longevity bonus pay, the length of service of any person who has retired from state service shall be reduced to zero, and if the person later returns to state service, the length of service shall be calculated on the same basis as that for a new hire. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-52, Dec. 19, 1986; amended May 1, 1987; amended Dec. 27, 1993; amended Dec. 17, 1995; amended Sept. 18, 1998; amended June 5, 2005; amended Jan. 12, 2007.)

1-2-47. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-48. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746 and K.S.A. 75-2948, as amended by 1995 SB 175, § 12; effective May 1, 1984; amended Dec. 17, 1995; revoked June 7, 2002.)

1-2-49. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-50. New hire. “New hire” means any person hired by a state agency who has not been previously employed by the state. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2942; effective May 1, 1981; amended Dec. 17, 1995.)

1-2-51. Pay increase date. “Pay increase date” means the date on which an employee is eligible for a step increase based on the time-on-step requirements of K.A.R. 1-5-19b. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995.)

1-2-53. (Authorized by K.S.A. 1980 Supp. 75-3747; implementing K.S.A. 75-2946; effective May 1, 1979; amended May 1, 1981; revoked May 31, 1996.)

1-2-54. Pay grade. “Pay grade” means a salary and wage range in the pay plan prepared by the director as required by K.S.A. 75-2938. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective Dec. 17, 1995.)

1-2-55. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-57. Permanent status. Permanent status means the status of an employee who has successfully completed a probationary period, in accordance with K.A.R. 1-7-3, 1-7-4, and 1-7-6. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing

K.S.A. 75-2946; effective May 1, 1979; amended May 1, 1981; amended May 31, 1996.)

1-2-59. Position. Position means a group of duties and responsibilities, assigned or delegated by an appointing authority, requiring the services of an employee on a full-time basis or, in some cases, on a less than full-time basis. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-61. Position review. Position review means the official study by the agency personnel officer or the division of personnel services of the current or proposed duties and responsibilities of a position. (Authorized by K.S.A. 1983 Supp. 75-3747; implementing K.S.A. 1983 Supp. 75-2938; effective May 1, 1979; amended May 1, 1984.)

1-2-63. Position description. Position description means a description of the duties and responsibilities of a position, and the education, experience, knowledge, skills, and abilities necessary to perform the duties and responsibilities of the position in a satisfactory manner. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-64. Probationary employee. “Probationary employee” means any individual serving a probationary period pursuant to K.A.R. 1-7-4 (a) or (d). (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective Sept. 25, 2009.)

1-2-65. Probationary status. “Probationary status” means the status of an employee serving a probationary period pursuant to K.A.R. 1-7-4 (a) or (d). (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1979; amended Sept. 25, 2009.)

1-2-67. Promotion. “Promotion” means a change of an employee from a position in one class to a position in another class having a higher pay grade, by an employee who meets the required selection criteria for promotion. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2944, as amended by 1995 SB 175, § 9, and K.S.A. 75-3746; effective May 1, 1979; amended Dec. 17, 1995.)

1-2-68. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2939, as amended by 1995

SB 175, § 5 and K.S.A. 75-3746; effective Dec. 17, 1995; revoked Aug. 1, 1997.)

1-2-69. Reallocation. Reallocation means a change in allocation of an existing position within an agency from one (1) class to another, at the same or a different level, on the basis of significant changes in the kind, difficulty, or responsibility of the work performed in such position. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-70. Regular position. “Regular position” means any position other than a temporary position. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995.)

1-2-71. Reemployment pool. “Reemployment pool” means a pool of persons who:

- (a) were laid off;
- (b) in lieu of a layoff, accepted a demotion or transfer to a position in another county, agency, program or shift, or to a position with fewer hours; or
- (c) voluntarily requested to be laid off. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2948, as amended by 1995 SB 175, § 12, and K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1984; amended Dec. 17, 1995.)

1-2-72. Rehire. “Rehire” means any person hired by the state who was previously employed by the state. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 75-3746; effective Dec. 17, 1995; amended May 31, 1996.)

1-2-73. Reinstatement. “Reinstatement” means rehiring a former permanent state employee within one year of a voluntary termination from the state into a position for which the individual meets the required selection criteria and which is in the same or similar class as the class in which the individual had permanent status prior to the termination. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended Dec. 17, 1995.)

1-2-74. Administrative leave. “Administrative leave” shall mean leave with pay that is approved by the appointing authority for an employee pending the outcome of an investigation of that em-

ployee under K.A.R. 1-9-19 or for other situations in which the appointing authority determines that administrative leave is in the best interests of the state. (Authorized by K.S.A. 2014 Supp. 75-2949 and 75-3747; implementing K.S.A. 2014 Supp. 75-2949, K.S.A. 75-3707, and K.S.A. 75-3746; effective Oct. 1, 1999; amended June 5, 2005; amended Jan. 6, 2017.)

1-2-75. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-77. (Authorized by K.S.A. 75-3706; implementing K.S.A. 20-2608, K.S.A. 1997 Supp. 74-4914 and K.S.A. 75-5517; effective Sept. 18, 1998; revoked Jan. 12, 2007.)

1-2-78. Resignation. Resignation means the voluntary termination of employment by an employee. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-2-79. Roster, official. “Official roster” means the employment history and employment status of all individuals in state service. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1985; amended Dec. 17, 1995.)

1-2-80. (Authorized by K.S.A. 1980 Supp. 75-3747; implementing K.S.A. 1980 Supp. 75-2938; effective May 1, 1979; amended May 1, 1981; revoked, T-86-17, June 17, 1985; revoked May 1, 1986.)

1-2-81. (Authorized by and implementing L. 1988, Chap. 325, Sec. 1; effective, T-1-10-28-88, Oct. 31, 1988; effective Dec. 18, 1988; revoked April 13, 1992.)

1-2-83. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-84. Supervisor. “Supervisor” means an employee in a position that meets all of the following criteria: (a) Performs a majority of work that is different from that of the employee’s subordinates; and

(b) has the responsibility to authorize or recommend in the interest of the employer a majority of the following actions:

(1) To hire, transfer, suspend, promote, demote, dismiss, and discipline employees under that individual's supervision and to address employee grievances; and

(2) to assign, direct, and conduct performance reviews of the work.

The exercise of this authority and responsibility shall not be of a merely routine or clerical nature but shall require the use of independent judgment. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1985; amended Dec. 17, 1995; amended Oct. 1, 1999.)

1-2-84a. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective Oct. 1, 1999; revoked June 5, 2005.)

1-2-84b. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective Oct. 1, 1999; revoked June 5, 2005.)

1-2-85. Temporary position. "Temporary position" means a classified position which is limited to not more than 999 hours of employment in a 12-month period. A temporary position shall not affect the position limitation of an agency. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2945, as amended by 1995 SB 175, § 10; effective May 1, 1979; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995.)

1-2-86. Time-on-step. "Time-on-step" means the amount of time an employee must serve on a particular step of the pay grade to be eligible for a step increase. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4, and K.S.A. 75-3746; effective Dec. 17, 1995.)

1-2-88. Transfer. "Transfer" means a change by an employee from one position to another position with a close similarity of duties, essentially the same basic qualifications, and the same pay grade. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 1995 Supp. 75-2944 and K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1983; amended Dec. 17, 1995; amended May 31, 1996.)

1-2-91. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1982 Supp. 75-3747; implementing K.S.A. 75-2947, K.S.A. 1982 Supp. 75-2944; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; revoked Dec. 17, 1995.)

1-2-95. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-2-97. Unclassified service. "Unclassified service" means those positions specifically designated by law as unclassified. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 2004 Supp. 75-2935, as amended by 2005 SB 74, § 3, and K.S.A. 75-3746; effective May 1, 1979; amended June 5, 2005.)

Article 3.—EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

1-3-1. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-3-2. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2956a; effective May 1, 1979; amended Dec. 17, 1995; revoked June 5, 2005.)

1-3-3 and 1-3-4. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-3-5. Definitions. (a) "Affirmative action" means a deliberate and sustained effort to identify and eliminate barriers to the employment and advancement of females and minorities. The purpose of affirmative action initiatives shall be to achieve, at all levels, a state government workforce whose composition with respect to female and minority employees approximates the composition of the available, qualified state resident workforce.

(b) "Affirmative action plan" means a written, results-oriented plan detailing the steps that an appointing authority will take to achieve a workforce whose composition with respect to female and minority employees approximates the composition of the available, qualified state resident workforce.

(c) “Equal employment opportunity” means the administration of the civil service personnel system in a manner that promotes the right of all persons to work and to advance on the basis of merit and ability without regard to race, religion, color, sex, national origin or ancestry, age, disability, military or veteran status, or political affiliation, except as otherwise provided by law.

(d) “Minority,” means a group differing in race or ethnic background from the majority of the available, qualified state workforce, or a member of such a group.

(e) “Underutilization,” with respect to a workforce, means a condition in which the percentage of female or minority employees is less than the percentage of females or minorities in the available, qualified state workforce. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-2925, 75-2941, 75-3707, and 75-3746; effective Jan. 12, 2007.)

1-3-6. Equal employment opportunity; affirmative action. In a manner that is consistent with K.S.A. 75-2925 and amendments thereto, each appointing authority shall take the following steps: (a) Each appointing authority shall implement programs and policies designed to promote equal employment opportunity and shall implement an affirmative action plan to identify whether areas of underutilization exist. If areas of underutilization are identified, the appointing authority shall initiate programs designed to address the underutilization.

(b) Each appointing authority shall establish any goals and target dates necessary to effectuate agency-level and statewide affirmative action plans.

(c) Each appointing authority shall ensure that complete and accurate applicant and employment records and statistics are maintained that provide information for the evaluation and analysis of current and past employment practices with respect to affirmative action. Each appointing authority shall provide this data to the director in the manner and on the forms required by the secretary. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-2925, 75-2941, 75-3707, and 75-3746; effective Jan. 12, 2007.)

Article 4.—CLASSIFICATION

1-4-1. Preparation of classification plan.

(a) A classification plan shall be prepared by the director after determining, in cooperation with

appointing authorities and principal supervisory officials, the duties and responsibilities of all positions in the classified service.

(1) The classification plan shall establish an appropriate title for each class, describe the typical duties and responsibilities of the positions in the class, and indicate the required selection criteria for performance of the duties of the class.

(2) The classification plan shall be developed and maintained in such a manner that:

(A) all positions substantially similar with respect to the kind, difficulty, and responsibility of work are included in the same class;

(B) there are required selection criteria which are applicable to all positions in a class, in addition to any selection criteria which may be applied to individual positions in a class to fulfill specific job requirements; and

(C) the same pay grade may be applied with equity to all positions in the class.

(b) The classification plan, and any amendments or revisions thereto, shall be in effect after approval by the governor, on an effective date specified by the governor.

(c) The classification plan shall be revised or amended whenever there are significant changes in organization, creation or abolition of one or more classifications, or changes in the duties or responsibilities of a classification that make revision or amendment necessary. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended May 1, 1981; amended Dec. 17, 1995.)

1-4-2. Position management. (a) Each supervisor shall structure each position to promote efficient use of the workforce and to fulfill current and future requirements, and shall accurately describe in writing the duties of the position. The supervisor shall review each subordinate position when the responsibilities of the position change, each time the position becomes vacant, and when other pertinent circumstances indicate a review is appropriate.

(b) Each appointing authority shall maintain a system of position identification and control, indicating the organizational unit, location, duties, and work hours and shifts of each established position, which shall be made available to the director upon request.

(c) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-2950

and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2950, and 75-3746; effective May 1, 1979; amended May 1, 1981; amended May 31, 1996; amended June 5, 2005.)

1-4-3. Position description. Each appointing authority shall ensure that a current position description is prepared and maintained for each position in the agency and that each position description accurately describes the duties and responsibilities of the position. The position description shall be signed by the supervisor, the employee, and the agency's human resource director or other human resource official. The appointing authority shall make the position description available to the division of personnel services upon request. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-2950 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2950, and 75-3746; effective May 1, 1979; amended June 5, 2005.)

1-4-4. Position analysis. Position descriptions shall be reviewed by managers, supervisors, and personnel officers or other personnel officials to determine the duties and responsibilities assigned to a particular position, its location in the organization, and the education, experience, knowledge, abilities, and skills necessary to perform successfully those duties and responsibilities. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

1-4-5. Position allocation; delegation to appointing authority. (a) The appointing authority shall notify the director when a new position is created in the classified service. The notice shall include a statement of the duties and responsibilities that are to be assigned to the position. The position shall then be allocated by the director. Except as otherwise provided in the act or in these regulations, no person shall be appointed to, or employed in, a classified position until the position has been allocated to an established class or until the classification plan has been amended to provide for the new position.

(b) The authority to allocate positions in an agency may be delegated by the secretary of administration to the appointing authority of that agency. The delegation shall specify the classes, or group of classes, for which the authority is granted and the conditions under which the delegation is made. Any delegation of allocation authority may be modified or withdrawn by the secretary to the

extent provided by K.S.A. 75-2938(c), and amendments thereto.

(c) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938 and 75-3746; effective May 1, 1979; amended May 1, 1981; amended June 5, 2005.)

1-4-6. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-4-7. Position reallocation. (a)(1) Upon the initiative of the director or the request of an incumbent or appointing authority, a position shall be reviewed whenever either of the following conditions is met:

(A) The organizational structure of an agency or the duties of a position are significantly changed.

(B) For any reason other than those specified in paragraph (a)(1)(A), a position appears to be allocated incorrectly.

(2) After conferring with the appointing authority, the position under review may be reallocated by the director to a different class, or the existing allocation may be retained. During the review, other positions may be reviewed and reallocated as required.

(b) Reallocation shall not be used for either of the following purposes:

(1) To avoid the provisions of the regulations pertaining to layoffs, demotions, promotions, and dismissals; or

(2) to increase or decrease the pay of an employee in circumvention of the regulations pertaining to pay.

(c) Unless otherwise prescribed by the secretary of administration, an appointing authority who has been granted authority to allocate positions shall have authority to reallocate the same positions.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938 and 75-3746; effective May 1, 1979; amended May 1, 1981; amended Dec. 17, 1995; amended June 5, 2005.)

1-4-8. Effect of position reallocation on incumbent. (a)(1) If a position that is reallocated is filled on the date of reallocation by an employee with permanent or probationary status and if the incumbent wishes to remain in the position, the appointing authority shall, within the current pay period, appoint the incumbent to the class to which the position was reallocated.

(2) If the class specification for the reallocated position requires that the person appointed to any position in that class possess a special license or certificate and the incumbent does not possess such a license or certificate, the incumbent shall not be appointed to the class to which the position was reallocated. If the reallocation of any position to a class requires that the employee possess a special license or certificate and if the incumbent does not possess that license or certificate, the reallocation may be made only after the reallocation has been approved in writing by the director.

(b) Except as provided in paragraph (a)(2), if the incumbent had permanent status at the time the position is reallocated, the appointing authority shall appoint the incumbent to the class to which the position was reallocated with permanent status, but may require the incumbent to serve a probationary period in accordance with the provisions of K.A.R. 1-7-4(b). Notice of the probationary period shall be given to the employee in writing.

(c) If the reallocation of a position occupied by an employee with permanent status is to a lower class, the appointing authority shall give the employee a written statement of the reason the position is being reallocated to a lower class.

(d) A reallocation shall not be retroactive unless authorized by the director, in writing, based on the director's determination that failure to do so would create a manifest injustice or undue hardship on the employee whose position is being reallocated. Each determination to authorize a retroactive reallocation shall be made by the director on a case-by-case basis. The length of time for which the reallocation will be retroactive shall be determined by the director.

(e) If the incumbent was serving a probationary period in the former class, the time served on probation in the former class shall apply towards the probationary period in the new class. However, if the incumbent had permanent status, but was serving a probationary period as a result of a promotional appointment to the former class, the appointing authority may start the employee on a new probationary period. The new probationary period shall begin on the date of the appointment to the new class, and the length of the probationary period shall be the same as that provided for promotional appointments in K.A.R. 1-7-4(b).

(f)(1) If the incumbent does not wish to remain in the position upon its reallocation, the incumbent shall submit a written notice to the appoint-

ing authority within 14 calendar days of the date on which the incumbent is given a written notice of the pending reallocation. If the incumbent does not submit a written notice within that 14-day period, the incumbent shall be presumed to desire to remain in the position as reallocated.

(2) If the incumbent has submitted the written notice as provided under paragraph (f)(1) or does not qualify for the position under paragraph (a)(2), the appointing authority shall take one of the following actions in accordance with these regulations:

(A) Lay off the incumbent if the incumbent has permanent status;

(B) terminate the incumbent if the incumbent has probationary status; or

(C) appoint the incumbent to a different position on the basis of a promotion, transfer, or voluntary demotion.

(g) Different qualifications may be established by the director for those positions in a class that are subject to federal laws and regulations.

(h) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-2946 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2946, 75-3707, and 75-3746; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended Oct. 1, 1999; amended June 5, 2005.)

1-4-9. Use of class titles. The class titles included in the classification plan, or code symbols of these titles, shall be used in all personnel, accounting, budget, appropriation, and financial records of all state agencies. No person shall be appointed to or employed in a position in the classified service under a title not included in the classification plan. (Authorized by K.S.A. 75-3747; effective May 1, 1979.)

Article 5.—COMPENSATION

1-5-1. Preparation, installation, and revision of the pay plan or plans. (a) After conferring with appointing authorities, the secretary of administration and the director of the budget, a pay plan or plans for the classified service shall be recommended to the governor by the director. Except as otherwise provided, the pay plan or plans shall provide a minimum and maximum rate of pay for each class of positions in the classified service. In establishing these rates, the following factors shall be taken into consideration by the director:

(1) the condition of the labor market;

- (2) prevailing rates for comparable positions in other public employment and in private business;
- (3) difficulty and responsibility of work;
- (4) the usual education and experience required;
- (5) the current cost of living;
- (6) turnover rates in the state service; and
- (7) maintenance or other benefits received.

Revisions to the pay plan or plans shall be prepared, adopted, and made effective in accordance with other provisions of article 5 of these regulations.

(b) When a pay plan or plans are to be installed or revised, instructions for installing or revising the plan or plans shall be prepared by the director, including instructions for handling circumstances where an employee's pay is above the pay grade, below the pay grade, or not on a step of the pay grade for the class in which the employee is employed. The instructions shall not be required if these circumstances can be handled by application of appropriate regulations. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 1995 Supp. 75-2938; effective May 1, 1979; amended May 31, 1996.)

1-5-2. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-5-3. (Authorized by K.S.A. 75-3747; effective May 1, 1979; amended Dec. 17, 1995; revoked May 31, 1996.)

1-5-4. Assignment of classes to pay grades. After conferring with appointing authorities, the secretary of administration, and the director of the budget, the assignment of each class of positions to one of the pay grades shall be recommended to the governor by the director, and schedules showing the pay grades approved by the governor for each class of positions shall be prepared by the director. Separate schedules of pay grades and steps showing full time biweekly salaries and hourly rates shall be developed and the appropriate schedule shall be used for each position in the classified service. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended Dec. 17, 1995.)

1-5-5. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1985 Supp. 75-3747; implementing K.S.A. 75-2938; effective May 1, 1979; amended May 1,

1981; amended, T-86-17, June 17, 1985; amended, T-86-36, Dec. 11, 1985; amended May 1, 1986; amended, T-87-11, May 1, 1986; amended May 1, 1987; revoked Dec. 17, 1995.)

1-5-6. (Authorized by K.S.A. 75-3747; effective May 1, 1979; amended Dec. 17, 1995; revoked May 31, 1996.)

1-5-7. Employees to be paid within the pay grade, approval of employee pay changes; effective date; retroactive increases. (a) Except as provided otherwise in these regulations, each employee shall be paid within the pay grade adopted for the class of positions and at the step within the pay grade as prescribed by these regulations.

(b) All employee pay changes shall be determined by the appointing authority in a manner prescribed by the director and shall comply with all applicable personnel regulations and directives approved by the governor.

(c) Each employee pay step increase shall be effective on the date that the employee completes the time-on-step requirements as stated in K.A.R. 1-5-19b. All other pay changes shall take effect on the day of the transaction.

(d) Employee pay changes may be retroactive as approved by the appointing authority or the director to correct documented errors or as otherwise approved by the governor. Each retroactive pay increase shall be limited to no more than six payroll periods, except as otherwise approved by the director.

(e) In a manner prescribed by the director, the appointing authority shall report to the director all pay changes made by the appointing authority pursuant to this regulation. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 1996 Supp. 75-2938; effective May 1, 1979; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended May 31, 1996; amended Oct. 24, 1997.)

1-5-8. Beginning pay. (a) Except as specified in subsection (b), each new hire and each rehire not based on a reemployment or reinstatement shall be paid at the minimum step of the pay grade for the class.

(b) New hires and rehires not based on a reemployment or a reinstatement may be paid at higher steps in the pay grade only under the following circumstances:

(1) If an agency has an eligible candidate with exceptional qualifications directly related to the vacant position and the agency cannot employ the person at the minimum step, the appointing authority may approve beginning pay for the individual at a higher step in the pay grade. Exceptional qualifications shall be based on the candidate's education, training, experience, skills, and other job-related qualifications.

(2) If there is a lack of candidates for a class of positions available for employment at the minimum step, one or more appointing authorities may request that the director establish some higher step in the pay grade as the beginning pay in the class for new hires and for rehires not based on a reemployment or a reinstatement. Authorization for the higher beginning pay may be given to a designated agency or agencies, to all agencies, or for a particular geographical area. This authorization shall remain in place until canceled by the director. If the authorization has remained in place for three years for reasons other than a geographic basis, a compensation study shall be conducted by the director.

(A) If the director authorizes higher beginning pay under paragraph (b)(2), each appointing authority whose agency has positions in the class or geographical area that is authorized for a higher beginning pay shall be notified of the authorization by the director. Except as provided below, the appointing authority of each agency to which the authority has been granted shall then raise the pay of each incumbent in the class who is being paid at a lower step to the higher beginning pay. These pay increases shall take effect on the first day of the first pay period following the date of the director's authorization. The length of time that the incumbent has spent on the previous step of the pay grade shall count toward the time-on-step requirement for the new step.

(B) If the authorization granted under paragraph (b)(2) is only for a particular geographical area, the appointing authority shall not raise the pay of incumbents in other geographical areas.

(3) Any appointing authority may pay a temporary employee at a higher step in the pay grade if the candidate has exceptional qualifications directly related to the position or has former permanent status in the same class or another class at the same or higher pay grade.

(c) In a manner prescribed by the director, the appointing authority shall report to the director each hire above the minimum step made by the appointing authority as provided in this regulation.

(d) The beginning pay for any unclassified employee hired into a position in the classified service shall be determined in accordance with the provisions of this regulation. (Authorized by K.S.A. 75-2950 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2938a, 75-2950, 75-3707, and 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995; amended Oct. 24, 1997; amended, T-1-1-30-01, Feb. 4, 2001; amended May 25, 2001; amended June 5, 2005; amended Sept. 29, 2006.)

1-5-9. Pay of temporary employee. (a) Except as provided in subsection (b), the pay of each temporary employee shall be the minimum step of the pay grade to which the classification is assigned.

(b) At the option of the appointing authority, any temporary employee may be hired at a step higher than the minimum step as provided in K.A.R. 1-5-8.

(c) No person hired on a temporary basis shall be eligible for any step increase during the period of temporary employment.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-2945 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2945, and 75-3707; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended Sept. 18, 1998; amended, T-1-1-30-01, Feb. 4, 2001; amended May 25, 2001; amended June 5, 2005.)

1-5-10. Pay of employee rehired by reinstatement or reemployment. (a) Any person hired by reinstatement may be paid at the same step of the pay grade for the class to which the employee is reinstated as the step on which the employee was previously paid for the class that serves as the basis for the employee's eligibility for reinstatement. When an employee to be reinstated has exceptional qualifications and the agency cannot hire the person at the previous step, the agency's appointing authority may approve beginning pay at a higher step in the pay grade. Exceptional qualifications shall be based on the former employee's education, training, experience, skills, and other qualifications directly related to the vacant position.

(1) When a higher step in the pay grade has been established as the beginning pay for new hires to the class pursuant to K.A.R. 1-5-8 due to lack of candidates, the agency shall hire the employee at the higher beginning pay.

(2) Nothing in this subsection shall prevent a person from accepting reinstatement at a step lower than that on which the person was being paid in the class that serves as the basis for the employee's eligibility for reinstatement.

(b) The pay increase date for any person who is reinstated shall be governed by the time-on-step requirement of the step to which reinstated. Time-on-step in a previous position shall not count towards the time-on-step requirement.

(c)(1) Any person who is reemployed to the same class from which the person was laid off, or to a class with the same pay grade as that class, shall be paid at the same step of the pay grade as the step on which the person was being paid on the date the person was laid off, or any lower step of the pay grade.

(2) Any person who is reemployed to a class with a pay grade lower than the class from which the person was laid off shall be paid at one of the following rates:

(A) the same pay rate (dollar amount) as the rate the person was being paid immediately before being laid off, if the rate is on a step in the lower pay grade. If that rate is within the pay grade for the class but not on a step, the person may be paid at the next lower step or the next higher step. However, in no case shall the person be paid above the maximum step of the lower pay grade; or

(B) a lower pay rate (dollar amount) than the person was being paid immediately before being laid off.

(d) In determining the pay increase date for any person who is reemployed to the class from which the person was laid off, to a class with the same pay grade as that class, or to a class with a pay grade lower than that class, the length of time the employee had spent on the last pay step immediately before the date the person was laid off shall count toward the time-on-step requirement. If the pay increase date for this person is less than six months after the date of reemployment, the agency may use the person's last performance review rating before layoff or may give a new performance review rating in determining the person's eligibility for a pay step increase, as provided in K.A.R. 1-5-19b. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2938, 75-2948 and

K.S.A. 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended Sept. 18, 1998.)

1-5-11. Pay of employee returned from military leave. (a) Except as provided in subsection (b) of this regulation, any employee who returns from military leave to a position in the same class in which the employee was employed when the leave was granted, or to a position in the same pay grade, shall be paid at the same step in the pay grade at which the employee was being paid when the leave began. In determining the employee's new pay increase date, credit shall be given for the time served in the armed forces.

(b) The appointing authority shall grant one or more pay step increases to an eligible employee upon the employee's return from military leave if the authority is reasonably certain the employee would have received the increase had the employee been continuously employed and state service not interrupted by military leave. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2947, as amended by 1995 SB 175, § 11; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1985; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended March 20, 1989; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995.)

1-5-12. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 1995 Supp. 75-2938 and K.S.A. 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Dec. 17, 1995; amended May 31, 1996; revoked Oct. 24, 1997.)

1-5-13. Pay of employee promoted to a higher class. (a) When an employee in the classified service is promoted or the employee's position is reallocated to a higher class, the appointing authority shall pay the employee on one of the following steps:

(1) the same step of the pay grade for the new class as the step on which the employee was being paid in the lower class;

(2) any lower step of the pay grade for the new class that gives the employee an increase in pay;

(3) the step for new hires in the class when a higher step in the pay grade has been established as the starting pay pursuant to K.A.R. 1-5-8; or

(4) a higher step in the pay grade, if the employee to be promoted has exceptional qualifications. Exceptional qualifications shall be based on the employee's education, training, experience, skills, and other qualifications directly related to the duties of the position to which promoted.

(b) Nothing in this regulation shall authorize pay above the maximum step of the pay grade.

(c) Each employee who is promoted or whose position is reallocated to a higher class shall receive step increases in accordance with the following provisions.

(1) A pay step increase shall be given on the same date, if eligible for such an increase.

(2) The pay increase date shall be governed by the time-on-step requirement of the step to which promoted.

(d) In a manner prescribed by the director, the appointing authority shall report to the director all hires made by the appointing authority pursuant to paragraph (a)(4) of this regulation. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 1996 Supp. 75-2938, K.S.A. 1996 Supp. 75-2938a, and K.S.A. 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-1, May 1, 1988; amended Oct. 1, 1988; amended March 20, 1989; amended Dec. 17, 1995; amended Oct. 24, 1997.)

1-5-14. Pay of employee upon transfer.

(a)(1) Any employee who is transferred may be paid on the same step as the step on which the employee was paid before the transfer.

(2) Any employee may transfer to a lower step within the pay grade, if this transfer is agreed upon by the employee and the appointing authority.

(3) If an employee is transferred to a trainee class with an abbreviated pay grade in lieu of lay-off, the employee may be paid at the employee's present rate of pay if the rate of pay does not exceed the maximum pay rate for the pay grade to which the trainee class is assigned.

(b) For each employee whose pay is determined under subsection (a), the length of time that the employee has spent on the previous step shall

count toward the time-on-step requirement for computing the employee's pay increase date.

(c) If an employee transfers from one position to another within the same agency, the appointing authority may pay the employee at a higher step on the pay grade than the step on which the employee was paid before the transfer if the appointing authority determines that the increase is in the best interests of the state. Nothing in this regulation shall authorize pay above the maximum step of the pay grade. The employee's pay increase date shall be governed by the time-on-step requirement of the new step.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938 and 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1987; amended Dec. 17, 1995; amended Sept. 18, 1998; amended June 5, 2005.)

1-5-15. Pay of employee upon demotion.

(a) Each employee who is demoted, in accordance with applicable regulations, whether voluntarily or for disciplinary reasons, shall be paid at the same step of the pay grade for the lower class as the step on which the employee was being paid in the higher class, or at any higher step that results in a decrease in the rate of compensation, except as specified in subsection (b).

(b) Any employee accepting a voluntary demotion may be paid at a step of the new pay grade that does not result in a decrease in rate if the action is in the best interest of the state service, except that the employee's rate of pay shall not exceed the maximum pay rate for the new pay grade.

(c) Nothing in this regulation shall prevent a demotion being made to a step in the pay grade lower than permitted by this regulation, if agreed upon in writing by the employee and appointing authority. However, if an employee with permanent status is promoted and, subsequently, is demoted pursuant to K.S.A. 75-2944, and amendments thereto, the employee shall be paid on a step that is no lower than the same step of the pay grade for the lower class as the step that the employee was on immediately before the promotion.

(d) An employee who takes a voluntary demotion may also receive a pay step increase on the same date if the employee is eligible for this increase.

(e) The pay increase date for any employee demoted for disciplinary reasons shall be governed by the time-on-step requirement of the step to

which demoted. The pay increase date for any employee who takes a voluntary demotion shall be unchanged if the employee did not receive a pay step increase on the date of the demotion.

(f) The provisions of K.A.R. 1-5-10, rather than this regulation, shall apply when a former permanent employee who was separated from the service for more than 30 days is reinstated to a class with a lower pay grade.

(g) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended March 20, 1989; amended Jan. 6, 1992; amended Dec. 27, 1993; amended Nov. 21, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 18, 1998; amended June 5, 2005.)

1-5-16. Pay of employee in position reallocated to a lower class. (a) An employee whose position is reallocated to a class with a lower pay grade, and who is placed in the reallocated position as provided in K.A.R. 1-4-8, may continue to be paid by the appointing authority at the current pay rate (dollar amount) if that rate is on a step in the lower pay grade. In no case shall an employee be paid above the maximum step of the lower pay grade.

(b) The appointing authority may set the pay at a lower step than permitted by this regulation, except that the employee shall not be paid at less than the same step of the pay grade for the lower class as the step that the employee was on immediately prior to the reallocation.

(c) The length of time the incumbent has spent on the step of the previous pay grade shall count toward the time-on-step requirement for computing the pay increase date. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2938, as amended by 1995 SB 175, § 4, K.S.A. 1994 Supp. 75-2938a, and K.S.A. 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995.)

1-5-18. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-5-19. (Authorized by K.S.A. 1980 Supp. 75-3747; implementing K.S.A. 1980 Supp. 75-2938; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; revoked May 1, 1983.)

1-5-19a. (Authorized by K.S.A. 1981 Supp. 75-3747; implementing K.S.A. 1981 Supp. 75-2938; effective May 1, 1983; revoked, T-86-17, June 17, 1985; revoked May 1, 1986.)

1-5-19b. Individual pay step increases. (a) Each employee whose latest performance review rating in the preceding 12-month period is at least satisfactory shall receive a pay step increase as provided by subsections (b) and (c) of this regulation, except as otherwise ordered by the governor.

(b) Each employee who is on the minimum step or the second step of a pay grade shall receive a one-step pay increase after six full months on that step of the pay grade.

(c) Each employee who is on the third step of a pay grade or any higher step, except the maximum step, shall receive a one-step pay increase after 12 full months on that step of the pay grade. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2938; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended, T-1-1-30-01, Feb. 4, 2001; amended May 25, 2001.)

1-5-19c. Effect of pay grade changes on pay. (a) If the governor has assigned a class of positions to a higher pay grade, the appointing authority shall pay each employee in the class on one of the following steps:

(1) The same step of the pay grade for the new class as the step on which the employee was being paid in the lower class;

(2) any lower step of the pay grade for the new class that gives the employee an increase in pay; or

(3) the step on the pay grade of the new class that provides the same rate, in dollar amount, as the current rate paid to the employee.

(b) If the governor has assigned a class of positions to a lower pay grade, each employee in the class shall continue to be paid at the same rate, in dollar amount, as the rate paid to the employee immediately before the assignment to the new pay grade.

(c)(1) For those employees who receive an increase in pay under either paragraph (a)(1) or (a)

(2), the pay increase date shall be governed by the time-on-step requirement of the new step.

(2) For those employees who did not receive an increase in pay under either paragraph (a)(3) or subsection (b), the length of time that the employee has spent on the step of the previous pay grade shall count toward the time-on-step requirement for computing the pay increase date. If the employee's current salary is above the new pay grade, the employee shall not receive a salary increase until the employee's rate of pay is less than the highest step of the new pay grade.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-2938a, and 75-3707; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended Oct. 24, 1997; amended, T-1-1-30-01, Feb. 4, 2001; amended May 25, 2001; amended June 5, 2005.)

1-5-20. Individual pay decreases. (a) The appointing authority may reduce the pay of any employee one step because of a less than satisfactory rating according to the employee's current performance review. Such a decrease shall not result in a pay rate below the minimum step of the pay grade. Approval of the director shall be required for more than one of these reductions in any 12-month period.

(b) Following a pay decrease, the employee's pay increase date shall be governed by the time-on-step requirement of the new step, except that the pay may be increased to the step from which it was reduced in any later payroll period, if the employee's subsequent rating is satisfactory.

(c) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1982; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995; amended, T-1-1-30-01, Feb. 4, 2001; amended May 25, 2001; amended June 5, 2005.)

1-5-21. Biweekly salary or hourly rates. Each exempt employee shall be paid a biweekly salary. Each non-exempt employee shall be paid an hourly rate as determined under K.S.A. 1994

Supp. 75-5515, and amendments thereto. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747 and K.S.A. 75-5514; implementing K.S.A. 75-5506 and K.S.A. 1994 Supp. 75-5515; effective May 1, 1979; amended Dec. 17, 1995.)

1-5-22. Payment for two or more positions. (a) Each employee who is employed in two or more regular, part-time positions shall receive separate pay for the duties performed in each position. Except as provided in subsection (c), the percentage of time worked on all positions shall not exceed 100 percent.

(b) Each employee in multiple regular, part-time positions shall receive benefits commensurate with the total time worked on all regular, part-time positions.

(c) Any classified exempt employee may hold one or more additional unclassified exempt positions teaching or conducting research in a state educational institution without limit on total pay, if the appointing authority in the classified service certifies that the position does not detract from the time for which the employee is being paid as a classified exempt employee. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1983; amended Dec. 17, 1995; amended May 31, 1996; amended Oct. 1, 1999; amended June 7, 2002.)

1-5-23. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1982 Supp. 75-3747; implementing K.S.A. 1982 Supp. 75-2938; effective May 1, 1979; amended May 1, 1983; revoked Dec. 17, 1995.)

1-5-24. Overtime. (a) Except as otherwise provided by statute or these regulations, employees of the state who are eligible to receive overtime compensation under the fair labor standards act of 1938 (FLSA), as amended, shall be compensated for overtime as provided in that act. State employees in agricultural positions shall also be eligible for overtime compensation. The final determination of eligibility to receive overtime as specified in this subsection shall be made by the director for all classified employees and all unclassified employees whose pay is subject to approval by the governor under K.S.A. 75-2935b and amendments thereto.

(b)(1) The rate at which any eligible employee is to be compensated for overtime worked shall be

one and a half times the employee's regular rate of pay. This rate shall not include premium pay for holidays worked or any call-in and callback compensation paid for hours not actually worked.

(2) All employees who are eligible for overtime compensation and who were paid for overtime during the 12 months preceding the receipt of a longevity bonus payment or a quality award bonus payment shall receive an additional overtime payment, which shall be calculated as follows:

(A) Divide the bonus pay by total hours worked in the preceding 12 months to obtain the increase in the regular rate; and

(B) multiply the increase in the regular rate by the number of overtime hours paid in the preceding 12 months; then, multiply that product by one-half. The result shall be the employee's additional overtime pay.

No additional overtime pay shall be due for any overtime hours worked during the preceding 12 months for which compensatory time was given under subsection (e).

(c) Each appointing authority shall be responsible for control of overtime in the agency. Overtime, to the extent possible, shall be authorized in advance by the responsible supervisor.

(d)(1) Except as provided in paragraph (d)(3), in determining whether an employee in a position or class determined to be eligible for overtime pay has worked any overtime in a given workweek or work period, only time actually worked shall be considered.

(2) The number of hours of paid leave used in an employee's workweek or work period that, when added to the number of hours actually worked in that employee's workweek or work period, exceeds the applicable overtime threshold shall be compensated in the following manner:

(A) Given as equivalent time off as specified in subsection (f); or

(B) paid at the hourly rate of pay.

(3) If all of the following conditions are met, an official state holiday may be counted as time worked for employees in positions that have been determined to be eligible for overtime compensation:

(A) The employee is asked to report to work in order to respond to a building, highway, public safety, or other emergency, as determined by the appointing authority.

(B) This work is performed outside the employee's normal work schedule for the workweek or work period that includes the official state holiday.

(C) The appointing authority authorizes inclusion of that official state holiday in calculating time worked by the employee.

The appointing authority shall report to the director the name and position number of each employee for whom the state holiday will be counted as time worked.

(e)(1)(A) In lieu of paying an eligible employee at the time-and-a-half rate for overtime worked, an appointing authority may elect to compensate an employee for overtime worked by granting compensatory time off, at the rate of one and a half hours off for each hour of overtime worked, at some time after the workweek or work period in which the overtime was worked if the conditions of paragraph (e)(1)(B) are met.

(B) Any appointing authority may elect to compensate an employee for overtime worked by granting compensatory time off only if an agreement or understanding has been reached before the performance of the work. Except as provided in 29 C.F.R. 553.23(b), the agreement or understanding concerning compensatory time off shall be between the appointing authority and the individual employee, and a record of its existence shall be maintained for each employee. The agreement or understanding to provide compensatory time off may take the form of an express condition of employment if the employee knowingly and voluntarily agrees to it as a condition of employment and if the employee is informed that the compensatory time earned may be preserved, used, or cashed out in a manner consistent with the provisions of this regulation. The appointing authority of any agency that had a regular practice of awarding compensatory time off in lieu of overtime pay before April 15, 1986 shall be deemed to have reached an agreement or understanding with any employee who has been continuously employed by that agency in one or more positions that are eligible for overtime from a date before April 15, 1986.

(2) An eligible employee shall not accrue more than 240 hours of compensatory time for overtime hours worked. Each eligible employee who has accrued 240 hours of compensatory time off shall, for any additional overtime hours of work, be compensated with overtime pay. However, an appointing authority may establish a lower maximum accumulation for employees in that agency.

(3) If an eligible employee is paid for accrued compensatory time off, this compensation shall be paid at the regular rate earned by the employee at the time the employee receives the payment.

(4)(A) Except as provided in K.A.R. 1-9-14 (a), each eligible employee who has accrued compensatory time off authorized under this subsection shall, upon termination of employment or upon promotion, demotion, or transfer to another state agency, be paid for the unused compensatory time at a rate of compensation not less than the higher of either of the following rates:

(i) The average regular rate received by the eligible employee during the last three years of the employee's employment; or

(ii) the final regular rate received by the eligible employee.

(B) Any longevity or quality award bonus payments received during the last three years of employment shall be included in determining the average regular rate and the final regular rate specified in paragraph (e)(4)(A).

(5)(A) Each eligible employee who has accrued compensatory time off authorized under this subsection and who has requested the use of compensatory time shall be permitted by the appointing authority to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the agency.

(B) Each employee who has accrued compensatory time and whose FLSA status is changed to exempt shall be granted the compensatory time off, paid for the entire amount, or provided a combination of both compensatory time off and pay, so that there is no remaining compensatory time balance before the employee's status changes to exempt.

(C) Each employee who has accrued compensatory time off under this subsection may be required by the appointing authority to use the compensatory time within a reasonable period after receiving notice of this requirement. The notice shall state the length of time in which a specified number of hours of compensatory time are to be used.

(f) When an employee who is eligible for overtime works additional time that could result in overtime hours, that employee's appointing authority may give the employee equivalent time off, on an hour-for-hour basis, in the workweek or work period in which the additional time is worked if any of the following conditions is met:

(1) The appointing authority notifies the employee of the change in the employee's normal work schedule for that workweek or work period at least five calendar days in advance of the day

in which the employee's normal work schedule is first changed.

(2) The appointing authority has established a written policy stating that the employee may be required to take equivalent time off, on an hour-for-hour basis, in the workweek or work period in which additional time is worked.

(3) The employee requests or agrees to take equivalent time off during the workweek or work period in which additional time was worked, and the appointing authority determines that this arrangement is not detrimental to the operations of the agency.

In any case, the equivalent time off shall be taken at a time agreeable to the appointing authority during the workweek or work period in which the additional time is worked.

(g) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, K.S.A. 75-5507, and 75-5514; implementing K.S.A. 75-2938, 75-3707, 75-3746, 75-5508, K.S.A. 2004 Supp. 75-5537, and K.S.A. 75-5541; effective May 1, 1979; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-86-17, June 17, 1985; amended, T-86-36, Dec. 11, 1985; amended May 1, 1986; amended, T-87-11, May 1, 1986; amended May 1, 1987; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 27, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 1, 2000; amended June 5, 2005.)

1-5-25. Call-in and call-back pay. (a) An appointing authority may call an employee in to work on a regular day off or may call an employee back to work after a regular work schedule. Except as provided in subsection (b), employees of the state who are eligible to receive overtime pursuant to K.A.R. 1-5-24, and who are called in to work on a regular day off or are called back to work after a regular work schedule, shall be paid at the appropriate rate of pay for the hours worked. Except as noted below, such employees shall be paid for a minimum of two hours. The minimum of two hours shall not apply if the employee was on stand-by when called in or called back, nor shall it apply if the employee was called in or called back during the two hour period immediately prior to the beginning of the employee's next regularly scheduled work shift. Only the hours actually worked shall be credited in determining eligibility for overtime compensation.

(b) The head of each agency with employees engaged in law enforcement and firefighting activities as defined in 29 C.F.R. 553, shall determine whether such employees will be eligible for call-in and call-back pay as provided in this regulation and shall submit a written statement regarding such determination to the director. The determination as to eligibility for call-in and call-back may be modified by the secretary upon recommendation of the director. (Authorized by K.S.A. 75-3747, as amended by 1985 HB 2125; effective May 1, 1979; amended, T-86-17, June 17, 1985; amended May 1, 1986.)

1-5-26. Stand-by compensation. (a) Any appointing authority may require a non-exempt employee to be on stand-by. "Stand-by time" means a period of time outside a non-exempt employee's regularly scheduled work hours, during which the non-exempt employee is required, at agency direction, to remain available to the agency within a specified response time. Each non-exempt employee on stand-by shall be available at agency direction for recall to perform necessary work. Stand-by assignments shall be limited to work situations where a probability of emergency recall of a non-exempt employee or employees exists. When an employer is able to contact employees by means of a paging device, the employer shall establish a policy stating whether such employees are eligible for stand-by compensation.

(b) Except as provided in subsection (f), each non-exempt employee shall be compensated at the rate of one dollar per hour for each hour the employee serves on stand-by status.

(c) Each non-exempt employee on stand-by who is called in to work shall be compensated for the actual hours worked at the appropriate rate of pay, but shall not be paid stand-by compensation for the hours actually worked. Only the hours actually worked by the non-exempt employee shall be credited in determining eligibility for overtime compensation.

(d) Time during which a non-exempt employee is restricted to a particular telephone number at a location designated by the employer, or to the employer's premises, in order to remain personally available to the employer shall be considered hours worked and the employee shall be compensated at the employee's regular rate of pay instead of receiving stand-by compensation.

(e) Any non-exempt employee on stand-by, or who is subject to the provisions of subsection (d),

who is not available when called, and who does not present reasonable justification for failure to report when called, shall lose compensation for that stand-by period and may be subject to disciplinary action.

(f) The head of each agency with employees engaged in law enforcement and firefighting activities as defined in 29 C.F.R. 553, as in effect on July 1, 1994, shall determine whether those employees will be eligible for stand-by compensation as provided in this regulation and shall submit a written statement regarding that determination to the director. The determination as to eligibility for stand-by compensation may be modified by the secretary upon recommendation of the director. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1985; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 31, 1996.)

1-5-27. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Jan. 6, 1992.)

1-5-28. Shift differential. (a) Each agency having multi-shift operations shall designate one or more shifts as a normal day shift. Each agency shall specify no more than 12 consecutive hours in the day from which normal day shifts may be designated. Each normal day shift shall fall entirely within those designated hours.

(b) Except as provided in subsection (e), a shift differential shall be paid to classified employees in positions eligible to receive overtime pursuant to K.A.R. 1-5-24 for hours worked on regularly established shifts other than the normal day shift or shifts. The shift differential shall not be paid to an employee for any time the employee is on any type of leave or holiday or when the employee works unscheduled hours before or after a normal day shift.

(c) Upon recommendation of the secretary, the amount of the shift differential shall be that amount set by executive directive of the governor. The amount shall be recommended by the secretary after consideration of pay survey data and other appropriate and relevant factors, which shall be reviewed at least annually.

(d) With regard to particular classes of employees, or particular agencies, or employees located in particular geographic areas of the state, a recommendation to extend or deny the shift differential authorized by this regulation may be submitted by the director of personnel services

to the secretary. This extension or denial shall be effective when approved by executive directive of the governor.

(e) The head of each agency with employees engaged in law enforcement and fire fighting activities, as defined in 29 C.F.R. 553, as in effect on July 1, 1994, shall determine whether such employees will be eligible for shift differential as provided in this regulation and shall submit a written statement regarding such determination to the director. The determination as to eligibility for shift differential may be modified by executive directive of the governor. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746, and K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective, E-81-14, June 12, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Jan. 6, 1992; amended July 26, 1993; amended Dec. 17, 1995.)

1-5-29. Longevity bonus pay. (a) Upon completion of 10 years of length of service, each classified employee in a regular position shall be eligible for longevity bonus pay.

(b) The longevity bonus payment for each eligible employee shall be computed by multiplying \$40 by the number of full years of state service, not to exceed 25 years.

(c) Longevity bonus pay shall increase the regular rate applying to overtime pay for hours worked during the 12 months preceding the date the longevity bonus is paid to the employee and shall be considered in calculating the payment of compensatory time to an employee upon termination as provided in K.A.R. 1-5-24. (Authorized by K.S.A. 75-5541; implementing K.S.A. 75-5541 and K.S.A. 75-2943; effective, T-1-7-27-89, July 27, 1989; effective Nov. 20, 1989; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended June 7, 2002.)

1-5-30. Benefits for employees activated to military duty. (a) Each employee who is ordered to report for active military service upon the activation of the National Guard and reserve units by presidential order, or who volunteers for this active duty, shall be eligible for the following benefits:

(1) The employee shall continue to accrue length of service, but shall not accrue vacation or sick leave. Upon return to work, the employee's

vacation leave accrual rate shall be increased to the appropriate level if the length of service the employee accrued while on military leave qualifies the employee for a higher accrual rate.

(2) A death benefit shall be payable if the employee dies while on active military duty. The death benefit shall be in an amount equal to the amount provided by the group term life insurance system that the employee would have received at the time of death if the employee had not been on active duty. The employing state agency at the time the employee entered active duty shall pay the death benefit. The death benefit shall be paid to the employee's beneficiary or beneficiaries, as designated on forms approved by the director of personnel services. If no beneficiary has been designated, the death benefit shall be paid to the estate of the employee. The provisions of this paragraph shall be applicable to each state employee who meets the following conditions:

(A) Immediately before entering active duty, was eligible for the insured death benefit provided under K.S.A. 74-4901 *et seq.*, and amendments thereto, and funded by the employing agency; and

(B) would not, at the time of death, be eligible for the death benefit described under paragraph (a)(2)(A).

(b) This regulation shall not apply to federal active duty for training purposes.

(c) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective, T-1-9-10-90, Sept. 10, 1990; effective Jan. 7, 1991; amended Jan. 6, 1992; amended Dec. 17, 1995; amended June 5, 2005.)

Article 6.—RECRUITING AND STAFFING

1-6-1. Registration for employment. Each person seeking employment with the state shall register on forms prescribed by the director, and these forms may be submitted or updated at any time. Registering with the state shall not constitute applying for a vacancy. This regulation shall be effective on and after December 17, 1995. (Authorized by 1994 Supp. 75-3747; implementing K.S.A. 75-2944, as amended by 1995 SB 175, § 9, K.S.A. 75-2939, as amended by 1995 SB 175, § 5, and K.S.A. 75-2942, as amended by 1995 SB 175, § 7; effective May 1, 1979; amended May 1, 1981; amended Dec. 17, 1995.)

1-6-2. Recruitment. (a)(1) For each classified vacancy to be filled, the appointing authority shall post a job requisition on the central notice of vacancy report administered by the director, except as provided in subsection (b).

(A) Each job requisition posted on the central notice of vacancy report shall be open to applications from the following individuals:

(i) Employees within the agency that is posting the job requisition;

(ii) persons in the reemployment pool; and

(iii) persons who separate from state service due to a permanent disability for which the employee receives disability benefits from either the Kansas public employee retirement system or the United States social security administration.

(B) The appointing authority may then determine whether recruitment will also be conducted among the following additional groups of individuals:

(i) All state employees and persons eligible for reinstatement; or

(ii) all state employees, persons eligible for reinstatement, and the general public.

(2) Notices of the vacancy shall be made available to all agency personnel offices. Appropriate and reasonable distribution within each agency shall be the responsibility of the appointing authority.

(3) The appointing authority, within guidelines established by the director, shall establish a period of time in which applications will be accepted for each vacancy.

(b) Notices of a vacancy shall not be required under any of the following conditions:

(1) A temporary position is to be filled.

(2) A position is to be filled by demotion or transfer.

(3) A position is to be reallocated.

(4) A governor's trainee position is to be filled.

(5) The director determines that, for good cause, a notice is not in the best interests of the state.

(c) All job postings, announcements, and advertisements for vacancies in safety-sensitive positions as defined in K.S.A. 75-4362, and amendments thereto, or in commercial driver positions as defined in K.A.R. 1-2-20 shall include a statement regarding the drug testing requirements set forth in K.A.R. 1-6-32, K.A.R. 1-6-33, K.A.R. 1-9-19a, and K.A.R. 1-9-25. (Authorized by K.S.A. 75-3706, K.S.A. 2005 Supp. 75-3747, and 75-4362; implementing K.S.A. 75-2939, 75-2942, 75-2943, 75-2944, 75-2945, 75-3707, 75-3746, and K.S.A. 2005 Supp. 75-4362; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended,

T-1-10-28-88, Oct. 31, 1988; amended Dec. 18, 1988; amended April 13, 1992; amended Dec. 17, 1995; amended Aug. 1, 1997; amended June 5, 2005; amended Sept. 29, 2006.)

1-6-3. Filling vacancies. (a) For each classification, required selection criteria shall be established by the director concerning education, experience, age, physical requirements, character, and other factors that are related to ability to perform satisfactorily the duties of positions in the class. Each required selection criterion shall relate directly to the duties of positions in the class. Optional selection criteria may be established by the director for one or more classes, which may be designated by the appointing authority as preferred or required for particular positions in the classes.

(b) Each applicant certified to the pool of eligible candidates shall meet the required selection criteria for that class and position at the time of hire. If the required selection criteria for a class or position includes a degree requirement, any applicant who is expected to complete the degree requirement by the end of the current academic term may be certified to the pool of eligible candidates for that class or position and extended a conditional offer of employment. The applicant shall meet the degree requirement at the time of hire.

(c) Any agency may establish preferred selection criteria, in addition to those provided under subsection (a), in order to determine the capacity and fitness of each eligible candidate in the pool to perform the position's specific duties. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-2939, K.S.A. 75-2943, and K.S.A. 75-2944; effective May 1, 1979; amended Dec. 17, 1995; amended June 7, 2002.)

1-6-4 to 1-6-5. These regulations shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-6-6. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1982 Supp. 75-3747; implementing K.S.A. 1982 Supp. 75-2944; effective May 1, 1979; amended May 1, 1983; revoked Dec. 17, 1995.)

1-6-7. Disqualification of applicants and candidates. (a) Any applicant or candidate may be disqualified by the director in the following circumstances. The director may refuse to assess an applicant or a candidate, or may refuse

to place a candidate in the eligible pool, or may remove a candidate from the eligible pool when the applicant or candidate has been dismissed from employment with the state for delinquency or misconduct, or fails to furnish a complete application or any information requested by the director, or for any of the reasons stated in K.S.A. 75-2940.

(b) Whenever the director disqualifies an applicant or candidate from any part of the employment process, a statement of the reasons for the disqualification shall be provided by the director. The applicant or candidate shall be provided an opportunity to respond in writing or to appear before the director within 14 calendar days to provide cause why the action should not be taken.

(c) The applicant or candidate may request in writing, within 30 days from the date of the disqualification, a hearing before the civil service board to determine the reasonableness of the action. The board shall, within a reasonable period, grant the applicant or candidate a hearing. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2940, as amended by 1995 SB 175, § 6; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended Dec. 17, 1995.)

1-6-8. Selection instruments. (a) Each appointing authority shall develop selection instruments to fairly assess the capacity and fitness of applicants to perform the duties of the position in which employment is sought. Selection instruments may include ratings of training, experience, and other qualifications, written tests, performance tests, interviews, physical fitness tests, assessment center evaluations, medical examinations, or other selection procedures. In accordance with these regulations, the appointing authority shall be responsible for developing, maintaining, and validating selection instruments and shall make all selection instruments, procedures, records, or other selection materials available to the director upon request. Any agency, upon request, may be assisted by the director in developing, maintaining, and validating selection instruments. Selection instruments may also be developed, maintained, and validated by the director.

(b) Promotional selection instruments shall include, in addition to any or all of the selection instruments identified above, consideration of the applicant's performance and length of service.

(c) Subject to policies established by the appointing authority to protect the confidentiality of information obtained by using the selection instruments, the document or records containing this information may be inspected by the applicant.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2939, 75-2942, 75-2943, and 75-3746; effective May 1, 1979; amended Dec. 17, 1995; amended Aug. 1, 1997; amended June 5, 2005.)

1-6-9 to 1-6-15. These regulations shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-6-16. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747 as amended by L. 1985, Ch. 276, Sec. 10; implementing K.S.A. 75-2942 as amended by L. 1985, Ch. 276, Sec. 4; effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; revoked Dec. 17, 1995.)

1-6-17. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-6-18. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1983 Supp. 75-3747; implementing K.S.A. 1983 Supp. 75-2942, 75-2943, 75-3746, 75-2948; effective May 1, 1979; amended May 1, 1984; revoked Dec. 17, 1995.)

1-6-19 to 1-6-20. These regulations shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked Dec. 17, 1995.)

1-6-21. Candidates for regular positions. (a) For each vacancy in a regular position that is to be filled, the appointing authority shall hire from among those persons certified as eligible. The pool of candidates certified as eligible to fill a vacant position may be used to fill one or more other vacancies in the same classification within 60 days of the last date on which applications are accepted for the first vacant position.

(b) The selection criteria shall be job-related. Each agency shall provide the candidates with equal consideration when applying the selection criteria.

(c) Each veteran who meets the minimum requirements for a vacant position shall be offered an interview for that vacancy when all of the following conditions are met:

(1) The vacancy is a regular position.

(2) A notice of vacancy, including a notice of an internal vacancy, has been posted for that position in accordance with the provisions of K.A.R. 1-6-2.

(3) No individuals who are eligible for the Kansas employee preference program have applied for that vacancy.

(d) The veterans' preference policy set out in subsection (c) shall not apply to any veteran who was dismissed or did not resign in good standing from state service.

(e) For the purposes of this regulation, "veteran" means any individual who is eligible for the veterans' preference under the provisions of K.S.A. 75-2955, and amendments thereto. (Authorized by K.S.A. 2002 Supp. 75-3747 and K.S.A. 75-2955; implementing K.S.A. 75-2943 and 75-2955; effective May 1, 1979; amended May 1, 1983; amended May 1, 1985; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended Aug. 1, 1997; amended June 7, 2002; amended Dec. 1, 2003.)

1-6-22. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 1994 Supp. 75-2935; effective May 1, 1979; amended May 1, 1983; amended Dec. 17, 1995; revoked Aug. 1, 1997.)

1-6-22a. Training classes. (a) Certain classes of positions may be designated by the director as training classes. Each person employed in a training class shall be in training status and not in probationary or permanent status. The training period served for each training class established as provided by this regulation shall be specified by written agreement between the director and the appointing authority of the agency in which the training class is used. If a specific training class is used by more than one agency, the duration of the training period served for that class shall be established by the director after consultation with all agencies that use the class.

(b) The appointing authority may dismiss a trainee at any time, except as follows.

(1) If a trainee was promoted from a classified position in which an employee held permanent status, the provisions in K.S.A. 75-2944, and amendments thereto, shall apply.

(2) If an employee who was demoted or transferred to a trainee position is terminated for reasons other than personal conduct, the employee shall be accorded the right to a position in the class in which the employee held permanent status immediately before the trainee position.

(c) The period served by an employee in a training class shall not be counted as part of the probationary period if the employee is subsequently employed in a regular position.

(d) Upon meeting the minimum qualifications for the applicable class and satisfactorily performing the job duties, responsibilities, and training requirements of the trainee position, each employee in a training class shall be placed in the applicable class as a probationary employee and serve a probationary period as established by K.A.R. 1-7-4. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective Dec. 27, 1993; amended Nov. 21, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 18, 1998; amended Sept. 29, 2006.)

1-6-23. Reemployment. (a)(1) Except as provided in subsection (b), each employee who is laid off, or demoted or transferred in lieu of layoff, shall be placed in a reemployment pool by the director, unless the employee requests in writing to not be placed in the reemployment pool. Each employee in the reemployment pool shall be eligible to apply for any vacancy to be filled, including any internal vacancy, until the date the employee is reemployed or for three years from the date of the layoff, whichever occurs first.

(2) Each employee who is eligible for reemployment and who is also a veteran shall be offered an interview for any vacancy that meets all of the following conditions:

(A) The vacancy is for a regular position in the classified service.

(B) The vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the notice of layoff.

(C) The employee meets the minimum requirements for the position.

(b)(1) Each individual who meets all of the following conditions shall be eligible for the Kansas employee preference program, as provided in this subsection:

(A) The individual received a written layoff notice in accordance with K.A.R. 1-14-9.

(B) The individual's most recent performance rating before receiving the layoff notice was "meets expectations" or better.

(C) The individual was not suspended, demoted, or terminated pursuant to K.S.A. 75-2949, and amendments thereto, in the 12 months preceding the date on which the individual received the layoff notice.

(2) Each individual who qualifies under paragraph (b)(1) shall remain eligible for the Kansas employee preference program until any of the following events occurs:

(A) The individual is appointed to a classified or unclassified position that is eligible for benefits.

(B) An eligible individual who was laid off or is scheduled to be laid off from a regular position that was not eligible for benefits chooses to use the Kansas employee preference for any position, whether that position is eligible for benefits, and the individual then is appointed to that position.

(C) A period of 12 consecutive months has passed since the effective date of the layoff. Each individual who is eligible for the Kansas employee preference program but has not been reemployed under any of the circumstances identified in paragraph (b)(2)(A) or (b)(2)(B) at the end of that 12-month period shall remain eligible for reemployment as provided in subsection (a).

(D) The individual is suspended, demoted, or terminated pursuant to K.S.A. 75-2949, and amendments thereto, at any time after the individual becomes eligible for the Kansas employee preference program, but before the date on which the individual is actually laid off.

(3) Each individual who is qualified to receive a Kansas employee preference shall be eligible to apply for any vacancy that meets all of the following conditions:

(A) The vacancy is for a classified position that is eligible for benefits, except that when the individual who is eligible for the Kansas employee preference program was laid off from or has received a layoff notice for a regular position that is not eligible for benefits, the vacancy may be for any regular position in the classified service, whether the vacant position is eligible for benefits.

(B) The vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the layoff notice.

(C) The vacant position to be filled is one for which a notice of vacancy will be posted in accordance with K.A.R. 1-6-2, including an internal vacancy.

(4) Upon receiving an application for the vacant position from an individual who is eligible for a Kansas employee preference, the appointing authority shall offer the position to the individual if the individual meets the minimum requirements for the position, subject to the following requirements:

(A)(i) If only one individual who is eligible for a Kansas employee preference applies for the position and is determined to meet the minimum requirements for the position, the appointing authority shall schedule an interview with the individual to provide the appointing authority with an opportunity to assess the employee's ability to successfully perform the duties and responsibilities of the position and to provide the individual with an opportunity to determine whether the position is of interest to the individual.

(ii) Following the interview, the appointing authority shall offer the position to the individual, unless the director determines that the individual cannot successfully perform the duties and responsibilities of the position under paragraph (b)(4)(C).

(iii) The individual who is offered the position as provided in paragraph (b)(4)(A) shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.

(B) If more than one individual who is eligible for a Kansas employee preference applies for the position and meets the minimum requirements for the position, the appointing authority shall apply additional, job-related selection criteria in accordance with K.A.R. 1-6-21 in considering the application of each of these individuals, subject to the following requirements:

(i) The appointing authority shall not be required to interview more than seven individuals, except that each individual who is a veteran shall be offered an opportunity for an interview.

(ii) After considering the additional, job-related selection criteria, the appointing authority shall offer the position to one of these individuals, except that the appointing authority shall not be required to offer the position to any individual who the director determines cannot successfully perform the duties and responsibilities of the position under paragraph (b)(4)(C).

(iii) Each individual who is a veteran shall be offered the position if that individual is determined to be equally qualified after applying the additional, job-related selection criteria.

(iv) The individual who is offered the position as provided in paragraph (b)(4)(B) shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.

(C) If the appointing authority submits written documentation to the director and, based on the documentation, the director determines in writing that an individual who is eligible for the Kansas employee preference could not successfully perform the duties and responsibilities of the position, the appointing authority shall not be required to offer the position to that individual.

(c) For purposes of this regulation, “veteran” shall mean any individual who is eligible for a veteran’s preference pursuant to K.S.A. 73-201, and amendments thereto. (Authorized by K.S.A. 75-2948 and K.S.A. 2014 Supp. 75-3747; implementing K.S.A. 75-2948; effective May 1, 1979; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 27, 1993; amended Dec. 17, 1995; amended May 31, 1996; amended, T-1-4-1-03, April 1, 2003; amended July 25, 2003; amended Jan. 6, 2017.)

1-6-24. Transfer. (a) Any appointing authority may transfer any employee with permanent status in accordance with the following regulations.

(1) An employee with permanent status may be transferred from a duty station in one county to a duty station in another county with the consent of the secretary of administration or the written consent of the employee.

(2) Any appointing authority may accept, by transfer, any employee with permanent status employed in another agency.

(3) Any employee with permanent status, or any employee serving a probationary period because of a promotion, may be transferred from a position in one class to a position in a different class if both positions are allocated to classes which are assigned to the same pay grade, have a close similarity of duties, and have essentially the same qualifications, and if the employee meets the qualifications for the new class.

(4) Each employee with permanent status who is transferred from one position to another position shall retain permanent status in the new position.

(b) Any appointing authority may transfer an employee on probationary status from one position in a class to another position in the same class in the agency. An appointing authority may ac-

cept, by transfer, an employee with probationary status employed in another agency, if the transfer is to a position in the same class. The probationary period of an employee transferred pursuant to this regulation shall be determined in accordance with K.A.R. 1-7-4.

(c) Approval of the employee shall not be required when a transfer within an agency, or between agencies, is made pursuant to this regulation.

(d) Each employee who is transferred from the unclassified service to a position in the classified service pursuant to the provisions of this subsection shall serve a probationary period in accordance with K.A.R. 1-7-4. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 1995 Supp. 75-2947, K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended March 20, 1989; amended Dec. 17, 1995; amended May 31, 1996.)

1-6-25. Temporary positions. (a) Except as otherwise provided by law, any appointing authority may fill a temporary position with any person who meets the required selection criteria for the class and the position. Employment of a person in one or more temporary positions shall not exceed 999 total hours of employment in state service for a period of 12 consecutive months. If the duration of a temporary position is to be less than 999 hours, the maximum duration of the temporary position shall be indicated by the appointing authority. All time worked, including overtime, shall count towards the 999 hours. Each temporary appointment shall be ended no later than 12 months after its commencement, even if the appointee works fewer than 999 hours. Any person may occupy more than one temporary position in a period of 12 consecutive months, if the total number of hours of employment in state service does not exceed 999 hours.

(b) Time worked in one or more temporary positions shall not be counted as part of the probationary period if an individual is subsequently hired in a regular position. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2945; effective May 1, 1979; amended May 1, 1981; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended Oct. 1, 1999.)

1-6-26. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 1983 Supp. 75-3747; implementing K.S.A. 1983 Supp. 75-2945; effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended May 1, 1984; revoked Dec. 17, 1995.)

1-6-26a. Limited-term positions. (a) "Limited-term position" means a position in the classified service that is scheduled to terminate within a predetermined period of time, as stipulated in grant specifications or other contractual agreements.

(b) Each individual in a limited-term position shall be notified at the time of hiring of the expiration date of the grant or contractual agreement. No employee with permanent status may be transferred to a limited-term position without the written consent of that employee. The end date of the position shall be entered on the employee's personnel record at the time of hiring.

(c) Each individual in a limited-term position shall be terminated on the end date of that position, subject to any extensions of the limited-term position. The termination of any employee who serves the full length of a limited-term position shall not be considered a layoff of that employee, and the provisions of K.S.A. 75-2948, and amendments thereto, and any regulations adopted under that statute shall not apply to the employee. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-2948; effective June 7, 2002.)

1-6-27. Demotion. (a) Any employee with permanent status may be demoted to a position in a lower class if that position is in the same series of classes, or if the appointing authority determines that the employee can reasonably be expected to perform satisfactorily the duties of the position in the lower class. Each employee with permanent status who is demoted pursuant to this regulation shall be granted permanent status in the class to which demoted, effective on the date of the demotion.

(b) Each request for a voluntary demotion shall be subject to approval of the appointing authority. The employee shall not be entitled to appeal the voluntary demotion to the civil service board.

(c) The demotion of an employee with permanent status for unsatisfactory performance of duties, for disciplinary reasons, or for other good cause shall be managed in accordance with the ap-

propriate procedures specified in K.S.A. 75-2944, K.S.A. 75-2949, K.S.A. 75-2949d, K.S.A. 75-2949e, and K.S.A. 75-2949f, and amendments thereto.

(d) An appointing authority may demote any new hire probationary employee or any probationary employee who was rehired on a basis other than reemployment or reinstatement to a class in a lower pay grade within the agency if the employee meets the qualifications for the lower class, if the employee can satisfactorily perform the duties of the lower class and if the employee has consented. Each employee with probationary status who is demoted under this subsection shall start a new probationary period that shall be no fewer than six months in length.

(e) Each unclassified employee who is voluntarily demoted to a regular classified position shall serve a probationary period in accordance with K.A.R. 1-7-4.

(f) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 2004 Supp. 75-2949; effective May 1, 1979; amended May 1, 1983; amended May 1, 1984; amended Dec. 17, 1995; amended Aug. 1, 1997; amended June 5, 2005.)

1-6-28. Overlapping hires. (a) In filling a position that is not yet vacated by the incumbent, the agency may have the incumbent and the new employee on the position concurrently for a period not to exceed four weeks.

(b) When an employee is on extended leave, the appointing authority may fill the regular position. The agency shall notify the employee in writing at the time the employee is hired that the employee shall not obtain permanent status in the position, unless the employee on leave does not return or for some other reason it is possible and advisable to grant the new employee permanent status. The probationary period for the employee may be extended by the appointing authority without regard to limits on the duration of probationary periods established elsewhere in these regulations. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended Dec. 17, 1995.)

1-6-29. Acting assignments. (a) Any appointing authority may temporarily assign an employee who has permanent status to perform the duties of another position on the basis of an acting assignment if all of the following conditions are met:

(1)(A) The other position is vacant; or

(B) The incumbent in the other position is unable or unavailable to perform the duties of that position for 30 days or more.

(2) The appointing authority makes both of the following determinations:

(A) It is necessary to assign the duties of the other position to another employee until the vacancy is filled or the incumbent returns to work.

(B) There are no other viable alternatives to an acting assignment.

(3) The employee meets the qualifications of the other position.

(4) The acting assignment is made in accordance with the provisions of this regulation.

(b) The appointing authority shall initiate action to fill the position on a permanent basis, if the incumbent has permanently vacated the position. However, the appointing authority may delay filling the position because of a shortage of funds.

(c) Acting assignments shall not be used to generate a series of acting assignments for an employee.

(d) An acting assignment shall not exceed one year in length unless approved by the director. No acting assignments made pursuant to K.S.A. 75-4315a shall exceed 12 months in duration. Acting assignments shall not be retroactive. The acting assignment procedure shall not be used for a short duration, temporary assignment of an employee for fewer than 30 days.

(e) Documentation of the acting assignment shall be placed in the employee's permanent record.

(f)(1) If an employee is acting in a position assigned to a pay grade higher than that of the employee's normal position, the employee shall be paid at a step on the higher grade that gives the employee an increase in pay. Such an increase shall not exceed the highest step that would be possible if the employee was being promoted to the position.

(2) When the acting assignment is terminated and the employee is returned to the former class, the employee's pay shall revert to whatever rate it would have been had the employee not received the acting assignment.

(3) Neither the employee's pay increase date nor the employee's status in the normal position shall be affected by an acting assignment.

(g)(1) If an employee is acting in a position assigned to the same pay grade as that of the employee's normal position, the appointing authority may compensate the employee at a higher step of the pay grade than the step on which the employee is paid in the employee's normal position if the

appointing authority determines the pay increase is in the best interests of the state. Nothing in this regulation shall authorize pay above the maximum step of the pay grade. The employee's pay increase date shall be governed by the time-on-step requirement of the new step to which the employee is assigned under this subsection.

(2) When the acting assignment is terminated and the employee is returned to the former class, the employee's pay shall revert to whatever rate it would have been had the employee not received the acting assignment.

(h) If an employee is acting in a position assigned to a pay grade lower than that of the employee's normal position, the employee shall be paid at the employee's normal pay rate.

(i) For the duration of any acting assignment, the employee may receive pay step increases in accordance with applicable pay step increase regulations.

(j) If the employee is promoted to a position in which the employee has served in an acting assignment, any accumulated months shall count towards the next pay step increase. The time served in the acting assignment may be credited towards the probationary period required for promotions.

(k) In a manner prescribed by the director, the appointing authority shall report to the director all acting assignments made by the appointing authority pursuant to this regulation.

(l) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2938, 75-3707, 75-3746, and 75-4315a; effective May 1, 1979; amended May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Jan. 6, 1992; amended Dec. 17, 1995; amended Oct. 24, 1997; amended June 5, 2005.)

1-6-30. Reinstatement. Each employee with permanent status who separates from state service in good standing may for a period of one year from the date of separation apply for, and may be certified as a candidate for, any vacancies open to state employees only, and may be rehired as a reinstatement. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1983; amended Dec. 17, 1995; amended Sept. 18, 1998.)

1-6-31. Governor's trainee program. (a) Any agency may fill an existing vacancy under the governor's trainee program according to the provisions of this regulation.

(1) "Governor's trainee program" means a program to attract and utilize females, minorities, and persons with disabilities as defined in K.A.R. 1-2-34 in order to provide career development opportunities.

(2) "Underutilization" means a lower representation in a class or EEO job category in an agency organizational unit's workforce or the agency's workforce of females, minorities or persons with disabilities as defined in K.A.R. 1-2-34 than would be expected by their availability.

(3) An agency shall not create additional positions as a result of using the governor's trainee program.

(4) Governor's trainee program positions shall be created only from the following:

- (A) vacancies arising out of attrition;
- (B) vacancies created by the legislature; or
- (C) vacancies created by actions taken pursuant to K.S.A. 75-2949.

(b) Each agency electing to fill a vacant position under the governor's trainee program shall first conduct an underutilization review to determine if underutilization exists in a class or EEO job category, or both, in the agency workforce or the agency organizational unit in which the vacancy exists.

(c) The agency shall submit information to the director regarding the vacant position and the data used in determining underutilization. When the director has verified underutilization, the agency shall be notified that the director has established a trainee classification and reallocated the position. The notice from the director shall include authorization for the agency to recruit persons who are members of the underutilized protected group or groups.

(d) After the close of the application period, the agency shall select, on a competitive basis, an applicant who:

(1) is a member of an underutilized protected group;

(2) will not, at the time of hiring, meet the required selection criteria for the regular class of the trainee position;

(3) will be able to meet the required selection criteria for the regular class within 24 months; and

(4) is deemed qualified to satisfactorily perform the duties of the trainee position.

(e) When the agency has selected a trainee for the position, the agency shall submit to the director:

(1) documentation that the trainee meets the requirements of subsection (d); and

(2) a copy of a proposed training and evaluation plan developed for the trainee that provides for regular assessments of the trainee's progress and communication of the assessments to the trainee.

(f) Each person hired as a governor's trainee shall be paid at two pay grades lower than the grade for the applicable regular class.

(g) The agency shall submit a progress report on each trainee to the director at least once each six months while the trainee is in training.

(h) When the trainee meets the required selection criteria for the applicable regular class, and receives a satisfactory performance rating for the job duties and responsibilities of the position, the trainee shall be promoted to the applicable regular class as a probationary employee. In no event shall the trainee be retained in a position under the governor's trainee program for less than six months or more than 24 months from the date of appointment.

(i) Each individual hired as a governor's trainee shall be eligible for the same rights and benefits as a person in a regular classified position who is on probationary status. If the governor's trainee was promoted or transferred from a classified position in which the employee held permanent status, rights normally associated with the promotion or transfer under K.S.A. 1995 Supp. 75-2944, as amended, and K.A.R. 1-6-24 shall apply. If the governor's trainee was demoted from a classified position in which the employee held permanent status, the trainee shall not be granted permanent status in the trainee position but shall be accorded the right to a position in the class in which the employee held permanent status. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 75-3746; effective March 20, 1989; amended Aug. 3, 1992; amended Dec. 17, 1995; amended May 31, 1996.)

1-6-32. Candidate drug screening test for safety-sensitive positions. (a) A drug test shall be administered to each candidate for a safety-sensitive position upon a conditional offer of employment for such a position.

(1) "Safety-sensitive position" shall be defined as provided in K.S.A. 75-4362(g), and amendments thereto.

(2) "Conditional offer of employment," for purposes of this regulation, means an offer that is contingent upon participating in the drug screening program established under K.S.A. 75-4362, and amendments thereto.

(b) If a candidate fails to participate in the required drug screening test or receives a confirmed positive result based upon a test sample obtained from the candidate, the following requirements shall apply:

(1) The conditional offer of employment shall be null and void.

(2) The candidate shall be disqualified from certification for safety-sensitive positions in accordance with K.S.A. 75-2940, and amendments thereto, and K.A.R. 1-6-7 for a period of one year from the effective date of the disqualification action.

(c) Each candidate who has been given a conditional offer of employment shall be informed of the provisions of subsection (b) in writing and shall sign a statement agreeing to participate in the test before the test is administered. Failure to accept this condition shall make the conditional offer of employment null and void.

(d) Each candidate required to submit to a drug screen shall be advised of all of the following aspects of the drug screening program:

(1) The methods of drug screening that may be used;

(2) the substances that may be identified;

(3) the consequences of a refusal to submit to a drug screening test or of a confirmed positive result; and

(4) the reasonable efforts to maintain the confidentiality of results and any medical information that are to be provided in accordance with subsection (j).

(e) Drug screening tests may screen for any substances listed in the Kansas controlled substances act.

(f) Any candidate who has reason to believe that technical standards were not followed in deriving a confirmed positive result may appeal the result in writing to the director within 14 calendar days of receiving written notice of the result.

(g) A retest by the original or a different laboratory on the same or a new specimen may be authorized only by the director, if the director determines that the technical standards established for test methods or chain-of-custody procedures were violated in deriving a confirmed positive result or if there is other appropriate cause to warrant a retest.

(h) If a candidate intentionally tampers with a sample provided for drug screening, violates the chain-of-custody or identification procedures, or falsifies test results, the conditional offer of employment shall be withdrawn. Any of these actions

by a candidate shall be grounds for disqualification for all positions in state service in accordance with K.S.A. 75-2940, and amendments thereto.

(i) If the result of a drug screening test warrants disqualification action, a candidate shall be afforded due process in accordance with K.S.A. 75-2940, and amendments thereto, and K.A.R. 1-6-7 before any final action is taken.

(j)(1) Individual test results and medical information shall be considered confidential and shall not be disclosed publicly in accordance with K.S.A. 75-4362, and amendments thereto. Each candidate shall be granted access to the candidate's information upon written request to the director.

(2) Drug screening test results shall not be required to be kept confidential in civil service board hearings regarding disciplinary action based on or relating to the results or consequences of a drug screen test.

(3) Each appointing authority shall be responsible for maintaining strict security and confidentiality of drug screening records in that agency. Access to these records shall be restricted to the agency's personnel officer or a designee, persons in the supervisory chain of command, the agency's legal counsel, the agency's appointing authority, the secretary of administration or a designee, the department of administration's legal counsel, and the director or a designee. Further access to these records shall not be authorized without the express consent of the director.

(k) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747 and 75-4362; implementing K.S.A. 75-2940 and K.S.A. 2004 Supp. 75-4362; effective, T-1-10-28-88, Oct. 28, 1988; effective Dec. 19, 1988; amended Feb. 19, 1990; amended April 13, 1992; amended Dec. 17, 1995; amended October 1, 1999; amended June 5, 2005.)

1-6-33. Candidate alcohol and controlled substances test for commercial driver positions. (a) The provisions of 49 C.F.R., Part 382, as in effect on May 1, 1995, and 49 C.F.R., Part 40, as in effect on February 15, 1994, and amendments to Part 40, as published in 59 Fed. Reg. 42,996 (1994), are hereby adopted by reference.

(b) Each candidate who has been given a conditional offer of employment for a commercial driver position shall be administered a controlled substances test.

(c) For purposes of this regulation, a "conditional offer of employment" means an offer of

a commercial driver position that is contingent upon participating in the controlled substances testing program established under the federal omnibus transportation employee testing act of 1991, 49 U.S.C. Appx. § 2717.

(d) Each candidate who has been given a conditional offer of employment shall be informed of the provisions of subsections (c) and (g) of this regulation in writing and shall sign a statement agreeing to participate in the testing prior to administration of the tests. Failure to accept this condition shall make the conditional offer of employment null and void.

(e) The appointing authority shall advise each candidate required to submit to controlled substances testing of the following aspects of the testing program:

(1) the methods of controlled substances testing that may be used;

(2) the substances that may be identified;

(3) the consequences of a refusal to submit to a controlled substances test or of a confirmed positive result; and

(4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided.

(f) Procedures and testing personnel used in collecting, analyzing, and evaluating test samples shall meet the standards established by the director in accordance with 49 C.F.R., Part 40.

(g) In the following instances, the conditional offer of employment shall be null and void, and the candidate shall be subject to disqualification from commercial driver positions in accordance with K.S.A. 75-2940 and K.A.R. 1-6-7 for a period of one year from the effective date of the disqualification action:

(1) the candidate fails to participate in the required controlled substances test;

(2) the candidate receives a confirmed positive controlled substances test result;

(3) the candidate refuses to provide written authorization to obtain information from prior employers as required by 49 C.F.R., 382.413; or

(4) the information obtained from a prior employer under 49 C.F.R., 382.413 indicates that, within the preceding two years, the following has occurred:

(A) the candidate violated any of the provisions of 49 C.F.R., Part 382, Subpart B; and

(B) the candidate failed to complete the requirements for returning to work under 49 C.F.R., 382.605, including an evaluation by a substance

abuse professional, a return-to-duty alcohol test, controlled substances test or both, and completion of any rehabilitation or treatment program.

(h) In accordance with 49 C.F.R., 40.25(f)(10)(ii)(E), any candidate who receives a confirmed positive result on a controlled substances test may request a retest by the original or a different laboratory on the second half of the original specimen within 72 hours of being notified of the positive test result.

(i) Any candidate who intentionally tampers with a sample provided for controlled substances testing, violates chain-of-custody or identification procedures, or falsifies a test result shall have the conditional offer of employment withdrawn and shall be subject to disqualification for all positions in state service in accordance with K.S.A. 75-2940.

(j) If disqualification of a candidate is warranted under subsection (g) of this regulation, the appointing authority shall afford the candidate due process in accordance with K.S.A. 75-2940 and K.A.R. 1-6-7.

(k)(1) Individual results and medical information shall be considered confidential and shall not be disclosed publicly. Each candidate shall be granted access to the candidate's information upon written request to the director, in accordance with 49 C.F.R., 382.405.

(2)(A) Each agency shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substance testing records in that agency. Access to these records shall be restricted to the following individuals:

(i) the agency personnel officer, the agency appointing authority, the secretary of administration, the director, or any of their respective designees;

(ii) persons in the supervisory chain of command;

(iii) the agency legal counsel; or

(iv) the department of administration legal counsel.

(B) Further access to these records shall not be authorized without the express consent of the director. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-3746, K.S.A. 1996 Supp. 75-2940, and K.S.A. 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended Dec. 17, 1995; amended June 20, 1997.)

Article 7.—PROBATIONARY PERIOD AND EMPLOYEE EVALUATION

I-7-1. (Authorized by K.S.A. 1981 Supp. 75-3747; implementing K.S.A. 1981 Supp. 75-2946;

effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; revoked May 1, 1983.)

1-7-2. (Authorized by and implementing K.S.A. 1980 Supp. 75-2943; effective May 1, 1979; amended May 1, 1981; revoked May 1, 1983.)

1-7-3. Probationary period required. (a) The probationary period shall be considered as a working test of the employee's ability to perform adequately in the position to which the employee was hired. In order to aid the agency in developing efficient employees, the supervisor shall give reasonable instruction and training that may be required throughout the probationary period. Each appointing authority shall establish procedures so that any problems with probationary employees will be brought to the attention of the agency management for appropriate action before the end of the probationary period.

(b) Before the end of the probationary period, the appointing authority shall provide the director with results of a performance review for the employee. If the overall performance review rating given to a probationary employee before the end of the employee's probationary period is unsatisfactory, the employee shall not be granted permanent status. The performance review ratings required by this subsection shall not be required to occur within the time period established in K.A.R. 1-7-10 (a)(3).

(c) Except as provided in K.A.R. 1-7-4, all new hires, promotions, and rehires shall be tentative and subject to a probationary period as authorized by K.A.R. 1-7-4. If the probationary period of an employee is to be extended as authorized by K.A.R. 1-7-4, the appointing authority, before the end of the probationary period, shall furnish the employee with a copy of the performance review stating that the probationary period is extended. Results of the performance review shall be provided to the director.

(d) Any probationary employee, other than an employee on probation due to a promotion from a position in which the employee had permanent status, may be dismissed by the appointing authority at any time during the probationary period.

(e) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended

May 1, 1986; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

1-7-4. Duration of probationary period. (a) Each new hire and each rehire made on a basis other than reemployment or reinstatement who is employed in a regular position shall be subject to a probationary period of six months. This probationary period may be extended by the appointing authority for not more than six additional months if action to extend the probationary period is taken before the end of the original six-month probationary period. A probationary period of not more than 12 months may be established by the appointing authority if specific training or certification requirements for a position cannot be completed within six months.

(b) Each employee who is promoted shall be subject to a probationary period of not less than three months and not more than six months as determined by the appointing authority. However, a probationary period of not more than 12 months may be established by the appointing authority if specific training or certification requirements for a position cannot be completed within six months. Each employee with permanent status who serves a probationary period in accordance with this subsection shall retain permanent status throughout the probationary period.

(c) Each person rehired on the basis of reemployment shall have permanent status effective on the date of rehire.

(d) Each person rehired on the basis of reinstatement shall be subject to a probationary period of not less than three months and not more than six months as determined by the appointing authority.

(e) Time on leave with or without pay of more than 30 consecutive calendar days shall not count towards total time served on probation. The employee's probationary period shall be continued effective with the employee's return from leave until the total probation time served equals the time required for the position.

(f) Each employee with permanent status who is transferred from one agency to another, or transferred within the same agency, shall continue to have permanent status.

(g) If a probationary employee is transferred from one position in a class to another position in the same class or another class in the same pay grade, the transfer shall have no effect on the employee's probationary period. The probationary period may be extended by the appointing au-

thority for not more than six additional months by giving written notice of the extension to the employee and director before the expiration of the original six-month probationary period.

(h) Each employee who is transferred, demoted, or promoted from any position in the unclassified service to a regular position in the classified service shall serve a probationary period of six months.

(i) Persons serving in temporary positions shall not be subject to a probationary period.

(j) Each employee in a governor's trainee position or a position in a training classification shall be placed on probation for six months when promoted to the regular class at the end of the training period.

(k) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended May 1, 1985; amended Dec. 27, 1993; amended Dec. 17, 1995; amended Oct. 1, 2009.)

1-7-5. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747, as amended by 1985 HB 2125; implementing K.S.A. 75-2946 and 1985 HB 2133; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; revoked Dec. 17, 1995.)

1-7-6. Notices relating to probationary periods and extensions. (a) Before the expiration of each employee's probationary period, a performance review shall be completed and a rating shall be assigned, and the appointing authority shall notify the employee and the director in writing of one of the following:

- (1) The employee has been dismissed or demoted.
- (2) The probationary period is being extended, if extension is permissible under the provisions of K.A.R. 1-7-4.
- (3) The employee is being given permanent status.

(b) If a probationary employee has not been notified in accordance with subsection (a) by the end of any probationary period, the employee shall be deemed to have been given permanent status. In case of dispute as to whether the employee was notified, a determination shall be made by the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707,

and 75-3746; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended May 1, 1987; amended Dec. 17, 1995; amended Sept. 25, 2009.)

1-7-7. Dismissal of probationary employee by director. The director may dismiss a probationary employee at any time during the employee's probationary period, after giving the employee notice and an opportunity to be heard, if the director finds that the employee was appointed as a result of a violation of the provisions of the act or these regulations. (Authorized by K.S.A. 75-3706 and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended Sept. 25, 2009.)

1-7-10. Performance reviews. (a) Each agency's appointing authority shall implement the state performance management process that was developed in accordance with L. 2008, Ch. 159, Sec. 1 and shall ensure that performance reviews are conducted in accordance with this process for each employee in the classified service. The performance review shall be used to inform employees of their expected performance outcomes and to assess the effectiveness of each employee.

(1) The performance review of each employee shall be completed by the employee's immediate supervisor or, if the employee's immediate supervisor has not supervised the employee for at least 90 days, by another qualified person designated by the appointing authority. "Qualified person" shall mean a person who is familiar with the duties and responsibilities of the employee's position and has significant knowledge of the job performance of the employee.

(2) A performance review shall be completed and a rating assigned at least annually in the manner required and on the forms prescribed by the director. An agency may add additional, job-related performance criteria and measures to the forms prescribed by the director, as determined by the appointing authority.

(3) Performance ratings for all permanent employees shall be assigned on an annual basis within the period beginning October 1 and ending December 31.

(4) Midyear reviews for all permanent employees shall be conducted on an annual basis within the period beginning April 1 and ending June 30.

(5) The appointing authority may conduct a special performance review rating for any employee

at any time, unless prohibited under K.A.R. 1-14-8 due to pending layoffs.

(6) Each employee who receives an unsatisfactory rating on either of the essential requirements set out on the form prescribed by the director shall have an overall performance review rating of unsatisfactory.

(7) Each employee shall be given the opportunity to sign the employee's performance review as evidence that the employee has been informed of the performance review rating. The employee's signature shall not abridge the employee's right of appeal if the employee disagrees with the rating. The failure of the employee to sign the performance review shall not invalidate the rating.

(b)(1) Any employee entitled to appeal a rating under K.A.R. 1-7-11 may do so within seven calendar days after being informed of the rating. After the period of seven calendar days for filing appeals has expired and if no appeal has been filed, the appointing authority or the authority's designee shall review the rating, make any changes deemed necessary, sign the performance review, place the entire original performance review in the employee's official personnel file, and provide a copy of the review to the employee. In addition, the appointing authority may provide copies to each reviewer if the appointing authority deems necessary.

(2) If the appointing authority makes any change in the rating or adds any comment on the performance review, the review shall be returned to the employee to be signed again, and the employee, if eligible to appeal the rating, shall again have seven calendar days to file an appeal to the appointing authority. The final results of the performance review shall be reported to the director.

(c) Subject to the provisions of K.S.A. 75-2949e and amendments thereto, two performance review ratings of less than meets expectations that are conducted within 180 days may be utilized as a basis for demotion, suspension, or dismissal of the employee.

(d) If the overall performance review rating assigned to a probationary employee at the end of the employee's probationary period is unsatisfactory, the employee shall not be granted permanent status.

(e) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2949e, 75-3706, and 75-3746; effective May 1, 1983;

amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended, T-1-7-27-89, July 27, 1989; amended Nov. 20, 1989; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

1-7-11. Employees entitled to appeal performance reviews. (a) Any employee who receives a performance rating that is lower than the highest possible rating may appeal that rating if the employee meets either of the following conditions:

(1) The employee has permanent status, including an employee with permanent status who is serving a probationary period due to a promotion.

(2) The employee is serving a probationary period due to a rehire on the basis of reinstatement.

(b)(1) If an action concerning the end of probationary status is dependent upon the performance review, the appeal committee may make a recommendation to the appointing authority concerning whether or not to grant permanent status to the employee. However, the appointing authority shall have the right to make the determination of whether or not to grant permanent status, subject to whatever limitations are imposed by the performance rating of the performance review prepared by the appeal committee.

(2) Notwithstanding the limits on the duration of probationary periods established elsewhere in these regulations, the appointing authority may extend the probationary period for a limited period of time as necessary to allow the appeal committee to prepare the final performance review. The total amount of time of this extension shall not exceed 60 calendar days.

(3) The appointing authority shall report to the director each extension of a probationary period made pursuant to this regulation.

(c) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended Oct. 24, 1997; amended June 5, 2005; amended Oct. 1, 2009.)

1-7-12. Performance review appeal procedure. (a) (1) Each employee who is eligible to appeal a performance review under K.A.R. 1-7-11 may, within seven calendar days after the employee has been informed of the rating, submit an appeal in writing to the appointing authority.

(2) Within seven calendar days following receipt of the employee's written notice of appeal, the appointing authority shall have the option either to make any changes in the rating deemed appropriate or to appoint a committee of three or more persons to hear the appeal.

(3) If the appointing authority makes any change in the rating or adds any comments to the rating form, the rating form shall be returned to the employee to be signed again. The employee shall be informed that, if the employee disagrees with the revised performance review, the employee may, within seven calendar days, file an appeal in writing to the appointing authority. If the employee files an appeal of the revised review, the appointing authority shall, within seven calendar days following receipt of the employee's written notice of appeal, appoint a committee of three or more persons to hear the appeal.

(4) If an appeal committee is appointed to hear the appeal, persons shall be appointed who, in the appointing authority's judgment, will be fair and impartial in discharging their responsibilities. Before appointing the appeal committee, the appointing authority shall give the employee a reasonable opportunity for consultation on the matter of appointment of the appeal committee. The appeal committee shall not include the initial rater or raters. In general, the members of the appeal committee shall be officers or employees of the agency. However, the appointing authority may select one or more members of the committee from one or more other state agencies if the appointing authority determines that the objective of a fair and impartial hearing can best be served by doing so.

(b)(1) As soon as the committee has been appointed, the appointing authority shall notify the employee of the names of the members of the committee and the date, time, and place of the hearing.

(2)(A) Before the beginning of the hearing, the employee may object to any individual proposed to serve as a member of the committee in writing and shall include the reasons upon which the employee is basing the objection.

(B) The appointing authority shall make a determination either to deny the objection or to grant the objection and appoint another individual to the committee before the commencement of the hearing.

(C) The appointing authority shall inform the employee of the determination in writing.

(D) Each objection taken pursuant to this subsection and each determination regarding each

objection shall be included as part of the documentation of the appeal.

(3) The appeal committee shall consider any relevant evidence that may be offered by the employee and the rater and shall make available to the employee any evidence that the committee may secure on its own initiative. The employee and rater shall have an opportunity to question any person offering evidence to the appeal committee. The appeal committee may limit the offering of evidence that it deems to be repetitious or irrelevant.

(4) Within 14 calendar days of the date the members of the committee were appointed, the committee shall prepare and sign a rating for the employee. That rating shall be final and not subject to further appeal. The appeal committee shall give the rating to the appointing authority, who, within five calendar days, shall provide copies to the employee and each person who originally rated the employee. The appeal committee shall report the rating to the director.

(5) If the appointing authority cannot appoint an appeal committee within the prescribed seven calendar days, the employee requests an extension of the time limit, or the appeal committee cannot make its rating within 14 calendar days of the date of its appointment, the appointing authority may extend these time limits for a reasonable period of time.

(c) This regulation shall be effective on and after October 1, 2009. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2008 Supp. 75-3747; implementing K.S.A. 75-2943, 75-3707, and 75-3746; effective May 1, 1983; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009.)

1-7-13. This regulation shall be revoked on and after December 17, 1995. (Authorized by K.S.A. 75-3747, as amended by 1985 HB 2125; implementing K.S.A. 75-2943, 75-2944, and 75-2949e, as amended by 1985 HB 2133; effective May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; revoked Dec. 17, 1995.)

Article 8.—TRAINING AND CAREER DEVELOPMENT

1-8-1. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-8-2. Orientation. (a) Each appointing authority shall be responsible for establishing and maintaining a program of orientation for new employees.

(b) Each orientation shall be relevant to each of the following:

- (1) That agency's mission, vision, and goals;
- (2) the employee's job responsibilities;
- (3) employee benefits; and
- (4) other aspects of the workplace pertinent to successful performance in the position.

(c) Any agency may supplement the orientation information required above with specific agency materials.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2925 and 75-3746; effective May 1, 1979; amended, T-1-9-19-94, Sept. 19, 1994; amended, Nov. 21, 1994; amended June 5, 2005.)

1-8-3. Training standards. Each appointing authority shall periodically assess, identify, and provide that agency's employees with access to appropriate education and training to meet workforce development needs. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2925 and 75-3746; effective May 1, 1979; amended June 5, 2005.)

1-8-4. Agency training records. Each appointing authority shall maintain training records and provide these records to the director upon request. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2925, 75-2950, and 75-3746; effective May 1, 1979; amended June 5, 2005.)

1-8-5. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 1995 Supp. 75-3747 and K.S.A. 1995 Supp. 75-37,115; implementing K.S.A. 1995 Supp. 75-37,115; effective May 1, 1979; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended May 31, 1996; revoked June 5, 2005.)

1-8-6. Leadership training programs. Each appointing authority shall develop and maintain a leadership program to provide supervisory training of an appropriate scope for each employee appointed to a supervisory position and for each employee currently working in a supervisory

position in the agency. Each appointing authority shall provide access to training and opportunities for continuing education and development for each employee in a supervisory position. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747 and 75-37,115; implementing K.S.A. 75-3746 and K.S.A. 2004 Supp. 75-37,115; effective May 1, 1979; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended Oct. 1, 1999; amended June 5, 2005.)

1-8-7. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1983; amended Aug. 3, 1992; revoked May 31, 1996.)

Article 9.—HOURS; LEAVES; EMPLOYEE-MANAGEMENT RELATIONS

1-9-1. Hours of work. (a) The standard workweek for each full-time employee shall be 40 hours during a given seven-day workweek.

(b)(1) Any agency head may submit a request for a deviation from the standard workweek in subsection (a) for particular classes of employees in writing to the director. Any such deviation shall be subject to approval by the secretary upon recommendation of the director.

(2) Appointing authorities shall not be required to designate a deviation from the standard workweek established in paragraph (1) of this subsection for exempt positions.

(c) It shall be a condition of employment with the state that each employee is required to work the number of hours per day and the number of days per workweek or work period specified for the employee's position, except when on authorized leave.

(d) Each exempt employee shall be paid on a salary basis in which the salary of the exempt employee is established to cover the hours required to complete the job. Each exempt employee shall be considered to be in pay status except for the following periods of time:

- (1) Full days of leave without pay;
- (2) full workweeks of leave without pay due to a suspension; or
- (3) one or more full days of leave without pay due to a suspension imposed in good faith for violation of workplace conduct rules or for an infraction of a safety rule of major significance.

Exempt employees may be required to use available vacation or sick leave or other paid leave, as appropriate, and shall be required to obtain authorization for absences in the form and at the time prescribed by the employee's appointing authority. Leave for employees in exempt positions shall be administered in accordance with the provisions of K.A.R. 1-9-20.

(e) The appointing authority may require each employee to work those hours that are necessary for the efficient conduct of the business of the state.

(f) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3746, 75-5505, and 75-5515; effective May 1, 1979; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 17, 1995; amended June 5, 2005.)

1-9-2. Holidays. (a) The following days shall be legal holidays for the state service: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When one of these legal holidays falls on a Saturday, the preceding Friday shall be the officially observed holiday for state employees. When one of these legal holidays falls on a Sunday, the following Monday shall be the officially observed holiday for state employees.

(b)(1) The governor may designate, in a particular year, additional days on which state offices are to be closed in observance of a holiday or a holiday season. For the purpose of this regulation, such a day shall be deemed a legal holiday.

(2) Each full-time employee who works a non-standard workweek shall receive the same number of holidays in a calendar year as employees whose regular work schedule is Monday through Friday.

(3) The governor may designate a discretionary holiday for observance of a holiday or other special day without closing state services. Each eligible employee shall receive the number of hours equal to the number of hours that employee is regularly scheduled to work, for a discretionary holiday. All hours for a discretionary holiday shall be taken on the same day.

(c)(1) For each holiday, each full-time employee shall receive holiday credit equal to the number of hours regularly scheduled to work, subject to the provisions of paragraph (b)(2). "Holiday credit" means pay or credit for paid time off at a straight-time rate.

(2) Each full-time employee who is required to work on a legal holiday or on an officially observed

holiday shall be awarded holiday credit in addition to any holiday compensation available under subsection (d). The appointing authority shall determine whether the holiday credit will be in the form of pay or paid time off to be used at a later time.

(d) Any appointing authority may require some or all employees to work on a legal holiday, an officially observed holiday, or both.

(1) Each full-time, nonexempt employee who is required to work on a legal holiday or on an officially observed holiday shall receive holiday compensation in addition to the employee's regular pay for the pay period. "Holiday compensation" means either pay or holiday compensatory time at a time-and-a-half rate for those hours worked on a holiday. The appointing authority shall determine whether the compensation for this holiday work will be in the form of pay or holiday compensatory time.

(2) The appointing authority shall make the following determinations for each exempt employee required to work on a holiday:

(A) Under what conditions the employee will be required to work;

(B) whether or not the employee will receive holiday pay or holiday compensatory time in addition to the employee's regular salary; and

(C) the rate at which any holiday pay or holiday compensatory time will be paid.

(3) Exempt employees shall take holiday compensatory time only in either half-day or full-day increments.

(e) Hours worked on a holiday by a nonexempt employee that result in overtime hours during that workweek or work period shall be compensated pursuant to K.A.R. 1-5-24 for those holiday hours worked on the holiday and at an additional half-time rate for the resulting overtime hours.

(f) If a legal holiday is preceded or followed by an officially observed holiday, each employee shall receive holiday credit for only one of the two days. Each full-time employee who is required to work on both the legal holiday and the officially observed holiday shall receive holiday compensation for only one of the two days. If the number of hours worked on the two days is not the same, the employee shall receive holiday compensation for the day on which the employee worked the greater number of hours.

(g) Each nonexempt employee who works less than full-time on a regular schedule shall receive, for each holiday that falls on a day included in the employee's regular work schedule, holiday credit equal to the time the employee is regularly sched-

uled to work on that day. If the employee works on the holiday, the employee shall receive, in addition, holiday compensation for the hours worked on the holiday.

(h) Each nonexempt employee who works less than full-time on an irregular schedule, as determined by the appointing authority, shall not receive holiday credit but shall be paid at the time-and-a-half rate for those hours worked on the holiday.

(i) An employee who is on leave without pay for any amount of time either on the last working day before a holiday or the first working day following a holiday shall not receive holiday credit, unless approved by the appointing authority.

(j) Any employee whose last day at work before separating from state service is the day before a regularly scheduled holiday shall not receive holiday credit for the holiday.

(k) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended May 1, 1985; amended Dec. 17, 1995; amended June 20, 1997; amended Oct. 1, 1999; amended June 5, 2005.)

1-9-3. Request and approval of leave; authorized leave; unauthorized leave. (a) Requests for leave shall be made to the appointing authority in such form and at such time as prescribed by the appointing authority. Leave that is requested as above, and approved, shall be termed authorized leave. Leave that is not requested as above, or not approved, shall be termed unauthorized leave, unless the employee furnishes the appointing authority evidence satisfactory to the appointing authority that circumstances made it impossible to request leave in the form and at such time as prescribed by the appointing authority.

(b) Use of unauthorized leave shall be entered into the employee's official personnel file in the agency. Habitual or flagrant use of unauthorized leave shall be grounds for disciplinary action, including dismissal.

(c) When an employee takes unauthorized leave, the appointing authority shall determine whether use of accumulated leave or accumulated compensatory time shall be allowed, whether leave without pay shall be granted, or in a case of habitual or flagrant use of unauthorized leave, whether a pay decrease, suspension, demotion, dismissal, or other disciplinary action shall be proposed or taken. This

regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended Dec. 17, 1995.)

1-9-4. Vacation leave. (a)(1) Each classified employee in a regular position shall be entitled to vacation with pay, which shall be earned and accumulated in accordance with this regulation. Vacation leave earned each payroll period, the maximum amount of vacation leave that may be accumulated, and the increments in which vacation leave may be used shall be determined as follows.

(A) Each nonexempt employee shall accrue vacation leave in accordance with the following table.

**Vacation Leave Table for
Nonexempt Employees
Hours Earned Per Pay Period
Based on Length of Service**

Hours in Pay Status Per Pay Period	Less Than 5 Years	5 Years & Less Than 10 Years	10 Years & Less than 15 Years	15 Years & Over
0-7	0.0	0.0	0.0	0.0
8-15	0.4	0.5	0.6	0.7
16-23	0.8	1.0	1.2	1.4
24-31	1.2	1.5	1.8	2.1
32-39	1.6	2.0	2.4	2.8
40-47	2.0	2.5	3.0	3.5
48-55	2.4	3.0	3.6	4.2
56-63	2.8	3.5	4.2	4.9
64-71	3.2	4.0	4.8	5.6
72-79	3.6	4.5	5.4	6.3
80-	3.7	4.7	5.6	6.5
Maximum Accumulation of Hours	144.0	176.0	208.0	240.0

(i) Nonexempt employees shall use vacation leave only in increments of a quarter of an hour.

(ii) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(B) Each exempt employee in a position that is eligible for benefits shall accrue vacation leave in accordance with the following table.

**Vacation Leave Table for
Exempt Employees
Hours Earned Per Pay Period
Based on Length of Service**

Time in Pay Status Per Pay Period	Less Than 5 Years	5 Years & Less Than 10 Years	10 Years & Less than 15 Years	15 Years & Over
0	0.0	0.0	0.0	0.0
> 0	3.7	4.7	5.6	6.5
Maximum Accumulation of Hours	144.0	176.0	208.0	240.0

(i) Exempt employees, including part-time, exempt employees, shall use vacation leave only in either half-day or full-day increments.

(ii) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(C) Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in paragraph (a)(1)(B), based on the employee's length of service.

(2) At the end of the last payroll period paid in each fiscal year, up to 40 hours of any accrued vacation leave that exceeds an employee's maximum accumulation of hours established in paragraphs (a)(1)(A) and (B) shall be converted to sick leave. After this conversion, all remaining vacation leave over the maximum accumulation of hours shall be forfeited at the end of the last payroll period paid in that fiscal year.

(3) If an employee terminates from the service, and if at the time of termination, the employee has more than the maximum accumulation of vacation leave permitted in paragraphs (a)(1)(A) and (B), the employee shall not be paid for any vacation leave in excess of the maximum accumulation to which that employee is entitled.

(b) Increased rates of vacation leave earnings based on length of service shall be calculated in accordance with K.A.R. 1-2-46.

(c) The appointing authority shall not be arbitrary in approving or rejecting vacation leave requests. The appointing authority shall not unreasonably defer the taking of vacations so that for all practical purposes the employee is deprived of vacation rights.

(d) Vacation leave earned by an employee during a pay period shall be available for use on the first day of the following pay period. Subject to the restrictions established in paragraph (a)(3), if the employee resigns or is otherwise separated from the service, any vacation leave earned in the pay period in which the separation occurs shall be credited to the employee, and payment for that leave shall be made to the employee as provided in K.A.R. 1-9-13.

(e) If a holiday on which state offices are closed occurs during an employee's vacation, the holiday hours shall not be charged against the employee's vacation leave.

(f) If an employee, or a member of the employee's family as defined in K.A.R. 1-9-5(e)(2), becomes ill while the employee is taking vacation

leave and, for all intents and purposes, the employee is deprived of all or a significant portion of the vacation due to the illness, the appointing authority, upon request of the employee, may charge to sick leave some or all of the time the employee or family member was ill during the vacation. For purposes of this subsection, "illness" shall include any of the reasons for sick leave identified in K.A.R. 1-9-5(e)(1).

(g) Vacation leave for school employees. Any classified employee in a school institution having scheduled vacation periods at stated times when school is not in session, including Thanksgiving and Christmas, who does not work during the scheduled vacation periods because the employee's services are not required may be granted leave without pay or vacation leave for those periods. Vacation leave taken for this purpose may be charged against accrued vacation leave or against vacation leave that will be accrued during the school term for which the employee is employed. Any classified employee at a school institution that is separated from the service before the end of the school term for which the employee is employed shall be charged on the final pay voucher for any vacation leave used in excess of accrued vacation leave. (Authorized by K.S.A. 2003 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Jan. 6, 1992; amended Aug. 3, 1992; amended Dec. 17, 1995; amended June 7, 2002; amended June 4, 2004.)

1-9-5. Sick leave. (a) Each classified employee in a regular position shall be credited and accumulate sick leave as provided in this regulation.

(b) The maximum sick leave credit an employee may accrue in any payroll period shall be 3.7 hours. The amount of sick leave hours earned each payroll period and the increments in which sick leave may be used shall be determined as follows.

(1) Each non-exempt employee shall accrue sick leave in accordance with the following table.

Sick Leave Table for Non-Exempt Employees

Hours in Pay Status Per Pay Period	Hours Earned Per Pay Period
0-7	0.0
8-15	0.4
16-23	0.8
24-31	1.2

Hours in Pay Status Per Pay Period	Hours Earned Per Pay Period
32-39	1.6
40-47	2.0
48-55	2.4
56-63	2.8
64-71	3.2
72-79	3.6
80-	3.7

(A) Non-exempt employees shall use sick leave only in increments of a quarter of an hour.

(B) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(2) Each exempt employee in a position that is eligible for benefits shall accrue sick leave in accordance with the following table.

Sick Leave Table for Exempt Employees

Time in Pay Status Per Pay Period	Hours Earned Per Pay Period
0	0.0
> 0	3.7

(A) Exempt employees, including part-time exempt employees, shall use sick leave only in half-day or full-day increments.

(B) For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time.

(3) Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in paragraph (b) (2).

(c) Sick leave earned by an employee during a pay period shall be available for use on the first day of the following pay period.

(d) Any employee may be required by the appointing authority or the director of personnel services to provide evidence necessary to establish that the employee is entitled to use sick leave under the circumstances of the request. If the employee fails to provide this evidence, the requested use of sick leave may be denied by the appointing authority or director. The appointing authority, with the director's approval, may require an examination of an employee by a licensed health care or mental health care professional ultimately responsible for patients' health care, as designated by the agency and at the agency's expense. An appointing authority with delegated authority under K.S.A. 75-2938, and amendments thereto, shall

not be required to obtain the director's approval before requiring an examination of an employee.

(e)(1) Sick leave with pay shall be granted only for the following reasons:

(A) Illness or disability of the employee, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, and personal appointments with a physician, dentist, or other recognized health practitioner;

(B) illness or disability, including pregnancy, childbirth, miscarriage, abortion, and recovery therefrom, of a family member, and a family member's personal appointments with a physician, dentist, or other recognized health practitioner, when the illness, disability, or appointment reasonably requires the employee to be absent from work;

(C) legal quarantine of the employee; or

(D) the adoption of a child by an employee or initial placement of a foster child in the home of an employee, when the adoption or initial placement reasonably requires the employee to be absent from work.

(2) For purposes of this regulation, "family member" means the following:

(A) Any person related to the employee by blood, marriage, or adoption; and

(B) any minor residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code.

(f) If an appointing authority has evidence that an employee cannot perform the employee's duties because of illness or disability, if the employee has accumulated sick leave, and if the employee refuses or fails to apply for sick leave, the appointing authority may require the employee to use sick leave. Upon exhaustion of this employee's sick leave, the appointing authority may require the employee to use any accumulated vacation leave. An appointing authority may request a written release by a licensed health care or mental health care professional ultimately responsible for patients' health care before the employee is allowed to return to work. If the employee has exhausted all sick leave or accumulated vacation leave, the appointing authority may grant the employee leave without pay as provided in K.A.R. 1-9-6(c).

(g) Each employee who is injured on the job and awarded workers compensation shall be granted use of accumulated leave upon the employee's request. The compensation for accumulated leave used each payroll period shall be that amount which, together with workers compen-

sation, equals the regular pay for the employee. Unless the employee requests otherwise, vacation leave and compensatory time credits shall be used only after sick leave credits have been exhausted. The appointing authority shall not require the use of accumulated compensatory time credits in conjunction with workers compensation.

(h) Each former employee who had unused sick leave at the time of separation and who returns to state service in a regular position within a year shall have the unused sick leave returned to the employee's credit. This provision shall not apply to a person who has retired from state service.

(i) Payments for sick leave accumulated by the date of retirement, in accordance with K.S.A. 75-5517, and amendments thereto, shall be calculated using the hourly or salary rates set forth in K.A.R. 1-5-21. (Authorized by K.S.A. 2001 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Sept. 26, 1988; amended July 16, 1990; amended Jan. 6, 1992; amended Aug. 3, 1992; amended July 26, 1993; amended Dec. 17, 1995; amended June 7, 2002.)

1-9-5a. Limits on state leave payment reserve fund payouts. (a) The amount of payout from the state leave payment reserve fund for accumulated vacation leave for any employee separating from state service due to retirement shall be limited to the accumulated hour limits specified in K.A.R. 1-9-4.

(b) The amount of payout from the state leave payment reserve fund for accumulated sick leave upon any employee's retirement shall be limited to the accumulated hour limits specified in K.S.A. 75-5517, and amendments thereto. (Authorized by K.S.A. 75-5545; implementing K.S.A. 75-5517, K.S.A. 2010 Supp. 75-5543, and K.S.A. 75-5544; effective, T-1-6-30-11, June 30, 2011; effective Oct. 28, 2011.)

1-9-6. Leave without pay. (a) The appointing authority shall determine whether approval of each request for leave without pay is for the good of the service, and shall approve or disapprove the request. The appointing authority may require use of accumulated vacation leave and accumulated sick leave before approval of leave without pay.

(b) Any new hire in a regular position without permanent status may be granted leave without pay for a period not to exceed 60 calendar days:

(1) for illness or disability, including pregnancy, childbirth, miscarriage, abortion and recovery therefrom;

(2) for the adoption of a child by the employee;

(3) for the initial placement of a foster child in the home of the employee;

(4) in order to care for a family member who has a serious health condition; or

(5) for other good and sufficient reason, when the appointing authority deems leave to be in the best interest of the service.

When an appointing authority determines that granting a longer leave of absence without pay than prescribed in this subsection is in the best interest of the service, the appointing authority may approve a longer leave, or an extension of a leave. The total duration of the leave shall not exceed six months. Any leave granted under this subsection that exceeds 30 calendar days shall be reported to the director of personnel services.

(c) Any employee currently without permanent status as a result of a promotion or reinstatement may be granted leave without pay under the same conditions as an employee with permanent status, if the employee had permanent status in the class in which the employee was employed immediately prior to the promotion or reinstatement.

(d) Any employee with permanent status may be granted leave without pay for a reasonable period of time consistent with the effective fulfillment of the agency's duties, but not to exceed one year:

(1) for illness or disability, including pregnancy, childbirth, miscarriage, abortion and recovery therefrom;

(2) for the adoption of a child by the employee;

(3) for the initial placement of a foster child in the home of the employee;

(4) in order to care for a family member who has a serious health condition; or

(5) for other good and sufficient reason, when the appointing authority deems such leave to be in the best interest of the service. Any leave that exceeds 30 calendar days shall be reported to the director of personnel services.

(e) Any employee with permanent status may be granted leave of absence without pay from the employee's classified position to enable the employee to take a position in the unclassified service, if the granting of this leave is considered by the appointing authority to be in the best interest of the service. Leave for this purpose shall not exceed one year, but the appointing authority may grant one or more extensions of up to one year,

and the appointing authority may determine the number of extensions.

(f) Desire of an employee to accept employment not in the state service shall be considered by the appointing authority as insufficient reason for approval of a leave of absence without pay, except under unusual circumstances.

(g) If the interests of the service make it necessary, the appointing authority may terminate a leave of absence without pay by giving written notice to the employee at least two weeks prior to the termination date. With the approval of the appointing authority, an employee may return from leave on an earlier date than originally scheduled.

(h) When an employee returns at the expiration of an approved leave without pay or upon notice by the appointing authority that a leave without pay has been terminated, the employee shall be returned to a position in the same class as the position which the employee held at the time the leave was granted, or in another class in the same pay grade for which the employee meets the qualifications.

(i) Failure to return to work at the expiration of an authorized leave of absence, or upon notice by the appointing authority that a leave has been terminated, shall be deemed a resignation. Such resignation shall be reported by the appointing authority to the director of personnel services in the manner provided by the director. Before terminating an employee for failure to return from leave, the appointing authority shall make a reasonable effort to contact the employee, and a summary of the steps taken to try to contact the employee shall be submitted to the director of personnel services with the resignation.

(j) As used in this regulation, the term "family member" shall have the meaning set out in K.A.R. 1-9-5(e)(2). This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-2947, as amended by 1995 SB 175, § 11; effective May 1, 1979; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended May 1, 1983; amended, T-88-9, April 21, 1987; amended, T-89-1, May 1, 1988; amended Oct. 1, 1988; amended Dec. 27, 1993; amended Dec. 17, 1995.)

1-9-7. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 1, 1985.)

1-9-7a. Military leave; voluntary or involuntary service in the Armed Forces. (a) Subject to the additional requirements and limitations

of Title 38, U.S. Code, Chapter 43, each employee in a regular position, who enlists or is drafted into the armed forces of the United States, including reservists and members of the national guard who are activated to military duty, shall be granted military leave without pay upon the employee's notice to the appointing authority of a military order requiring active duty for other than training purposes. The appointing authority shall require the employee to provide, within a reasonable period of time, documentation to substantiate the military order for active duty.

Any person on military leave, as mentioned above, who applies to the appointing authority for permission to return to the classified service within 90 days after receiving a discharge from the military service under honorable conditions, or from hospitalization, shall:

(1) be restored to that position or to a similar position with like status and pay in the same geographic location, as determined pursuant to K.A.R. 1-5-11;

(2) if qualified to perform the duties of any other position, be offered employment in the same geographic location in a position comparable in status and pay to the former position; or

(3) appeal to the secretary of administration for appropriate placement.

(b) Military leave shall be counted as part of the employee's length of service as prescribed in K.A.R. 1-2-46. Sick leave, vacation leave, and holidays shall not be earned or accrued during a period of military leave without pay.

(c) Reenlistment or continuation of active duty beyond the time prescribed by Title 38, U.S. Code, Chapter 43, shall be considered a voluntary resignation from military leave status. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 77-3746; effective May 1, 1985; amended, T-1-3-14-91, March 14, 1991; amended July 8, 1991; amended Dec. 17, 1995.)

1-9-7b. Military leave; voluntary or involuntary service with reserve component of the armed forces. (a)(1) Each employee in a classified or unclassified position that is eligible for benefits who is a member of a reserve component of the military service of the United States shall be granted a maximum of 30 working days of military leave with pay for required military duty within each 12-month period beginning October 1 and ending September 30 of the following year.

(2) For the purpose of this regulation, “required military duty” shall mean any period of active duty, inactive duty, or full-time national guard duty, or any other appropriate duty status as determined by the director, that is required of the employee.

(b) Required military duty in excess of 30 working days within the 12-month period specified in subsection (a) shall be charged to military leave without pay or, at the employee’s request, to appropriate accrued leave.

(c) Each request for military leave shall be submitted to the appointing authority with as much notice as possible under the circumstances of the required military duty. Whenever possible, an appropriate military order or duty document shall be received by the appointing authority before military leave is authorized.

(d) Each employee in a classified or unclassified position that is eligible for benefits shall be granted military leave without pay or, at the employee’s request, appropriate accrued leave for the purpose of induction, entrance, or examination for entrance into a reserve component. Notice to the appointing authority shall be provided as prescribed by the appointing authority. Upon completion of the induction, entrance, or examination, the employee shall return to state employment as prescribed in subsection (f).

(e) Upon release from a period of service under subsection (a), (b), or (d) or upon discharge from hospitalization for or convalescence from an illness or injury incurred in or aggravated during the service, each employee shall be permitted to return to one of the following positions:

(1) The position in which the employee would have been employed if the employee had not been absent; or

(2) a position with status and pay similar to the status and pay that the employee would have had if the employee had not been absent for those purposes. If the employee is not qualified to perform the duties of the position by reason of disability sustained while absent in accordance with this regulation but is qualified to perform the duties of any other position, the employee shall be offered employment in a position comparable to the former position, in status and pay.

(f)(1) Except as provided in paragraph (f)(2), when returning from periods of required military duty or upon completion of the induction, entrance, or examination for entrance into a reserve component, the employee shall report for work as follows:

Period of Absence (in consecutive days)	Return to Work Following Release From a Period of Service
1-30	First full, regularly scheduled day after release
31-180	Within 14 days of release
181+	Within 90 days of release

(2) The time periods specified in paragraph (f)(1) may be extended to no more than two years from the date of release from a period of service to accommodate a period of hospitalization or convalescence resulting from a service-connected injury or illness. To the extent practicable, the employee shall inform the appointing authority of any change in the date on which the employee is anticipated to return to work. The appointing authority may request documentation from the employee’s commanding officer or the employee’s licensed health or mental health care provider of the date on which the employee is released from a period of service and of the reasons the employee will not be able to return to work following the employee’s release from a period of service.

(g) Military leave shall be counted as part of the employee’s length of service as prescribed in K.A.R. 1-2-46. Sick leave, vacation leave, and holiday credit shall not be earned or accrued during a period of required military duty when military leave without pay has been granted.

(h) For purposes of this regulation, each reference to the military reserve of the United States shall be considered to include members of the national guard. (Authorized by K.S.A. 75-3706 and K.S.A. 2016 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1985; amended Dec. 17, 1995; amended, T-1-10-1-97, Oct. 1, 1997; amended, T-1-11-5-99, Nov. 5, 1999; amended Dec. 27, 2002; amended Oct. 1, 2006; amended Oct. 6, 2017.)

1-9-7c. Military leave; state duty with Kansas national guard or state guard when organized.

(a) Each employee in a regular position who is a member of the state or Kansas national guard shall be granted military leave with pay for the duration of any official call to state emergency duty.

(b) The appointing authority may grant military leave without pay or, at the employee’s request, accrued vacation leave for the duration of any other type of state duty performed pursuant to K.S.A. 48-225.

(c) Each employee shall provide an appropriate state military order to the appointing authority before the processing of any pay reports or time and attendance reports, or both.

(d) In accordance with K.S.A. 1996 Supp. 48-517, each employee in a regular position who is called or ordered to active duty by the state of Kansas national guard shall be returned to a job that is comparable to the job that the employee held at the time the employee was called to duty. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1985; amended Dec. 17, 1995; amended June 20, 1997.)

1-9-8. Jury duty; other required appearance before a court or other public body. (a)(1)

Each employee in a regular position, shall be granted leave with pay by their appointing authority:

(A) for required jury duty; or

(B) in order to comply with a subpoena as a witness before the civil service board, the Kansas commission on civil rights, the United States equal employment opportunity commission, or a court.

(2) An employee shall not be entitled to leave of absence with pay in circumstances where the employee is called as a witness on the employee's own behalf in an action in which the employee is a party.

(b) Leave with pay may be granted to any employee for an appearance before a court, a legislative committee or other public body, if the appointing authority considers the granting of leave with pay to be in the best interest of the state.

(c) When any employee travels in a state vehicle for a required appearance before a court, or a legislative committee, or other public body, the employee shall turn over to the state any mileage expense payments received.

(d) Each employee granted leave under this section who receives pay or fees for a required appearance, excluding jury duty, shall turn over to the state the pay or fees in excess of \$50.00. The employee may retain any amount paid to the employee for expenses in traveling to and from the place of the jury duty or required appearance, except as provided in subsection (c) of this regulation. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-86-17, June 17, 1985; effective May 1, 1986; amended, T-87-17, July 1, 1986; amend-

ed May 1, 1987; amended, T-89-1, May 1, 1988; amended Oct. 1, 1988; amended Dec. 17, 1995.)

1-9-9. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-9-10. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; revoked May 1, 1985.)

1-9-11. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; revoked May 1, 1985.)

1-9-12. Funeral or death leave. An appointing authority may grant leave with pay to an employee in a regular position upon the death of a close relative. Such leave shall in no case exceed six working days. The employee's relationship to the deceased and necessary travel time shall be among the factors considered in determining whether to grant funeral or death leave, and if so, the amount of leave to be granted. This regulation shall be effective on and after December 17, 1995. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended May 1, 1981; amended Dec. 17, 1995.)

1-9-13. Payment for accumulated vacation leave, compensatory time, and holiday compensatory time upon separation. Each employee who separates from state service shall be paid for that employee's accumulated vacation leave, compensatory time, and holiday compensatory time. Pay for an employee's vacation leave, compensatory time, and holiday compensatory time shall be calculated using the appropriate hourly or salary rate set forth in K.A.R. 1-5-21 and, with respect to non-exempt employees, the provisions of K.A.R. 1-5-24(e)(4). Pay for the vacation leave, compensatory time, and holiday compensatory time shall be a lump sum addition to the employee's last paycheck. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, and K.S.A. 75-5514; implementing K.S.A. 75-3707, 75-3746, and 75-5508; effective May 1, 1979; amended May 1, 1984; amended May 1, 1985; amended, T-86-36, Dec. 11, 1985; amended, T-87-11, May 1, 1986; amended May 1, 1987; amended Feb. 1, 1993; amended Dec. 27, 1993; amended Dec. 17, 1995; amended June 20, 1997; amended June 5, 2005.)

1-9-14. Transfer of leave credits. When an employee is appointed to a position in a different state agency, all types of leave for which the employee has a balance at the time of the appointment, except for compensatory time credits and holiday compensatory time credits, shall be transferred with the employee. All accumulated compensatory time and holiday compensatory time shall be paid by the agency from which the employee is leaving at the time the employee leaves that agency. The accumulated compensatory time and holiday compensatory time shall be paid as a lump sum addition to the employee's last paycheck from that agency as provided in K.A.R. 1-9-13. However, upon request, an employee may transfer accumulated compensatory time and holiday compensatory time if approved by both the agency from which the employee is leaving and the agency to which the employee is going. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, and K.S.A. 75-5514; implementing K.S.A. 75-3707, K.S.A. 2004 Supp. 75-3747, and K.S.A. 75-5508; effective May 1, 1979; amended, T-1-9-13-99, Sept. 13, 1999; amended June 5, 2005.)

1-9-15. (Authorized by K.S.A. 75-3747; effective May 1, 1979; amended Dec. 17, 1995; revoked May 31, 1996.)

1-9-16. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

1-9-17. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked June 20, 1997.)

1-9-18. (Authorized by K.S.A. 1994 Supp. 75-3747; implementing K.S.A. 75-3746, K.S.A. 75-2925, as amended by 1995 SB 175, § 2, and K.S.A. 75-2938, as amended by 1995 SB 175, § 4; effective May 1, 1979; amended Aug. 3, 1992; amended Dec. 17, 1995; revoked Jan. 12, 2007.)

1-9-19. Relief from duty or change of duties of a permanent employee. (a) Under any of the circumstances identified in K.S.A. 75-2949(i), and amendments thereto, any appointing authority may relieve an employee from duty and place the employee on administrative leave or change the duties of the employee, pursuant to the provisions of subsections (b) and (c).

(b) If the duties of an employee are changed, the appointing authority shall notify the employee in writing of the date the duties are to be changed, the manner in which the duties are to be changed,

the reason for the change, and the expected date for resumption of regular duties or other disposition of the matter. The appointing authority shall report any change in duties that lasts more than 30 days to the director.

(c) If an employee is relieved of all duties and placed on administrative leave, the appointing authority shall notify the employee, in writing and within seven calendar days of the date the employee was relieved from duty with pay, of the reasons for that action and either of the following:

(1) The approximate length of time that the employee is to be relieved of duties and the date by which a determination in the matter is expected; or

(2) the date on which a determination in the matter was made and either the date on which the employee is to be returned to duty or the date on which any other disposition of the matter that has been decided upon by the appointing authority is to be implemented.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-2949, K.S.A. 75-3706, and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 2004 Supp. 75-2949, K.S.A. 75-3707, and 75-3746; effective May 1, 1979; amended June 5, 2005.)

1-9-19a. Drug screening test for certain employees. (a) Any employee holding one of the following positions may be required to submit to a drug screening test in accordance with K.S.A. 75-4362, and amendments thereto, based upon reasonable suspicion of illegal drug use by that employee:

(1) Any safety-sensitive position;

(2) any position in an institution of mental health, as defined in K.S.A. 76-12a01, and amendments thereto, that is not a safety-sensitive position;

(3) any position in the Kansas state school for the blind, as established under K.S.A. 76-1101 *et seq.*, and amendments thereto;

(4) any position in the Kansas state school for the deaf, as established under K.S.A. 76-1001 *et seq.*, and amendments thereto; and

(5) any employee of a state veteran's home operated by the Kansas commission on veteran's affairs, as described in K.S.A. 76-1901 *et seq.* and K.S.A. 76-1951 *et seq.*, and amendments thereto. (b)(1) "Safety-sensitive position" shall be defined as provided by K.S.A. 75-4362(g), and amendments thereto.

(2) "Reasonable suspicion" means a judgment, supported by specific, contemporaneous, artic-

ulable facts or plausible inferences, that is made regarding the employee's behavior, appearance, or speech or supported by evidence found or reported that indicates drug use by the employee. Reasonable suspicion may be based on one or more of the following:

(A) An on-the-job accident or occurrence in which there is evidence to indicate any of the following:

(i) The accident or occurrence was in whole or in part the result of the employee's actions or in-actions;

(ii) the employee exhibited behavior or in other ways demonstrated that the employee may have been using drugs or may have been under the influence of drugs; or

(iii) a combination of the factors specified in paragraphs (b)(2)(A)(i) and (ii) is present;

(B) an on-the-job incident that could be attributable to drug use by the employee, including a medical emergency;

(C) direct observation of behavior exhibited by the employee that could render the employee unable to perform the employee's job, in whole or part, or that could pose a threat to safety or health;

(D) information that has been verified by a person with the authority to determine reasonable suspicion and that indicates either of the following:

(i) The employee could be using drugs or is under the influence of drugs, and this circumstance is affecting on-the-job performance; or

(ii) the employee exhibits behavior that could render the employee unable to perform the employee's job or could pose a threat to safety or health;

(E) physical, on-the-job evidence of drug use by the employee or possession of drug paraphernalia;

(F) documented deterioration in the employee's job performance that could be attributable to drug use by the employee; and

(G) any other circumstance providing an articulable basis for reasonable suspicion.

(c) Any appointing authority may ask any employee in a position specified in subsection (a) to submit to a drug screening test under the circumstances of reasonable suspicion as a condition of employment. Refusal to comply with this requirement shall be considered the equivalent of receiving a confirmed positive result for referral or disciplinary purposes.

(d) Each employee required to submit to a drug screening test shall be notified of that requirement in writing and shall be advised of all of the following aspects of the drug screening program:

(1) The methods of drug screening that may be used;

(2) the substances that can be identified;

(3) the consequences of a refusal to submit to a drug screening test or a confirmed positive result; and

(4) the reasonable efforts to maintain the confidentiality of results and any medical information that are to be provided in accordance with subsection (k).

(e) Drug screening tests may screen for any substances listed in the Kansas controlled substances act.

(f) Any employee who has reason to believe that technical standards were not followed in deriving the employee's confirmed positive result may appeal the result in writing to the director within 14 calendar days of receiving written notice of the result.

(g) A retest by the original or a different laboratory on the same or a new specimen may be authorized by the director, if the director determines that the technical standards established for test methods or chain-of-custody procedures were violated in deriving a confirmed positive result or has other appropriate cause to warrant a retest.

(h) An employee who receives a confirmed positive drug screen result shall be subject to dismissal in accordance with K.S.A. 75-2949d and K.S.A. 75-4362, and amendments thereto as follows:

(1) Except as provided in paragraph (2) of this subsection, the employee shall not be subject to dismissal solely on the basis of the confirmed positive result if the employee has not previously had a confirmed positive result or the equivalent and the employee successfully completes an appropriate and approved drug assessment and recommended education or treatment program.

(2) The employee shall be subject to dismissal if the employee is a temporary employee, is in trainee status, or is on probationary status at the time the employee is given written notice of the drug screen requirement.

(3) The employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee fails to successfully complete an appropriate and approved drug assessment and recommended education and treatment program.

(4) The employee shall be subject to dismissal, in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed positive result or the equivalent.

(5) This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed positive result and that are normally grounds for discipline.

(i) Each employee who intentionally tampers with a sample provided for drug screening, violates the chain-of-custody or identification procedures, or falsifies a test result shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto.

(j) If the result of a drug screening test warrants disciplinary action, an employee with permanent status shall be afforded due process in accordance with K.S.A. 75-2949, and amendments thereto, before any final action is taken.

(k)(1) All individual results and medical information shall be considered confidential and, in accordance with K.S.A. 75-4362, and amendments thereto, shall not be disclosed publicly. Each employee shall be granted access to the employee's information upon written request to the director.

(2) Drug screening test results shall not be required to be kept confidential in civil service board hearings regarding disciplinary action based on or relating to the results or consequences of a drug screen test.

(3) Each appointing authority shall be responsible for maintaining strict security and confidentiality of drug screening records in that agency. Access to these records shall be restricted to the agency's personnel officer or a designee, persons in the supervisory chain of command, the agency's legal counsel, the agency's appointing authority, the secretary of administration or a designee, the department of administration's legal counsel, and the director or a designee. Further access to these records shall not be authorized without the express consent of the director.

(l) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, and K.S.A. 2004 Supp. 75-4362; implementing K.S.A. 2004 Supp. 75-2949, K.S.A. 75-2949f, 75-3707, and K.S.A. 2004 Supp. 75-4362; effective, T-1-10-28-88, Oct. 28, 1988; effective Dec. 19, 1988; amended Feb. 19, 1990; amended April 13, 1992; amended May 31, 1996; amended Oct. 1, 1999; amended June 5, 2005.)

1-9-20. Leave usage for exempt employees. (a) When using available sick or vacation leave or other paid leave, as appropriate, each

exempt employee shall obtain authorization for these absences in the manner prescribed by the employee's appointing authority.

(b) Each exempt employee shall follow the leave request procedures established by the employee's appointing authority for any time away from work. The employee shall obtain prior approval from the employee's supervisor for all time away from work, including periods of less than half of a day.

(c) Vacation, sick, and shared leave and holiday compensatory time shall be recorded as used only when employees in exempt positions use leave in half-day or full-day increments.

(d) Time away from work for less than half of a day shall not be accumulated over multiple days to total a half-day or full-day increment of vacation, sick, or shared leave or holiday compensatory time. However, time away from work of less than half of a day may be accumulated in the same day to total a half-day increment.

(e) A supervisor may deny the request of an exempt employee for time away from work of less than half of a day or may require the employee to use half of a day or a full day of an appropriate type of leave if the employee has abused the use of leave in less than half-day or full-day increments or if other similar circumstances exist. The employee shall not perform work before the allotted time of leave is used.

(f) Other types of leave used by employees in exempt positions, including jury duty, funeral, job injury, and disaster service leave, shall be reported in quarter-hour increments.

(g) An exempt employee shall not be suspended for a period that is less than the employee's workweek of seven consecutive 24-hour periods or multiples of this workweek, unless the suspension is imposed in good faith for either of the following conditions:

(1) for an infraction of a safety rule of major significance; or

(2) for violation of workplace conduct rules.

(h) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706, K.S.A. 2004 Supp. 75-3747, and K.S.A. 75-5507; implementing K.S.A. 75-3707, 75-3746, and 75-5507; effective May 1, 1979; amended June 5, 2005.)

1-9-21. Nepotism. In accordance with K.S.A. 46-246a and K.A.R. 19-40-4, no state officer or employee shall advocate, participate in or cause the appointment, promotion, transfer, demotion or discipline of a member of the officer's or employ-

ee's household or a family member. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-3746, K.S.A. 1992 Supp. 46-246a; effective May 1, 1979; amended Jan. 6, 1992; amended July 26, 1993.)

1-9-22. Job injury leave. (a) Each classified or unclassified employee who sustains a qualifying job injury, as determined by the employee's appointing authority, shall be eligible for job injury leave in accordance with this regulation.

(b) "Qualifying job injury" shall mean an injury that meets the following conditions:

(1) Renders the employee unable to perform the employee's regular job duties;

(2) arose out of and in the course of employment with the state; and

(3)(A) Was sustained as a result of a shooting, stabbing, or aggravated battery as defined in K.S.A. 21-5413 and amendments thereto, by another against the employee;

(B) was sustained as a result of a confrontation with a patient or client in a facility or ward for mental health, intellectual disability, or developmental disability in which the patient or client inflicts great bodily harm, causes disfigurement, or causes bodily harm with a deadly weapon or in any manner by which great bodily harm, disfigurement, dismemberment, or death can be inflicted; or

(C) was sustained in any other situation in which the appointing authority determines that job injury leave is in the best interest of the state.

(c) Job injury leave shall not exceed six total months away from work. While an employee is on approved job injury leave, the employing state agency shall continue to pay the employee's regular compensation. If the employee is awarded worker's compensation, the state agency shall pay the employee compensation in an amount that, together with worker's compensation pay, equals the regular pay of the employee. The employee shall not be required to use accrued sick leave or vacation leave. The employee shall continue to accrue sick and vacation leave as long as the employee remains in pay status. Nothing in this regulation shall be construed as providing voluntary or gratuitous compensation payments in addition to temporary total disability compensation payments pursuant to the worker's compensation laws.

(d) The appointing authority may require an employee on approved job injury leave to return to full or limited duty if the employee is physically able to perform the duty as determined by a physician selected by the appointing authority

or selected by a representative of the state self-insurance fund. However, limited duty allowed shall not, in combination with time away from work on job injury leave, exceed the total six months allowed for job injury leave. If the employee remains unable to return to full duty, the appointing authority shall take any action deemed to be in the best interest of the state.

(e) While an employee is on approved job injury leave, the appointing authority may require the employee to be examined by a physician selected by the appointing authority to determine the capability of the employee to return to full or limited duty.

(f) Each employee on approved job injury leave shall be prohibited from being gainfully employed by any other employer.

(g) The requirements of this regulation may be waived or modified by the director upon written request of the appointing authority. Any waiver or modification may be granted only upon a finding by the director that both of the following conditions are met:

(1) Granting the requested waiver or modification would not be in conflict with any statutes pertaining to leave.

(2) Failure to grant the requested waiver or modification would create a manifest injustice or undue hardship on the employee requesting the job injury leave. (Authorized by K.S.A. 75-3706, K.S.A. 2013 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective, T-86-17, June 17, 1985; effective May 1, 1986; amended Nov. 21, 1994; amended Dec. 17, 1995; amended Sept. 12, 2014.)

1-9-23. Shared leave. (a)(1) Any employee in a classified, regular position or in an unclassified position that is eligible for benefits may be eligible to receive or donate shared leave as provided in this regulation.

(2) Except as provided in paragraph (d)(1)(D), shared leave may be granted to an employee if all of the following conditions are met and if the employee meets the criteria specified in paragraph (b)(1):

(A) The employee or a family member of the employee, as defined in K.A.R. 1-9-5 (e)(2), is experiencing a serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition.

(B) The illness, injury, impairment, or condition of the employee or the family member has caused or is likely to cause the employee to take leave without pay or terminate employment.

(C) The illness, injury, impairment, or condition of the employee or the family member keeps the employee from performing regular work duties.

(b)(1) Each employee who meets the requirements of paragraph (a)(2) shall be eligible to receive shared leave if both of these conditions are met:

(A) The employee has exhausted all paid leave available for use, including vacation leave, sick leave, compensatory time, holiday compensatory time, and the employee's discretionary holiday.

(B) The employee has at least six continuous months of service, pursuant to K.A.R. 1-2-46.

(2)(A) An employee shall be eligible to donate vacation leave or sick leave to another employee if these conditions are met:

(i) The donation of vacation leave does not cause the accumulated vacation leave balance of the donating employee to be less than 80 hours, unless the employee donates vacation leave at the time of separation from state service.

(ii) The donation of sick leave does not cause the accumulated sick leave balance of the donating employee to be less than 480 hours, unless the employee donates sick leave at the time of separation from state service.

(B) If the employee is retiring from state service and receiving compensation for sick leave upon retirement, the donated sick leave consists only of the accumulated sick leave in excess of the applicable minimum accumulation amount required for eligibility for a sick leave payout pursuant to K.S.A. 75-5517, and amendments thereto.

(c)(1)(A) When requesting shared leave, an employee shall be required to provide a statement from a licensed health care provider or other medical evidence necessary to adequately establish that the illness, injury, impairment, or physical or mental condition of the employee or family member is serious, extreme, or life-threatening and keeps the employee from performing regular work duties. If the employee fails to provide the required evidence, the use of shared leave shall be denied.

(B) At any time during the use of shared leave, the appointing authority may require the employee to provide a statement from a licensed health care provider or other medical evidence necessary to establish that the illness, injury, impairment, or physical or mental condition of the employee or family member continues to be serious, extreme, or life-threatening or to establish when the employee will be able to return to work. If the employee fails to provide the required evidence, the

use of shared leave may be terminated by the appointing authority.

(2)(A) The appointing authority shall determine whether an employee meets the initial eligibility requirements in paragraph (b)(1) and, if applicable, whether the employee would be caring for an individual who meets the definition of a family member.

(B) Shared leave may be denied if the appointing authority determines that the requesting employee has a history of leave abuse.

(C) An employee who currently is receiving workers compensation for the illness, injury, impairment, or physical or mental condition that is the basis of the shared leave request or has submitted an application to the division of workers compensation for this illness, injury, impairment, or condition shall not be eligible to receive shared leave.

(d)(1)(A) A shared leave committee shall be established and coordinated by the director. The shared leave committee shall consist of three current employees in the executive branch who, in the director's judgment, have experience in making determinations regarding leave and who will be fair and impartial in discharging their responsibilities.

(B) Except as provided by paragraph (d)(2), once the appointing authority determines that an employee meets the eligibility requirements specified in paragraph (c)(2), the shared leave committee shall determine whether the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions established in paragraph (a)(2).

(C) If the shared leave committee determines that the illness, injury, impairment, or physical or mental condition meets the requirements of paragraph (a)(2), the appointing authority shall grant all or a portion of the time requested.

(D) An appointing authority may approve an employee's request for shared leave regardless of the determination of the shared leave committee if the appointing authority determines that such a decision would be in the best interests of the state. Before approving the request, the appointing authority shall consult with the director about the factors that the appointing authority is relying upon in making the determination that approval of the shared leave is in the best interests of the state.

(2) If the appointing authority is an elected official, the appointing authority may determine whether the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions

established in paragraph (a)(2) or may submit the shared leave request to the shared leave committee for determination as provided in paragraph (d)(1).

(e) Employees shall not be notified of the need for shared leave donations until the request for shared leave has been approved as provided in subsection (d). No employee shall be coerced, threatened, or intimidated into donating leave or financially induced to donate leave for purposes of the shared leave program.

(f) The records of all shared leave donations shall remain confidential.

(g)(1) Shared leave may be used only for the duration of the serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition for which the shared leave donation was collected. The maximum number of hours of shared leave that may be used by an employee shall be the total number of hours that the employee would regularly be scheduled to work during a six-month period.

(2) No employee shall be eligible to use shared leave after meeting the eligibility requirements for disability benefits under the Kansas public employees retirement system.

(3) Employees shall use shared leave in accordance with their regular work schedules.

(4) Exempt employees shall use shared leave only in half-day or full-day increments.

(h)(1) Shared leave may be applied retroactively for a maximum of two pay periods preceding the date the employee signed the shared leave request form.

(2) The employee shall no longer be eligible to receive shared leave for a particular occurrence if any of these conditions is met:

(A) The illness, injury, impairment, or condition of the employee or the employee's family member improves so that it is no longer serious, extreme, or life-threatening, and the employee is no longer prevented from performing regular work duties.

(B) The employee terminates or retires.

(C) The employee returns to work and works the employee's regular work schedule for at least 20 continuous working days.

(3) Any unused portion of the shared leave shall be prorated among all donating employees based on the original amount and type of donated leave and returned to those employees within two pay periods of the date on which it is determined that the employee receiving the donated leave is no longer eligible for shared leave. Shared leave shall not be returned to donating employees in incre-

ments of less than one full hour or to any person who has left state service.

(i)(1) Shared leave shall be paid according to the receiving employee's regular rate of pay by the receiving employee's agency. The rate of pay of the donating employee shall not be used in figuring the amount of shared leave that the requesting employee receives.

(2) Shared leave shall be donated in full-hour increments.

(j) Each decision to approve or deny a request for shared leave and any other determination regarding the extension or termination of shared leave shall be final and shall not be subject to appeal to the civil service board. (Authorized by K.S.A. 75-3706, K.S.A. 2016 Supp. 75-3747, and K.S.A. 75-5549; implementing K.S.A. 75-3707, 75-3746, and 75-5549; effective, T-1-7-23-92, July 23, 1992; effective Sept. 14, 1992; amended July 26, 1993; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 18, 1998; amended, T-1-2-17-00, Feb. 17, 2000; amended June 16, 2000; amended June 5, 2005; amended Jan. 6, 2017.)

1-9-24. Disaster service volunteer leave.

(a) An appointing authority may authorize leave with pay to any employee in the classified or unclassified service who is a certified disaster service volunteer of the American red cross.

(1) Such leave may only be granted when:

(A) the employee is requested by the American red cross to provide disaster services;

(B) the disaster is designated as a Level II disaster or above by the American red cross; and

(C) the disaster occurs in Kansas or in states contiguous to Kansas.

(2) Request for disaster service volunteer leave shall be made in accordance with K.A.R. 1-9-3(a) and shall include written verification of the provisions of paragraph (a)(1) from the American red cross.

(3) Disaster volunteer leave shall not exceed 20 working days in the 12-month period that starts the first day the leave was used.

(b) The employee shall not be considered to be an employee of the state for the purposes of workers' compensation or the Kansas tort claims act while on disaster service leave. (Authorized by K.S.A. 75-3747; implementing L. 1993, ch. 33, § 3; effective, T-1-11-16-93, Nov. 16, 1993; effective Dec. 27, 1993.)

1-9-25. Alcohol and controlled substances tests for employees in commercial driver positions. (a)(1) For purposes of this regulation, “the act” means the provisions of 49 U.S.C. app. § 2717, as amended, that apply to the alcohol and controlled substance testing of employees in commercial driver positions.

(2) This regulation shall apply to any employee in a commercial driver position who may be required to submit to an alcohol or controlled substances test in accordance with the act.

(b) Any appointing authority may ask any current employee in a commercial driver position within that agency to submit to alcohol and controlled substances tests under the provisions of the act as a condition of employment. Refusal to comply with this requirement shall be considered the equivalent of receiving a confirmed “positive” test result for referral or disciplinary actions.

(c)(1) Each employee required to submit to alcohol or controlled substances tests shall be notified of that requirement in writing. Each appointing authority shall provide to each current employee in a commercial driver position within that agency detailed materials containing the information identified in paragraph (c)(2). These materials shall be provided to each current employee before the start of alcohol and controlled substances testing by the agency and to each employee subsequently hired or transferred into a commercial driver position.

(2) The information provided to each employee in a commercial driver position shall include the following:

(A) The identity of the person designated by the appointing authority to answer drivers’ questions about the materials;

(B) the categories of drivers who are subject to the provisions of the act;

(C) sufficient information about the safety-sensitive functions performed by those drivers to specify during which periods of the workday the driver is required to be in compliance with the act;

(D) specific information concerning driver conduct that is prohibited by the act;

(E) the circumstances under which a driver will be tested for alcohol or controlled substances under the act;

(F) the procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test re-

sults, and ensure that those results are attributed to the correct driver;

(G) the requirement that each driver submit to alcohol and controlled substances tests administered in accordance with the act;

(H) an explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(I) the consequences for drivers found to have violated the act, including the requirement that the driver be removed immediately from safety-sensitive functions, and the referral, evaluation, and treatment procedures under the act;

(J) the consequences for drivers found to have an alcohol concentration exceeding permissible levels established under the act;

(K) information regarding postaccident procedures and the instructions necessary for the employee to be able to comply with the postaccident testing requirements; and

(L) information concerning the following:

(i) The effects of the use of alcohol and controlled substances on an individual’s health, work, and personal life;

(ii) the signs or symptoms of an alcohol or a controlled substances problem, whether the driver’s own problem or that of a coworker; and

(iii) the available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the state employee assistance program, referral to management, or a combination of these methods.

(d) This subsection shall apply only to employees with permanent status, including employees with permanent status who are serving a probationary period due to a promotion.

(1) Except as provided by paragraph (d)(2), an employee shall not be subject to dismissal solely on the basis of a confirmed “positive” test result or the equivalent or a violation of any other provision of the act if the employee has not previously had a confirmed “positive” test result or the equivalent or any other violation of the act and the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program. However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed “positive” test result or the equivalent or any other violation of the act or if the employee fails to successfully complete an appropriate and approved alco-

hol and controlled substance assessment and any recommended education and treatment program prescribed by the substance abuse professional. This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed “positive” test result or another violation of the act and that are normally grounds for discipline.

(2) Each employee who takes any of the following actions shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto:

(A) Intentionally adulterates, tampers with, or substitutes a sample provided for alcohol or controlled substances testing;

(B) violates the chain-of-custody or identification procedures; or

(C) falsifies a test result.

(3) If disciplinary action is warranted under the provisions of this regulation, the appointing authority shall afford the employee due process in accordance with K.S.A. 75-2949, and amendments thereto.

(e) An employee shall be subject to dismissal if both of the following conditions are met:

(1) At the time the employee is given written notice of an appointment for an alcohol or controlled substances test, the employee is a temporary employee, is in trainee status, or is serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(2) The employee has a confirmed “positive” test result or the equivalent or takes any of the following actions:

(A) Adulterates, tampers with, or substitutes a sample provided for controlled substances testing;

(B) violates the chain-of-custody or identification procedures;

(C) falsifies a test result; or

(D) violates any other applicable provision of the act.

(f)(1) Each appointing authority shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substances records in that agency. Access to these records shall be restricted to the following personnel:

(A) The agency’s personnel officer, the agency’s appointing authority, the secretary of administration, the director, or any of their respective designees;

(B) persons in the supervisory chain of command;

(C) the agency’s legal counsel; or

(D) the department of administration’s legal counsel.

(2) Further access to these records shall not be authorized without the express consent of the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended Sept. 18, 1998; amended October 1, 1999; amended Jan. 12, 2007.)

1-9-26. Preduty controlled substances testing for employees in positions assigned commercial driver functions. (a)(1) For purposes of this regulation, “the act” means the provisions of 49 U.S.C. app. § 2717, as amended, that apply to the preduty controlled substances testing of employees in positions assigned commercial driver functions.

(2) This regulation shall apply to any existing, filled position to which the appointing authority assigns duties that result in the position becoming a commercial driver position, thereby subjecting the incumbent employee to the requirements of the act, including its controlled substances testing requirements and the provisions of the act regarding release of alcohol and controlled substances test information by previous employers.

(b) Each employee who is an incumbent in a position to which commercial driver functions are assigned shall be informed of the provisions of the act and this regulation in writing and shall sign a statement agreeing to participate in the controlled substances testing before administration of the test. The appointing authority shall advise each employee required to submit to controlled substances testing under the act of the following aspects of the testing program:

(1) The methods of controlled substances testing that may be used;

(2) the substances that may be identified;

(3) the consequences of a refusal to submit to a controlled substances test or of a confirmed “positive” test result; and

(4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided.

(c) If an incumbent employee fails to participate in the required controlled substances test, refuses to sign the written authorization required under subsection (b) of this regulation, or refuses to provide written authorization for release of alcohol and controlled substances test information

by previous employers, the employee shall not begin performing the safety-sensitive functions. A subsequent refusal to participate in the required testing or to sign the written authorization shall be grounds for the following consequences:

(1) Discipline under K.S.A. 75-2949f, and amendments thereto, for any employee with permanent status, including an employee serving a probationary period due to a promotion from a position in which the employee had permanent status; or

(2) termination, for any temporary employee, any employee in trainee status, or any employee serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(d) This subsection shall apply only to employees with permanent status, including employees with permanent status who are serving a probationary period due to a promotion.

(1) Except as provided by paragraph (d)(3), an incumbent employee in a position to which commercial driver functions are assigned shall not be subject to dismissal solely on the basis of a confirmed “positive” test result if the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided by the act. However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed “positive” test result or the equivalent, if the employee committed some other violation of the act, or if the employee fails to successfully complete an appropriate and approved alcohol and controlled substance assessment and any recommended education and treatment program prescribed by the substance abuse professional. This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed “positive” test result or another violation of the act and that are normally grounds for discipline.

(2) The provisions of (d)(1) relating to a confirmed “positive” test shall apply if the information obtained from a prior employer under the act indicates that, within the preceding two years, both of the following have occurred:

(A) The employee violated any of the provisions of the act.

(B) The employee failed to complete the requirements for returning to work under the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

(3) Each employee who takes any of the following actions shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto:

(A) Intentionally adulterates, tampers with, or substitutes a sample provided for alcohol or controlled substances testing;

(B) violates the chain-of-custody or identification procedures; or

(C) falsifies a test result.

(4) If disciplinary action is warranted based on the provisions of this regulation, the appointing authority shall afford the employee due process in accordance with K.S.A. 75-2949, and amendments thereto.

(e) An employee shall be subject to termination if both of the following conditions are met:

(1) At the time the employee is given notice of the assignment of commercial driver functions to the employee’s position, the employee is a temporary employee, is in trainee status, or is serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(2) One or more of the following has occurred:

(A) The employee has a confirmed “positive” test result or the equivalent.

(B) The information obtained from a prior employer under the act indicates that, within the preceding two years, both of the following occurred:

(i) The employee violated any of the provisions of the act.

(ii) The employee failed to complete the requirements for returning to work under the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

(C) The employee takes any of the following actions:

(i) Intentionally adulterates, tampers with, or substitutes a sample provided for controlled substances testing;

(ii) violates the chain-of-custody or identification procedures;

(iii) falsifies a test result; or

(iv) violates any other applicable provision of the act.

(f)(1) Each appointing authority shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substance testing records in that agency. Access to these records shall be restricted to the following individuals:

(A) The agency's personnel officer, the agency's appointing authority, the secretary of administration, the director, or any of their respective designees;

(B) persons in the supervisory chain of command;

(C) the agency's legal counsel; or

(D) the department of administration's legal counsel.

(2) Further access to these records shall not be authorized without the express consent of the director. (Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended June 20, 1997; amended Sept. 18, 1998; amended Jan. 12, 2007.)

1-9-27. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 31, 1996; amended June 20, 1997; revoked June 5, 2005.)

Article 10.—GUIDANCE AND DISCIPLINE

1-10-1 to 1-10-5. (Authorized by K.S.A. 1980 Supp. 75-3747; effective May 1, 1979; revoked, E-82-14, July 1, 1981; revoked May 1, 1982.)

1-10-6. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2949d and 75-2944; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended Dec. 27, 1993; amended May 31, 1996; amended Sept. 18, 1998; revoked June 5, 2005.)

1-10-7. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 1996 Supp. 75-3747; implementing K.S.A. 75-2949; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended Oct. 24, 1997; revoked June 5, 2005.)

1-10-8. (Authorized by K.S.A. 1983 Supp. 75-3747; implementing K.S.A. 1983 Supp. 75-2944 and 75-2946; effective, E-82-14, July 1, 1981;

effective May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended Dec. 17, 1995; revoked May 31, 1996.)

1-10-9. (Authorized by K.S.A. 1981 Supp. 75-3747; implementing K.S.A. 75-2946; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended Dec. 17, 1995; revoked May 31, 1996.)

1-10-10. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and 75-3747; implementing K.S.A. 75-2925, 75-2949, 75-2952, 75-2957, 75-3707, and 75-3746; effective Oct. 1, 1999; revoked June 5, 2005.)

1-10-11. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3706 and 75-3747; implementing K.S.A. 75-2925, 75-2949, 75-2952, 75-2957, 75-3707, and 75-3746; effective Oct. 1, 1999; revoked June 5, 2005.)

Article 11.—NONDISCIPLINARY TERMINATION

1-11-1. Resignation. (a) Each employee wishing to resign in good standing shall file with the appointing authority, at least two weeks before the employee's last day at work, a written resignation stating the date it will become effective and the reasons for leaving. If the employee fails to give the required written notice of resignation as specified in this subsection, the appointing authority may have a statement concerning this failure inserted in the employee's official personnel record. Any appointing authority may consider the fact that a person did not give the required notice when the person resigned from earlier employment with the state to be grounds for refusal to employ that person.

(b) With the approval of the appointing authority, an employee may withdraw a resignation.

(c) An appointing authority may consider any unauthorized absence from work for a period of five consecutive working days for which the employee does not provide a satisfactory explanation to be abandonment of the job and a presumed resignation. Before terminating an employee for a presumed resignation, the appointing authority shall make a reasonable effort to obtain a satisfactory explanation from the employee.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 75-3706

and K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective May 1, 1979; amended May 1, 1985; amended May 31, 1996; amended June 7, 2002; amended June 5, 2005.)

1-11-2. (Authorized by K.S.A. 1981 Supp. 75-3747; implementing K.S.A. 1981 Supp. 75-2948; effective May 1, 1979; amended, E-82-14, July 1, 1981; amended May 1, 1982; revoked May 1, 1984.)

1-11-3. This regulation shall be revoked on and after June 5, 2005. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked June 5, 2005.)

Article 12.—GRIEVANCES AND APPEALS

1-12-1. Grievance procedure. Each appointing authority shall establish in writing a grievance procedure for its employees. The availability to, or the use of, a grievance procedure by an employee shall not preclude the employee's use of appropriate appeal procedures that are available to the employee in the civil service act or these regulations. This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended June 5, 2005.)

1-12-2. Agency appeals. Any appointing authority may appeal any final decision of the director of personnel services to the secretary of administration by filing a written notice of appeal with the secretary, signed by the appointing authority, with a copy to the director. Each notice of appeal shall state in clear and concise language the final decision of the director that is the subject of the appeal and the grounds upon which the appeal is based. The notice of appeal shall be delivered to the secretary's office or mailed to the secretary within 10 working days of the date on which the final decision becomes effective. The day and hour for hearing the appeal shall then be set by the secretary. The appeal shall be conducted informally. Both the appellant and the director may be present in person or by counsel, and both may present evidence and argument. A timely disposition of the appeal shall be made by the secretary. A copy of the secretary's decision shall be provided to the appointing authority and the director by the secretary. The filing of a notice of appeal or the pendency of an appeal shall not suspend the final decision from which the appeal is taken. This

regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-3746; effective May 1, 1979; amended June 5, 2005.)

Article 13.—RECORDS, REPORTS, RESEARCH AND EVALUATION OF PERSONNEL SYSTEM

1-13-1. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 1, 1983.)

1-13-1a. Content of employees' official personnel records. (a) The official personnel record of each state employee shall include the following information:

(1) Records showing the employee's hires, transfers, promotions, demotions, separations, changes of pay rates, leaves of absence, and any other changes in employment status;

(2) performance reviews, letters of reprimand and letters of rebuttal, and letters of commendation;

(3) the application for each position for which the employee was hired;

(4) letters of disciplinary action; and

(5) any other information related to state service that the appointing authority deems appropriate.

(b) The records specified in subsection (a) may be maintained in paper or electronic form or by using other appropriate media.

(c) The official personnel record of each state employee shall be transferred with the employee if the employee is appointed to a position in another agency.

(d) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2950, and K.S.A. 75-3746; effective May 1, 1983; amended Dec. 27, 1993; amended Dec. 17, 1995; amended May 31, 1996; amended June 20, 1997; amended June 5, 2005.)

1-13-1b. Disclosure of employee information. (a) Except as otherwise provided in this regulation and the Kansas open records act, K.S.A. 45-215 *et seq.* and amendments thereto, the information contained in each state employee's official personnel record shall not be open to public inspection.

(b) Upon any inquiry, the appointing authority shall disclose the following information concerning any current or former employee:

(1) The name of the employee;

(2) the employee's current job title;

(3) the employee's current or prior pay;
 (4) the employee's length of employment with the state;

(5) the name of the employing agency; and
 (6) the length of time the employee has served in the employee's current position.

(c) When appropriate personnel from one of the following agencies, in carrying forth their official duties, establish a need for information contained in an employee's official personnel record, the appropriate personnel from these agencies shall be permitted to access the other employee's personnel record:

(1) The Kansas department of administration;
 (2) the Kansas attorney general's office, including the Kansas bureau of investigation;

(3) the federal equal employment opportunity commission and the Kansas human rights commission;

(4) the Kansas civil service board;

(5) legislative post audit;

(6) the agency employing that employee; and

(7) employees of the Kansas department of social and rehabilitation services responsible for that agency's child support enforcement activities.

(d) Any current or former employee, or any other individual or an organization if authorized in writing by the current or former employee, may review that employee's official personnel record upon written request to the appointing authority. The appointing authority shall place in the employee's personnel record a copy of the written request and the written authorization from the employee. The review shall be consistent with the conditions established by the appointing authority and at a time and place mutually convenient to the parties.

(e)(1) Any appointing authority with an established need to review the personnel record of an employee in another state agency may, upon request to the appointing authority of the employing agency, review the employee's official personnel record, including applications for employment and performance reviews.

(2) Each appointing authority responding to job-related reference and performance questions from another state agency shall answer the questions in good faith.

(3) If a prospective employer, other than another state agency, requests information about a current or former state employee as part of a reference check, the response of the appointing authority shall be consistent with the requirements of K.S.A. 44-119a, and amendments thereto.

(f) The official personnel record of any specifically named employee shall be made available for inspection in connection with litigation, pursuant to the terms of an order entered by a judge of any federal, state, or municipal court having proper jurisdiction over the litigation.

(g) This regulation shall be effective on and after June 5, 2005. (Authorized by K.S.A. 2004 Supp. 75-3747; implementing K.S.A. 75-2950 and 75-3746; effective June 5, 2005.)

1-13-2 to 1-13-4. (Authorized by K.S.A. 75-3747; effective May 1, 1979; revoked May 31, 1996.)

Article 14.—LAYOFF PROCEDURES AND ALTERNATIVES TO LAYOFF

1-14-1 to 1-14-5. (Authorized by K.S.A. 75-2965, 75-2966, 75-2968; effective Jan. 1, 1967; revoked May 1, 1979.)

1-14-6. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2948; effective May 1, 1984; amended January 18, 1994; revoked May 31, 1996.)

1-14-7. Agency submission of layoff notice to director. (a) When submitting a layoff notice to the director, the appointing authority shall list the reason for the proposed layoff. As established by K.S.A. 75-2948, as amended, the reasons for proposing a layoff shall be limited to:

(1) a shortage of work or funds;

(2) the reinstatement of an employee returning from authorized leave; or

(3) the abolition of a position or other material change in duties or organization.

(b) Any appointing authority proposing a layoff shall give written notice of the proposed layoff to the director, and a copy of the notice to the secretary of administration, at least 45 calendar days before the proposed effective date of the layoff. In cases of extenuating circumstances, the 45-day notice requirement may be waived by the director. However, in no case shall notice of layoff to the director be less than 30 days prior to the proposed effective date of the layoff.

(c) In the notice, the appointing authority shall specify:

(1) the reason or reasons for the layoff;

(2) the class, classes, or class series in which the layoff is to occur;

(3) the estimated number of employees to be laid off;

- (4) the proposed effective date of each layoff;
 - (5) the position or positions to be vacated by layoff; and
 - (6) the layoff scores of employees identified in subsection (a) of K.A.R. 1-14-9.
- (d) In addition to the information required under subsection (c), the notice shall include the following information:
- (1) a list of the agency's organizational units;
 - (2) a description of any geographic areas to which the layoffs will be limited; and
 - (3) any other information requested by the director.

If the agency chooses to permit employees to bump into lower classes in a class series in addition to any lower class in which an employee had permanent status, the notice shall also indicate the class series to be used for bumping.

(e)(1) The appointing authority may designate a geographic area or an organizational unit within which the layoff is to occur and within which the employees are to be subject to layoff. If one or more geographic areas or organizational units are designated by the appointing authority, they shall be indicated in the layoff notice. If no area or unit is designated, the layoff shall be agency-wide. The appointing authority also may limit the layoff to full-time employees or to employees employed on less than a full-time basis.

(2) If an area or unit is used, the layoff and bumping rights shall be applied only to employees within the designated area or unit. When the layoff is limited to full-time employees or less than full-time employees, any employee with permanent status may exercise bumping rights into a position filled by any employee with probationary status only within the group of employees having the same full-time or less than full-time status. Otherwise, any employee with permanent status may exercise bumping rights into any position filled by an employee with probationary status anywhere within the agency, if the employee with permanent status meets the required selection criteria for the class.

(f) The appointing authority may also allow employees to bump into lower classes in a class series in addition to any lower class in which the employee had permanent status. The class series bumping option shall be limited to class series that are designated in the layoff notice.

(g) Within 10 working days of the receipt of a proposed layoff notice, the agency shall be contacted by the director with any questions the

director may have regarding the layoff, and the proposed layoff shall be reviewed with the secretary of administration. The proposed layoff shall be approved, modified and approved as modified, or rejected by the secretary within 15 working days of the receipt of the proposed layoff notice. The agency shall be notified in writing of the secretary's determination. (Authorized by K.S.A. 1995 Supp. 75-3747; implementing K.S.A. 1995 Supp. 75-2948; effective May 1, 1984; amended Jan. 18, 1994; amended Dec. 17, 1995; amended May 31, 1996.)

1-14-8. Computation of layoff scores. (a)

A layoff score shall be computed by the appointing authority for each employee in the agency who has permanent status and who either is in a class of positions identified for layoff or could be affected by the exercise of bumping rights.

(b) Layoff scores shall be computed according to the formula $A \times L$, where A and L have the following values:

(1) A = the average performance review rating of the employee, as described in subsection (d); and

(2) L = the length of service, as defined in K.A.R. 1-2-46 (a), expressed in years, with three months of service equivalent to .25.

Length of service for a retired employee who has returned to work shall be calculated in accordance with K.A.R. 1-2-46 (g). The layoff scores shall be prepared in accordance with a uniform score sheet prescribed by the director.

(c) Layoff scores computed by the appointing authority shall be made available for inspection by each employee upon request at the time the agency gives written notice of a proposed layoff to the director and the secretary pursuant to K.A.R. 1-14-7. Upon request of any employee, the appointing authority shall review the manner in which the employee's score was calculated. Each dispute as to the proper calculation of a layoff score of any employee shall be resolved by the director.

(d) Except as otherwise authorized by this subsection, the performance review ratings used in computing the layoff score of an employee shall be the employee's five most recent ratings if the employee has as many as five ratings. However, a rating resulting from a special performance review that is given for a rating period ending within 90 calendar days of any notice of the layoff to the director shall not be counted. Performance reviews completed for rating periods ending on or

after the date the appointing authority notifies the director in writing that a layoff is to occur shall not be considered in computing layoff scores; however, the appointing authority may designate a uniform earlier cutoff date to identify which performance review ratings are to be used in computing layoff scores.

(1) For the purposes of calculating layoff scores in accordance with the formula established in subsection (b), a rating of “exceptional” shall have a value of seven, a rating of “exceeds expectations” shall have a value of five, a rating of “meets expectations” shall have a value of three, a rating of “needs improvement” shall have a value of one, and a rating of “unsatisfactory” shall have a value of zero.

(2) If an employee does not have a total of five performance review ratings for use in computation of a layoff score, the layoff score shall be an average of the ratings that the employee has actually received.

(3) If an employee has no performance review ratings that may be used to compute a layoff score, the employee shall be deemed to have been given a single performance review rating of “meets expectations,” and the value of that rating shall be used to compute a layoff score. New hires and rehires employed on a basis other than reinstatement who are serving a probationary period and employees in training classes shall be subject to subsections (e), (f), and (g).

(4) If any layoff scores are identical and some, but not all, of the persons with the same score must be laid off, preference among these persons shall be given to any veteran, as defined in K.S.A. 73-201 and amendments thereto, and any orphan, as defined in this paragraph, in that order. For the purpose of this regulation, “orphan” shall mean a minor who is the child of a veteran who died while, and as a result of, serving in the armed forces.

If further ties remain, a method of breaking the ties that is consistent with agency affirmative action goals and timetables for addressing underutilization of persons in protected groups shall be established by the secretary. If further ties remain, preference in retention shall be given to the person with the higher average performance review rating as used in calculating layoff scores in accordance with subsection (b). If a tie still exists, the next preference shall be given to the person with the greatest length of service, as defined in K.A.R. 1-2-46, within that agency. If a tie still ex-

ists, the appointing authority shall determine an equitable tie-breaking system.

(e) New hires and rehires with probationary status shall not be granted permanent status on or after the date the appointing authority has notified the director of a proposed layoff. However, any new hire or rehire with probationary status in a position for which no employee subject to layoff meets the required selection criteria may be given permanent status. New hires and rehires with probationary status shall have their probationary period extended until it is certain that no employee with permanent status whose position is to be vacated by layoff or who otherwise would be laid off through the exercise of bumping rights is claiming the position held by the employee with probationary status.

(f) Each employee serving a probationary period as a result of one of the following shall be considered to have permanent status for layoff purposes:

(1) Promotion of an employee who has permanent status;

(2) reallocation of a position if the incumbent has permanent status; or

(3) promotion from a classified position with at least six months of continuous classified service.

(g) Each employee who is in training status in a governor’s trainee position, or in any identified training position, and who has at least six months of continuous service shall be considered to have permanent status for layoff purposes only.

(h) The layoff list shall be based on the order of the layoff scores. The person with the lowest layoff score shall be laid off first. If more than one person is to be laid off, the persons to be laid off shall be selected on the basis of the lowest layoff scores. (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. 2014 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2948, 75-3707, and 75-3746; effective May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 27, 1993; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009; amended Jan. 6, 2017.)

1-14-9. Layoff notice to employee. (a) Any appointing authority proposing a layoff shall give written notice of the proposed layoff to:

(1) Each employee in a position identified for layoff or who may be affected by layoff;

(2) each employee that may be laid off through the exercise of layoff bumping rights; and

(3) the director of personnel services.

(b) The notice required under subsection (a) shall be given at least 30 calendar days before the effective date of the proposed layoff.

(c) Written notice of layoff shall be deemed to have been properly given if, at least 30 days prior to the date of layoff:

(1) the notice is personally delivered to the employee by two or more persons or if it is personally delivered to the employee by one person and a written acknowledgment of receipt is obtained from the employee; or

(2) the notice is sent by certified mail, restricted delivery, to the residential address of the employee as shown on the agency's records. (Authorized by K.S.A. 1983 Supp. 75-3747; implementing K.S.A. 1983 Supp. 75-2948; effective May 1, 1984.)

1-14-10. Procedures for bumping and layoff conferences. (a) Bumping shall occur within the layoff group identified in the agency's layoff notice, or agencywide if the agency has not designated a layoff group. If the requirements in paragraphs (a)(1) and (2) have been met, any employee with permanent status, or any employee considered permanent for layoff purposes only, who is scheduled for layoff shall bump only into a lower class in which the employee previously had permanent status, unless the employee's position is in a class that is part of a class series designated by the appointing authority in the agency's layoff notice. If such a class series is designated in the agency's layoff notice, then the employee shall be permitted to bump into a lower class in the class series. Except as authorized by subsection (b), in order for an employee with permanent status to exercise bumping rights, the following requirements shall be met:

(1) The employee to be bumped shall have a lower layoff score than the person exercising the bumping right.

(2) The employee to be bumped shall have the lowest layoff score in that employee's job class of anyone in a position not scheduled for layoff.

(b) No employee with permanent status shall be laid off if all of the following conditions are met:

(1) There is a position filled by a probationary employee anywhere in the agency.

(2) The employee with permanent status scheduled to be laid off is interested in the position.

(3) The employee with permanent status is eligible for transfer or demotion to the position pursuant to K.A.R. 1-6-24 and 1-6-27.

(c) If an agency's layoff notice permits bumping only into lower classes in which an employee had previous permanent status and the class or classes in which the employee had previous permanent status have been abolished, the employee shall be afforded bumping rights to a similar job class in a lower pay grade if a similar job class exists as determined by the director.

(d) Regardless of subsections (a), (b), and (c), subject to the approval of the director, any appointing authority may prevent any classified employee from being laid off if the appointing authority finds that the loss of the employee, due to the employee's particular knowledge, skills, abilities, certification, licensure, or combination thereof, would substantially impair the agency's ability to perform its essential operations.

(e)(1) Bumping procedures shall begin as soon as possible after layoff notices have been given pursuant to K.A.R. 1-14-9. The appointing authority or designee shall develop a schedule for an individual conference with each affected employee, starting with the employee having the highest layoff score. The schedule of conferences shall continue in this order until each affected employee has had such a conference.

(2) During the layoff conference, the employee shall be informed of the bumping options available to the employee and of the opportunity to select one such option. The employee may defer the selection no longer than one full working day, unless a longer period of time is authorized by the appointing authority. If an employee is unavailable on the day the employee is scheduled for a layoff conference, the appointing authority shall reschedule the layoff conference. If the employee fails to appear at the rescheduled conference, the appointing agency shall not be required to hold a layoff conference with the employee and the employee shall forfeit bumping rights.

(3) In extenuating circumstances and when deemed to be in the best interest of the state service, group layoff conference sessions may be authorized by the appointing authority.

(f) At the layoff conference, each employee shall be informed of the employee's right to seek reemployment opportunities with the state, including placement assistance provided by the division. Placement assistance shall be available to the affected employee for up to three years after the effective date of the layoff, unless the affected employee requests in writing that the employee does not want placement assistance.

(g) Any employee who is not scheduled for layoff, but whose position will be vacated during the layoff and bumping process, and who refuses to accept a transfer or demotion to another position may request to be laid off voluntarily. Any employee who has been granted a voluntary layoff shall have reemployment rights.

(h) All disputes resulting from the forfeiture of bumping rights shall be resolved by the director. (Authorized by K.S.A. 2014 Supp. 75-3747; implementing K.S.A. 75-2948; effective May 1, 1984; amended Jan. 18, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Jan. 6, 2017.)

1-14-11. Furlough. (a) For purposes of this regulation, “furlough” shall mean mandatory leave without pay for a preset number of hours during each pay period covered by the furlough. There are two types of furloughs.

(1) An administrative furlough is a planned action by an agency that is designed to address budget reductions necessitated by reasons other than a lapse in appropriations. A furlough plan shall be required for each administrative furlough.

(2) An emergency furlough occurs if there is an immediate or imminent lack of funding to continue agency operations or any emergency that results in an unanticipated interruption of funding to the agency. In an emergency furlough, an affected agency could have to cease activities that are not excepted by law, typically with very little lead time. A furlough plan shall not be required for any emergency furlough.

(b) In accordance with this regulation, if an appointing authority deems it necessary, the appointing authority may implement an administrative furlough or an emergency furlough for all employees in the classified or unclassified service in designated classes, positions, organizational units, geographical areas, or any combination of those groups unless specific funding sources necessitate exceptions. An employee’s social security and retirement contributions shall be affected under a furlough, but all other benefits, including the accrual of vacation and sick leave, shall continue, despite any other regulations to the contrary. A furlough shall not affect the employee’s continuous service, length of service, pay increase anniversary date, or eligibility for authorized holiday leave or pay.

(c)(1) For each administrative furlough, at least 30 calendar days before the date the administrative furlough is to be implemented, the appointing

authority shall prepare a furlough plan specifying the following information:

- (A) The cause of the funding shortage;
 - (B) the effective date of the furlough and the date on which the furlough is to end;
 - (C) the methods for notifying the affected employees;
 - (D) the amount of advance notice that will be given to affected employees, which shall not be less than 10 calendar days;
 - (E) the estimated cost savings;
 - (F) each class, organizational unit, or geographical area to be affected;
 - (G) the criteria used to select each class, position, organizational unit, or geographical area to be included in the furlough;
 - (H) any exceptions to the furlough plan based on funding sources; and
- (I) the number of hours by which the workweek will be reduced, including separate categories detailing the proposed reduction in hours by standardized increments for exempt and nonexempt employees.

(2) A copy of each furlough plan prepared in accordance with this subsection shall be submitted to the director at least 30 days before the date the administrative furlough is to be implemented.

(d) For each emergency furlough, the affected employees and the director shall be notified by the appointing authority as soon as it is practical to do so.

(e) This regulation shall not be used as a disciplinary action against any employee. (Authorized by K.S.A. 75-3706, K.S.A. 2013 Supp. 75-3747, and K.S.A. 75-5514; implementing K.S.A. 75-3707, 75-3746, and 75-5505; effective, T-88-5, Feb. 11, 1987; effective, T-89-1, May 1, 1988; effective Oct. 1, 1988; amended May 31, 1996; amended June 5, 2005; amended Sept. 12, 2014.)

1-14-12. Layoff procedures for an abolished agency. With the approval of the secretary of administration, alternative procedures to the layoff provisions specified in the regulations may be established by the director if an entire agency is abolished. (Authorized by K.S.A. 75-3747; implementing K.S.A. 75-2948; effective Dec. 27, 1993.)

1-14-12a. (Authorized by K.S.A. 75-3706, and K.S.A. 1996 Supp. 75-4370, 75-4371 and 75-4377; implementing K.S.A. 1996 Supp. 75-4370, 75-4371, 75-4372, 75-4373, 75-4374, 75-4375 and 75-4376; effective, T-1-11-21-96, Nov. 21, 1996; effective Feb. 21, 1997; revoked June 7, 2002.)

Article 15.—DISCRIMINATION

1-15-1 and 1-15-2. (Authorized by K.S.A. 75-2939, K.S.A. 1975 Supp. 75-2929, 75-2940, 75-2949, 75-3706, 75-3746; effective, E-74-41, Aug. 16, 1974; effective, E-76-17, March 27, 1975; effective May 1, 1976; revoked May 1, 1979.)

Article 16.—TRAVEL REIMBURSEMENT

1-16-1. Personal funds to be supplied. Except as otherwise provided in K.A.R. 1-16-1a, employees shall provide themselves with sufficient funds for all current expenses. Blanket advances from the state treasury or other special funds to cover the prospective expenses of travel are not allowed except as authorized by K.S.A. 75-3072. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; amended May 1, 1979.)

1-16-1a. Travel; advance from imprest fund. In exceptional circumstances and in hardship cases, an agency head may authorize travel subsistence advances through the authorized imprest funds and the proper disbursing official to an employee entitled to subsistence of mileage allowances under these regulations, a sum considered advisable with regard to the character and probable duration of the travel expenses is recoverable from the employee or the employee's estate by: (a) setoff against accrued pay, or other amount due the employee; and

(b) such other methods as provided by law. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-1b. Advisory personnel; subsistence and mileage payment. For purposes of payment of subsistence, transportation, mileage and other allowances for official travel, an employee shall include an individual employed intermittently by or under an agency as an advisor or advisory committee member, irrespective of whether compensation is paid to such individual or the amount thereof. (Authorized by K.S.A. 1979 Supp. 75-3207; effective May 1, 1979; amended May 1, 1980.)

1-16-2. Official station; expense-related matters. (a) Office employee. The official station of an officer or employee assigned to an office shall be the city or town where such office is located. Transportation costs between the employee's domicile and the office and subsistence within the limits of an employee's official station shall not be reimbursable.

(b) Field employees. The official station of each field employee shall be designated by the administrative head of the state agency. Subsistence within the limits of the employee's official station or domicile shall not be allowed. No transportation costs shall be allowed between any such employee's place of residence and the office to which such employee is assigned.

(2) Nonreimbursable travel. When additional expense is incurred by reason of an employee residing in a city or town other than the official station, or additional expense is otherwise caused by an employee's choice of residence, such an expense is not reimbursable except as provided in K.A.R. 1-16-2a. (Authorized by and implementing K.S.A. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended May 1, 1979; amended, T-1-4-26-93, April 26, 1993; amended July 12, 1993.)

1-16-2a. Relocation assistance. (a) The provisions of this regulation shall apply only to employees who are transferred to a new official station that is more than 25 miles from the old station and to new employees who are recruited under the provisions of 1997 SB 104, § 1. However, no subsistence allowance shall be paid under this regulation for expenses incurred within 30 miles of the official station at the time of travel.

(b) For purposes of searching for a new residence, in the 30-day period preceding an employee's transfer or the employee's original appointment date, the employee may be allowed subsistence reimbursement for not more than 15 calendar days at the current prevailing subsistence rates and private car mileage reimbursement for not more than one round trip from the employee's domicile.

(c) To the extent considered necessary and appropriate by the appointing agency head, the agency may pay all or part of the following relocation expenses:

(1) Subsistence expenses for the employee while en route between the old and new official station or, for an employee recruited under 1997 SB 104, § 1, while en route between the old domicile and new domicile; and

(2) a mileage allowance at the rate provided to reimburse state employees for the use of a privately owned conveyance for transporting the employee's immediate family from the old domicile to the new official station. However, such expenses may be allowed for only one one-way trip in connection with each change of official station

and domicile of the employee, and for transfers, only in cases in which the new station is over 25 miles from the old station.

(d) On and after the date of the employee's transfer or original appointment, subsistence expenses of the employee may be paid for a period of 30 days while the employee is occupying temporary quarters and trying to locate or waiting to enter a permanent residence. Subsistence expense payments to the employee may be extended for additional 30-day periods when deemed necessary by the agency head, with approval of the secretary of administration, while the employee's residence is in temporary quarters. (Authorized by and implementing K.S.A. 75-3203, 75-3207, and 1997 SB 104, § 1; effective May 1, 1979; amended, T-1-4-26-93, April 26, 1993; amended July 12, 1993; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997.)

1-16-2b. Moving expenses. (a) The provisions of this regulation shall apply only when a permanent employee transfers within a state agency or from one agency to another for the convenience or benefit of the employing agency and the official station is more than 25 miles from the old official station, or when an employee has been recruited under the provisions of 1997 SB 104, § 1.

(b) The head of the employing agency may pay reasonable moving expenses to a commercial carrier or may reimburse the employee as authorized by this regulation, in an amount not to exceed the actual expenses.

(1) The employee may be reimbursed or a commercial carrier may be paid for the expenses of transporting, packing, crating, temporarily storing, draying, unpacking, and obtaining transit insurance for up to 12,000 pounds net weight of household goods and personal effects, excluding any cost for disassembling yard toys, patio equipment, window air conditioners, and shelving.

(2) When an employee transports a house trailer or mobile dwelling for use as a residence and the employee otherwise would be entitled to transportation of household goods and personal effects under paragraph (1) of this subsection, the head of the employment agency may pay for the following expenses:

(A) A mileage allowance at the rate provided to reimburse state employees for the use of a privately owned conveyance, including the payment of necessary tolls, charges, and permit fees, if the trailer or dwelling is transported by the employee; or

(B) commercial transportation of the house trailer or mobile dwelling, at agency expense or through reimbursement to the employee, including the payment of necessary tolls, charges, and permit fees, if the trailer or dwelling is not transported by the employee. (Authorized by and implementing K.S.A. 75-3706 and 1997 SB 104, § 1; effective May 1, 1979; amended May 1, 1981; amended, T-1-4-26-93, April 26, 1993; amended July 12, 1993; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997.)

1-16-2c. Non-reimbursable transfer expenses. When a transfer is made primarily for the convenience or benefit of the employee or at the employee's request, the expense of travel and transportation, expense of transporting, packing, crating, temporary storage, drayage, unpacking of household goods and personal effects, and transit insurance shall not be allowed or paid from agency funds. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-2d. (Authorized by and implementing K.S.A. 75-3207, 75-3219 and 75-3224; effective May 1, 1979; amended, T-1-4-26-93, April 26, 1993; amended July 12, 1993; revoked, T-1-7-1-97, July 1, 1997; revoked Aug. 8, 1997.)

1-16-2e. Bidding required. (a) Moving expenses that may be paid pursuant to K.A.R. 1-16-2b(a) shall not exceed the total cost of moving a comparable household of 12,000 pounds of household furnishings and personal effects by commercial carrier at the tariff rates filed with and approved by the state corporation commission.

(b) Each employee who is eligible for moving expenses shall attempt to obtain three firm rate bids from commercial carriers and shall be responsible for selection of the lowest responsible carrier. Any contractual arrangement shall be between the state employee and the commercial carrier.

(c) The firm rate bid shall include costs of the following services:

- (1) transportation;
- (2) material and labor for packing and unpacking barrels, drums and cartons;
- (3) appliance service;
- (4) piano pick-up and delivery; and
- (5) transit insurance. (Authorized by and implementing 1997 SB 104, § 1; effective May 1, 1979; amended, T-85-46, Dec. 19, 1984; amended May 1, 1985; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997.)

1-16-2f. (Authorized by K.S.A. 75-3207; effective May 1, 1979; revoked, T-1-4-26-93, April 26, 1993; revoked July 12, 1993.)

1-16-2g. (Authorized by and implementing K.S.A. 75-3224; effective May 1, 1979; amended May 1, 1981; revoked, T-85-46, Dec. 19, 1984; revoked May 1, 1985.)

1-16-2h. (Authorized by K.S.A. 75-3207; effective May 1, 1979; revoked, T-85-46, Dec. 19, 1984; revoked May 1, 1985.)

1-16-2i. Self-move. Authorized costs for a self-move may be paid when deemed desirable by the agency head and may include: (a) rental costs, plus insurance, of a van or trailer; or

(b) private car mileage one (1) way for a personally owned conveyance at the mileage rate prescribed by K.A.R. 1-18-1a. When a move of this type is undertaken by an employee, the time required to complete the move is chargeable as normal working time. When the estimated time of move and costs appear unreasonable, a commercial carrier bid may be required to establish the allowable maximum cost. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-2j. Limitations, employee's responsibility. (a) An agency head may authorize combination mobile home and self moves. However, the cost of such a move shall not exceed the comparable cost for commercial carrier moves.

(b) Employees shall be responsible upon completion of commercial carrier moves to inspect their belongings, note damages on the shipper's bill of lading, and sign the bill of lading. (Authorized by and implementing K.S.A. 75-3224; effective May 1, 1979; amended, T-85-46, Dec. 19, 1984; amended May 1, 1985.)

1-16-2k. Sale of residence, expenses not allowed. Expenses of the sale of the employee's residence, losses on the sale of an employee's residence or the settlement of an employee's residence or the settlement of an unexpired lease by the employee at the old residence and the purchase of a home at the new official station required to be paid by the employee shall not be allowable expenses of the agency. (Authorized by and implementing K.S.A. 75-3207, 75-3219 and 75-3224; effective May 1, 1979; amended, T-1-4-26-93, April 26, 1993; amended July 12, 1993.)

1-16-2l. Separation from service. A former employee separated by reason of reduction in force or transfer of function who within one (1) year after separation is re-employed by a non-temporary appointment at a different geographical location from that which separation occurred, may be allowed and paid authorized expenses in the same manner and to the same extent as though the employee had been transferred in the interest of the state agency without a break in service to the location of re-employment from the location where separated. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-3. Official station; three months. If an employee has been continuously stationed at one place for three months, or travels to a place of work where more than one-half of the work time is spent for three or more months, that place shall be immediately designated as the official station and no further allowance shall be made for subsistence expenses incurred there. Upon written application to and approval of the secretary of administration, a maximum of two extensions may be requested and approved. Each extension shall not exceed three months but in no event shall the total duration of such extensions exceed six additional months. (Authorized by and implementing K.S.A. 75-3207 and 75-3207a; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended May 1, 1979; amended, T-87-17, July 1, 1986; amended May 1, 1987.)

1-16-3a. Incapacitated employee on intrastate travel; subsistence and transportation. An employee who, while traveling on official intrastate business and away from the employee's designated official station or domicile, becomes incapacitated by illness or injury not due to the employee's misconduct, is entitled at the discretion of the agency head to subsistence allowance for a period not to exceed five (5) workdays and appropriate mileage reimbursement for returning the employee's privately owned conveyance to the employee's designated official station or domicile as the case may be. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-3b. Incapacitated employee on interstate travel; subsistence and transportation. An employee who, while traveling on official interstate business away from the employee's designated official station or domicile, becomes incapacitated by illness or injury not due to the em-

ployee's misconduct, is entitled at the discretion of the agency head to subsistence allowance for a period not to exceed five (5) workdays and appropriate transportation expenses to the employee's designated official station or domicile as the case may be. (Authorized by K.S.A. 75-3207; effective May 1, 1979.)

1-16-3c. Official station; employee residing outside the designated official station.

When an employee residing in an area other than the city designated as the employee's official station, travels on official state business from his or her residence to a destination which is outside the city designated as the employee's official station, the employee shall be paid either mileage between the official station and the destination, or mileage between the employee's residence and the destination, whichever is lesser. In returning to the employee's residence from the last point where official state business was conducted, the employee shall be paid mileage from that point to either his or her official station or his or her residence, whichever is lesser. For purposes of determining the time of departure from or arrival at the employee's residence for computing subsistence allowances, an adjustment to the actual time at which the employee commenced travel or at which travel terminated shall be made by dividing the unreimbursed mileage traveled by forty-five (45) miles per hour. The result shall be added to the time of actual departure from, or subtracted from the time of actual arrival at the employee's residence, to determine the allowable time to be used for computing the subsistence allowance. (Authorized by and implementing K.S.A. 1980 Supp. 75-3203, 75-3207; effective May 1, 1981.)

1-16-4. Date and hour of departure and return.

If an employee is granted leave of absence while on official travel, including Saturdays, Sundays, and holidays, the employee's subsistence allowance claim shall be adjusted accordingly for the date and hour of departure from, and the return to, the field duty station or to the official station. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective Jan. 1, 1966; amended Feb. 5, 2016.)

1-16-5. After leave of absence. Subsistence shall be allowed after leave of absence from the time of return to field duty station until travel assignment is completed by return to official station or, in the event of transfer to a new official station,

until arrival at such new station. (Authorized by K.S.A. 1965 Supp. 75-3207; effective Jan. 1, 1966.)

1-16-6. Railroad accommodations. When employees travel by railroad, first class day coach seating accommodations may be authorized. No railroad sleeping accommodations will be reimbursed inasmuch as K.S.A. 1968 Supp. 75-3207 as amended provides for payment on a quarter day basis of a subsistence allowance which includes charges for lodging expenses. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970.)

1-16-7. Airline travel accommodations.

When the administrative head of the agency determines that airline travel is the most economical or advantageous to the state, the use of airline travel may be authorized. The most economical mode of airline travel is considered to be tourist or economy class. If tourist or economy class accommodations are not available, a statement from the airline or travel agency must be submitted on or with the voucher. (Authorized by K.S.A. 1965 Supp. 75-3207; effective Jan. 1, 1966.)

1-16-8. Use of privately owned or operated conveyance, limitations; reimbursement for transportation and subsistence expenses.

(a) In-state travel. If the use of a privately owned or operated conveyance on official state business is authorized by the agency head or the agency head's designee, reimbursement shall be on a mileage basis at the rate specified and under the limitations prescribed by K.A.R. 1-18-1a. Mileage shall be calculated in accordance with K.A.R. 1-17-11, except that storage or parking charges for a privately owned conveyance at any commercial transportation terminal, while the traveler is on an extended trip, and turnpike tolls, may be allowed in addition to this mileage allowance.

(b) Out-of-state travel.

(1) If the use of a privately owned or operated conveyance on official state business, instead of common carrier, is authorized by the agency head or the agency head's designee, the traveler shall be allowed private conveyance mileage as prescribed by K.A.R. 1-18-1a to the destination, turnpike tolls, and parking charges, or an amount equal to economy class air fare to the air terminal nearest the destination, whichever is lesser. Out-of-state subsistence allowance shall be allowed only for the number of quarter days that would have been necessary had the traveler used the fastest public

transportation available to the destination instead of a private conveyance. No taxi or air terminal expenses shall be allowed at the destination. Air terminal shall mean the principal air terminal in that general geographic area.

(2) If two or more travelers on official business travel in one privately owned conveyance instead of common carrier, the use of one conveyance may be authorized on a mileage basis. In such cases, the subsistence allowed shall be for the number of days the trip would take by car using the usually traveled route to the point of destination as provided in K.A.R. 1-17-11.

(3) Upon written, prior approval of the agency head, exceptions to this subsection may be granted in unusual circumstances if deemed to be in the best interest of the state.

(c) Exception. Nothing in this regulation shall apply to any person to whom K.S.A. 75-3212 and K.S.A. 75-3216, and amendments thereto, apply. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1981; amended April 30, 1990; amended July 1, 2010; amended Feb. 5, 2016.)

1-16-9 and 1-16-10. (Authorized by K.S.A. 1974 Supp. 75-3207; effective Jan. 1, 1966; revoked, E-74-4, Nov. 2, 1973; revoked May 1, 1975.)

1-16-11. Taxicabs. Taxicab charges shall be allowed, except when limousine services are available between any of the following points: Only from regular domicile or place of business to station or other terminal; from station or terminal at origin or destination of trip to hotel, domicile or place of business; or between bus, rail or plane stations or terminals or other points of official duty. Taxicab charges from a hotel to a restaurant or from a restaurant to a hotel are not reimbursable. (Authorized by K.S.A. 1965 Supp. 75-3207; effective Jan. 1, 1966.)

1-16-12. Home—travel from and to. Actual taxi or common carrier fares shall be allowed for transportation directly from home of traveler to railroad, bus or airport terminals at the beginning of official travel status and for transportation directly from railroad, bus or airport terminals to home of traveler at conclusion of official travel status. (Authorized by K.S.A. 1965 Supp. 75-3207; effective Jan. 1, 1966.)

1-16-13. Rental or charter of special conveyances. The rental or charter of aircraft, automobiles, boats, busses, or other special conveyances shall be held to a minimum but may be authorized in those cases when no public or ordinary means of transportation are available, or when such public or ordinary means of transportation cannot be used advantageously in the best interests of the state. Specific justification shall accompany the voucher in each instance where the use of a special conveyance is authorized. Mere convenience for the traveler is not justification for the rental or charter of a special conveyance.

When public or ordinary means of transportation were not available, the justification for the use of a special conveyance shall show the location where travel by special conveyance commenced and the points visited. The justification shall also state that public or ordinary means of transportation were not available.

When public or ordinary means of transportation are available but cannot be used advantageously in the best interest of the state, the justification for the use of a special conveyance shall show the location where travel by special conveyance commenced and the points visited. The director of accounts and reports may require comparison of the cost of public or ordinary means of transportation to the cost of the special conveyance. Other factors should also be included in the justification when applicable. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; amended May 1, 1979.)

1-16-14. No allowance for subsistence furnished by public agency. No allowance for subsistence shall be claimed where meals or lodging are furnished without cost to the traveler by any agency supported by public funds. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970.)

1-16-15. Reduced allowances. (a) Except as provided in K.A.R. 1-16-18, the agency head, or the agency head's designee, may approve paying a reduced meals allowance or lodging expense. However, the following shall apply:

(1) If the cost of meals is included within the cost of a registration fee or other fees and charges paid by the agency, the agency shall pay the applicable reduced subsistence allowance specified in K.A.R. 1-16-18.

(2) If both meals and lodging will be provided at no cost to an agency's traveling employee, the agency shall be authorized to not pay any subsistence for this travel.

(b) The approval of reduced subsistence allowances by the agency head or the agency head's designee shall be based on reducing quarter-day meals allowances and lodging expenses, and this reduced subsistence shall in all other respects be paid in accordance with applicable regulations and accounting procedures. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended May 1, 1979; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 2010; amended Feb. 5, 2016.)

1-16-16 and 1-16-17. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; revoked, E-69-18, Aug. 14, 1969; revoked Jan. 1, 1970.)

1-16-18. Subsistence allowance. (a) General provisions. Except as otherwise specifically provided by law, subsistence allowances for in-state and out-of-state travel shall be paid on the basis of a meals allowance and the actual cost of lodging expenses incurred, within the limits specified in this regulation.

Meals allowance rates and lodging reimbursement limitation rates established pursuant to K.S.A. 75-3207a, and amendments thereto, shall be issued through informational circulars of the department of administration. Rates shall be established for the following geographic areas or categories of travel:

- (1) Travel to in-state destinations;
- (2) travel to out-of-state destinations;
- (3) international travel. As used in this regulation, "international travel" shall mean travel outside the 50 states, the District of Columbia, and U.S. territories and possessions;
- (4) travel involving conference lodging that qualifies under K.A.R. 1-16-18a; and
- (5) other categories as the secretary of administration deems appropriate.

(b) Meals allowance; general provisions. Except as provided in subsection (c), the meals allowance shall be paid in an amount not to exceed rates established pursuant to K.S.A. 75-3207a, and amendments thereto.

(c) Meals allowance; exceptions.

(1) If the cost of meals is included within the cost of registration fees or other fees and charges paid by the agency or is supplied without cost by another party, the meal allowance shall be reduced by the appropriate per-meal allowance established pursuant to K.S.A. 75-3207a, and amendments thereto.

(2)(A) Except as prohibited by paragraph (c)(2)(B), the agency head or the agency head's designee may authorize any employee who does not incur lodging expenses to be reimbursed for one meal on any day on which either of the following circumstances occurs:

(i) The employee is required to travel on official state business, and the employee's workday, including travel time, is extended three hours or more beyond the employee's regularly scheduled workday.

(ii) The employee is required to attend a conference or a meeting as an official guest or participant, and a meal is served during the required attendance time.

(B) No meals shall be reimbursed if the location at which the official business is conducted is within 30 miles of the employee's official station or if a meal is provided at no cost to the employee.

(C) Each request for reimbursement of a meal under paragraph (c)(2) shall identify the date, purpose, destination, and time of the travel, conference, or meeting, and the meal requested for reimbursement.

(D) Each employee who receives reimbursement for a meal under paragraph (c)(2) shall be paid at the applicable per-meal allowance rate established pursuant to K.S.A. 75-3207a, and amendments thereto.

(d) Lodging expense limitations; general provisions.

(1) Reimbursement for lodging, or direct payment of lodging expenses to the lodging establishment, shall be made on the basis of actual, single-rate lodging expenses incurred and shall be supported by the original official receipt of the lodging place or other suitable documentation. Subject to applicable lodging expense limitations established pursuant to K.S.A. 75-3207a and amendments thereto, reimbursement for lodging expenses, or direct payment of lodging expenses to the lodging establishment, shall be limited to the lodging establishment's lowest available rate for normal single occupancy on the day or days the lodging expense was incurred.

(2) Taxes associated with lodging expenses shall not be included in the applicable lodging expense limitation rates established pursuant to K.S.A. 75-3207a, and amendments thereto, and shall be paid as an additional reimbursement.

(e) Lodging expense limitations; exception. Specific exceptions to the applicable dollar limitation on lodging expenses may be made pursuant to K.S.A. 75-3207a, and amendments thereto. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207 and 75-3207a; effective, E-80-10, July 11, 1979; effective May 1, 1980; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 1990; amended, T-1-8-14-90, May 1, 1990; amended Oct. 8, 1990; amended, T-1-9-26-91, Oct. 1, 1991; amended Nov. 18, 1991; amended, T-1-1-1-93, Jan. 1, 1993; amended Feb. 22, 1993; amended, T-1-6-28-95, July 1, 1995; amended Oct. 27, 1995; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997; amended July 1, 1998; amended July 1, 1999; amended Feb. 15, 2002; amended July 1, 2010; amended Feb. 5, 2016.)

1-16-18a. Designated high-cost geographic areas; exceptions; conference lodging.

(a) For official travel to and from, or within, any designated high-cost geographic area in which the traveler is required to sleep away from home, the applicable subsistence allowance rate for that designated high-cost geographic area may be paid. However, reimbursement on this basis shall not be allowable if the area is only an intermediate stopover at which no official duty is performed or if the subsistence expenses incurred relate to relocation, to travel to seek residence quarters, or to travel to report to a new permanent duty station or to temporary quarters.

(b) Reimbursement for travel in designated high-cost geographic areas shall be at the prescribed designated high-cost geographic area rate, unless the agency establishes a reduced rate as provided in K.A.R. 1-16-15. If an out-of-state trip is to two or more destination cities with different subsistence allowance rates, the subsistence allowance rate shall change subject to and on application of the appropriate meals allowance as determined by the time of arrival at the second destination city.

(c)(1) If an employee is required or authorized to attend a conference, the agency head or the agency head's designee may approve reimbursement or direct payment of actual lodging expenses. Before the date of travel, the employee shall submit to the agency head or the agency head's designee conference materials indicating that the conference will be held at or in connection with a lodging establishment with rates exceeding both the applicable lodging expense limitation established under K.A.R. 1-16-18 and the exception provided in K.S.A. 75-3207a, and amendments thereto.

(2) The reimbursement or direct payment of actual lodging expenses shall be effective for the approved conference and for official state business related to the conference and shall be applicable only to the state employee attending the conference.

(3) For purposes of this regulation, the term "conference" shall mean any seminar, association meeting, clinic, colloquium, convention, symposium, or similar gathering that is attended by a state employee in pursuit of a goal, obligation, function, or duty imposed upon a state agency or performed on behalf of a state agency. (Authorized by and implementing K.S.A. 2015 Supp. 75-3207a; effective, E-80-10, July 11, 1979; effective May 1, 1980; amended May 1, 1981; amended, E-82-14, July 1, 1981; amended May 1, 1982; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended, T-87-26, Oct. 1, 1986; amended May 1, 1987; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended July 1, 1990; amended, T-1-1-1-93, Jan. 1, 1993; amended Feb. 22, 1993; amended April 1, 1996; amended July 1, 1998; amended July 1, 1999; amended July 1, 2010; amended Feb. 5, 2016.)

1-16-18b. Sharing of lodging or travel expense reimbursement.

State employees or officials who are eligible to receive reimbursement for lodging expenses incurred in connection with in-state travel shall not be required to share lodging accommodations with other state employees. (Authorized by and implementing K.S.A. 75-3207; effective, T-87-26, Oct. 1, 1986; amended May 1, 1987.)

1-16-19. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; revoked, E-69-18, Aug. 14, 1969; revoked Jan. 1, 1970.)

1-16-20. Miscellaneous expense definition. Miscellaneous expense shall mean any expense deemed necessary in the conduct of the official business of the state that is not included in the categories of subsistence allowance, mileage, or fares in lieu of mileage and state-owned vehicle operation. All miscellaneous expenses shall be claimed as "miscellaneous nonsubsistence expense" on the travel reimbursement form as prescribed by the director of accounts and reports and shall include items listed under subsections (b) through (g).

(a) Receipts. A receipt evidencing a payment shall be obtained for each transaction involving miscellaneous expenditures, except taxi fares, telephone calls, telegrams, and intracity streetcar, bus fares, and limousine service.

(b) Baggage. Charges for baggage in excess of the weight or size carried free by transportation companies shall be allowed if the excess baggage is used for official business. Charges for the storage of baggage may also be allowed if it is shown that the storage was due to official business. Specific justification shall be submitted with the travel reimbursement form, as prescribed by the director of accounts and reports.

(c) Telephone and facsimile messages. Expenses for official telephone and facsimile messages that must be paid for by the traveler shall be allowed. Toll and local calls and facsimiles shall be supported by documentation submitted with the travel reimbursement form as prescribed by the director of accounts and reports, showing the date, the city or town called or faxed, the name of the person or firm called or the place to which the fax was sent, and the cost of each call or fax.

(d) Stenographic services. Charges for official stenographic services shall be allowed while on official travel.

(e) Purchase of supplies. The purchase of stationery and all other similar supplies shall be allowed in emergencies warranting the use for handling official business while on official travel.

(f) Transportation by common carrier or special conveyance. The cost of common or special conveyance transportation tickets shall be considered a miscellaneous expense.

(g) Taxicabs. Taxicab charges shall be claimed for reimbursement as miscellaneous expenses. Both points of origin and destination for each such fare shall be shown on a travel reimbursement form, as prescribed by the director of accounts and reports.

This regulation shall be effective on and after July 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended July 1, 2010.)

1-16-21. Registration fees. The payment of registration fees which are required as admittance or attendance fees for participation in meetings shall be allowed. (a) Advance payment of registration fees shall be made upon application when supported by an announcement of the meeting indicating the cost of such registration fees.

(b) Reimbursement of registration fees shall be made when such request is supported by the official receipt of the meeting, when available, or upon declaration of the employee that he or she attended the meeting and paid the registration fee.

(c) Expenditures for the payment of registration fees for obtaining the privileges of membership or other personal benefits from an organization are not reimbursable. Memberships in organizations must be in the name of the state agency. (Authorized by K.S.A. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended May 1, 1978.)

1-16-22. Subsistence and lodging expenses; students, inmates, prisoners and patients. When the employee finds it necessary to expend funds for meals or lodgings of students, inmates, prisoners or patients while on official travel, a claim for those expenses shall be made on a reimbursement basis supported by receipts or by the appropriate subsistence rate. The amount reimbursable for students shall not exceed the established limitations for state officials or employees. (Authorized by and implementing K.S.A. 75-3207; effective Jan. 1, 1966; amended, E-69-18, Aug. 14, 1969; amended Jan. 1, 1970; amended July 12, 1993.)

1-16-23 to 1-16-27. (Authorized by K.S.A. 1974 Supp. 75-3207; effective Jan. 1, 1966; revoked, E-74-4, Nov. 2, 1973; revoked May 1, 1975.)

Article 17.—USE OF STATE-OWNED OR -OPERATED MOTOR VEHICLES ON OFFICIAL STATE BUSINESS

1-17-1. Use of state-owned or operated motor vehicles on official state business; applicability; definitions. (a) The rules and regulations in this article shall apply, except as may be expressly indicated, to the use, charges for use, or reimburse-

ment for use, of all motor vehicles owned, leased or operated by an agency, officer, or employee of the state when on official state business.

(b) For the purpose of these rules and regulations, the following terms shall have the meanings described.

(1) "State-owned or operated motor vehicles" means all motor vehicles, including privately-owned motor vehicles, authorized for use on official state business.

(2) "State-owned or leased motor vehicles" means only those motor vehicles owned or directly leased by the state or its agencies and specifically excludes privately-owned motor vehicles.

(3) "Official state business" means the pursuit of a goal, obligation, function, or duty imposed upon a state agency or performed on behalf of a state agency.

(4) "Secretary" means the secretary of administration.

(5) "Motor pool" means the central motor pool or any branch thereof established pursuant to K.S.A. 75-4602 *et seq.* and any amendments thereto. (Authorized by K.S.A. 75-4608; implementing K.S.A. 75-4604; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended Nov. 18, 1991.)

1-17-2. Same; use of state-owned or leased motor vehicles. (a) State-owned or leased motor vehicles shall only be used for official state business and shall only be operated by a person who has a valid driver's license and who is:

(1) an officer or employee of the state of Kansas; or

(2) any other person who has been approved by the secretary or the secretary's designee to operate a state-owned or leased motor vehicle while engaged in official state business.

(b) Only employees of the state or a person or persons reasonably engaged in and accompanying a state employee or other person approved under subsection (a) on official state business shall be allowed to ride in a state-owned or leased motor vehicle. (Authorized by and implementing K.S.A. 75-4608; effective, E-74-4, Nov. 2, 1973; effective, E-76-17, March 27, 1975; effective May 1, 1975; amended May 1, 1976; amended Nov. 18, 1991.)

1-17-2a. State-owned or leased vehicles; travel from employee's residence to his or her official work station. (a) (1) State-owned or leased motor vehicles shall not be used to com-

mute between the employee's residence and the employee's official work station, except:

(A) when parking the vehicle at the official work station overnight subjects the vehicle to a high risk of vandalism;

(B) when the vehicle is used by an official or employee who is regularly called to duty after normal work hours in connection with law enforcement activities or dealing with emergencies which result from an act of God; or

(C) for trip vehicles assigned to the traveler, on the evening of the work day immediately preceding the date of travel or the evening of the workday in which travel is completed.

(2) When the state-owned or leased motor vehicle is authorized to be used for travel to an employee's place of residence under paragraphs (1)(A) and (1)(B), the "reasonable distance" one-way between the employee's official work station and residence shall not exceed 10 miles unless the 10-mile limitation is specifically exempted by the secretary or the secretary's designee. For trip vehicles assigned to a traveler under paragraph (1)(C), "reasonable distance" shall be based on a determination that driving the vehicle home will not increase the total one-way trip mileage between the official work station and the destination by more than 10 miles.

(b) This regulation shall not apply to:

(1) an employee whose residence has been designated as the official work station because over 50% of the employee's work time involves direct travel from his or her residence; or

(2) state-owned or leased motor vehicles acquired or assigned for use in the state vanpool program. (Authorized by and implementing K.S.A. 75-4608; effective May 1, 1981; amended, T-87-17, July 1, 1986; amended May 1, 1987, amended Nov. 18, 1991.)

1-17-3. Same; use of state-owned or operated motor vehicles; responsibility of operator.

The operator of a state-owned or operated motor vehicle shall be responsible for operating the vehicle in a safe and prudent manner and in accordance with all applicable county, township, city ordinances and state laws pertaining to the operation of motor vehicles. Any fines or penalties arising from the operation of a state-owned or operated motor vehicle in an unlawful manner shall be and are the responsibility and obligation of the operator. (Authorized by K.S.A. 1974 Supp. 75-3706, 75-4608; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975.)

1-17-4. Same; use of state-owned or operated motor vehicles; compliance with regulations; condition precedent. Compliance with the provisions of these rules and regulations shall be a condition precedent to the right to operate or continue to operate a state-owned or operated motor vehicle on official state business or to be reimbursed for any expense that may, by law, or hereinafter in these rules and regulations, be allowed. (Authorized by K.S.A. 1974 Supp. 75-3706, 75-4608; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975.)

1-17-5. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1984.)

1-17-5a. Permanently-assigned vehicles.

(a) Any agency desiring to have a permanently-assigned motor pool vehicle may apply to the director of the central motor pool. The director shall approve the assignment if:

(1) the vehicle is driven no less than 18,000 miles per year when the driver or agency is located in Topeka and Shawnee County;

(2) the vehicle is driven no less than 15,000 miles per year when the driver or agency is located outside Topeka and Shawnee County;

(3) the employee to whom the vehicle is to be permanently assigned is required by the employee's official duties to travel at least 50% of the time;

(4) the vehicle is required for special service and equipped with two-way radio or other apparatus rendering the vehicle unusable for normal travel; or

(5) the vehicle is used for a special purpose, such as hauling special tools or equipment, transporting handicapped people or other special needs.

(b) If special equipment must be added to a central motor pool vehicle, the agency to whom the vehicle is assigned shall be responsible for the expense of installing that equipment.

(c) Upon exchange or retirement of any permanently-assigned vehicle, the agency shall remove any special equipment placed on or in the vehicle and repair all holes or other damage before return to central motor pool. (Authorized by K.S.A. 75-4608; implementing K.S.A. 75-4604; effective May 1, 1984.)

1-17-6. Requests for state-owned or leased motor vehicles on a daily or trip basis. Requests for motor pool vehicles shall be made

of the motor pool's administrative officer by the requesting operator submitting a requisition form to the motor pool at the time the vehicle is needed, or as the secretary may otherwise allow. The following information shall be required on the requisition form: (a) Name of driver and driver's license number;

(b) Agency;

(c) Date and hour the vehicle is needed;

(d) Type of vehicle (sedan, station wagon, van, pickup, etc.); and

(e) Destination and time of return.

If it is later determined that the vehicle is not needed, the motor pool shall be notified promptly. If the agency requesting the vehicles does not give prompt notice of cancellation, the motor pool may charge the minimum daily rate. A requisition form shall be completed by the agency and signed by the agency head or a designee. The form, in duplicate, shall be presented to the motor pool. One copy shall be retained by the operator as authority to use the vehicle. Upon completion of the trip, the vehicle shall be returned to the motor pool and the operator shall indicate operation of the vehicle and list defects, if any, on the requisition form. The form shall be completed by the motor pool. The operator shall take one (1) copy for the agency and one (1) copy will be used for billing.

Procedures for the assignment on a daily or trip basis of state-owned or leased motor vehicles not within the central motor pool or a branch thereof, shall be approved by the secretary. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-17-7. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; revoked May 1, 1979.)

1-17-7a. Agency responsibility for vehicles rented to the agency for official duties.

At the time of employment, personnel of the state whose duties require operation of motor vehicles shall qualify for operating motor vehicles by having and maintaining in effect a valid driver's license. Each agency shall be responsible for proper care and maintenance of each permanently assigned vehicle and for adherence to maintenance and service schedules established by the secretary. Any damage or loss to the rented or permanently assigned vehicle or loss of equipment and costs related thereto on the vehicle may be chargeable

to the agency to which the vehicle is rented or permanently assigned. Such recoveries of costs to repair damages or to replace losses of vehicle equipment, excluding ordinary wear and tear, is authorized and may be pursued from available funds of the agency to whom the vehicle is rented or permanently assigned. In the event a vehicle is completely destroyed, the amount of such loss shall be the undepreciated book value of the vehicle. (Authorized by K.S.A. 75-4608; implementing K.S.A. 75-4607; effective May 1, 1979; amended May 1, 1981.)

1-17-7b. Written accident reports required. The following forms shall be completed and filed by the employee driver or someone designated by the employee's immediate supervisor: (a) Employee report of accident form shall be filed with the secretary or employee designated at the central motor pool.

(b) Accident investigating officer's report shall be filed with the secretary or employee designated at the central motor pool.

(c) Insurance company report form as required shall be submitted to the insurance company.

(d) Letter of the employee's immediate supervisor shall be submitted stating all facts obtained from the supervisor's investigation, and the supervisor's opinion concerning the accident. The letter report shall state the supervisor's recommendations concerning the establishment of negligence as it might apply to agency personnel.

(e) Copies of such reports and letters shall be filed in the individual employee's personnel files. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective May 1, 1979.)

1-17-7c. Accident repairs. Employees are prohibited from making personal payments for repairs to motor pool vehicles as a result of accidents. Regular state purchasing and accounting procedures shall apply for payment of vehicle accident repairs. In cases where the liability is with the other party involved, checks for settlement and repair costs by liable party or insurance company shall be remitted directly to the department of administration, central motor pool. Any agency employee involved shall initiate any claim against any other party involved and assist in the collection of payment for vehicle repairs or replacement, if liability is with the non-state party. Notice of problems or delays in repairs to damaged vehicles and date of payment to repair shop shall be furnished

to the central motor pool. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective May 1, 1979.)

1-17-8. Same; use rates and charges for motor pool vehicles. Motor pool vehicle use rates will be charges based on the actual cost of operating the motor pool, including reasonable overhead costs, vehicle depreciation, public liability insurance, and all operating, servicing, repair and replacement costs of all state-owned or leased vehicles assigned to the motor pool. An agency shall reimburse the motor pool within thirty days of date of billing. The basis for billing on passenger cars and station wagons shall be on miles operated with a minimum of 50 miles per day or 1,000 miles per month. A standard schedule of rates shall be promulgated and furnished each agency. (Authorized by K.S.A. 1974 Supp. 75-4601 *et seq.* and 75-3706; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975.)

1-17-9. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1981.)

1-17-10. State-owned or leased motor vehicles; travel records. (a) Each state agency shall ensure that travel records are maintained for each state-owned or leased motor vehicle assigned to the agency.

(b) For daily and trip assignments, each operator shall maintain an accurate record of mileage for the vehicle on forms prescribed by the secretary. The beginning and ending mileage shall be shown. Each driver shall sign the form certifying the daily or trip mileage, list all expenditures incurred, and attach all receipts to the form at the time of returning the vehicle.

(c) For each permanently assigned vehicle, the operator shall maintain a daily log of mileage, use, and expenses incurred in the operation of the vehicle on forms prescribed by the secretary. Each agency head or a designee shall submit the daily logs for each central motor pool vehicle to the secretary or the secretary's designee not later than five working days following the end of each month.

(d) The head of any state agency may request that the secretary approve an exemption from some or all of the record-keeping requirements of this regulation for the entire agency or some of the agency's employees. Such an exemption may be approved upon a finding by the secretary that the exemption is necessary or desirable in order to meet

the reasonable operational needs of the agency. The exemption may be revoked by the secretary at any time. (Authorized by and implementing K.S.A. 75-4608; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1981; amended Nov. 22, 1996.)

1-17-11. State-owned or operated motor vehicles; verification of mileage; point of duty in interstate travel. For the purpose of computing mileage reimbursement, travel shall be deemed to be by way of the usually traveled, most direct route. Information and maps of the department of transportation shall be used in verifying mileage as reported or claimed by the traveler. Out-of-state mileage shall be based on mileage figures published by the American automobile association. In official interstate travel, the employee's hotel may be considered as a point of official duty. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-17-12. Supplies, service, maintenance, repair, and storage of state-owned or leased motor vehicles. Supplies for, service, maintenance, repair, and storage of state-owned or leased motor vehicles shall be performed or arranged for under the supervision of the secretary or a designee and pursuant to contracts for such supplies, service, maintenance, repair, and storage and the facilities therefor entered into by the director of purchases or the secretary pursuant to K.S.A. 75-4605. The cost of such supplies, services, maintenance, repair, storage, and the facilities therefor, for state-owned or leased motor vehicle in a motor pool shall be included as part of the mileage charge made to user agencies. For state-owned or leased motor vehicles not assigned to the motor pool, the actual cost of such supplies, services, maintenance, repair, and storage, shall be borne by the agency incurring the same. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-17-13. Expenses incurred in the operation of state-owned or leased motor vehicles.

(a) While on official state business, any operator may purchase operating or maintenance items or services, including gasoline, oil, tire repairs, and lubrication, for a state-owned or leased motor vehicle.

(b) (1) Except as authorized by the agency head, each operator shall purchase all gasoline for state-

owned or leased vehicles from self-service gasoline pumps.

(2) If open-end contracts for discount purchase of gasoline, oil or services are entered into by the director of purchases, those contracts shall be used wherever possible.

(3) Except in emergencies, tires shall be purchased under any applicable contract established by the director of purchases for state vehicle tires.

(4) If a special credit card is issued to secure operating or maintenance items or services, the card shall be used whenever possible.

(c) Other expenses, including charges for ferries, bridges, parking or toll roads, if paid by the operator, shall be submitted for reimbursement as permitted and in the manner required by the rules and regulations governing travel expenses. (Authorized by K.S.A. 75-3706, 75-4608; implementing K.S.A. 75-4608; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended June 27, 1994.)

1-17-14. Repairs or purchases for central motor pool vehicles. Except as authorized by K.A.R. 1-17-15, no obligation for repairs or purchases in excess of \$75 shall be incurred without the prior approval of the central motor pool director. (Authorized by K.S.A. 75-3706, 75-4604; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1986.)

1-17-15. Emergency repairs or purchases for central motor pool vehicles. Repairs or purchases necessary to safely drive a central motor pool vehicle to the immediate destination may be reimbursed upon justification and approval by the director of the central motor pool. No obligation for repairs or purchases in excess of \$200 shall be incurred without the prior approval of the central motor pool director. (Authorized by K.S.A. 75-3706, 75-4604; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1986.)

1-17-16. Parking for and return of state-owned or leased motor vehicles.

A state-owned or leased motor vehicle assigned on a trip or daily basis shall be returned to the proper motor pool as soon as the state business for which the vehicle was used is completed. If use of the vehicle is required after motor pool hours, it shall be returned to the motor pool by 8:00 a.m. the following morning. Persons desiring to park their personal car while using a state car on a trip basis may leave their car

in the space occupied by the state car. Any state car parked at a driver's domicile shall be kept in a garage or driveway, if available. No expense for parking a state-owned or leased motor vehicle at an employee's domicile shall be allowed or paid. Expenses for parking a motor vehicle at the employee's official station or at a duty post shall be reimbursed to the employee by the agency in accordance with established procedures governing reporting and claiming reimbursement for such travel expenses. On official travel, a state vehicle shall be kept in a hotel or motel parking lot, if available; however, parking on streets will be permitted when not in violation of a local ordinance. Any vehicle assigned to an individual or agency shall have parking fees, if required, at the official station, paid by that person or agency. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

I-17-17. State-owned or leased motor vehicles; towing charges. Towing charges resulting from failure of a motor pool vehicle shall be paid by the motor pool. When towing service is required within approximately twenty-five (25) miles of Topeka, the operator shall call the motor pool and request towing services; in all other instances, the driver shall call the nearest garage. Towing charges for other state-owned or leased motor vehicles shall be the responsibility of the agency to whom the motor vehicle is permanently assigned. Towing and service charges incurred through improper parking of the motor vehicle by the operator shall be charged to the operator. Towing due to driver negligence may be charged to the agency. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

I-17-18. State-owned or operated motor vehicles; accident reporting requirements. If an accident should occur involving any state-owned or operated motor vehicle, the accident should be immediately reported by the operator or some reliable person to the highway patrol or other law enforcement agency. Statements should not be made to anyone except law enforcement officers, or representatives of the state's insurance company, or motor pool or agency officials. Information should be secured about the other party so a complete report can be made on the report form provided. In the event of an accident in which there are serious injuries or death, tele-

phone collect the claim department of the state's insurance company, or the employing state agency. The employee's immediate supervisor shall be notified at once by an employee involved in an accident. If the employee is unable to notify the employee's supervisor, then the first employee having knowledge of the accident shall do so. In case of a severe accident, the employee involved or the employee's immediate supervisor shall immediately contact the secretary or employee designated at the motor pool office and report the accident. A complete written report of all accidents shall be made to the secretary or a designee within twenty-four (24) hours of details concerning each accident. It shall be the responsibility of the employee involved in an accident to protect state property from theft or further damage. If the employee is not able to do so, then the employee's immediate supervisor or first employee having knowledge of the accident shall do so. The location of any damaged vehicle shall be reported to the secretary or employee designated at the motor pool as soon as such information is available. Damaged vehicles shall be towed to state property to avoid storage charges. Other reports to the highway patrol, or other law enforcement officials, shall be made where required. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

I-17-19. State-owned or leased motor vehicles; signs, decals, and bumper stickers prohibited. No agency or operator shall permit any sign, decal, or bumper sticker to be affixed to or remain on any state-owned or leased motor vehicle unless it has been placed there under the written authority of the secretary. (Authorized by K.S.A. 75-3706, 75-4601 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

Article 18.—MAXIMUM ALLOWANCE FOR MILEAGE FOR USE OF A PRIVATELY OWNED CONVEYANCE FOR PUBLIC PURPOSES

I-18-1. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3203; effective, E-74-18, April 5, 1974; effective, E-76-5, Jan. 1, 1975; effective, E-76-17, March 27, 1975; effective May 1, 1976; revoked May 1, 1979.)

I-18-1a. Mileage rates. Any agency designee may approve travel reimbursement to an em-

ployee or public official who has been authorized to use a privately owned conveyance to engage in official business for an agency according to any of the following:

(a) The mileage rate published in the current informational circular by the division of accounts and reports;

(b) the lower cost of another mode of transportation that is available, if the agency designee has informed the employee or public official of the lower specified rate in advance of the travel; or

(c) the mileage rate specified in subsection (a), if the agency designee determines that the use of the other mode of transportation that is less costly would not be advantageous or the employee or public official has a disability that requires the use of a privately owned vehicle that is specially equipped. (Authorized by K.S.A. 75-3201 and 75-3203; implementing K.S.A. 75-3201, 75-3203, and 75-3203a; effective May 1, 1979; amended, E-80-10, July 11, 1979; amended May 1, 1980; amended, E-81-14, June 12, 1980; amended May 1, 1981; amended, T-83-19, July 1, 1982; amended May 1, 1983; amended, T-84-20, July 26, 1983; amended May 1, 1984; amended, T-85-46, Dec. 19, 1984; amended, T-86-7, April 1, 1985; amended May 1, 1985; amended, T-86-7, May 1, 1985; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended, T-1-2-28-90, March 1, 1990; amended April 23, 1990; amended, T-1-11-14-90, Nov. 14, 1990; amended Jan. 7, 1991; amended July 12, 1993; amended, T-1-6-28-95, June 28, 1995; amended Aug. 4, 1995; amended, T-1-7-1-96, July 1, 1996; amended Oct. 18, 1996; amended, T-1-7-1-97, July 1, 1997; amended Aug. 8, 1997; amended July 1, 1998; amended, T-1-3-18-99, April 1, 1999; amended June 24, 1999; amended, T-1-7-7-00, July 15, 2000; amended Nov. 3, 2000; amended, T-1-7-2-01, July 2, 2001; amended Oct. 26, 2001; amended Nov. 5, 2021.)

1-18-2. (Authorized by K.S.A. 1975 Supp. 75-3203, 75-3706, 75-4608; effective, E-74-18, April 5, 1974; effective, E-76-5, Jan. 1, 1975; effective, E-76-17, March 27, 1975; effective May 1, 1976; revoked Nov. 5, 2021.)

Article 19.—HOUSING, FOOD SERVICE AND OTHER EMPLOYEE MAINTENANCE

1-19-1. Applicability. (a) This regulation is applicable to all housing, food service and other

employee maintenance furnished by a state agency, and to all officers or employees who receive such housing, food service, or other employee maintenance as these terms are defined herein. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-2. Definitions. For purposes of this regulation, the following definitions will apply: (A) Housing—shall include all sleeping places, place of abode, rooms or residences, place of habitation, quarters or facilities owned or leased by the state and used by state employees and others for dwelling purposes.

(B) Food service—shall mean any article used as food or drink by a state officer or employee and furnished as raw substance to be prepared for use for human consumption, including meat, fish, eggs, vegetables, bread, condiments, ice cream, soft drinks, beverages, confections or as prepared meals provided by a food service business, an agency kitchen or dining facility, but excluding meal subsistence allowances paid to state officers or employees in travel status. Food service may be provided to qualified officers or employees in the following manner.

(1) By a cash allowance representing an adjustment to the salary for the position held in lieu of furnishing actual raw commodities, labor and other components necessary for providing a finished food service product.

(2) By allowing officers or employees access to agency dining facilities which offer, for any given meal period, the same meal, with a limited choice in beverage, to every person utilizing the dining facilities.

(3) By allowing officers or employees access to agency dining facilities which offer, for any given meal period, a choice in both meal and beverage items for which unit prices are established.

(C) Other employee maintenance—shall include certain pecuniary or material benefits which a state officer or employee might receive with or without charge by virtue of his office or position for the purpose of being maintained or supported.

(D) Wage or salary for the purpose of these regulations shall include the regular cash salary plus any remuneration provided in a medium other than cash, which shall be computed on the basis of the fair and prevailing value or cost of such items in the locality at the time of payment or as provided herein. (Authorized by K.S.A. 1974 Supp. 75-

2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-3. Policy. It shall be the state policy that where agency's facilities or services are available for providing housing, food service or other employee maintenance, they may be furnished to employees with adjustments to the cash wages or salaries of the position involved as provided herein.

No officer or employee shall accrue any type of housing, food service or other employee maintenance benefit, by virtue of his position, unless such benefit is authorized by statute or regulation as provided herein.

Charges for the value of housing, food service or other employee maintenance which are deemed to be primarily for the benefit of the employee will be deducted from the employee's cash salary or collected in cash from the employee, as provided herein.

The value of housing, food service or other employee maintenance which are deemed to be for the benefit of the employer shall be provided without charge to the employee as provided in regulation 1-19-4 (A) 4 and 1-19-4 (B) 4. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-4. Benefits which may be provided to employees. (a) Food service. (1) Agencies operating dining facilities for patients, inmates, and students may provide food service or meals to employees subject to the conditions contained in this regulation.

(2) When an agency operates its dining facility on the basis of a single standard menu, the agency shall establish rates for meals based upon a recovery to the state of cost as provided in K.A.R. 1-19-9. Employees desiring to take advantage of such food service may purchase meal tickets or booklets containing individual meal accountability or pay the flat monthly rate established for food service, without individual meal accountability according to the practice established in the agency. Where meals are provided for the benefit of the employer as set out in this regulation, meal tickets, booklets or the monthly rate established for such benefits shall be recorded in the payroll records to comply with reporting requirements for social security, Kansas public employees retirement system, unemployment compensation, and workers compensation. Single meal tickets may be sold by the agency for

cash at the unit meal rate established, if such practice is established by the agency.

(3) Where an agency operates its dining facility on the basis of the selection of individual food items, the agency shall establish rates for each item based upon a recovery to the state of cost. Employees desiring to take advantage of such facility shall pay the established unit price for each item purchased. Payment shall be made by the custom established in the agency, *i.e.*, by tendering cash to a cashier or by tendering a meal ticket for cancellation of the amount(s) due. If meal tickets are used, the employee shall purchase meal tickets, at a cost fixed by the agency. Where meals are provided for the benefit of the employer as set out in this regulation, meal tickets, booklets, or the monthly rate established for such benefit shall be recorded in the payroll records to comply with reporting requirements for social security, Kansas public employees retirement system, unemployment compensation, and workers compensation.

(4) The value of meals furnished to an employee shall be excluded from wages and salaries for income and withholding tax purposes under internal revenue code section 119, if the meals are furnished on the agency premises, for the convenience of the employer during the employee's working hours in order to have the employee available, (A) for emergency call during the meal period, or (B) when the employee is regularly engaged in a function in which the peak workload occurs during the normal lunch hours, and the employee must be restricted to a short meal period and could not be expected to otherwise secure proper meals off the premises within the meal period allowed. In order to demonstrate that the value of such meals are deductible it must be shown that emergencies requiring duty assignments have actually occurred, or can reasonably be expected to occur and which have resulted or will result, in the agency head or a designee calling on the employee to perform job duties during the meal period.

(5) Agencies shall procure their supplies of meal tickets or booklets through the director of printing or the local agency printing service according to the specifications prepared by the agency and approved by the director of accounts and reports.

(6) The charge for meals provided for the benefit of employees shall be deducted from the employee's pay by a maintenance charge payroll deduction at the rates established, on the payroll, or by cash purchase from the agency.

(7) Agencies shall maintain an accounting sys-

tem and records for all meal transactions. Such system and records proposed to be maintained by the agency shall be submitted to the director of accounts and reports for approval.

(b) Housing. (1) Where state-owned or leased housing facilities are available, agencies, departments, and institutions may provide housing to employees. Such housing may also be occupied by spouses and other members of the immediate family of a state employee when an apartment, dwelling, or residence is available.

(2) The value and rental charges established for housing are: (A) The value and rental charge shall be determined as provided in the approved rate schedule adopted under K.A.R. 1-19-9 (b).

(3) Every occupant of a house, duplex, or house trailer which has separate utility meters or separate heating fuel sources shall pay for such services directly to the vendor. (A) Agencies shall begin the installation of separate utility meters and heating fuel sources for those houses, house trailers, and duplexes where it is feasible to make such installations. Where it is not practical to install meters the state agency shall designate a rate to be charged to the employee to cover the cost to the agency of providing such services.

(B) Employees living in their own house trailers which are parked on state property shall pay to the state the sum determined by the state agency to cover the costs to the agency for lot rental, heat, and utilities if they do not have separate utility meters and heating fuel sources.

(4) A full deduction of the value established for housing, lot rent, utility meters or heating fuel sources which are provided by the employer as a part of the rental value shall be allowed from wages and salaries to comply with internal revenue code section 119, for income and withholding tax purposes if the occupant is required by the agency to be available at the duty location twenty-four (24) hours per day, every day—except for authorized time off—to meet job requirements. In order to qualify for this reduction: (A) The lodging must be furnished on the agency premises and at the place of employment with the state agency.

(B) The lodging must be furnished because the employee is required to be available for duty at all times or because the employee could not perform the services required unless such lodging is furnished.

(C) The employee is required to accept such lodging as a condition of employment in order to properly perform the job duties.

(D) The head of each agency shall certify on the form prescribed those positions and employees on such positions who are required to live in the housing provided.

(5) Each agency is responsible for the collection of the charges prescribed through payroll deductions or cash collections, or both, and for the recordkeeping in connection with such collections.

(6) Agencies shall notify the director of accounts and reports of the following types of changes in housing on forms prescribed.

(A) Square footage added to an existing dwelling.

(B) Number of occupants in a dwelling.

(C) Type of fuel used to heat a dwelling.

(D) Source of water supply.

(E) Separate utility meters or heating fuel sources installed.

(F) New dwelling constructed or purchased.

(G) Existing dwelling converted into living quarters.

(H) Existing dwelling abandoned or converted to other use.

(I) Condition of a dwelling changed through remodeling, interior decorating, or repair.

(7) The identification number assigned to every house, duplex, apartment, room, and house trailer in the approved rate schedule shall be affixed to the entrance way of each individual housing unit in numbers not less than one (1) inch high by each agency.

(8) Employees visiting the agency on official business who stay overnight in a room provided by the state shall pay the nightly rate prescribed by the agency. Records shall be maintained, showing the name of each such persons, the date(s) of stay, and the sum collected.

(9) Every occupant of state-owned or controlled housing who has telephone service for the occupant's convenience shall pay for such service directly to the vendor, and in all cases shall pay personal long distance telephone charges.

(c) Drugs, medical, or dental services. (1) Agency heads may authorize the use of agency drug supplies and medical or dental services, for employees, in cases of emergencies occurring during an employee's duty shift, or for the prevention of disease to which employees may be exposed while on the job.

(2) Drug supplies authorized for employee emergency or preventive disease treatment shall be prescribed by a medical doctor.

(3) Drug and medical services authorized in cases of emergencies as provided in this regula-

tion, or for preventive disease treatment may be given to the employee without charge.

(4) No drug supplies, or dental services, shall be continued beyond the initial emergency period authorized in this regulation, nor shall any such supplies or services be given or sold to, or purchased for, employees for non-emergency purposes, other than authorized preventive disease treatment.

(5) Agencies' accident records should include employee drug, medical and dental transactions.

(d) Laundry and cleaning services. (1) Agency heads may permit the laundering or cleaning in state operated facilities of uniforms for those employees required to wear uniforms on duty and household linen and drapes in state-owned housing. Such laundering or cleaning may be done without charge to the employee.

(2) Agency laundry and cleaning facilities shall not be used for the personal clothing of employees or members of their families.

(e) Benefits under rehabilitation or vocational training programs. (1) Student, patient, or inmate rehabilitation, or vocational training programs, where employees are authorized to take advantage of the services offered by the program may be provided subject to the limitations contained in this regulation.

(2) Where employees are taking advantage of such a program which involves the use of agency facilities or stocks, the employees shall be billed for the cost of any parts, materials, or supplies; plus a ten percent (10%) markup for administration; plus the cost of labor, if it is agency policy to pay students, patients, or inmates for their labor. These charges shall be paid to the agency in cash or may be deducted from the employee's salary at the discretion of the agency head.

(3) Where it is agency policy that students, patients, or inmates engaged in a rehabilitation or vocational training program shall be paid for their labor, the agency shall supervise all monetary transactions between the employee and the student, patient, or inmate, including arrangements for the labor, rates of pay, invoicing, and method of payment.

(4) Agencies shall keep records of all transactions involving student, patient, or inmate labor and, where applicable, agency stocks, furnished to employees. Records shall include the date, employee, student, patient, or inmate, program, supplies, break out of charges, and any other pertinent information as prescribed by the director of accounts and reports.

(f) Use of state-owned cars. The assignment and use of state-owned cars shall be in accordance with the provisions of applicable travel reimbursement and motor pool regulations.

(g) Awards for suggestion or work improvement proposals. Awards for suggestions by agency employees shall be considered as additional wages and be paid under the terms of the enabling legislation, regulation, or appropriation act on the agency payroll. (Authorized by K.S.A. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975; amended May 1, 1979.)

1-19-5. Benefits which may not be provided to employees. (A) Domestic help. No officer or employee of any agency will be furnished domestic help, except those working under authorized training programs as provided for in regulation 1-19-4 (E) and for classified domestic workers whose duty assignment is in state-owned or controlled housing.

(B) Motor pool supplies. No gasoline, oil, parts or other motor pool supplies will be furnished to an employee, from agency stocks or by direct purchase for a privately-owned vehicle, except as provided for in regulation 1-19-4 (E).

(C) Employee purchase discounts. Items purchased by the state shall not be resold to officers or employees, except for those convenience items regularly offered for sale through recognized canteens and then only at the price at which the item is regularly offered for sale.

(D) Commissary storeroom, warehouse or other privileges. No employees, or members of their families will charge purchases to the state or will draw food, rations, linens, household supplies, or any other expendables, from any agency storeroom, warehouse, kitchen, farm or other service, supply or production area, for their personal benefit or use.

(E) Monetary allowances. No monetary allowances will be given to employees in lieu of benefits.

(F) Charge accounts. No state-financed charge accounts or credit cards will be furnished or used for the personal benefit of employees or their families.

(G) Surplus institutional commodities. Commodities which are locally produced at an agency and which are surplus to the needs of the agency and its customer agencies may not be sold or furnished to employees or officers, except as authorized by statute, provided if such commodities are offered for sale to the general public, they

may be sold to employees at rates no lower than they are offered to the general public. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-6. Visiting state employees. State employees visiting agencies on official business may use agencies' dining facilities and pay the amount required under the cost recovery system established by the agency. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-7. Existing agreements and contracts. This regulation supersedes all existing rate schedules pertaining to employee benefits. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-8. Administration. (A) Payroll deductions. Total charges for housing, food service or other employee maintenance provided for the convenience of the employee which is deducted from each employee's monthly salary will be shown in a maintenance charge column on the monthly payroll.

(B) Cash. Maintenance charges collected in cash will be accounted for and deposited in the appropriate fund of the agency and remitted as provided by K.S.A. 75-4215 to the state treasurer.

(C) Records. Agencies will maintain records required to properly administer the provisions of this regulation. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

1-19-9. Rate schedule. Agencies shall immediately on the effective date of these regulations and annually thereafter, by June 1, adopt an accounting procedure and prepare a rate schedule for housing, food service, and other employee maintenance to be provided to employees for the following fiscal year and shall submit such schedule to the director of accounts and reports on forms provided for such purpose for approval. The approved rate schedule when submitted to the secretary of administration and approved by the governor shall become effective, provided that the secretary of administration may adopt interim rates pending approval of the governor which shall be in effect until adopted or amended by the governor.

The criteria used to develop the rate schedule are as follows: (a) Food service rates will be based on costs of direct raw food cost, additional direct labor cost incurred to serve employee's meals, and a surcharge for indirect cost of ten percent (10%) of the direct costs.

(b) Housing rates shall be determined by the fair rental value as recommended by the agency and determined by the director of accounts and reports or by a qualified appraiser employed by the agency to determine the prevailing fair market rental value of the housing in the immediate locality. The determinations of the fair rental value of housing shall include but not be limited to recognized cost factors for operating costs, annualized maintenance, repairs and replacement, amortized replacement cost of the fixed asset, and a management fee.

(c) Other maintenance charges shall be based on agency costs. (Authorized by K.S.A. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975; amended May 1, 1979.)

1-19-10. Permissive changes in rate schedule. Any agency may apply at any time to the secretary of administration for changes in the rate schedules provided for in these regulations, subject to the approval of the governor. (Authorized by K.S.A. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975; amended May 1, 1979.)

1-19-11. Food service and housing authorized by line item appropriation and provided primarily for public functions shall be exempt from the provisions of these regulations. (Authorized by K.S.A. 1974 Supp. 75-2961a, 75-3706; effective, E-74-46, Aug. 28, 1974; effective May 1, 1975.)

Article 20.—TRAVEL SUBSISTENCE ALLOWANCE

1-20-1 and 1-20-2. (Authorized by K.S.A. 1979 Supp. 75-3207, 75-3207a; effective May 1, 1976; amended, E-79-10, April 20, 1978; revoked, E-80-10, July 11, 1979; revoked May 1, 1980.)

Article 21.—UNITED STATES SAVINGS BOND DEDUCTION PROGRAM

1-21-1. Definitions. (a) "Director" means the director of accounts and reports.

(b) "Agency" means the agency employing the participating employee.

(c) "Payroll savings program" means the state of Kansas program for the purchase of United States savings bonds through state payroll deductions.

(d) "Participating employee" means an employee who has elected to participate in the payroll savings program.

(e) "Bond" means United States payroll savings bond.

(f) "Account" means the amount accumulated in the clearing fund toward the purchase of a specific bond on behalf of an employee.

(g) "Clearing fund" means the state of Kansas United States savings bond clearing fund.

This regulation shall take effect on and after December 17, 1995. (Authorized by K.S.A. 75-3706, 75-5530; implementing K.S.A. 79-5530; effective May 1, 1978; amended July 12, 1993; amended Dec. 17, 1995.)

1-21-2. Participation. (a) Any employee may elect to participate in the payroll savings program on an individual basis.

(b) Joint purchase of United States savings bonds by two or more employees shall not be permitted. However, any employee may establish multiple bond accounts in multiple denominations with a designated amount or percentage of the payroll deduction going to each account. Any employee may designate different owners, co-owners or beneficiaries for each bond purchased from that individual's account.

(c) Participation shall begin in the first payroll period following processing of the authorization form by the agency as prescribed by the director.

(d) Any participating employee may discontinue participation at any time, subject to the limitations set out in subsection (g).

(e) Any employee may elect to re-enroll at any time, subject to the limitations set out in subsection (g).

(f) Authorization changes shall be limited to:

(1) changes in the name, address or social security number of the owners, co-owners or beneficiaries;

(2) changes in the amount or the percentage of the payroll deduction designated for each account; and

(3) changes in the denomination of bond.

(g) All authorization changes shall take effect in the first payroll period following receipt of the prescribed authorization form by the agency.

This regulation shall take effect on and after December 17, 1995. (Authorized by K.S.A. 75-

3706, 75-5530; implementing K.S.A. 75-5530; effective May 1, 1978; amended July 12, 1993; amended Dec. 17, 1995.)

1-21-3. (Authorized by K.S.A. 75-3706, 75-5530; effective May 1, 1978; revoked July 12, 1993.)

1-21-4. Limitations. (a) Each participating employee shall designate a whole dollar amount to be deducted in each payroll period which shall:

(1) be at least \$5.00 per payroll period; and

(2) not exceed the amount of the employee's net pay after all other payroll deductions.

(b) Each participating employee may designate different owners, co-owners or beneficiaries of record.

(c) Each participating employee may have multiple active accounts in multiple denominations.

(d) The following denominations of bonds shall be offered:

	Face Value	Cost
(1)	\$100.00	\$50.00
(2)	\$200.00	\$100.00
(3)	\$500.00	\$250.00
(4)	\$1,000.00	\$500.00 (effective January 1, 1996)
(5)	\$5,000.00	\$2,500.00 (effective January 1, 1996)
(6)	\$10,000.00	\$5,000.00 (effective January 1, 1996)

(e) Employees may purchase multiple bonds in multiple denominations for issue in the same pay period.

This regulation shall take effect on and after December 17, 1995. (Authorized by K.S.A. 75-3706, 75-5530; implementing K.S.A. 75-5530; effective May 1, 1978; amended July 12, 1993; amended Dec. 17, 1995.)

1-21-5 and 1-21-6. (Authorized by K.S.A. 75-3706, 75-5530; effective May 1, 1978; revoked July 12, 1993.)

1-21-7. Custody of funds, disbursements, refunds and transfers. (a) Any payroll deduction in an amount insufficient to issue the denomination selected shall be accumulated and retained in the clearing fund, without interest, until:

(1) a sufficient amount is credited to the account to issue the denomination selected;

(2) the amount is refunded to the employee; or

(3) the amount is transferred to the state treasurer, as provided in subsection (d).

(b) Bonds in the denomination selected shall be purchased and issued by the director within a reasonable time following each regular payday.

(c) The amount in an account shall be refunded on request to:

- (1) an employee who discontinues participation;
- (2) an employee who terminates employment; or
- (3) an employee's estate or authorized representative.

(d) If an account has been inactive for three years and no request for a refund has been filed, the balance in the account may be transferred to the state treasurer as unclaimed property, pursuant to K.S.A. 1992 Supp. 58-3909, at the director's discretion.

(e) If a bond is issued and a subsequent payroll adjustment transaction is processed which creates an insufficient bond account for the employee, agency funds shall be charged for the amount of the adjustment included in the purchase price of the bond. The agency shall be responsible for the recovery of these funds from the employee. (Authorized by K.S.A. 75-3706, 75-5530; implementing K.S.A. 75-5530; effective May 1, 1978; amended July 12, 1993.)

1-21-8. (Authorized by K.S.A. 75-3706, 75-5530; effective May 1, 1978; revoked July 12, 1993.)

1-21-9. (Authorized by K.S.A. 75-3706; effective May 1, 1978; amended May 1, 1979; revoked July 12, 1993.)

1-21-10 and 1-21-11. (Authorized by K.S.A. 75-3706, 75-5530; effective May 1, 1978; revoked July 12, 1993.)

1-21-12. Adoption of federal regulations. The regulations in 31 C.F.R., Part 351, Section 351.0-351.13 prescribed by the savings bond division of the bureau of the public debt, United States department of the treasury, as in effect on July 1, 1991, are hereby adopted by reference. (Authorized by K.S.A. 75-3706, 75-5530; implementing K.S.A. 75-5530; effective May 1, 1978; amended July 12, 1993.)

Article 22.—MOVING ASSISTANCE

1-22-1, 1-22-2, 1-22-3, and 1-22-4. (Authorized by K.S.A. 75-3219; effective May 1, 1979; revoked, T-1-4-26-93, April 26, 1993; revoked July 12, 1993.)

1-22-5. (Authorized by K.S.A. 75-3219; effective May 1, 1979; amended May 1, 1986; revoked, T-1-4-26-93, April 26, 1993; revoked July 12, 1993.)

Article 23.—STATE VANPOOL PROGRAM

1-23-1. Use of state-owned vans in the vanpool program; applicability; definitions.

These rules and regulations shall apply except as expressly indicated in this regulation, to the use, charges for use or reimbursement for use of all vans assigned for use in the vanpool program by all passengers and officers or employees as drivers. For the purpose of these rules and regulations, the following terms shall have the meanings hereafter described. The term "director" shall mean the director of the central motor pool of the department of administration. The term "motor pool" shall refer to the central motor pool or any branch thereof established pursuant to K.S.A. 75-4602 *et seq.* and any amendments thereto. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-2. Program administration. (a) The secretary of administration shall be responsible for overall supervision and for decisions regarding expansion or contraction of the scope of the vanpool program. To assist the secretary in making such policy decisions, a program review committee composed of the secretary of administration, the director of the Kansas energy office, the secretary of the Kansas department of transportation, or their designees, may be convened at the discretion of the chairperson. The chairperson of the committee shall be the secretary of administration or his or her designee. The committee may review instances of mishap or misconduct relating to program operations and, if necessary, recommend remedial action.

(b) For purposes of the vanpool program, ridership participation shall consist of one (1) qualified driver and at least seven (7) passengers, of which at least six (6) must be state employees, selected from applications filed with the central motor pool director to best meet the program goals set out in K.S.A. 1980 Supp. 75-46a02.

(c) The day-to-day operation of the vanpool program shall be the responsibility of the central motor pool. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-3. Passenger requirements. (a)(1) Each person desiring to participate on a month-

to-month basis in the vanpool program shall complete a written application and agreement to participate. The signed agreement to participate shall be filed with the central motor pool by the driver of the appropriate vanpool.

(2) Each person desiring to terminate participation in a vanpool shall give the driver written notice of that intention not less than two weeks before the termination date. The driver shall, in turn, notify the central motor pool.

(b) (1) The fare for participating in the vanpool program shall be determined for each individual vanpool and shall be based upon the costs of operating the vans, including reasonable overhead costs, depreciation reserve requirements for vehicle replacement, public liability insurance, all operating, servicing, repair and replacement costs, and maintenance of a contingency reserve.

(2) Maximum individual passenger fares shall not exceed $\frac{1}{7}$ of the assessed monthly vanpool costs.

(3) All passengers' fares shall be proportionately reduced with the participation of each additional passenger. All passenger's fares shall be paid monthly and shall be collected by the driver on or before the fifth day of the month following the month in which the costs were incurred. Passengers who do not comply with this requirement may be prohibited from further participation in the vanpool program, and may be replaced by prospective passengers from the vanpool program waiting list. Passengers denied further participation in the vanpool program may apply for reinstatement to the waiting list. (Authorized by K.S.A. 75-46a08; implementing K.S.A. 75-46a03 through 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981; amended May 1, 1984; amended, T-87-4, Jan. 27, 1986; amended May 1, 1987.)

1-23-4. Primary driver requirements. (a) Each person desiring to be a driver in the vanpool program shall apply to the central motor pool on the prescribed form. Each driver applicant shall meet the following minimum requirements:

(1) Each applicant shall possess a Kansas driver's license which is valid for the type of vehicle driven.

(2) Each applicant shall be able to provide a safe parking place for the van. The van shall not be parked on the street overnight, unless approved by the Central Motor Pool.

(3) Each applicant's driving record shall be screened according to the criteria set out in K.S.A. 40-277.

(b) All persons selected to be drivers in the vanpool program shall assume the following responsibilities:

(1) Each primary driver shall be responsible for the safe and prudent operation of the assigned vanpool in accordance with all applicable county resolutions, city ordinances and state laws pertaining to the operation of motor vehicles. Any fines or penalties arising from operation in an unlawful manner shall be the responsibility of the driver. The state of Kansas reserves the right to prohibit from further participation in the vanpool program any driver who operates a van in a manner which:

(A) interferes with the prompt pick-up and delivery of passengers in the vanpool;

(B) threatens the safety of vanpool passengers or any member of the general public; or

(C) habitually violates terms of contracts or rules and regulations and laws governing the vanpool program.

(2) Each primary driver shall be responsible for the collection of fares from passengers. Such fares shall be paid to the central motor pool by the sixth day of each month. Failure to remit those fares shall result in appropriate collection action.

(3) Each primary driver shall maintain accurate mileage and service logs for the vanpool. The mileage and service logs shall indicate beginning and ending mileage traveled in the course of normal vanpool operations, beginning and ending mileage accumulated in the course of personal use of the van and a current passenger list. A copy of the signed log, along with a list of all expenditures incurred and receipts for purchases or expenditures incurred shall be filed each month by the sixth day of the month with the central motor pool.

(c) Each person selected to be a primary or alternate driver in the vanpool program shall be eligible for reimbursement of any enrollment fee for a red cross multi-media first aid course, or the equivalent, and a national defensive driver course, or the equivalent. These fees shall be paid by the central motor pool on receipt of evidence of enrollment and successful completion of these courses. Leave with pay to attend the courses shall be allowed as authorized by K.A.R. 1-9-9.

(d) All persons selected as primary drivers in the vanpool program shall:

(1) be required to pay 25% of the individual passenger fare established for that van pool. When not functioning as primary driver for a period of more than one week, the full passenger fare shall be charged.

(2) have personal use of the van when it is not required for travel to the work place or return. However, the driver shall be required to pay for the personal use of the van at the prevailing vanpool mileage rate. Payment for such personal use shall be made on the sixth day of each month. (Authorized by K.S.A. 75-46a08; implementing K.S.A. 75-46a02 through 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981; amended May 1, 1984; amended, T-87-4, Jan. 27, 1986; amended May 1, 1987.)

1-23-5. Alternate driver requirements. Each vanpool shall have at least one (1) passenger who is a qualified alternate driver, other than the primary driver. This passenger shall, in the absence of the primary vanpool driver, assume all responsibilities for vanpool operations. Alternate drivers shall meet the same requirements as those set forth for primary vanpool drivers. If an alternate driver serves as the primary operator for a period exceeding one (1) week, he or she shall receive the same benefits as those accorded primary vanpool drivers for the duration of such services. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-6. Supplies, service, maintenance, repair and expenses of operation of state-owned vans. Supplies for, service, maintenance and repair of state-owned vans shall be performed or arranged for under the supervision of the director and pursuant to contracts for such supplies, service, maintenance and repair and the facilities therefor entered into by the director of purchases or the secretary of administration pursuant to K.S.A. 75-4605. The cost of such supplies, service, maintenance and repair and the facilities therefor for state-owned vans in the vanpool program, shall be reflected and be a part of the mileage charge made to each individual vanpool. While the vanpool driver may make occasional purchases of operating or maintenance items for a state-owned van such as gasoline, oil, tire repairs, greasing, etc., the normal purchases shall be made from the motor pool facilities. Wherever open-end contracts for discount purchase of gasoline, oil or services are entered into by the director through the director of purchases, the special credit cards issued for such contracts shall be used wherever possible. Such items as tires and other items designated by the director, shall be purchased under

the contract established by the division of purchases, department of administration. Expenses such as charges for ferry, bridges or toll roads and receipts covering such items of expenditures except unattended toll bridges and parking meters, shall be paid by the driver. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-7. Major and emergency repairs or purchases. Obligation for repairs to or purchases of a major nature for a state-owned van shall not be made without the prior authorization of the director. A major repair or purchase is defined as one which exceeds seventy-five dollars (\$75).

Emergency purchases immediately necessary to keep a state-owned van operating safely to the immediate destination may be reimbursed upon justification and approval by the director, but not in excess of two hundred dollars (\$200) without the approval of such officials prior to incurring the obligation for such expenditure. Towing charges resulting from failure of a motor pool van shall be paid by the motor pool. When towing service is required within approximately twenty-five (25) miles of Topeka, the driver shall call the motor pool and request towing services; in all other instances, the driver shall call the nearest garage. Towing and service charges incurred through improper parking of the motor vehicle by the operator will be charged to the driver. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-8. Accident reporting requirements. If an accident should occur involving any state-owned van, the accident should be immediately reported by the driver or some reliable person to the highway patrol or other law enforcement agency. Statements should not be made to anyone except law enforcement officers, representatives of the state's insurance company or motor pool officials. Information should be secured about the other party so a complete report can be made on the report form provided. In serious injuries or death, telephone collect the claim department of the state's insurance company, or the motor pool. A complete written report of all accidents shall be made to the director. Other reports to the highway patrol or other law enforcement officials, shall be made where required. (Authorized by K.S.A.

1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

1-23-9. Signs, decals and bumper stickers prohibited. No van driver shall permit any sign, decal or bumper sticker to be affixed to or remain on any state-owned van unless it has been placed there under the written authority of the director. (Authorized by K.S.A. 1980 Supp. 75-46a08; implementing K.S.A. 1980 Supp. 75-46a02 to 75-46a08; effective, E-81-14, June 12, 1980; effective May 1, 1981.)

Article 24.—PAYROLL DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS

1-24-1. Written authorization. (a) Each state employee who desires to participate in the payroll deduction plan authorized by K.S.A. 75-5531 *et seq.* for the purpose of making contributions to united way organizations shall enroll in the plan by completing a written authorization on the form prescribed or approved by the director of accounts and reports.

(b) The completed and signed authorization form shall be submitted to the united way organization solicitor or agent, who shall forward one copy to the agency for the agency records.

(c) For each employee who elects during the annual “united way” drive to contribute by payroll deduction, the employee’s agency shall process the authorization form prescribed by the director.

(d) Any employee not electing to participate during the annual calendar year “united way” drive may participate at any time thereafter, subject to the other provisions of this regulation and after processing of the authorization form prescribed by the director.

(e) Unless changed or canceled, the deductions shall continue through the calendar year. If a participating employee decides to cancel or change the united way contribution by payroll deduction, the employee shall file written notice of such authorization with the designated agency official. The change in payroll deduction shall be effective the first day of the payroll period that begins after the authorization form is received by the agency.

(f) This regulation shall take effect on and after December 17, 1995. (Authorized by K.S.A. 75-5534; implementing K.S.A. 1994 Supp. 75-5532; effective May 1, 1981; amended, T-89-1, Jan. 7, 1988; amended Oct. 1, 1988; amended Dec. 17, 1995.)

1-24-2. Cancellations or changes of contributions or payroll departments. This revocation shall take effect on and after October 1, 1988. (Authorized by K.S.A. 1980 Supp. 75-5534; implementing K.S.A. 1980 Supp. 75-5532; effective May 1, 1981; revoked, T-89-1, Jan. 7, 1988; revoked Oct. 1, 1988.)

1-24-3. Minimum and maximum amounts to be deducted. (a) The minimum united way deduction amount authorized shall be one dollar (\$1) per payroll period.

(b) The maximum united way deduction amount which may be deducted shall be limited only to the amount of compensation that is payable to the employee after subtracting all other lawful items of payroll withholdings and deductions. (Authorized by and implementing K.S.A. 1980 Supp. 75-5534; effective May 1, 1981.)

1-24-4. Coercion to contribute prohibited. The use of official action or threat of official action by a state officer or employee to coerce or attempt to coerce a subordinate state employee to contribute to a united way organization is prohibited. (Authorized by and implementing K.S.A. 1980 Supp. 75-5534; effective May 1, 1981.)

Article 25.—SET-OFF OF AMOUNTS OWED DEBTORS OF STATE

1-25-1 to 1-25-9. (Authorized by and implementing K.S.A. 1980 Supp. 75-3728k; effective May 1, 1981; revoked, E-82-14, July 1, 1981; revoked May 1, 1982.)

Article 26.—WRITE-OFF OF ACCOUNTS RECEIVABLE BY STATE AGENCIES

1-26-1. Write-off procedures. (a) Each state agency shall apply to the director of accounts and reports for authority to write off a receivable when the receivable is past due and the agency has complied with the minimum collection procedures set forth in K.A.R. 1-26-2 and has determined that the receivable is uncollectible.

(b) The request for write-offs shall include:

- (1) the number of accounts to be written off;
- (2) the total dollar amount of such accounts;
- (3) for each account list, the debtor’s name, social security number, amount and a brief statement as to the reason or basis for determining the account to be uncollectible;

(4) a statement by the responsible individual that

in his or her opinion the accounts are uncollectible, and that this request is submitted in accordance with K.S.A. 75-3728b and these regulations; and

(5) the signature of the agency head which certifies his or her approval of the request.

(c) Each state agency shall retain receivables on its record until written notification of approval from the division of accounts and reports to write-off such receivable is received.

(d) The secretary of administration, at the request of a state agency, may authorize the director of accounts and reports to write off any account or tax receivable upon the secretary's determination that there is a reasonable basis to believe that the account should not have been listed as an account receivable or other information indicates that there is a legitimate dispute as to the amount owed. (Authorized by K.S.A. 1980 Supp. 75-3728c; implementing K.S.A. 75-3728b; effective May 1, 1981.)

1-26-2. Minimum collection procedures.

Unless the director of accounts and reports approves an agency's alternative collection procedure, each state agency shall perform the following minimum collection procedures: (a) A record shall be kept for each action taken to collect an account. This documentary evidence of collection efforts shall be available at the agency to support an account being classified as uncollectible.

(b) At least three (3) documented efforts should be made to demand payment and collect all delinquent accounts over twenty-five dollars (\$25.00). Accounts twenty-five dollars (\$25.00) and under require only one (1) documented attempt.

(c) All past due accounts over two hundred dollars (\$200.00) shall be referred to the agency attorney or attorney general for legal review.

(d) The state agency shall request the assistance of the division of accounts and reports in determining whether the debtor is subject to set-off procedures authorized by K.A.R. 1-25-1 *et seq.*

(e) In cases where the debtor is subject to the setoff procedures authorized by K.A.R. 1-25-1 *et seq.*, the state agency shall attempt to avail itself of such procedures.

(f) When there are legal remedies available to the state agency without the commencement of court proceedings, including but not limited to, suspension, revocation or cancellation of a license, permit, certificate or other grant of authority, the state agency shall attempt to avail itself of such remedies. (Authorized by K.S.A. 1980 Supp. 75-

3728c; implementing K.S.A. 75-3728b; effective May 1, 1981.)

Article 27.—CANTEENS AND BENEFIT FUNDS

1-27-1. Establishment of canteens, canteen funds and benefit funds. Requests for the establishment of canteens, canteen funds and benefit funds, as defined by K.S.A. 1980 Supp. 75-3728e, shall be made to the director of accounts and reports. The application shall be made upon the prescribed form and signed by the superintendent, president or other supervisory head of the state institution. (Authorized by K.S.A. 75-3728h; implementing K.S.A. 75-3728f; effective May 1, 1981.)

1-27-2. Custodian of funds. A custodian of the canteen fund and benefit fund shall be appointed by the supervisory head of the institution. Each custodian shall be responsible for establishing internal controls over the moneys of these funds and shall maintain the accounting records prescribed by the director of accounts and reports. (Authorized by K.S.A. 75-3728h; implementing K.S.A. 75-3728f; effective May 1, 1981.)

1-27-3. Accounting records and reporting. (a) Each canteen fund shall maintain the following accounting records:

- (1) sales journal;
- (2) purchases journal;
- (3) cash receipts journal;
- (4) cash disbursements journal;
- (5) general journal; and
- (6) general ledger.

Accounts included in the general ledger shall include, but not be limited to, cash on hand, cash in bank, accounts receivable, inventory, equipment, accumulated depreciation, accounts payable, unused coupon books, retained earnings, capital, sales, cost of sales, depreciation, miscellaneous, rent, repairs and maintenance, and supplies. Other accounts shall be added as required by generally accepted accounting principles. The accounting requirements of this regulation may be modified for a particular institution by written approval of the director of accounts and reports.

(b) The custodian of each canteen fund shall be responsible for the preparation of an income statement and balance sheet on each fund or operation for the periods ending March 31, June 30, September 30 and December 31 of each year. A copy

of these financial statements shall be forwarded to the director of accounts and reports within one (1) month after the end of each reporting period.

(c) Each benefit fund shall maintain the following accounting records: (1) cash receipts journal; and (2) cash disbursements journal.

(d) The custodian of each benefit fund shall be responsible for the preparation of a change in fund balance statement on each fund or operation for the periods ending March 31, June 30, September 30 and December 31 of each year. A copy of this financial statement shall be forwarded to the director of accounts and reports within one (1) month after the end of each reporting period. The first report due pursuant to this subsection shall be for the period ending September 30, 1983. (Authorized by K.S.A. 75-3728h; implementing K.S.A. 75-3728f; effective May 1, 1981; amended May 1, 1983.)

1-27-4. Deposits and expenditures. (a) All moneys received by a benefit fund or a canteen fund shall be deposited into the bank account designated by the pooled money investment board.

(b) All disbursements from benefit funds and canteen funds shall be made by check from the bank account for the fund. Petty cash funds, change funds and imprest funds may be established under procedures specified by the director of accounts and reports. The custodian or alternate custodian of each fund shall sign each check that is drawn upon the bank account. (Authorized by K.S.A. 75-3728h; implementing K.S.A. 75-3728f; effective May 1, 1981.)

1-27-5. Canteen coupon books. (a) Canteen coupon books may be sold by the custodian of the benefit fund. Such coupons shall be accepted on purchases at face value by the canteen cashier when presented by the registered owner. The custodian of the canteen fund, shall present the coupons to the custodian of the benefit fund for redemption at face value from the benefit fund at least monthly. The custodian of the benefit fund shall maintain a complete record of the sale and redemption of the coupons.

(b) All coupons redeemed by the custodian of the benefit fund shall be filed by denomination and retained until the completion of the next post audit of the institution or agency fund as performed by the division of post audit, and the approval thereof in writing in the audit report by the division of post audit. (Authorized by K.S.A.

75-3728h; implementing K.S.A. 75-3728f; effective May 1, 1981.)

Article 28.—SOCIAL SECURITY PROGRAM IN POLITICAL SUBDIVISIONS

1-28-1. (Authorized by K.S.A. 40-2308; implementing K.S.A. 40-2305; effective May 1, 1980; amended, E-81-23, Aug. 27, 1980; amended May 1, 1981; amended, T-84-20, July 26, 1983; amended May 1, 1984; revoked July 12, 1993.)

1-28-2. (Authorized by K.S.A. 40-2308, 75-3749, K.S.A. 1979 Supp. 40-2305; effective May 1, 1980; revoked July 12, 1993.)

Article 29.—EMPLOYEE AWARDS

1-29-1. (Authorized by and implementing K.S.A. 1980 Supp. 75-2956b; effective, E-81-14, June 12, 1980; effective May 1, 1981; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-29-2. (Authorized by and implementing K.S.A. 75-2956b; effective, E-81-14, June 12, 1980; effective May 1, 1981; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-29-3. (Authorized by and implementing K.S.A. 1982 Supp. 75-2956b; effective May 1, 1983; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

Article 30.—EMPLOYEE SUGGESTION SYSTEM

1-30-1. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-2. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-3 to 1-30-5. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-6. (Authorized by and implementing K.S.A. 1980 Supp. 75-2956b; effective, E-82-14,

July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-7 and 1-30-8. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-9 and 1-30-10. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-11. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-12 and 1-30-13. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-14. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-15. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-16. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-17. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-18 and 1-30-19. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-20. (Authorized by and implementing K.S.A. 1981 Supp. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked May 1, 1986.)

1-30-21. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981;

effective May 1, 1982; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-22. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-23. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

1-30-24. (Authorized by and implementing K.S.A. 75-2956b; effective, E-82-14, July 1, 1981; effective May 1, 1982; amended May 1, 1986; revoked, T-87-26, Oct. 1, 1986; revoked May 1, 1987.)

Article 31.—COMPUTER SERVICES—GENERAL

1-31-1. (Authorized by K.S.A. 75-3706, 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; revoked May 1, 1978.)

1-31-2. Applicability. (a) These rules and regulations shall apply to all state agencies as defined in K.S.A. 1976 Supp. 75-3701. The exclusion specified in K.S.A. 1976 Supp. 75-4705 for board of regents institutions relates only to central processing of data by computer. Provisions of these rules and regulations pertaining to the approval of automatic data processing machinery, lease, purchase or contracts specified in K.S.A. 1976 Supp. 75-4706, shall apply to such institutions.

(b) The provisions of K.S.A. 1976 Supp. 75-4705(b), as they apply to approval for control, possession, and operation of adjunct central processing units shall be implemented by memorandums of agreement between the department, division, or agency seeking approval and the director of the division of computer services. Such memorandums of agreement shall be explicit as to the term of the agreement and the conditions under which the director may terminate the agreement.

(c) The statement “no other division, department, or agency of the state shall perform central processing computer functions . . .” as it appears in K.S.A. 1976 Supp. 75-4705(a) shall apply equally to performance by contractual arrangement with any supplier of data processing or data entry services, or lease, purchase or contract for any data processing programs or programming systems, or any data processing systems design or computer programming services. In the interests

of economy and efficiency, the director, division of computer services may approve written requests submitted by departments, divisions and agencies of the state for the acquisition of such data processing services, programs or systems. Board of regents institutions are excluded from this requirement.

(d) The director of computer services may elect to call upon other agencies of the state, including board of regents institutions, to provide assistance in the central processing of data by computer. Such action may become necessary to (1) alleviate a shortage of data processing capability in the division of computer services, (2) make better use of state computer resources which may have reserve capacity, or (3) provide alternate capability in the event of disaster. When a request for assistance is made on behalf of an agency normally serviced by DCS, the director will assume responsibility for all negotiations, scheduling and billing for services. (Authorized by K.S.A. 75-3706, 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-31-3. Definitions. When used in these administrative regulations, the following words and phrases shall have the meaning indicated: (a) "DCS" refers to and means the division of computer services of the department of administration.

(b) "Central processing of data by computer," "data processing services," and "central processing computer functions." These phrases refer to and mean performance or the capability to perform the complete range of data processing machine services normally provided by a data processing facility and include, in addition, systems design and programming services, furnishing of services to remote electronic terminals, data entry services, maintenance of tape and disk libraries, and maintenance of a library of computer programs for both generalized and special use.

(c) "Facility" or "data processing facility" means the resources available to the division of computer services and includes all the services specified in the preceding paragraph.

(d) "Data" and "data to be processed" as used in K.S.A. 1976 Supp. 75-4703(c) and (d) includes, in addition to data files and data transactions submitted either electronically or physically (*e.g.*, cards, tape, or disk packs), the following: (1) Computer programs submitted to the division of computer services for compilation, assembly, test, and implementation into the production schedule.

(2) Files maintained for user agencies within the data processing facility as well as the data used in updating, correcting, or otherwise manipulating such files.

(3) Files maintained for user agencies which are interrelated by the use of indexing schemes and which can be accessed, updated and otherwise manipulated by the use of a "data base management system," either from terminals ("on-line") or in a batch operation may be defined as "data base" files.

(e) The phrase "determination of priorities for such services performed" as used in K.S.A. 1976 Supp. 75-4703(b) shall include but not be limited to schedules and the scheduling of facility production.

(f) The phrase "including authority to decline new projects under specified conditions" as it appears in K.S.A. 1976 Supp. 75-4703(b) means and refers to conditions that may arise when the demand for new or expanded computer services exceeds the capacity of DCS to provide these services. During these periods, and for such length of time as is required to increase the productive capability of the DCS facilities, the director may request users to defer the development of new computer applications or major revisions to existing applications that require additional facility resources. Upon a showing by the user agency that such deferral would adversely affect the state's interest, the director may exercise the option described in 1-31-2(d) to utilize other state computer resources, or may authorize the user agency to obtain contractual data processing services as provided in 1-31-2(c).

(g) "Schedules" and "scheduling of facility production" refer to the planning for use of facility resources on a time of day, day of month, or other time-related basis to provide users with reports and output data at times specified by the user.

(h) Prior approval of the director of computer services for the lease, purchase, or contract for any automatic data processing machinery, specified in K.S.A. 1976 Supp. 75-4706, shall include prior consultation with the director or his or her authorized designee for the proposed lease, purchase or contract for any systems design or programming services. Prior approval of the director or his or her authorized designee is required for the proposed rental or lease/purchase of (1) any automatic data processing programs or programming systems, or, (2) any computer data processing services to be furnished by a commercial data

processing services bureau or a board of regents institution. (Ref. 1-31-2(c), above.)

(i) The phrase “central processing units of a computer” as used in K.S.A. 1976 Supp. 75-4705(b) shall be interpreted to refer to configurations of data processing equipment that provide a capability to meet the total data processing requirements of a state agency. The phrase does not include those devices variously identified as “intelligent terminals,” “mini” or “micro” computers whose function is limited to specialized activities ancillary to or supporting to a large scale computer facility.

(j) “Software” means and refers to computer programs. Software includes application programs (payroll, engineering calculations, etc.) generally written by user personnel to meet a specific user need; utility programs which perform functions commonly needed by all users (copying, printing, punching, etc.); operating system programs which control the internal activities of the computer; and proprietary programs which are purchased or leased and which perform certain specialized functions such as data base management, telecommunications management, program library management, or sorting. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

Article 32.—POLICY AND PROCEDURES MEMORANDUM

1-32-1. Policy and procedures memorandum. The framework of policy established by these administrative regulations is designed to set the procedural boundaries within which the director of computer services will operate. In order that information concerning data processing services will be promptly made available to the agencies using DCS services, the use of policy and procedures memorandums (PPM) is authorized. Policy and procedures memorandums describe the procedures which agencies are to follow in obtaining computer services from the division of computer services. (Authorized by K.S.A. 75-3706, 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-32-2. Same; usage. PPM’s issued over the signature of the director DCS or his or her designee, shall serve the following purposes: (a) A method for distributing information to users that

is transitory or subject to frequent change, such as the form in which data is to be submitted for processing, changes in instructions applicable to computer operations systems, etc.

(b) A method to notify user agencies of changes in rates, schedules, payment procedures, or standards as required for the efficient operation of the DCS data processing facility.

(c) A method to distribute findings, and recommendations, of the computer services board or the user advisory group. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

Article 33.—RATES AND CHARGES FOR DATA PROCESSING SERVICES

1-33-1. Basis of charges. Charges for data processing services performed by the division of computer services shall be based upon the actual cost of usage of a particular data processing cost center plus distributed overhead costs. Such rates and charges shall be maintained by a cost system in accordance with generally accepted accounting principles. In determining cost rates for billing to agencies, overhead expenses shall include but not be limited to light, heat, power, insurance, labor, depreciation, etc. Billings shall include direct and indirect costs and shall be based on the foregoing cost accounting practices. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-2. Usage cost. Data processing cost centers shall be established by breaking down the division’s activities in such a way that rates and charges will reflect equity when they are applied to the user of its services.

The actual cost of usage shall be determined by recording information that is indicative of the cost center’s resources necessary to provide the particular data processing service. When equipment or services are dedicated to the service and benefit of a single user, that user will bear the full cost of the equipment or service. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-3. Distributed overhead costs. Distributed overhead costs shall be determined by summing the following fixed and variable costs and then developing average monthly costs on an annual basis:

(a) Rental of space, including power and air conditioning.

(b) Labor, to include computer operators, supervisors, and clerical personnel, directly assigned to operation and pro-rata share of DCS administrative costs.

(c) Supplies, to include standard forms, punched cards, specialized materials and equipment.

(d) Charges required to provide a lawful depreciation reserve fund pursuant to K.S.A. 1976 Supp. 75-4704(a).

(e) Software overhead is an item within distributed overhead costs. It applies to computer programs procured for generalized applications. Generalized applications are those used by all clients of the computer services division. Included in this category are software systems such as operating systems, compilers, assemblers, data base management systems, and general purpose utility programs. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-4. Adjustments in factors. Certain adjustments in applicable factors of the cost formula will be made to distribute overhead costs equitably to remote terminal users; e.g., terminal operations directly supported by the user's own labor force and standard forms purchased by the user for terminal output will not result in duplicate charges. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-5. Specific applications costs. Specific applications computer program (software) costs, if procured by the division of computer services, will be charged back to the customer as a separate cost item. Where usage of specific applications software procured by the division is extended to include additional users, the rates charged to any user for such software shall be in direct proportion to use. Software included in this category are programs such as those designed to manage telecommunications traffic. These costs will not be applied for user-owned commercial software systems. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-6. Formulae for charges. The rates and charges to be made can be expressed in general terms by the following formula:

- Where
- A = the budgeted annual expenditures allocated to a cost center
 - B = the percentage of annual administrative overhead allocated to a cost center
 - C = the percentage of annual general operations overhead allocated to a cost center
 - D = annual depreciation of equipment or software allocated to a cost center
 - E = total annual cost of operating a cost center
 - F = total monthly cost of operating a cost center
 - G = the average measured units of use per month of a cost center
 - H = the rate per unit of use of a cost center
- $$E = A + B + C + D$$
- $$F = E \div 12$$
- $$H = F \div 12$$

A large cost center may be broken down into smaller sub-cost centers, if it is reasonable that only a part of its resources may be required by a user. When this is done the costs will be prorated to the sub-cost centers in proportion to their size within the cost center. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-7. Publication and distribution of rates. The dollar rates charged for data processing services developed by the above formula will be published and distributed to all user agencies by policy and procedures memorandum issued by the director of computer services. Rate revisions will be made, when required, on a quarterly basis. Prior to the annual call for agency budget estimates, the director, DCS, will furnish rates and charges to be used for estimating the cost of data processing services. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-8. Premium rates. Requests by agencies for rapid "turn-around" services that differ from the norm shall be processed at a premium rate. The rates for levels of service will be derived from the standard algorithm adjusted by a factor that recognizes the additional costs associated with special handling. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-33-9. Discount rates. A discount for night time and weekend computer processing may be developed in order to encourage the use of resource at those times. In order to recover costs

it will be necessary to charge a premium during day time processing. The rates will therefore be adjusted in the following manner:

Where

H = rate per unit of use of a cost center
 I = adjusted day time rate for a cost center
 J = 100% less desired night time discount
 K = % of day time use of a cost center
 L = % of night time use of a cost center

$$H = IK + IJL$$

$$H = I(K + JL)$$

$$I = \frac{H}{K + JL}$$

(Authorized by K.S.A. 75-3706, 75-4703; effective May 1, 1978.)

1-33-10. Billing periods. Users of DCS data processing services shall be billed semi-monthly. When cash reserves are deemed adequate the director may elect to bill on a monthly basis. In the event extraordinary expenses are incurred the director is authorized, with the approval of the secretary, to request payment in advance based on the billing history of each user of services. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

Article 34.—SYSTEMS DESIGN AND PROGRAMMING SERVICES RATES AND CHARGES

1-34-1. Requests for design and services. State agencies may request systems design and programming services from DCS on a limited basis. This service is designed for those agencies which do not maintain their own systems and programming staff. The rates for such services will be published and distributed by DCS in policy and procedures memoranda. Rates will be based on time and material costs such that the full expense of providing the service will be recovered from the requesting agency. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-34-2. Same; format. Requests for services shall be addressed to the director, DCS, and should follow the format described below:

- Statement of the problem or application
- Date by which a solution or product is required
- A general indication that funds are available for the proposed development effort

(a) The director, DCS, will assign a computer systems analyst to work with the requesting agency to provide an accurate written evaluation of

the scope of the work, a cost estimate, and a time schedule. The evaluation will include an estimate of on-going costs by fiscal year.

(b) The evaluation will be transmitted to the requesting agency on forms provided by the director, DCS. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-34-3. Same; options available when DCS cannot provide services. When the scope of work requested is beyond the capability of DCS staff, or when the date by which a solution or product is required cannot be met, the director will so inform the requesting agency. The director may recommend

- (a) That the agency defer development, or
- (b) That the agency consider using contractual services to meet their needs. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

1-34-4. Contractual services. An agency desiring to use contractual services shall notify the director of its intention and furnish an estimate of the funds available for the work. The director, DCS, shall act in behalf of the requesting agency and shall prepare bid specifications to procure the desired services. In the event bids are not responsive in respect to funds available, the director shall notify the requesting agency before rejecting the bid. If the agency is unable to obtain additional funding the bid will be rejected. If the bid is responsive, the director will award the bid and issue a work order to the successful contractor. It shall be the responsibility of the director, DCS, to insure the contractor's commitments are met and that the final product is acceptable to the requesting agency. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

Article 35.—PAYMENT OF RATES AND CHARGES

1-35-1. Charges. All data processing services performed by the division of computer services for other divisions, departments and agencies of the state shall be charged for in accordance with rate schedules established and published as set forth in these regulations. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-35-2. Same; statements. DCS shall prepare monthly statements of charges on "interfund

order-transfer voucher" DA-102 for each user of DCS services. Payment of these charges shall be made to the computer services revolving fund established by K.S.A. 1976 Supp. 75-4704. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-35-3. Same; separate cost centers. Because rates are based on the statutory requirement for cost recovery (K.S.A. 1976 Supp. 75-4703(a)), separate cost centers will use separate rates, and the algorithm for one cost center may generate different hourly rates than those of another cost center. Statements will identify the cost center which performed the service; rates charged will be in accordance with schedules published in PPM's issued by DCS. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-35-4. Same; federally funded agencies. For those agencies which are wholly or partly federally funded, the division of computer services will provide supporting detail to the extent that requests for data processing services include precise identification of jobs and accounts to which jobs are to be charged. Claims for federal reimbursement shall be transactions between the user agency (state) and the federal department or agency providing funds. Grantees for federal funds are responsible for assuring that the funding federal agency is provided adequate audit data to support data processing expenditures. The division of computer services will provide supporting information as necessary when required for audit purposes. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

Article 36.—DETERMINATION OF PRIORITIES AND SCHEDULES

1-36-1. Schedules for processing batch data specifications. The director of computer services, after consultation with agency heads or their designated representatives, will establish schedules for the central processing of batch data by computer. The schedules so established will be based on documented requirements furnished by user agencies. In the event a proposed computerized application or system will require facility resources in an amount that would jeopardize the ability of the division of computer ser-

VICES to provide service to established users, the director, DCS, may decline to schedule or process the application. The head of the requesting agency will be informed in writing of the reasons for the refusal action. The internal facility priorities required to meet local agency batch processing schedules will be assigned and controlled by the director of DCS. Terminal users may assign priorities within the job classes assigned for their activities. User agency requirements will specify: (a) The time when data processing output documents or products are needed in agency operations;

(b) The method of delivery or pick-up;

(c) The time by which output data should be available at, or received at, a remote terminal location. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-36-2. Same; adherence to standards. Data submitted for processing that does not conform to scheduling agreements, is improper as to form of submission, violates standards established for program or data submission may be

(a) Returned for correction,

(b) Deferred until resources are available for processing, or

(c) Cancelled unconditionally. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-36-3. Variations in rates; priority or deferred processing. Within the limitations imposed by the operating software systems that control processing within DCS computer facilities users may, at their option, request either priority or deferred processing. Rate adjustments resulting from these requests will be in conformance with published rates and charges and will be detailed in billing statements. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

Article 37.—STANDARDS FOR THE SUBMISSION OF DATA

1-37-1. Submission of data. "Data to be processed" (see "definitions," 1-31-1, above) in centralized data processing facilities can be submitted both physically and electronically. (a) Physical submission includes the delivery to the facility of punched cards, paper tape, magnetic tape cassette and reels, magnetic disks and disk packs.

This type of submission may also include handwritten or typed data on preprinted forms (vouchers, requisitions, purchase documents, program coding forms, etc.) to be processed by the department of administration data entry facility.

(b) Electronic submission includes all data transactions, data files or inquiries transmitted to the central facility for processing from terminals or other remote data entry or inquiry equipment. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-37-2. Same; standards. Submission standards are used to specify the format and content allowable for data submitted for processing and represent the minimum requirements that must be met before an application can be accepted for processing within any DCS facility. The minimum standards apply to data and material submitted either physically or electronically. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-37-3. Same; mandatory standards. The following submission standards are mandatory and apply to all work delivered or transmitted to a DCS facility: (a) Must meet job control language (JCL) requirements for the computer involved as published in PPM's covering facility standards.

(b) "Batch run" data should include sufficient information to enable the submitted work to be controlled through the processing cycle, i.e., number of transactions, output requirements, control totals, etc. Terminal users should provide their own controls.

(c) Programmed controls for electronic submission of data should be sufficient to provide clear audit trails so that "end-of-job" routines provide summaries of such essential information as the number of transactions read and processed, control totals, the number of exceptions to normal processes, the number of lines printed, cards read, records read to tape or disk and such other data that auditors or end users may require. The decision to include or ignore such controls is a user responsibility. Electronically submitted data must adhere to published requirements for identification of user, sign-on and sign-off conventions, and other security measures that may be implemented. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-37-4. Control functions responsibility of division. The following control functions are the responsibility of the division of computer services (a) Verify that user submitted jobs: (1) comply with facility standards; (2) are successfully completed; (3) are properly accounted for if not successfully completed.

(b) Insure that internal operations, (i.e., time accounting, staffing, operating procedures, schedules, etc.) meet user requirements for service and efficiency.

(c) Insure that vital computer control programs (i.e., vendor operating systems, sorts, utilities, etc.) are properly maintained and knowledge of changes or improvements is made available to user agencies in advance of implementation.

(d) DCS shall perform the duplication or "back-up" function for all operating system and operating system support functions, and will restore these systems in the event of hardware, software or environment control failure. Where "back-up" responsibility is assigned to user agencies (see 1-37-5, below) DCS will schedule the jobs required to perform the "back-up" and report successful completion to user agencies. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-37-5. Control functions responsibility of agencies. The following control functions are the responsibility of user agencies: (a) Insure that work submitted to a DCS facility is proper as to form and adherence as to standards.

(b) Users are responsible for designating back-up procedures on their own (single-user) data sets, data files or user-assigned disk packs, and are responsible for any reorganization, compression or other manipulation of such data. Operating procedures and program documentation shall be maintained by users, but should be made available to DCS operations personnel when required.

(c) When available DCS security storage is not used, user agencies must provide their own security storage of duplicate files of data, program libraries, systems and/or program documentation. Verification that work performed by the DCS facility meets user agency's schedules and standards for quality and completeness. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

Article 38.—STANDARDS FOR SECURITY AND CONFIDENTIALITY

1-38-1. General. Current and pending advances in the technology of data processing provide opportunities for acquiring, storing and inter-relating very large files of data. These inter-related files and the computer programming techniques which control them are referred to, respectively, as “data bases” and “data base management systems.” Although these data may be in the physical custody of the director of computer services the formal responsibility for the content, organization, and inter-relationships of agency data remains with the organizationally responsible agency officer. If agency data bases become a part of a larger “state data base,” formal responsibility for the content, organization and inter-relationships then rests jointly with the agencies concerned. The director of computer services provides safeguards for data files (tape, disk), data transaction (both electronic and physically submitted), and computer programs, program libraries and all operating system programs and proprietary systems. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-38-2. Facility security. Access to the DCS computer facility shall be limited to those designated individuals who have clearance and who are indispensable to the facility’s production processes. Visitors and those persons who have an occasional legitimate need to enter the facility may enter the facility under escort after registering their name, organization and purpose. (Authorized by K.S.A. 75-3706 and 75-4703; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1978.)

1-38-3. Physical security of data files, program libraries, operating and proprietary systems. DCS shall provide a safe, secure and controlled environment within the facility for tape and disk libraries of data and programs in active use. DCS shall provide fireproof and tightly secured storage for duplicate (“back-up”) copies of program libraries, archival or confidential data, and operating or proprietary programming systems. All tape files in active use shall be under library control, either by a user agency tape librarian or by DCS tape librarians. The DCS library system controls the release of magnetic tape to users, preserves recorded tape

through its expiration date, and maintains the quality of tape through a tape cleaning and testing program. All magnetic disk files, both permanently mounted and mountable on call, are under the assignment control of the DCS systems programming group. The procedures required to “back-up” or duplicate files for security are implemented by the systems programming group for multiple user files, and by user agency data processing managers for single-user (agency) magnetic disk files. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

1-38-4. Control of locally submitted production. “Local submission” refers to data processing jobs, programs and data physically submitted to the operations control group. Work for which operational responsibility has been transferred to operations control will be controlled through the production process in conformance to job requirements specified in documentation. This may include batch controls, quality controls, etc., as defined by the user. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

1-38-5. Restoration of services in event of disaster; minimum plan. The director, DCS, after consultation with agency heads or their designees shall prescribe the actions to be taken to restore essential services in the event of natural disaster, civil disturbance, fire or water damage, or extensive and prolonged interruption to power. The plan for restoration of services must consider, as a minimum, the following: (a) Alternate computer processing sites. If an alternate state facility is to be used, plans must include preparation of duplicate files in the manner to make them usable at the alternate site. Operational requirements of the alternate site will be maintained and made available to DCS users.

(b) Periodic duplication of essential data files and retention of transaction files to allow reconstruction to current status.

(c) Duplication and maintenance of operating systems and applications programs in current status, as required.

(d) Duplication of program documentation and run books in current status, as required.

(e) Periodic duplication of computer systems accounting and performance data, as required. (Authorized by K.S.A. 75-3706 and 75-4703; effective May 1, 1978.)

Article 39.—OFFICE OF ADMINISTRATIVE HEARINGS

1-39-1, 1-39-2, 1-39-3, and 1-39-4.

(Authorized by and implementing K.S.A. 75-37,121; effective Nov. 20, 1998; revoked Jan. 20, 2017.)

Article 45.—MOTOR VEHICLE PARKING ON CERTAIN STATE-OWNED OR -OPERATED PROPERTY IN SHAWNEE COUNTY

1-45-1. (Authorized by and implementing K.S.A. 75-3706 and 75-4506; effective May 1, 1979; amended Oct. 26, 2001; revoked Feb. 28, 2003.)

1-45-2 and 1-45-3. (Authorized by K.S.A. 75-3706 and 75-4507; effective May 1, 1979; revoked Feb. 28, 2003.)

1-45-4. (Authorized by K.S.A. 75-3706, 75-4506, and 75-4507; implementing K.S.A. 75-4506; effective May 1, 1979; amended Nov. 22, 1996; revoked Feb. 28, 2003.)

1-45-5 and 1-45-6. (Authorized by K.S.A. 75-3706 and 75-4507; effective May 1, 1979; revoked Feb. 28, 2003.)

1-45-7. (Authorized by K.S.A. 75-3706 and 75-4506; implementing K.S.A. 75-4506; effective May 1, 1979; amended May 1, 1981; amended, T-87-17, July 1, 1986; amended May 1, 1987; amended Nov. 22, 1996; amended Oct. 26, 2001; revoked Feb. 28, 2003.)

1-45-7a. (Authorized by K.S.A. 75-3706, 75-4506, and 75-4507; implementing K.S.A. 75-4506; effective, T-1-7-2-01, July 2, 2001; effective Oct. 26, 2001; revoked Feb. 28, 2003.)

1-45-8. (Authorized by K.S.A. 75-3706, 75-4506, and 75-4507; implementing K.S.A. 75-4506; effective May 1, 1979; amended Nov. 22, 1996; revoked Feb. 28, 2003.)

1-45-9 through 1-45-13. (Authorized by K.S.A. 75-3706 and 75-4507; effective May 1, 1979; revoked Feb. 28, 2003.)

1-45-14. (Authorized by K.S.A. 75-3706 and 75-4507; implementing K.S.A. 75-4507; effective May 1, 1979; amended Sept. 14, 1992; revoked Feb. 28, 2003.)

1-45-15. (Authorized by K.S.A. 75-3706 and 75-4507; effective May 1, 1979; amended, T-1-11-12-02, Nov. 12, 2002; revoked Feb. 28, 2003.)

1-45-16. (Authorized by K.S.A. 75-3706; implementing K.S.A. 75-4507; effective May 1, 1979; amended Jan. 6, 1992; amended, T-1-11-12-02, Nov. 12, 2002; revoked Feb. 28, 2003.)

1-45-17. (Authorized by K.S.A. 75-3706 and 75-4507; effective May 1, 1979; revoked Feb. 28, 2003.)

1-45-18. Definitions and application of regulations. (a) The following definitions shall apply to these regulations:

(1) “Director” means the director of facilities management.

(2) “Motor vehicle” shall have the meaning prescribed by K.S.A. 8-126, and amendments thereto.

(3) “Parking permit” or “permit” means a decal, hang tag, electronic key card, or any other form of parking authorization specified and issued by the secretary, which shall be displayed in a manner determined by the secretary.

(4) “Person” means the individual, partnership, corporation, association, or governmental body to whom a motor vehicle is registered as provided in K.S.A. 8-127, and amendments thereto.

(5) “Secretary” means the secretary of administration or the secretary’s designee.

(6) “State agency” shall have the meaning prescribed by K.S.A. 75-4112, and amendments thereto.

(7) “Visitor” means a person who is not eligible to enter into a parking contract for the parking lot in which that person’s vehicle is parked.

(b) Each vehicle parked upon any state-owned or state-operated property in Shawnee County, Kansas shall be parked in compliance with these regulations. These regulations shall not apply to any of the following:

(1) State-owned or state-operated property in Shawnee County, Kansas, that is under the jurisdiction and control of any of the following:

- (A) The department of corrections;
- (B) the Kansas neurological institute;
- (C) the juvenile justice authority; or
- (D) the Kansas national guard;

(2) the facilities governed by article 46 of these regulations; or

(3) the state highway shops and laboratory. (Authorized by K.S.A. 75-3706, K.S.A. 2003 Supp. 75-4506, and K.S.A. 75-4507; implementing K.S.A.

2003 Supp. 75-4506; effective Feb. 28, 2003; amended, T-1-3-29-04, March 29, 2004; amended July 23, 2004.)

1-45-19. Application for a parking contract and issuance of a parking permit. (a)

Any state employee or state agency may request to enter into a parking contract for a parking location at which parking is restricted to vehicles that display a parking permit by submitting an application in the form and manner determined by the secretary, except that eligibility to enter into a parking contract for those parking locations may be limited to those state employees and state agencies with offices located in buildings and facilities specified by the secretary as associated with the requested parking location.

(b) These regulations shall be considered to be part of each parking contract, and each state employee or state agency entering into a parking contract shall agree to abide by all applicable regulations.

(c) A unique parking permit shall be issued for each parking contract that is executed by a state employee or state agency. The parking permit shall be issued only after the state employee or state agency has signed the written parking contract and, where required, paid the fee prescribed by K.A.R. 1-45-21 or K.A.R. 1-45-22.

(d) Each parking permit shall be in a form designated by the secretary. Each state employee or state agency to which a parking permit is issued shall display the permit in the manner specified by the secretary. Only one parking permit shall be issued per parking contract, except that, if the secretary determines that a parking permit is to be displayed by permanently affixing the permit to the vehicle, the parking permit may be issued to a state employee in a manner that permits display of the parking permit in a maximum of two vehicles. Any permit issued to a state agency may be restricted by time period or location, or both.

(e) When a parking contract is cancelled or terminated, the parking permit issued in connection with that parking contract shall be invalid and shall be returned to the secretary.

(f) A temporary parking permit authorizing parking in a stated location or locations for a specified period of time may be issued if the secretary determines that doing so would facilitate conduct of official state business, assist any individual who is visiting a facility located on property subject to these regulations, or otherwise be in the best interests of the state. Each application for a temporary

parking permit and for renewal or extension of a temporary parking permit shall be submitted in the form and manner designated by the secretary. Each temporary parking permit shall be in a form designated by the secretary, shall be displayed in the manner specified by the secretary, and may be subject to other reasonable conditions established by the secretary. (Authorized by K.S.A. 75-3706, K.S.A. 2003 Supp. 75-4506 and K.S.A. 75-4507; implementing K.S.A. 2003 Supp. 75-4506; effective Feb. 28, 2003; amended, T-1-3-29-04, March 29, 2004; amended July 23, 2004.)

1-45-20. Parking permit required. (a)

The provisions of this regulation shall apply only between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted, and to those locations at which parking is restricted to vehicles displaying a parking permit.

(b) Except as otherwise expressly indicated in this regulation, a motor vehicle shall not be parked in any of the parking locations subject to this regulation, unless the motor vehicle plainly displays a parking permit that authorizes the motor vehicle to be parked in that parking location. A motor vehicle with a parking permit shall not be parked on the statehouse grounds, in a parking lot or garage other than the location for which the parking permit has been issued, or in stalls that are designated for visitors.

(c)(1) Any motor vehicle displaying the appropriate parking permit for that particular parking lot or garage may be parked in any parking stall that is not specifically marked as reserved, or that is not specifically designated or posted for the use and benefit of specified vehicles, state agencies, or state employees.

(2) Each motor vehicle displaying a temporary permit for parking shall be parked only in those locations specified by the temporary permit and only on those dates and for the length of time specified by the temporary permit.

(d) At no time shall more than one vehicle per parking contract use the parking permit for that contract to park at locations subject to this regulation.

(e) Each parking permit shall be used only by the employee or state agency to which that parking permit is issued. Parking contracts, parking permits, and temporary permits shall not be loaned, assigned, sublet, or in any other manner permitted to be used by any other individual. If a parking permit is designed to be permanently affixed to a specific vehicle, that parking permit shall not be

used for parking any motor vehicle other than that for which it was specifically issued, except with the prior permission of the secretary. (Authorized by K.S.A. 75-3706, K.S.A. 2003 Supp. 75-4506 and K.S.A. 75-4507; implementing K.S.A. 2003 Supp. 75-4506; effective Feb. 28, 2003; amended, T-1-3-29-04, March 29, 2004; amended July 23, 2004.)

1-45-21. Parking fees. (a)(1) Before January 1, 2007, the parking permit fee, where required, shall be as follows, except as provided in K.A.R. 1-45-21:

- (A) Reserved spaces.
 - (i) State agencies\$17.50 per month
 - (ii) state employees \$8.08 per biweekly fee period
- (B) Nonreserved spaces.
 - (i) State agencies\$15.00 per month
 - (ii) state employees \$6.92 per biweekly fee period

(2) Effective on and after January 1, 2007, the parking permit fee, where required, shall be as follows, except as provided in K.A.R. 1-45-22:

- (A) Reserved spaces.
 - (i) State agencies\$25.00 per month
 - (ii) state employees \$11.54 per biweekly fee period
- (B) Nonreserved spaces.
 - (i) State agencies\$20.00 per month
 - (ii) state employees \$9.24 per biweekly fee period

(3) The parking permit fee shall be waived for any vehicle in the state vanpool or for any carpool that has as passengers three or more state employees who have jointly signed a parking contract and who have been jointly issued a parking permit.

(b) Parking permit fees shall be paid in advance. Each state employee who enters into a parking contract shall pay the biweekly parking fee by payroll deduction, except for any fee periods or portion of a fee period before the payroll deduction application is processed.

(c) The parking fee shall not be prorated, and no refunds shall be made for any unused portions of a fee period. The payment of permit fees shall be a continuing obligation until terminated in writing by either party to a parking contract.

(d) Metered spaces in designated visitor parking areas shall be charged at the rate of \$.60 per

hour. (Authorized by K.S.A. 75-3706, K.S.A. 75-4506, as amended by L. 2002, Ch. 200, Sec. 1, and K.S.A. 75-4507; implementing K.S.A. 75-4506, as amended by L. 2002, Ch. 200, Sec. 1; effective Feb. 28, 2003.)

1-45-22. Parking fees for state parking garage. (a) “State parking garage” shall mean the parking garage located on Jackson avenue between 10th and 11th streets that is owned by the Topeka public building commission and operated by the state of Kansas.

(b)(1) Despite the provisions of K.A.R. 1-45-21, parking fees for the state parking garage shall be established on an annual contract basis for state employees and state agencies.

(2) Parking permit fees shall be paid in advance. Each state employee who enters into a parking contract for the state parking garage shall pay the parking fee by biweekly payroll deduction, except for any fee periods or portion of a fee period before the payroll deduction application is processed.

(c) If space in the state parking garage is made available to members of the public either for parking permits or for short-term parking, the following parking fees shall apply to members of the public:

(1) Members of the public with a parking permit shall pay a monthly rate established by the secretary.

(2) Members of the public without a parking permit shall be charged parking fees at the rate of \$1.00 per hour or \$10.00 per day.

(d) The parking fee shall not be prorated, and no refunds shall be made for any unused portions of a month or fee period. The payment of parking fees shall be a continuing obligation until terminated in writing by either party.

This regulation shall be effective on and after January 1, 2016. (Authorized by K.S.A. 75-3706, K.S.A. 2014 Supp. 75-4506 and K.S.A. 75-4507; implementing K.S.A. 2014 Supp. 75-4506; effective Feb. 28, 2003; amended Jan. 1, 2016.)

1-45-23. Parking restrictions. Unless otherwise authorized by the secretary or the secretary’s designee for reasons of business or emergency, a motor vehicle shall not be parked in any of the following locations:

- (a) A tunnel or archway;
- (b) a pedestrian walk;
- (c) a driveway;

(d) any location other than within a marked parking stall;

(e) any location in which the vehicle is double-parked; or

(f) in any location in which the vehicle is parked in a manner contrary to posted signs indicating “no parking” or any other parking restrictions. In lieu of posting “no parking” signs or signs indicating any other parking restrictions, any officer of the capitol area security patrol or any designee or agent of the director may lawfully prohibit or direct the parking of a motor vehicle upon any property subject to these regulations. The order of an officer of the capitol area security patrol or a designee or agent of the director shall take precedence over any parking permit or posted sign. (Authorized by K.S.A. 75-3706, K.S.A. 2003 Supp. 75-4506 and K.S.A. 75-4507; implementing K.S.A. 2003 Supp. 75-4506; effective Feb. 28, 2003; amended, T-1-3-29-04, March 29, 2004; amended July 23, 2004.)

I-45-24. Violations and enforcement. (a) Fines.

(1) Except as provided in paragraph (a)(2), in any parking lot or garage for which parking permits are issued, each person whose vehicle is parked in violation of any of these regulations shall be subject to the following administrative fines:

(A) First violation: \$3 fine;

(B) second violation: \$10 fine;

(C) third violation: \$25 fine; and

(D) each violation after the third violation: the person’s vehicle shall be subject to one of the following:

(i) being mechanically immobilized, subject to subsection (d); or

(ii) being removed, as specified in subsection (c).

A violation shall be deemed to have occurred each time that a motor vehicle is found to be parked in a manner prohibited by these regulations, except that a second or subsequent violation shall not be deemed to have occurred on the same day when that motor vehicle continues in the same violation at the same location.

(2) In metered visitor parking areas, each person whose vehicle is parked after the expiration of the paid meter time or otherwise in violation of these regulations shall be subject to the following fines:

(A) First violation: \$3 fine; and

(B) subsequent violations in the same day and at least two hours after the previous violation: \$10 fine for each violation.

The administrative fines specified in this paragraph (a)(2) shall apply only to vehicles not bearing a parking permit. Each person whose vehicle bears a parking permit and is parked in violation of this paragraph (a)(2) shall be subject to the fines specified in paragraph (a)(1).

(3) Persons paying the administrative fines specified in this regulation shall not be deemed guilty of violating these regulations under K.S.A. 75-4508, and amendments thereto, and shall not be subject to the criminal penalties prescribed by K.S.A. 75-4508, and amendments thereto. An administrative fee of \$25.00 shall be assessed to each person who does not pay the administrative fine specified in this regulation within 90 days of the date on which the citation was issued or, if the person submits an appeal as provided under subsection (b), within 90 days of the date on which the hearing officer affirms the fine.

(b) Appeal of administrative fines.

(1) Any person who is assessed an administrative fine under this regulation may submit a written appeal of the fine to the director within 10 days of the date on which the fine was assessed.

(2) A hearing officer shall be appointed by the director to consider each appeal. The fine may be affirmed, modified, or vacated by the hearing officer based on the written documentation submitted with the appeal. Before affirming, modifying, or vacating the fine, the person may be requested by the hearing officer to submit additional information in writing or in person.

(3) Written notice of the hearing officer’s decision to affirm, modify, or vacate the fine shall be given to the person within 30 days of the date on which the appeal is received by the director. The decision of the hearing officer shall be considered a final agency action, which may be appealed in accordance with K.S.A. 77-601 *et seq.*, and amendments thereto.

(c) Removal of vehicles. In addition to any criminal penalties imposed under K.S.A. 75-4501 *et seq.* and amendments thereto or any administrative fines assessed under this regulation, any motor vehicle, whether privately or publicly owned, that is parked in violation of any of these regulations may be deemed to be a common nuisance. Upon the direction of the secretary, the nuisance may be abated through removal and impoundment of the motor vehicle. The cost of the abatement by removal and impoundment shall be a lien against the motor vehicle until paid to the director or the director’s designee.

(d) Costs of immobilization. Each person whose vehicle is mechanically immobilized as provided in paragraph (a)(1)(D)(i) shall be assessed the costs incurred by the director for immobilizing the vehicle and removing the immobilization device.

(e) Termination of parking contract. Any parking contract may be terminated and any parking permit may be revoked by the secretary for any violation of the terms and conditions of the parking contract, these regulations, or any statute pertaining to parking. Each individual whose contract is terminated under this subsection shall be ineligible for a new parking contract until all other individuals eligible for parking contracts for whom space was not available at the time the individual's parking contract was terminated have been given an opportunity to enter into a parking contract. (Authorized by K.S.A. 75-3706, K.S.A. 2003 Supp. 75-4506, K.S.A. 75-4507, and K.S.A. 2003 Supp. 75-4508; implementing K.S.A. 75-3762, K.S.A. 2003 Supp. 75-4506 and K.S.A. 2003 Supp. 75-4508; effective Feb. 28, 2003; amended, T-1-3-29-04, March 29, 2004; amended July 23, 2004.)

Article 46.—PARKING FOR THE STATEHOUSE

1-46-1. Applicability. (a) The provisions of this article shall apply only to parking on the statehouse grounds unless expressly stated otherwise. Except as provided in K.A.R. 1-46-3, these regulations shall apply:

(1) between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted;

(2) between 8:00 a.m. and noon on Saturday, holidays excepted; and

(3) during any other time that either chamber of the legislature is meeting in session.

(b) "Statehouse grounds" means the area bounded by 8th, 10th, Jackson, and Harrison streets in Topeka, Kansas.

(c) "Person" means:

(1) the individual, partnership, corporation, association, or governmental body to whom the motor vehicle is registered pursuant to K.S.A. 8-127, as amended; or

(2) a person who has lawful possession of a motor vehicle pursuant to a lease entered into for valuable consideration, including assignments of motor vehicles to individuals or state agencies in accordance with K.S.A. 75-4601 *et seq.*, and any

amendments thereto, and rules and regulations promulgated thereunder.

(d) The term "motor vehicle" shall have the meaning prescribed by K.S.A. 8-126 as amended. (Authorized by K.S.A. 75-3706 and 75-4507; implementing K.S.A. 75-4507; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended Sept. 14, 1992.)

1-46-2. Parking restrictions. Unless the secretary of administration has specifically authorized otherwise, for reasons of business or emergency, no person shall: (a) Park a motor vehicle or permit his or her motor vehicle to be parked upon the statehouse grounds without a permit issued under the authority of this article.

(b) Park a motor vehicle or permit his or her motor vehicle to be parked, whether or not the motor vehicle displays an authorized parking permit, contrary to any sign posted by the capitol area security patrol, or contrary to any order of an officer of the capitol area security patrol upon the statehouse grounds. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-3. Additional parking restrictions. Unless otherwise authorized by the secretary of administration for reasons of business or emergency, no person shall, at any time, park a motor vehicle or permit that person's motor vehicle to be parked so that it is: (a) double-parked in a tunnel or archway;

(b) on a pedestrian walk;

(c) in a driveway;

(d) backed into a parking stall; or

(e) not within a marked parking stall. (Authorized by K.S.A. 75-3706 and 75-4507; implementing K.S.A. 75-4507; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended Sept. 14, 1992.)

1-46-4. Violations. Parking a motor vehicle in violation of any provision of this article shall constitute a misdemeanor under K.S.A. 75-4508, as amended, or under K.S.A. 75-4510a, as amended, or both. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-5. Tow-away. Any motor vehicle parked in violation of K.S.A. 75-4510a, as amended, may be removed and impounded in accordance with

K.S.A. 75-4510, as amended. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-6. Issuance of permits. The secretary of administration shall issue permits for parking on the statehouse grounds in accordance with this article of the rules and regulations of the department of administration. No fee or other charge shall be made for issuance of any permit to park on the statehouse grounds, and no contract for such parking shall be made. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-7. Legislative department. In addition to permits issued to legislators under K.A.R. 1-46-18, the secretary of administration shall issue not more than sixty-five (65) permits for parking on the statehouse grounds to officers and employees of the legislative department. Not more than twenty-five (25) of such permits shall allow parking on the statehouse grounds throughout the year, and the remainder of such permits shall allow such parking except during the time when the legislature is in session. Permits authorized by this regulation shall be issued to persons designated by the director of legislative administrative services. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-8. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; revoked May 1, 1979.)

1-46-9. Executive department. (a) The secretary of administration shall issue to officers and employees of the executive department not more than seventy-five (75) permits allowing parking on the statehouse grounds throughout the year. Included within such number of permits shall be the permits issued to members of the press pursuant to K.A.R. 1-46-13.

(b) The secretary of administration may issue to officers and employees of the executive department permits allowing parking on the statehouse grounds throughout the year, except during the time when the legislature is in session. The number of such permits so issued shall be determined by the secretary. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-10 to 1-46-12. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; revoked May 1, 1979.)

1-46-13. Press permits. The secretary of administration may issue permits for parking on the statehouse grounds to regular members of the statehouse press. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-14. Monument parking. The secretary of administration shall provide on the statehouse grounds not less than twenty-five (25) parking spaces that are appropriately designated by monuments for offices and positions within the executive and legislative departments. At least ten (10) of such monument parking spaces shall be for the executive department to be assigned by the secretary of administration, and at least fifteen (15) of such monument parking spaces shall be for the legislative department, to be assigned by the legislative coordinating council through the director of legislative administrative services.

The secretary of administration may establish additional monument parking spaces for the executive or the legislative department at his or her discretion. Monument parking spaces assigned to the legislative and executive departments shall be counted in the total number of permits authorized for each department by K.A.R. 1-46-7 and 1-46-9. Those persons holding titles for which monuments are provided shall be the only persons permitted to park in monument spaces, except that any other person may be permitted to use the monument space upon written authorization of the titleholder supplied to a member of the capitol area security patrol or to the secretary of administration. A monument shall not be provided for any officer or employee who does not work primarily in the capitol. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-15. Transfer of a permit. No permit issued for the statehouse grounds may be used by any other person or used for the parking of any motor vehicle other than one (1) owned or leased by a permittee. Exceptions to this regulation may be granted, but only in advance, by the secretary of administration for a member of the executive department, or by the legislative coordinating council through the director of legislative administrative services for a member of the legislative

department. A maximum of two (2) decals shall be authorized for each parking permit holder. In the event a permittee operates a vehicle which does not bear a decal, notice of decal number and license tag of such substitute vehicle shall be provided to the security officers of the highway patrol stationed in the state office building. (Authorized by and implementing K.S.A. 75-4507; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended May 1, 1981.)

1-46-16. Parking restricted by signs. The secretary of administration shall direct the capitol area security patrol to post signs in order to restrict parking on the statehouse grounds as follows: (a) At least thirty two (32) spaces in the southwest quadrant shall be signed for "visitor parking" while the legislature is both in and out of session.

(b) At least twelve (12) spaces not occupied by monuments in the northeast quadrant shall be signed for "legislators only" while the legislature is out of session.

(c) At least one hundred thirty (130) spaces shall be signed for "legislators only" while the legislature is in session.

(d) All spaces not occupied by monuments, and not specified by (a), (b), or (c) above, may be signed at the secretary's discretion as follows: "permit parking only," "legislators only," "visitor parking," or "construction parking." (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-17. Peak-load legislative parking. When all of the parking spaces signed for "legislators only" are occupied, any legislator may park in any space signed for "permit parking only," or in parking provided elsewhere by the secretary of administration. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-18. Official parking for legislators. The secretary of administration shall issue through the director of legislative administrative services, one (1) parking permit to each legislator during the first three (3) weeks in January of each odd-numbered year. Each legislative permit shall be effective during the two-year period commencing with issuance. The secretary shall obtain official parking stickers from the state printer who shall not provide identical or similar stickers to any other person. The official parking stickers shall be evi-

dence of a permit issued under this regulation and shall be affixed on the motor vehicle of the legislator as follows: one (1) sticker on the lower left corner of the front windshield and one (1) in the lower left corner of the rear window. A permit issued under this regulation shall be the only permit required of a legislator to park on the statehouse grounds, if the motor vehicle so parked properly displays official parking stickers. Whenever a motor vehicle which has no official parking stickers affixed thereto is sold or the legislator to whom the stickers were issued is no longer a member of the Kansas legislature, such stickers shall be removed by the legislator or former legislator from the motor vehicle. Whenever a vacancy shall occur in the legislature and a new member is appointed to fill the vacancy, the secretary of administration shall issue a parking permit and official parking stickers to the new member for the same term as other original permits were issued. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-19. Additional parking stickers for legislators. Additional sets of official parking stickers for any legislator shall be issued by the secretary of administration when application therefor is made to the director of legislative administrative services. Additional sets of stickers shall be affixed in the same manner as initial sets of stickers on the windshields of additional motor vehicles owned or leased by the legislator. Replacement of official parking stickers shall be issued by the secretary of administration upon appropriate showing of need. Notwithstanding the fact that a legislator may have more than one (1) set of official parking stickers, no legislator shall have parked upon the statehouse grounds at any one (1) time more than one (1) motor vehicle under the authority of either official parking stickers or a permit issued in accordance with these rules and regulations. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-20. Remote parking south of 10th street and 8th and Harrison. The secretary of administration shall issue permits to employees and officers of the legislative branch for parking in the state lot located at 8th and Harrison Streets, Topeka, whether or not the legislature is in session. The permits shall be issued in accordance with lists provided to the secretary by the

director of legislative administrative services. The secretary shall provide when the legislature is in session two hundred (200) parking spaces south of 10th street, and issue permits therefor to employees of the legislative branch in accordance with lists furnished by the director of legislative administrative services. The secretary may also provide parking spaces south of 10th street and issue permits therefor to employees of the executive branch whose main duty assignments are in the state capitol building. The provisions of this article shall apply to parking authorized under this regulation to the same extent as to parking on the statehouse grounds. No fee or other charge shall be made for issuance of any permit to park under authority of this regulation and no contract for such parking shall be made. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended, E-80-6, May 15, 1979; amended May 1, 1980.)

1-46-21. Additional parking in Topeka. The secretary of administration shall have the authority to negotiate with appropriate officials of the city of Topeka for parking privileges in the proximity of the statehouse grounds, particularly along the south curblin of 8th street and the north curblin of 10th street. This parking shall be used during legislative sessions for officers and employees of the legislative and executive branches working in the statehouse not accommodated with sufficient parking on the statehouse grounds proper. Such officers and employees shall be those officers and employees who hold permits for parking on the statehouse grounds, except during the time the legislature is in session, and such additional legislative officers and employees as are designated by the legislative coordinating council. Whenever a permittee to park on the statehouse grounds is unable to find an appropriate parking space on the statehouse grounds he or she may park in such additional areas designated by the secretary of administration. No fee or other charge shall be made for issuance of any permit to park under authority of this regulation and no contract for such parking shall be made. Parking provided under this regulation shall be in addition to all other parking provided under this article. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended, E-80-6, May 15, 1979; amended May 1, 1980.)

1-46-22. Temporary permits. In addition to other permits authorized under these regulations, the secretary of administration may provide for temporary parking permits for display on motor vehicles of persons visiting the statehouse or for such other good and sufficient reason as the secretary may determine. Persons whose motor vehicles display a temporary permit for parking issued by the secretary may park within parking stalls marked or posted by the secretary as available for temporary parking on such date and for such length of time as the individual temporary permit issued and displayed shall state. The secretary shall not issue or authorize to be issued any temporary permit to park at any place on the statehouse grounds except in such area as is regularly designated as "visitor parking" or "guest parking" under K.A.R. 1-46-16 (a) or (d). Applications for temporary permits or a renewal or extension thereof shall be made upon such conditions as the secretary may establish. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-23. Display of permits. Every motor vehicle authorized by these regulations to be parked upon state-owned or operated property subject to these regulations, except motor vehicles properly displaying official parking stickers of legislators, shall display the permit decal issued by the secretary. The permit decal shall be placed in the lower left corner of the windshield of the authorized motor vehicle by a member of the capitol area security patrol unless otherwise authorized by the secretary. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-46-24. Kansas judicial center parking. The secretary of administration may issue contracts and permits for parking in the underground garage of the Kansas judicial center. Such permits shall be issued only for employees and officials working in the judicial center. Those motor vehicles displaying a permit valid for the underground garage of the judicial center shall not be allowed to park elsewhere upon the statehouse grounds. The permits shall be issued in accordance with lists provided to the secretary by the chief justice of the supreme court and by the attorney general. The provisions of this article shall apply to parking authorized under this

rule to the same extent as to parking on the state-house grounds. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective May 1, 1979.)

Article 47.—VEHICLE TRAFFIC

1-47-1. Applicability. (a) Except as otherwise specified in these regulations, no person shall drive or otherwise operate any motor vehicle, bicycle, or any other vehicle intended to transport a person or persons, whether publicly or privately owned, upon any state-owned or state-operated property in Shawnee County, Kansas, in violation of these regulations or in contravention of the lawful directions of an officer of the capitol area security patrol. Exceptions to these regulations may be authorized by the secretary to allow for emergencies, public functions, deliveries of goods, repairs, or maintenance.

(b) These regulations shall not apply to any of the following:

(1) State-owned or state-operated property in Shawnee County, Kansas, that is under the jurisdiction and control of any of the following:

- (A) The secretary of corrections;
- (B) the Kansas neurological institute;
- (C) the juvenile justice authority; or
- (D) the Kansas national guard; or

(2) the state highway shops and laboratory. (Authorized by K.S.A. 75-3706 and 75-4505; implementing K.S.A. 75-3762 and 75-4505; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; amended June 6, 2003.)

1-47-2. Speed limits. No person shall drive or otherwise operate a vehicle using any driveway or roadway designed for vehicle traffic on state-owned or operated property subject to these rules and regulations at a speed in excess of fifteen (15) miles per hour, except as otherwise posted by the secretary, or as otherwise provided in these rules and regulations. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-47-3. Traffic flow. No person shall drive or otherwise operate a vehicle in the opposite direction on a driveway or roadway designed or posted for one-way traffic flow. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-47-4. Stop signs. No person driving or otherwise operating a vehicle shall fail to bring that vehicle to a complete stop at any stop sign as may

be posted by the secretary. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-47-5. Right-of-way. No person driving or otherwise operating a vehicle shall fail to yield the right of way to any pedestrian at any marked pedestrian crosswalk or sidewalk. No person shall fail to yield the right of way, in any circumstance to any pedestrian or vehicle in order to avoid a collision. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-47-6. Travel only on drives or roads. No person shall drive or otherwise operate a vehicle on other than a driveway or roadway intended and designed for motor vehicle traffic unless the secretary has posted otherwise. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

1-47-7. Penalties and enforcement. Any person who shall violate any of these rules and regulations shall be subject to arrest and prosecution and the penalties provided by law. (Authorized by K.S.A. 75-3706, 75-4501 *et seq.*; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979.)

Article 48.—PARKING VEHICLES; 801 HARRISON

1-48-1 to 1-48-5. (Authorized by K.S.A. 75-3706, K.S.A. 1965 Supp. 75-3622; effective Jan. 1, 1966; revoked May 1, 1975.)

Article 49.—PERSONAL CONDUCT; CERTAIN BUILDINGS AND GROUNDS

1-49-1. Personal conduct limitations and animal restrictions. (a) No person shall climb upon or hang over any rotunda, hall or portico, railing, or stair railing located in or upon any of the following properties:

- (1) The statehouse;
- (2) the Kansas judicial center;
- (3) Docking state office building, 915 SW Harrison;
- (4) Landon state office building, 900 SW Jackson;
- (5) the memorial building, 120 SW 10th;
- (6) Forbes office building #740;
- (7) the division of printing plant, 201 NW MacVicar;

(8) the state office building located at 3440 SE 10th Street;

(9) the Dillon house, 404 SW 9th Street;

(10) the Curtis state office building, 1000 SW Jackson;

(11) the state office building located at 700 SW Harrison; or

(12) any other building located in Shawnee County that is operated by the secretary of administration.

(b) No person shall run up or down the halls or stairways, or crowd, push, or shove any other person upon the stairways of any of the buildings listed in subsection (a).

(c) No person shall swim or wade in any fountain located on the grounds of any of the buildings listed in subsection (a), nor shall any person permit any animal under that person's care to enter the fountain.

(d) Except as provided in subsection (e), no person shall bring any animals into any of the buildings listed in subsection (a).

(e)(1) Guide dogs, hearing assistance dogs, and service dogs shall be permitted in the buildings identified in subsection (a) for the purpose of assisting disabled persons.

(2) Upon the request of a state agency, permission to bring animals into any of the buildings identified in subsection (a), or into a particular area within one of those buildings, may be granted by the secretary of administration if this action will assist a state agency in attaining an objective or goal that bears a valid relationship to the powers and functions of the state agency. (Authorized by K.S.A. 75-3706 and 75-4505; implementing K.S.A. 75-4505 and 75-3762; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1979; amended Nov. 18, 1991; amended June 27, 1994; amended May 26, 2000; amended June 6, 2003.)

1-49-2. Trash. Bottles, cups, food containers, or other trash shall not be left upon the stairways, or anywhere in the hallways of any buildings or upon the grounds of buildings listed in K.A.R. 1-49-1, but shall be placed in containers provided for the purpose. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-3. Eating on grounds. Lunches or picnics sponsored by private groups shall not be held upon any of the grounds, stairways, or hallways of any of the buildings listed in K.A.R. 1-49-

1, except upon prior approval by the secretary of administration. (Authorized by K.S.A. 75-3697, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-4. Unnecessary noise. Persons in the halls or upon the stairways of any buildings listed in K.A.R. 1-49-1, shall refrain from boisterous, noisy conduct or shouting. Groups of five (5) or more children under the age of eighteen (18) years shall be in the charge of some adult person who shall be held responsible for the conduct of the children. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-5. Damage to public property. No person shall write, scratch, cut or otherwise deface or damage any of the walls, floors, woodwork, doors, glass or other public property located in or on any of the buildings or grounds of buildings listed in K.A.R. 1-49-1. Any person violating this regulation shall be prosecuted as provided by law. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-6. Dome visitors. (a) No person under eighteen (18) years of age shall be permitted to visit the dome of the capitol building unless accompanied by an adult. The adult shall be held responsible for any person or persons under the age of eighteen (18) years within the capital dome area under his or her supervision.

(b) Any child under eighteen (18) years of age within the dome area shall remain in the immediate company of the adult responsible for his or her supervision. No adult shall permit any child under his or her supervision to run ahead or lag behind, or otherwise leave the immediate area in which the adult may be located.

(c) No person shall leave the designated stairways or walkways within the dome area. No person shall climb upon any girders or supporting beams located within the dome area. No person shall go upon either the glass, girders or catwalks of the glass inner dome ceiling. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-7. General dome provisions. (a) No person shall carry into the dome any bottle, cup or other trash. No person shall litter or drop any article whatsoever from any steps within the dome or from the observation tower outside the upper dome.

(b) All persons within the dome area shall carefully and promptly follow the directions of any official state guard or guide on duty therein. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-8. State office building observation tower. The provisions of K.A.R. 1-49-7 shall be equally applicable to persons visiting the observation tower of the state office building. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1979.)

1-49-9. Penalty and enforcement. Any person violating any of these regulations may be expelled and ejected from any of the buildings or grounds of buildings listed in K.A.R. 1-49-1. If any person is responsible for damage to or destruction of public property as the result of violation of these regulations he or she may be prosecuted as provided by law. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-3762; effective Jan. 1, 1966; amended May 1, 1978; amended May 1, 1979.)

1-49-10. Prior approval of activities. No person shall post any notices or petitions upon any of the grounds or in any of the public areas of the buildings listed in K.A.R. 1-49-1, except on the bulletin board of an agency when the consent of the agency has been secured. No person shall conduct any meeting, demonstration or solicitation on any of the grounds or in any of the buildings listed in K.A.R. 1-49-1 without the prior permission of the secretary of administration or the secretary's designee. (Authorized by K.S.A. Supp. 75-3706, K.S.A. 1978 Supp. 75-3762; effective May 1, 1978; amended May 1, 1979.)

1-49-11. Possession of firearms prohibited. The provisions of K.S.A. 1992 Supp. 21-4218, as amended, with respect to possession of firearms shall apply to all state-owned or leased buildings in which the agency or agencies occupying the building have conspicuously placed signs clearly stating that firearms are prohibited within that building. (Authorized by 75-3706, 75-4505; implementing K.S.A. 1992 Supp. 21-4218, as amended by L. 1992, ch. 298, sec. 80; effective Dec. 27, 1993.)

1-49-12. Smoking prohibited. No person shall smoke in any of the following areas: (a) In any of the buildings identified in K.A.R. 1-49-1;

(b) in or near the exterior doorways of those buildings, except in any area designated as a smoking area by means of a posted sign; or

(c) in any area designated as a nonsmoking area by means of a posted sign, on the grounds of those buildings. (Authorized by K.S.A. 75-3706 and 75-4505; implementing K.S.A. 75-3762 and K.S.A. 75-4505; effective June 6, 2003.)

Article 50.—MUNICIPAL ACCOUNTING SECTION FEES

1-50-1. (Authorized by and implementing K.S.A. 1981 Supp. 75-3910; effective, E-82-14, July 1, 1981; effective May 1, 1982; revoked, T-83-19, July 1, 1982; revoked May 1, 1983.)

1-50-2. (Authorized by and implementing L. 1982, ch. 31, sec. 5; effective, T-83-19, July 1, 1982; effective May 1, 1983; revoked July 12, 1993.)

Article 51.—MOBILE HOMES AND RECREATIONAL VEHICLES—GENERAL

1-51-1 to 1-51-4. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

Article 52.—STANDARDS (Mobile Housing)

1-52-1. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

1-52-2. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1213, 75-1220; effective May 1, 1979; revoked May 1, 1982.)

Article 53.—PLAN APPROVAL (Mobile Housing)

1-53-1 and 1-53-2. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

Article 54.—INSPECTION PROGRAM (Mobile Housing)

1-54-1 to 1-54-3. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

1-54-4 and 1-54-5. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective,

E-74-4, Nov. 2, 1973; effective, E-76-17, March 27, 1975; effective May 1, 1975; amended May 1, 1976; amended May 1, 1979; revoked May 1, 1982.)

**Article 55.—SEALS
(Mobile Housing)**

1-55-1 to 1-55-6. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**Article 56.—CONTRACT AGENTS
AND THIRD PARTIES
(Mobile Housing)**

1-56-1 to 1-56-3. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**Article 57.—SERIAL NUMBER
(MOBILE HOUSING)**

1-57-1. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**Article 58.—WARRANTIES
(MOBILE HOUSING)**

1-58-1. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**Article 59.—NONCOMPLIANCE
(Mobile Housing)**

1-59-1 to 1-59-3. (Authorized by K.S.A. 75-3706, K.S.A. 1978 Supp. 75-1220; effective, E-74-4, Nov. 2, 1973; effective May 1, 1975; amended May 1, 1979; revoked May 1, 1982.)

**Article 60.—SPECIAL ASSESSMENTS
AGAINST THE STATE**

1-60-1. Definitions. As used in this article, “secretary” means the secretary of administration, “local unit of government” means any subordinate governmental agency of the state having statutory authority to levy special assessment taxes for any purpose; and “board” means the governing body

of any local unit of government. (Authorized by K.S.A. 12-3502, 75-3706; effective May 1, 1978.)

1-60-2. Initial notification. When any local unit of government initiates action designed to create public improvements to be financed, in part or whole, by adjacent property owners by way of special assessment taxes, and one or more of the pieces of property involved belongs to the state of Kansas, such local unit of government shall inform the secretary of such action by sending by registered mail a copy of the resolution, minute, motion or record of such action, within ten (10) days after adoption, to the secretary of administration, second floor, statehouse, Topeka, Kansas 66612. The board will provide the secretary the following information in its initial notification, either by including same in its resolution, minute, motion or record of initiating action, or by separate documentation:

- (a) General nature of proposed improvement.
 - (b) Estimated total cost.
 - (c) Legal description of proposed improvement district.
 - (d) Proposed method of assessment.
 - (e) Apportionment, if any, of cost between property to be improved and property of local unit of government at large.
 - (f) Map of proposed improvement district specifying location of state owned property.
 - (g) State agency having custody of affected land.
- (Authorized by K.S.A. 12-3504, 75-3706; effective May 1, 1978.)

1-60-3. Subsequent notifications. The board shall also provide to the secretary, and to such state agency heads as may be designated by the secretary, a copy of all subsequent formal actions taken by the board with respect to creation of the improvement district to include motions, resolutions, ordinances and notices of public hearings. (Authorized by K.S.A. 12-3504, 75-3706; effective May 1, 1978.)

Article 61.—ALLOTMENT SYSTEM

1-61-1. Required findings and notice of implementation of allotment system. (a) Findings. (1) Whenever the secretary of administration, on the advice of the director of the budget, finds that the resources of the state general fund or any special revenue fund are likely to be insufficient to finance appropriations against the state general fund or such special revenue fund, the secretary

of administration shall instruct the director of the budget to implement an allotment system.

(2) Whenever the secretary of administration, on the advice of the director of the budget, finds that the use of an allotment system for application to a particular executive branch state agency will be beneficial to the state in order to assure that the affected state agency will be able to operate for an entire fiscal year within the fiscal constraints of appropriations made to the affected state agency, the secretary of administration may instruct the director of the budget to implement an allotment system for the affected state agency.

The secretary of administration shall inform the director of the budget of the secretary's decisions as to the amount of money to be made available to each affected state agency to which the allotment system is to be applied and of any limitation thereon.

(b) Notice. After the director of the budget has received notice from the secretary of administration of the secretary's allotment decision or decisions, the director of the budget shall provide written notice of the allotment decision to each state agency that is affected by the allotment system. The notice shall be given to a state agency at least 30 days before the beginning of the time period in which that state agency is subject to the allotment system. The 30 day notice shall be deemed to have been timely given if the notice is personally delivered to the affected state agency or placed in the U.S. mail, addressed to the affected state agency, at least 30 days prior to the time period in which the state agency is subject to the allotment system. The notice shall:

(1) specify the amount of money that the secretary of administration has allotted to the state agency, and the limitations and time period or periods applicable to the allotment;

(2) specify the type and form of fiscal information that is to be submitted by the state agency to the director of the budget and time schedules therefor; and

(3) inform the agency of the right to seek review of the secretary's allotment decisions pursuant to K.A.R. 1-61-3. (Authorized by and implementing K.S.A. 75-3722; effective, T-83-42, Nov. 23, 1982; effective May 1, 1983.)

1-61-2. Monitoring and reporting on allotment system. (a) The director of the budget shall provide the director of accounts and reports information showing the allotment decisions of the secretary of administration and any modifi-

cation thereto which have been approved by the governor.

(b) The director of accounts and reports or the director of the budget may require agencies subject to the allotment system to submit specific or general information that either director deems necessary to assure that any agency is operating within the funds allotted and limitations applicable thereto.

(c) In cases where there is a dispute, the secretary of administration shall make determinations as to whether an agency is operating within the funds allotted to an agency and complying with limitations placed on those funds after first giving the agency an opportunity to supply relevant information. In cases where an agency head is aggrieved by the secretary's decision, the matter shall be referred to the Governor, whose decision shall be final. (Authorized by and implementing K.S.A. 75-3722; effective, T-83-42, Nov. 23, 1982; effective May 1, 1983.)

1-61-3. Review of allotment decisions. A state agency may request that the Governor review an allotment decision of the secretary of administration. The request shall be made in writing and delivered to the Governor within 10 days after the personal delivery or postmark date of the notice of the agency's allotment and shall include:

(a) any proposed alternative methods the agency recommends to reduce expenditures to the level that would be realized if the secretary of administration's allotment decision is not altered; and

(b) other information that the requesting state agency believes is necessary for the Governor to undertake an appropriate review of the allotment decision of the secretary of administration. (Authorized by and implementing K.S.A. 75-3722; effective, T-83-42, Nov. 23, 1982; effective May 1, 1983.)

Article 62.—HANDICAPPED ACCESSIBILITY STANDARDS

1-62-1. Handicapped accessibility standards. Subject to the additional provisions of K.S.A. 58-1301 *et seq.*, all public buildings and facilities in this state, and additions thereto, and all governmental buildings and facilities in this state, and additions thereto, shall conform to the American National Standards Institute, Inc. specifications, designated ANSI A-117.1-1986, for making buildings and facilities accessible to, and

usable by, the physically handicapped, which specifically were approved February 5, 1986, by the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018. Any public building or facility or any governmental building or facility, or any addition to any such building or facility, to which the provisions of K.S.A. 58-1301 were applicable prior to the effective date of this regulation, shall be governed by the provisions of that section which were in effect on the date the contract for design of such public building or facility or such governmental building or facility, or addition thereto, was entered into. (Authorized by and implementing K.S.A. 58-1301; effective Aug. 14, 1989.)

Article 63.—QUALITY MANAGEMENT

1-63-1. State quality management initiative. (a) The state quality management initiative shall focus on customer satisfaction, continuous improvement, and employee involvement.

(b) In order to continually strive towards achieving the highest quality in all aspects of state government, state agencies, employees, administrators, officers and quality teams shall adhere to the state quality program's guiding principles. The four guiding principles shall be:

- (1) identify customers and meet their needs and expectations;
- (2) involve employees at all levels in problem solving and decision making;
- (3) enable employees to change and succeed through appropriate education and training; and
- (4) improve processes and remove barriers to create and reinforce continuous improvement.

(c) Each state agency shall prepare an implementation strategy containing proposed activities and quality goals in accordance with the statewide quality management implementation strategy established by the secretary of administration. These strategies shall be submitted to the secretary of administration for approval. (Authorized by and implementing L. 1994, ch. 91, § 1; effective, T-1-9-19-94, Sept. 19, 1994; effective Nov. 21, 1994.)

1-63-2. Quality initiative leadership. (a) The state quality management initiative shall be led by the secretary of administration and shall include the elements listed below:

- (1) promoting and assisting the development of implementation strategies by each agency; and
- (2) developing and coordinating appropriate training programs for state officers and employees.

(b) The quality management advisory council shall consist of each state agency cabinet secretary and shall advise the secretary of administration on state quality management initiative policy issues.

(c) A state quality management initiative administrative and training office shall be staffed by the division of personnel services. Quality management materials and programs for the state quality program shall be developed and coordinated by the administrative and training office with the approval of the comprehensive management education and training strategy committee. (Authorized by and implementing K.S.A. 1996 Supp. 75-37,115; effective, T-1-9-19-94, Sept. 19, 1994; effective Nov. 21, 1994; amended June 20, 1997.)

Article 64.—ADMINISTRATION OF WIRELESS AND VOIP ENHANCED 911 SERVICES

1-64-1. (Authorized by K.S.A. 2006 Supp. 12-5325 and 12-5354; implementing K.S.A. 2006 Supp. 12-5325, 12-5331, 12-5354, and 12-5357; effective Sept. 21, 2007; revoked Feb. 17, 2012.)

Article 65.—ENERGY STAR PRODUCTS AND EQUIPMENT

1-65-1. Purchase of energy star products and equipment. (a) Subject to the provisions of K.S.A. 75-3737a through K.S.A. 75-3744, K.S.A. 75-37,102, and K.S.A. 75-4713 and amendments thereto, each state agency shall acquire products and equipment that bear the energy star label pursuant to K.S.A. 75-37,127, and amendments thereto.

(b) In order to determine the projected cost savings for the useful life of an energy star product, each state agency shall utilize the United States environmental protection agency's energy savings calculator for the energy star product.

(c) If the United States environmental protection agency has not produced an energy savings calculator for a specific energy star product, then the projected cost savings for the useful life of the energy star product shall be based on a comparison of the following:

- (1) The initial cost of the energy star product plus the estimated lifetime operating cost of the energy star product; and
- (2) the initial cost of a functionally equivalent product plus the estimated lifetime operating cost of the functionally equivalent product.

(d) This regulation shall apply only to the purchase of new, unused energy star products and equipment. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,127; effective Feb. 4, 2011.)

Article 66.—ENERGY AUDITS FOR REAL PROPERTY

1-66-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Agency head” means an individual or body of individuals in which the ultimate legal authority of a state agency is vested by any provision of law.

(b) “Division” means the division of facilities management within the Kansas department of administration.

(c) “Energy audit” means the utilization of a building energy-use benchmarking system, including the energy star portfolio manager, that generates a written report that details the conversion of a building’s energy consumption data into energy-intensity metrics for the purpose of comparing the energy use of a building to the national average energy use of similar buildings.

(d) “Energy consumption data” means the monthly amount of energy consumed in the preceding 12-month period as recorded by a utility distributing and selling energy or water services for a particular building.

(e) “Energy-intensity metrics” means the measurement of weather variations and changes in the physical and operating characteristics of each building.

(f) “Energy star portfolio manager” means an online energy management tool created by the United States environmental protection agency that uses an algorithmic formula for tracking and assessing energy and water consumption across a portfolio of buildings. The energy star portfolio manager can be accessed through the division’s web site.

(g)(1) “Excessive amount of energy,” when applied to a building subject to an energy audit, shall be determined by comparing the building’s site and source energy-intensity metrics, annualized to a 12-month period, to the national average site and source energy-intensity metrics of similar buildings.

(2) If the site and source energy-intensity metrics of the building subject to an energy audit are greater than the national average site and source

energy-intensity metrics, then the building shall be deemed to use an excessive amount of energy.

(h) “Secretary” means the secretary of the Kansas department of administration.

(i) “State agency” has the meaning specified in K.S.A. 75-3701, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

1-66-2. Energy audit required for each state-owned building. (a) If a state agency owns real property, the agency head, or that person’s designee, shall conduct an energy audit of each building on that real property and submit the written report to the division.

(b) An energy audit shall be conducted every five years for each building specified in subsection (a).

(c) If a state agency owns four buildings or less, the written reports for the first energy audits for all of the buildings shall be submitted no later than July 1, 2011.

(d) If a state agency owns five or more buildings, an energy audit for at least one-fifth of all of those buildings shall be conducted each year. The written reports for the first energy audits shall be submitted no later than July 1, 2011.

(e) Each state agency conducting an energy audit shall identify each state-owned building in which an excessive amount of energy is being used, pursuant to K.S.A. 75-37,128 and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

1-66-3. Energy audit required for new lease, or lease renewal or extension, of non-state-owned real property. (a) Each new lease, or lease renewal or extension, for non-state-owned real property submitted by an agency head to the division for approval shall include the written report for an energy audit conducted by the owner or lessor of each building on that real property that is the subject of the new lease, or lease renewal or extension.

(b) Subject to the provisions of K.S.A. 75-3739 and amendments thereto, a new lease, or lease renewal or extension, may be approved if either of the following conditions is met:

(1) The written report for the energy audit indicates that the leased space does not use an excessive amount of energy.

(2) The written report for the energy audit indicates that the leased space uses an excessive amount of energy, and the new lease, or lease re-

new or extension, requires the owner or lessor to implement cost-effective energy conservation measures that are approved by the secretary to reduce or eliminate the excessive amount of energy. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,128; effective Feb. 4, 2011.)

Article 67.—ENERGY EFFICIENCY PERFORMANCE STANDARDS FOR STATE-OWNED BUILDINGS

1-67-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Agency architect” has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(b) “Agency engineer” has the meaning specified in K.S.A. 75-1254(a)(3), and amendments thereto.

(c) “ASHRAE” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(d) “Design development” means drawings and other documents that describe the size and character of a project’s architectural, structural, mechanical, and electrical systems.

(e) “IECC” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(f) “New construction” has the meaning specified in K.S.A. 75-37,126, and amendments thereto.

(g) “Project architect” has the meaning specified in K.S.A. 75-1251, and amendments thereto.

(h) “Project engineer” has the meaning specified in K.S.A. 75-1251, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

1-67-2. Energy efficiency performance standards for new construction. (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall comply with ASHRAE or IECC at the time of submission of the design development for new construction.

(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for new construction, the agency architect, agency engineer, project architect, or project engineer shall submit a report verifying life-cycle cost-effective compliance for the

new construction. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

1-67-3. Energy efficiency performance standards for renovated, retrofitted, or repaired buildings. (a) Subject to the provisions of K.S.A. 75-1250 through K.S.A. 75-1267 and K.S.A. 75-3784 and amendments thereto, each agency architect, agency engineer, project architect, or project engineer shall, to the extent possible, comply with ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building.

(b) If an agency architect, agency engineer, project architect, or project engineer seeks to comply with a functionally equivalent standard other than ASHRAE or IECC at the time of submission of the design development for the renovation, retrofit, or repair of each state-owned building, the agency architect, agency engineer, project architect, or project engineer shall submit a report verifying life-cycle cost-effective compliance for the renovation, retrofit, or repair of each state-owned building. The report shall be submitted to the department of administration, division of facilities management. (Authorized by and implementing K.S.A. 2009 Supp. 75-37,129a; effective Feb. 4, 2011.)

Article 68.—AVERAGE FUEL ECONOMY STANDARDS FOR STATE-OWNED MOTOR VEHICLES

1-68-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Average fuel economy” shall have the meaning assigned to that term in 40 C.F.R. 600.002-85(a)(14), as in effect on July 1, 2007, which is hereby adopted by reference.

(b)(1) “Life-cycle cost-effective,” when used to describe a motor vehicle that is being compared to another motor vehicle, shall mean the motor vehicle with a lower life-cycle cost, as determined according to this subsection.

(2) To determine the life-cycle cost of each motor vehicle, the following formula shall be used: (Average annual fuel cost of the motor vehicle x 6.67) + purchase price of the motor vehicle. The

multiplier 6.67 reflects 100,000 miles divided by 15,000 miles per year.

(3) If the motor vehicles being compared have identical life-cycle costs as computed in accordance with this subsection, then these motor vehicles shall be deemed to be equally life-cycle cost-effective.

(c) "Motor vehicle" shall have the meaning assigned to "automobile" in 40 C.F.R. 600.002-85(a) (4), as in effect on July 1, 2007, which is hereby adopted by reference. As used in that federal regulation, "secretary" shall mean the U.S. secretary of transportation or that person's authorized representative.

(d) "State agency" has the meaning specified in K.S.A. 75-3701, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective Feb. 4, 2011.)

1-68-2. Purchase of a new motor vehicle during fiscal year 2011. (a) Each state agency that seeks to purchase a new motor vehicle during

fiscal year 2011 shall be subject to the provisions of K.S.A. 75-3739 through K.S.A. 75-3740a, K.S.A. 75-37,102, and K.S.A. 75-4618 and amendments thereto.

(b) Each state agency that seeks to purchase a new motor vehicle without complying with subsection (a) shall meet the following requirements before the purchase of the new motor vehicle:

(1) Submit a written motor vehicle purchase request to the department of administration, division of budget, on a form authorized by the division of budget; and

(2) obtain approval to purchase the new motor vehicle from the department of administration, division of budget.

(c) The director of the division of purchases in the department of administration shall obtain the average fuel economy for each motor vehicle on contract and ensure that each motor vehicle purchased as specified in subsection (a) is life-cycle cost-effective. (Authorized by and implementing K.S.A. 2009 Supp. 75-4618; effective Feb. 4, 2011.)

Agency 2

Municipal Accounting Board

Editor's Note:

For later regulations affecting licensed municipal accountants, see Agency 74, articles 4, 5 and 10.

Articles

- 2-1. *EXAMINATION AND LICENSURE OF MUNICIPAL PUBLIC ACCOUNTANTS. (Not in active use.)*
- 2-2. *ACCOUNTING AND FISCAL PROCEDURE FOR MUNICIPALITIES. (Not in active use.)*
- 2-3. *ACCOUNTING AND FISCAL PROCEDURE FOR MUNICIPALITIES.*
- 2-4. *SAME; APPLICABILITY TO OTHER UNITS. (Not in active use.)*
- 2-5. *CONTINUING EDUCATION REQUIREMENTS FOR LICENSED MUNICIPAL PUBLIC ACCOUNTANTS. (Not in active use.)*

Article 1.—EXAMINATION OF LICENSURE OF MUNICIPAL PUBLIC ACCOUNTANTS

2-1-1 to 2-1-16. (Authorized by K.S.A. 75-1119; effective May 1, 1978; revoked May 1, 1985.)

Article 2.—ACCOUNTING AND FISCAL PROCEDURE FOR MUNICIPALITIES

2-2-1. (Authorized by K.S.A. 75-1117, 75-1121 and 75-1123; effective May 1, 1978; revoked May 1, 1980.)

2-2-2. (Authorized by K.S.A. 75-1120, 75-1121 and 75-1123; effective May 1, 1978; revoked May 1, 1980.)

2-2-3 and 2-2-4. (Authorized by K.S.A. 75-1121 and 75-1123; effective May 1, 1978; revoked May 1, 1980.)

Article 3.—ACCOUNTING AND FISCAL PROCEDURE FOR MUNICIPALITIES

2-3-1 and 2-3-2. (Authorized by K.S.A. 75-1120, 75-1121, 75-1123; effective May 1, 1978; revoked May 1, 1980.)

2-3-3. (Authorized by K.S.A. 75-1121; effective May 1, 1978; revoked July 19, 1993.)

2-3-4. Audit reports. No municipality shall place a restriction upon the scope of the report without prior approval of the director. The audit report shall comply with the standards prescribed by regulations adopted by the director and the board.

The report shall either contain an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated. In all cases where an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's examination, if any, and the degree of responsibility he is taking. (Authorized by K.S.A. 75-1121 and 75-1124; effective May 1, 1978.)

2-3-5. Compliance reports. Upon the installation in any governmental unit of approved accounting procedures at the direction of, or with the assistance of, the director or his staff, copies of the monthly reports, as prepared for the governing body shall be filed with the office of the director for a period of one year or as determined by the director upon his written directive. These copies will indicate the financial condition of the governmental unit and establish its continued compliance with the prescribed accounting procedures. Failure to comply will be subject to penalties as prescribed in K.S.A. 75-1130. (Authorized by K.S.A. 75-1121; effective May 1, 1978.)

2-3-6. (Authorized by K.S.A. 75-1121, 75-1123; effective May 1, 1978; revoked May 1, 1980.)

Article 4.—SAME; APPLICABILITY TO OTHER UNITS

2-4-1. (Authorized by K.S.A. 75-1121; effective May 1, 1978; revoked May 1, 1980.)

**Article 5.—CONTINUING EDUCATION
REQUIREMENTS FOR LICENSED
MUNICIPAL PUBLIC ACCOUNTANTS**

2-5-1 to 2-5-5. (Authorized by K.S.A. 75-1119; effective May 1, 1979; revoked May 1, 1985.)

Agency 3

State Treasurer

Articles

- 3-1. DISPOSITION OF UNCLAIMED PROPERTY.
- 3-2. KANSAS POSTSECONDARY EDUCATION SAVINGS PROGRAM.
- 3-3. LINKED DEPOSIT LOAN PROGRAMS.
- 3-4. LOW-INCOME FAMILY POSTSECONDARY SAVINGS ACCOUNTS INCENTIVE PROGRAM.

Article 1.—DISPOSITION OF UNCLAIMED PROPERTY

3-1-1. Time limits. Whenever limits of time are provided for in the act or in these rules and regulations the following shall govern: Whenever the time provided for is seven (7) days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time so limited is less than seven (7) days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any such period shall fall on a Saturday, Sunday or legal holiday, such day shall be omitted from the computation. (Authorized by K.S.A. 1979 Supp. 58-3927; effective May 1, 1980.)

3-1-2. Definitions. (a) "Demand deposit" means every deposit which is not a "time deposit" or "savings deposit".

(b) "Time deposit" means "time certificate of deposit" and "time deposit open account".

(c) "Time certificate of deposit" means a deposit evidenced by a negotiable or non-negotiable instrument which provides on its face that the amount of such deposit is payable:

(1) On a certain date, specified in the instrument, not less than thirty (30) days after the date of the deposit.

(2) At expiration of a specified period not less than thirty (30) days after the date of the instrument.

(3) Upon written notice to be given out less than thirty (30) days before the date of repayment.

(d) "Time deposit, open account" means a deposit, other than a "time certificate of deposit", with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall not be less than thirty (30) days after the date of the deposit; or prior to the expiration

of a period of notice which must be given by the depositor in writing not less than thirty (30) days in advance of withdrawals.

(e) "Savings deposit" means a deposit with respect to which the depositor is not required by the deposit contract but may at any time be required by the financial institution to give notice in writing of an intended withdrawal not less than thirty (30) days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(f) "Charges that may lawfully be withheld" means any type of deduction by a holder (including service charges, holding charges and administrative costs) from property presumed abandoned pursuant to the disposition of unclaimed property act, also deductions by a holder from property prior to the presumption of abandonment, which deductions were made by reason of the nonoccurrence of the events or acts that prevent the presumption of abandonment, or by reason of the inactivity, dormancy of unclaimed status of the property.

(g) "Memorandum on file" means a written notation prepared in the ordinary course of business of a financial organization reflecting an oral or written interest expressed by the owner relating to his or her funds of deposit. To be effective as a bar to the presumption of abandonment the memorandum must be prepared contemporaneously with the expression of interest by the owner and prepared and dated by a responsible representative of the financial organization.

(h) "Annual correspondence" means written correspondence mailed first class, postage prepaid, by the holder on an annual basis. (Authorized by K.S.A. 1979 Supp. 58-3927; effective May 1, 1980.)

3-1-3. Charges by holder. Charges deducted by any holder shall be included as a portion of the report filed pursuant to K.S.A. 1979 Supp.

58-3912 along with the citation of the authority or a copy of the form or contract authorizing such charges. The value or amount of each item of property before any such charges were deducted therefrom shall also be stated in the report along with the amount of the charges deducted from each item and the date or dates on which such charges were deducted. The fact that the total charges deducted from an item of property equals or exceeds the value of the item shall not relieve the holder from making the report or providing the information requested on the report form. The state treasurer may by special inquiry to holder require additional explanation of charges including documentation of correspondence between the holder and owner, passbook provisions, signature cards, rules and regulations, by-laws, and other documents concerning any agreement between the holder and the owner.

If payment of interest or dividends on property presumed abandoned pursuant to the disposition of unclaimed property act is discontinued, before or after the property is presumed abandoned, the holder shall include in the report filed pursuant to K.S.A. 1979 Supp. 58-3912 a statement explaining the discontinuance. The state treasurer, by special inquiry with the holder, may require documentation relative to the discontinuance. (Authorized by K.S.A. 1979 Supp. 58-3927; effective May 1, 1980.)

3-1-4. Action by holder. An act or occurrence delaying or terminating the presumption of abandonment cannot result from the unilateral act of the holder except in those instances where correspondence is mailed by the holder and not returned. (Authorized by K.S.A. 1979 Supp. 58-3927; effective May 1, 1980.)

Article 2.—KANSAS POSTSECONDARY EDUCATION SAVINGS PROGRAM

3-2-1. No guarantee of principal or earnings; required statement. Each account contract, account application, and account deposit slip, and all promotional materials for the Kansas postsecondary education savings program shall contain the following statement or an equivalent statement approved by the treasurer, in a typeface and a location that are readily visible: “**NOTICE:** Accounts established under the Kansas Postsecondary Education Savings Program and their earnings are neither insured nor

guaranteed by the State of Kansas.” (Authorized by K.S.A. 1999 Supp. 75-644 and 75-647; implementing K.S.A. 1999 Supp. 75-647; effective June 30, 2000.)

3-2-2. Excess contributions. (a)(1) “Excess contributions” means contributions on behalf of a designated beneficiary in excess of the maximum account balance.

(2) “Maximum account balance” means an amount equal to the average amount of the qualified higher education expenses that would be incurred by a designated beneficiary for five years of study at institutions of postsecondary education located in the midwest states, as determined annually by the state treasurer.

(b) The program manager shall establish adequate safeguards to prevent excess contributions. At a minimum, those safeguards shall include all of the following:

(1) The program manager shall identify all accounts with the same designated beneficiary.

(2) When a contribution is forwarded to the program manager, the program manager shall use the following calculation to determine whether that contribution would exceed the maximum account balance:

(A) Add the following amounts:

(i) The new contribution;

(ii) the aggregate balance of all accounts for that designated beneficiary at the end of the prior quarter; and

(iii) the sum of all other contributions made during the current quarter to any account for that designated beneficiary; and

(B) subtract the sum of all withdrawals made during the current quarter from any account for that designated beneficiary.

Any portion of the contribution that is determined in this manner to exceed the maximum account balance shall be an excess contribution.

(3) If the program manager determines that a contribution will result in excess contributions for that designated beneficiary, the program manager shall deposit only that portion of the contribution, if any, that will not result in an excess contribution. The program manager shall return the balance of the contribution to the contributor.

(c) The program manager shall continually monitor the contributions to and aggregate balance of all the accounts for each designated beneficiary, using the following calculation:

(A) Add the following amounts:

(i) The aggregate balance of all accounts for that designated beneficiary at the end of the prior quarter; and

(ii) the sum of all contributions made during the current quarter to any account for that designated beneficiary; and

(B) subtract the sum of all withdrawals made during the current quarter from any account for that designated beneficiary.

If at any time the result of this calculation exceeds the maximum account balance, the program manager shall determine whether any portion of the amount in excess of the maximum account balance is attributable to contributions made during the current quarter. The program manager shall not be required to take any further action if the amount that created the excess is not attributable to current-quarter contributions. If any portion of the excess is attributable to current-quarter contributions, the program manager shall notify the account owner of each account creating the excess that excess contributions have been made on behalf of the designated beneficiary and that the excess contributions attributable to that account must be eliminated through a withdrawal or a roll-over distribution.

(d) If, within 30 days of the date the notice is mailed to the account owner, the account owner does not submit a request for a withdrawal or roll-over distribution in an amount sufficient to eliminate the excess contributions for that designated beneficiary, the program manager shall process withdrawal of the excess contributions from the affected account and shall forward the proceeds to the account owner. (Authorized by K.S.A. 2001 Supp. 75-644 and 75-646, as amended by L. 2002, Ch. 104, Sec. 2; implementing K.S.A. 2001 Supp. 75-646, as amended by L. 2002, Ch. 104, Sec. 2; effective June 30, 2000; amended Dec. 6, 2002.)

3-2-3. Withdrawals. Any account owner may withdraw part or all of the balance from the owner's account at any time.

Each request for a withdrawal shall be made in the form prescribed by the treasurer. The request shall include an identification of the account from which the withdrawal is to be made and the amount.

Except as otherwise provided by the postsecondary education savings agreement, the program manager shall process each withdrawal upon receipt of a completed withdrawal request. (Authorized by K.S.A. 2001 Supp. 75-644 and 75-646, as

amended by L. 2002, Ch. 104, Sec. 2; implementing K.S.A. 2001 Supp. 75-646, as amended by L. 2002, Ch. 104, Sec. 2; effective June 30, 2000; amended Dec. 6, 2002.)

Article 3.—LINKED DEPOSIT LOAN PROGRAMS

3-3-1. Agricultural production loans. For each agricultural production loan authorized by K.S.A. 75-4270 et seq. and amendments thereto, the "eligible agricultural borrower" shall be a resident of the state of Kansas, and a majority of the farm for which the proceeds of the loan are expended shall be located within the state of Kansas. A limited liability agricultural company, limited agricultural partnership, or family farm corporation shall be considered a resident if it meets the requirements of K.S.A. 17-5903, and amendments thereto. (Authorized by K.S.A. 2007 Supp. 75-4270; implementing K.S.A. 2007 Supp. 75-4270, 75-4271, and 75-4272; effective, T-3-7-3-00, July 3, 2000; effective Oct. 27, 2000; amended, T-3-6-25-08, July 1, 2008; amended Oct. 24, 2008.)

3-3-2. Kansas housing loans. (a) The proceeds of all housing loans authorized by K.S.A. 75-4276 et seq., and amendments thereto, may be used for building newly constructed residential structures or rehabilitating existing residential structures.

(1) A "residential structure" shall mean an improvement to real property that is intended to be used or occupied as a single-family residential dwelling or a multifamily residential dwelling of four attached living units or less.

(2) A "newly constructed residential structure" shall mean a residential structure that has never been occupied for any purpose and initially sells or is appraised by an independent certified real estate appraiser or an independent licensed real estate appraiser for less than \$287,434 for a single-family residence, \$367,975 for a two-family residence, \$444,751 for a three-family residence, and \$552,757 for a four-family residence. The value of the property shall include the value of the land upon which the improvement is located only if the cost of the land is included in the housing loan.

(3) Each loan for rehabilitating a residential structure shall be at least \$15,000, and the value of the property upon completion of the project shall be estimated to be less than the amounts listed in paragraph (a)(2) using either an appraisal by an

independent certified real estate appraiser or an independent licensed real estate appraiser or the most recent county appraisal of the property plus the cost of the rehabilitation project.

(b) Loans to savings banks and savings and loan associations statewide may be made by the treasurer. (Authorized by K.S.A. 2009 Supp. 75-4278; implementing K.S.A. 2009 Supp. 75-4277(e), as amended by L. 2010, ch. 113, sec. 1(e), and K.S.A. 2009 Supp. 75-4279(g), as amended by L. 2010, ch. 113, sec. 2(g); effective, T-3-6-25-08, July 1, 2008; effective Oct. 24, 2008; amended, T-3-5-12-10, May 12, 2010; amended Jan. 21, 2011.)

Article 4.—LOW-INCOME FAMILY POSTSECONDARY SAVINGS ACCOUNTS INCENTIVE PROGRAM

3-4-1. Definitions. In addition to the terms and definitions in K.S.A. 75-643 and K.S.A. 75-650 and amendments thereto, the following terms shall have the meanings specified in this regulation:

(a) “Account owner” means the account owner or joint account owners of a participant account.

(b) “Contribution” means any deposit made by an account owner to that account owner’s participant account during a calendar year, except any deposit that is one of the following:

(1) A rollover from another account in the Kansas postsecondary education savings program;

(2) a rollover from another state’s qualified tuition program as defined in internal revenue code section 529;

(3) a transfer from a Coverdell education savings account as defined in internal revenue code section 530; or

(4) a transfer of proceeds from a qualified U.S. savings bond as described in internal revenue code section 135(c)(2)(C).

(c) “Household” means a group of individuals who are related by birth, marriage, or adoption and who share a residence.

(d) “Participant” has the meaning specified in K.S.A. 75-650, and amendments thereto. Each participant shall be a beneficiary of a Kansas postsecondary education savings program account, as defined in K.S.A. 75-643 and amendments thereto.

(e) “Participant account” means the Kansas postsecondary education savings program account established by an account owner for the benefit of a participant who is enrolled in the matching grant program.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by L. 2009, ch. 113, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

3-4-2. Eligibility requirements. Each account owner shall meet the following requirements:

(a) Be a resident of the state of Kansas;

(b) reside in a household with a combined federal adjusted gross income for all individuals residing in the household that is not more than 200 percent of the current federal poverty level; and

(c) not be claimed as a dependent on someone else’s income tax return.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

3-4-3. Applications. Each application shall be processed in the order received for awarding the number of matching grants authorized by L. 2006, ch. 189, sec. 3, and amendments thereto. Each application shall be accompanied by a copy of the federal income tax return for the previous tax year for each individual residing in the household who is required to file an income tax return. (Authorized by and implementing L. 2006, ch. 189, sec. 3; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006.)

3-4-4. Eligibility period. Each participant shall be entitled to a matching grant equal to the amount of the account owner’s contributions to the participant account for the program year in which the account owner’s application is approved. The program year shall coincide with the period designated for contributions that are eligible for the deduction pursuant to K.S.A. 79-32,117(c)(xv) and amendments thereto. Each account owner shall re-apply each program year to remain eligible for the program. A participant shall not be eligible during a program year in which a qualified or nonqualified withdrawal is taken from the participant account.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by L. 2009, ch. 113, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

3-4-5. Matching grant accounts. The matching grant funds for each participant shall be deposited in a separate account in the account owner's name for the benefit of the participant, with the following restrictions:

(a) No change in ownership of the participant account or the corresponding matching grant account shall be allowed, except upon approval by the treasurer. A change in account ownership to another account owner who meets the eligibility requirements in K.A.R. 3-4-2 may be approved by the treasurer. A change in account ownership to any individual may be approved by the treasurer upon the account owner's death, divorce, or incapacity.

(b) For participant accounts that are not used to participate in the matching grant program after January 1, 2010, any change in the designated beneficiary for a participant account by the account owner shall cause the beneficiary for the corresponding matching grant account to be changed to the same new beneficiary.

(c) The investment portfolio for the corresponding matching grant account shall always be the same as the investment portfolio selected for each participant account.

(d) Each request for a withdrawal from the matching grant account shall be submitted to the treasurer's office for approval. If the treasurer determines that the request is for qualified higher education expenses, then the request shall be approved. Each approved withdrawal from the matching grant account shall be paid either directly to the educational institution or to the account owner or the designated beneficiary, upon presentation of documentation acceptable to the treasurer that the account owner or designated beneficiary has paid qualified higher education expenses at least equal to the amount of the requested withdrawal. Each approved withdrawal shall be equally funded from the participant account and the corresponding matching grant account.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; amended Jan. 1, 2010.)

3-4-6. This regulation shall be revoked on January 1, 2010. (Authorized by and implementing K.S.A. 2006 Supp. 75-650; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended July 6, 2007; revoked Jan. 1, 2010.)

3-4-7. Forfeit of matching grant funds. (a) (1) Except as specified in paragraphs (a)(2) and (a)(3), funds in a matching grant account shall be forfeited in an amount equal to either of the following:
(A) Any nonqualified withdrawal from the corresponding participant account; or
(B) any rollover distribution to another qualified tuition plan from the corresponding participant account.

(2) If any nonqualified withdrawal or rollover distribution closes a participant account, the corresponding matching grant account shall be closed and its entire balance shall be forfeited.

(3) Any account owner who contributes more than the maximum matching grant amount may make a nonqualified withdrawal or rollover distribution of the excess contribution without forfeiting funds from the matching grant account.

(b) If the treasurer determines that the account owner has made a material misrepresentation on the application, all matching grant funds resulting from the application shall be forfeited.

(c) If a participant account ever becomes reportable as unclaimed property under K.S.A. 58-3934 et seq. and amendments thereto or the unclaimed property laws of any other state, the remaining balance in the corresponding matching grant account shall be forfeited.

(d) For participants who are enrolled in the matching grant program on or after January 1, 2010, if the account owner changes the beneficiary of the participant account, all funds in the corresponding matching grant account shall be forfeited regardless of when the matching grant was provided by the state.

(e) All forfeited funds shall be returned to the Kansas postsecondary education savings trust fund.

This regulation shall be effective on and after January 1, 2010. (Authorized by and implementing K.S.A. 2008 Supp. 75-650, as amended by 2009 SB 225, sec. 1; effective, T-3-6-29-06, June 29, 2006; effective Oct. 27, 2006; amended Jan. 1, 2010.)

Agency 4

Kansas Department of Agriculture

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Article 1.—AGRICULTURAL CHEMICALS

4-1-1. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-2. Definitions. In addition to the terms defined in K.S.A. 2-2202 and amendments thereto, the following terms shall have the meanings specified in this regulation: (a) “Abstracted,” as used in K.S.A. 2-2202(x)(3) and amendments thereto, means omitted.

(b) “The act,” and “the agricultural chemical act” mean K.S.A. 2-2201 et seq., and amendments thereto.

(c) “Authorized representative” and “designee” mean any person authorized by the secretary to enforce the act.

(d) “Pesticide” shall include insecticides, fungicides, rodenticides, herbicides, nematocides, defoliants, desiccants, and antimicrobials.

(e) “Plant-incorporated protectant” means any pesticidal substance produced by any plant and the genetic material necessary for the plant to produce the substance.

(f) “Plant regulator” shall not include any substance labeled or otherwise represented solely for use as a plant nutrient, fertilizer, or soil amendment.

(g) “Product” means one or more pesticides formulated, packaged, and labeled for distribution or sale.

(h) “Valuable constituent” means any active ingredient or inert ingredient. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-3 and 4-1-4. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-5. Label. The label of each product shall show clearly and prominently the following items:

(a) The complete name of the product under which the product is registered under the act;

(b) the name and address of the manufacturer, registrant, or person for whom the product was manufactured. Unless otherwise stated, any name and address on the label shall be considered as the name and address of the manufacturer. If the registrant’s name appears on the label and the registrant is not the manufacturer or if the name of the person for whom the product was manufactured appears on the label, the name that appears on

the label shall be qualified by appropriate wording that may include “packed for,” “distributed by,” or “sold by,” to indicate that the name is not that of the manufacturer. If the product is manufactured in more than one location or at a location separate from the manufacturer’s principal office, then the product label shall state either one of the addresses where the product is manufactured or the address of the manufacturer’s principal office;

(c) the EPA registration number, if required under the provisions of FIFRA;

(d) the net contents;

(e) an ingredient statement, which shall meet the following requirements:

(1) The ingredient statement shall appear on the front panel of the label unless the secretary or designee determines that, due to the size or form of the container, a statement on that portion of the label is impractical and permits this statement to appear on another side or panel of the label. If so permitted, the ingredient statement shall be in larger type and more prominent than the surrounding text. The ingredient statement shall run parallel with other printed matter on the panel of the label on which the ingredient statement appears and shall be on a clear, contrasting background and not obscured or crowded;

(2) the acceptable common name of each active ingredient as specified in FIFRA shall appear on the ingredient statement or, if the active ingredient has no common name, the correct chemical name shall be stated. A trademark or trade name shall not be used as the name of an active ingredient unless the trademark or trade name has become a common name;

(3) active ingredients and inert ingredients shall be so designated. The term “inert ingredient” shall appear in the same size type and be as prominent as the term “active ingredient”; and

(4) the percentages of all ingredients shall be determined by weight, and the sum of the percentages of all ingredients shall be 100. Sliding-scale forms of ingredient statements shall not be used;

(f) a first aid statement; and

(g) a warning or caution statement. The warning or caution statement shall appear on the label in a place sufficiently prominent to warn the user and shall state clearly and in nontechnical language the particular hazards involved in the use of the product and the precautions to be taken to avoid accident, injury, or damage to humans and other nontarget organisms. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp.

2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-6. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-7. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-8. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-9. Registration. (a) Pursuant to K.S.A. 2-2204 and amendments thereto, a product may be registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.

(b) The registrant shall be responsible for the accuracy and completeness of all information submitted in connection with the application for registration of a product.

(c) Each registrant shall submit the product labeling to the secretary or designee when initially registering the product and whenever changing or modifying the labeling. When a registrant submits a product's labeling due to a change or modification in the labeling, the labeling shall be accompanied with a written statement that clearly and specifically describes the changes from the previous labeling and the proposed date of implementation of the new labeling. After the effective date of a change in labeling, the product shall be marketed only under the new labeling. Any registrant may request from the secretary or designee that a reasonable time be permitted to relabel or dispose of any products with the old labeling. After the initial registration of a product, any registrant may register that product no more than four consecutive years without the submission of the product label if there is no change to the product label.

(d) Claims or representations made for a product by the registrant or registrant's agent shall not differ from claims or representations made in connection with registration. These claims or representations shall include the following:

(1) Publications or advertising literature that accompanies the product or is distributed separately from the product;

(2) advertising by radio, television, internet sites, or other electronic media; and

(3) verbal and written communication.

(e) If the secretary requires additional information in support of the registration and the registrant believes that the requirement for additional data is unreasonable, the registrant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date on which the request for additional data is sent to the registrant.

(f) Each registration shall be valid through the last day of the calendar year in which the product was registered, unless the registration has been canceled or suspended before that day. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2204; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-9a. Registration for special local need. (a) Each person registering a product for additional uses and methods of application not stated on the product's labeling under section three of FIFRA, but not inconsistent with federal law, for the purpose of meeting a special local need shall submit an application for the special local need to the secretary or designee. Each application shall include the following:

(1) A statement explaining why a special local need registration is necessary;

(2) efficacy and residue data;

(3) a letter from a subject matter expert, as recognized by the secretary or designee, detailing support for the special local need registration;

(4) EPA form 8570-25, "application for/notification of state registration of a pesticide to meet a special local need"; and

(5) a proposed label for the product.

(b) A product shall not be eligible for special local need registration if at least one of the following conditions is met:

(1) There is insufficient evidence to support a special local need for the additional use or method of application within the state.

(2) The registrant and product do not meet all requirements under the act and the Kansas pesticide law.

(3) For a food or feed use, the additional use or method of application does not have an established residue tolerance, or an exemption from tolerance, under FIFRA.

(4) The same use or method of application has previously been denied, disapproved, suspended, or cancelled by EPA.

(5) The same use or method of application has been voluntarily cancelled by the registrant.

(c) A special local need registration shall be issued to the applicant upon referral of the application to EPA by the secretary.

(d) A special local need registration shall be immediately cancelled by the secretary or designee if the application is disapproved by EPA.

(e) Each special local need registration of a product shall be renewed annually, but may be renewed no more than four times without resubmission of a special local need request pursuant to K.A.R. 4-1-9a. (Authorized by K.S.A. 2009 Supp. 2-2205 and K.S.A. 2009 Supp. 2-2214; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

4-1-9b. Emergency situation exemptions.

(a) Any person may submit a request for a registration exemption under section 18 of FIFRA to the secretary or designee if an emergency situation exists.

(b) "Emergency situation" shall include the following: a specific emergency, a public health emergency, a quarantine emergency, and a crisis emergency that is urgent and nonroutine.

(c) Each request for registration exemption under section 18 of FIFRA shall include documentation of each of the following:

(1) No effective registered products are available.

(2) No feasible alternative control practices are available.

(3) The emergency situation involves the introduction of a new pest, will present significant risks to human health or the environment, or will cause significant economic loss.

(d) Each person seeking an emergency situation exemption shall compile and present to the secretary or designee any additional information required by EPA to support the request.

(e) Each person distributing a product under the emergency situation exemption shall provide the end user with the product labeling that was approved for the emergency situation exemption.

(f) Each person distributing or using products under an emergency situation exemption shall meet the following requirements:

(1) Comply with all reporting requirements contained within the emergency situation exemption; and

(2) notify the secretary or designee of any adverse effects resulting from the use of the product. (Authorized by K.S.A. 2009 Supp. 2-2205;

implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

4-1-10. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-11. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-12. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-13. Enforcement; product sampling.

Collection of samples of products for analysis shall be performed by the secretary or designee. A sample may be taken as either an unopened original package or a portion from the unopened original package. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2206, as amended by L. 2010, ch. 17, §10; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-14. Experimental use. (a) A product, including a plant or seed modified genetically to include a plant-incorporated protectant, may be distributed for experimental use without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

(1) A permit for the product has been obtained from the secretary or designee.

(2) The experimental use of the product is limited to one of the following:

(A) Laboratory or greenhouse tests; or

(B) a small-scale test conducted on a cumulative total of no more than one acre of land per pest.

(b) An experimental use permit may be issued if the secretary or designee determines that the applicant needs the permit to accumulate information necessary to register a pesticide under K.S.A. 2-2204, and amendments thereto. Issuance of an experimental use permit may be denied by the secretary or designee if it is determined that the proposed use of the pesticide could cause unreasonable adverse effects on the environment. Terms, conditions, and a limited time period of the experimental use permit may be prescribed by the secretary or designee.

(c) Each application for experimental use shall include the following:

(1) The name and address of the applicant;

(2) the purpose or objectives of the experimental use and the experimental protocols to be followed;

(3) the name, address, and telephone number of all participants in the experimental use in Kansas;

(4) the amount of the product, including a plant or seed modified genetically to include a plant-incorporated protectant, to be shipped into or used in Kansas;

(5) the applicant's signature;

(6) documentation of EPA approval;

(7) a copy of the experimental use product labeling approved by EPA; and

(8) any other relevant information requested by the secretary or designee. If the secretary requires additional information in support of the application and the applicant believes that the requirement for additional data is unreasonable, the applicant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date the request for additional data is sent to the applicant.

(d) After the permit is issued, the permittee shall meet the following requirements:

(1) Coordinate the dates and locations of the proposed use of the product with the secretary or designee; and

(2) notify the secretary or designee of any adverse effects resulting from the experimental use within 24 hours of discovery.

(e) An experimental use permit may be modified, revoked, suspended, or modified by the secretary or designee at any time if either of the following conditions is met:

(1) The secretary or designee finds that the terms or conditions of the permit are being violated.

(2) The secretary or designee, after taking into account the economic, social, and environmental costs and benefits of the use of the product under the existing permit, determines the risk to the environment to be unacceptable.

(f) At the conclusion of the experimental use, the permittee shall submit a final report to the secretary or designee summarizing the results. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-15 and 4-1-16. (Authorized by K.S.A. 2-2205; effective Jan. 1, 1966; revoked May 1, 1982.)

4-1-17. Registration fee. The annual registration fee for each registered product shall be \$150.00. (Authorized by K.S.A. 2009 Supp. 2-2204 and K.S.A. 2009 Supp. 2-2205; imple-

menting K.S.A. 2009 Supp. 2-2204; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-22-89, June 22, 1989; amended Aug. 14, 1989; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended June 10, 2011.)

Article 2.—AGRICULTURAL SEED

LABELING

4-2-1. Labeling prohibitions. Any agricultural seed shall be deemed mislabeled within the meaning of the act if there appears on the label, container, invoice, other accompanying literature, or any advertising media, any statement directly or indirectly implying that any agricultural seed is recommended or endorsed by the Kansas state board of agriculture or its state seed laboratory, or any of its other divisions. This regulation shall become effective on January 1, 1989. (Authorized by K.S.A. 2-1427; implementing K.S.A. 1987 Supp. 2-1417; effective Jan. 1, 1966; amended Jan. 1, 1989.)

4-2-2. Labeling treated seed. Treated seed must be labeled. If seed has been chemically treated, each bag or container must be labeled bearing a true statement as follows: The required information shall be in type no smaller than 8 point and may be on the tag bearing the analysis information or on a separate tag, or it may be printed in a conspicuous manner on a side or top of the container. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966.)

SAMPLING

4-2-3. Sampling procedure. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Free-flowing seed" means any agricultural seed that readily sheds the husks, hulls, awns, bran, and other plant parts while being conditioned, allowing the seeds to move freely and independently of each other.

(2) "Non-free-flowing seed" means any agricultural seed that, because of attached husks, hulls, awns, bran, and other plant parts that do not readily separate from the seed while being conditioned, tends to bind together, preventing the seeds from moving independently of each other.

(3) "Seed" means agricultural seed as defined in K.S.A. 2-1415, and amendments thereto.

(b) To obtain a representative sample, equal portions shall be taken from evenly distributed parts of the lot to be sampled based on the type of seed and number of containers, unless the seed is stored or piled in a manner that makes taking a representative sample impossible or impractical.

(c) For free-flowing seed in bags or bulk, a probe or trier long enough to sample all portions of the bag shall be used.

(d) All non-free-flowing seed, including uncleaned agricultural seed and chaffy range grasses that are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

(e) The portions collected from a single lot shall be combined into one or more composite samples.

(f) As the seed is sampled, each portion shall be examined. If a lack of uniformity appears to exist, additional samples shall be taken to determine whether a lack of uniformity exists. (Authorized by K.S.A. 2016 Supp. 2-1427; implementing K.S.A. 2-1416 and K.S.A. 2016 Supp. 2-1423; effective Jan. 1, 1966; amended Oct. 6, 2017.)

4-2-4. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked Dec. 12, 1994.)

4-2-5. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked Dec. 12, 1994.)

4-2-6. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked Dec. 12, 1994.)

4-2-7. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked May 1, 1982.)

ANALYSES IN ADMINISTRATION OF THE ACT

4-2-8. Methods of analyses. (a) Subject to the provisions of subsections (f), (g), and (h) of this regulation, the methods of analysis shall be those published by the association of official seed analysts in the following sections of volume 1 of the "AOSA rules for testing seeds," titled "principles and procedures," including all tables and charts, dated October 1, 2016 and hereby adopted by reference:

(1) Section 2, preparation of working samples, except page 2-60;

(2) section 3, the purity analysis, except page 3-30;

(3) section 4, uniform classification of weed and crop seeds;

(4) section 5, examinations;

(5) section 6, germination tests;

(6) section 8, tetrazolium testing;

(7) section 12, mechanical seed counts; and

(8) section 14, tolerances, except subsection 14.10.

(b) Volume 2 of the association of official seed analysts' "AOSA rules for testing seeds," titled "uniform blowing procedure," revised 2015, is hereby adopted by reference, except page ii, section 1, and section 8.

(c) Volume 3 of the association of official seed analysts' "AOSA rules for testing seeds," titled "uniform classification of weed and crop seeds," revised 2016, is hereby adopted by reference, except pages i-iii and viii-xiv.

(d) Volume 4 of the association of official seed analysts' "AOSA rules for testing seeds," titled "seedling evaluation," including illustrations, dated 2016, is hereby adopted by reference, except pages i-vi; page 18; the "references" sections on pages 22, 41, 46, 58, 62, 67, 98, 109, and 115; and pages 135-139.

(e) The "AOSA/SCST tetrazolium testing handbook," prepared by the tetrazolium subcommittee of the association of official seed analysts and the society of commercial seed technologists, including tables and illustrations, 2010 edition, is hereby adopted by reference, except pages i-viii; in part 1, subsections 1, 3, 7, and 15.2; part 4; and part 5.

(f) For the purpose of this regulation, the term "noxious-weed seed" used in the material adopted by reference in this regulation shall mean "restricted weed seed" as defined in K.S.A. 2-1415 and amendments thereto.

(g) For the purpose of this regulation, the term "purity tolerances" used in the material adopted by reference in this regulation shall mean "the greatest non-significant difference between two values, which may be two estimates or a specification and an estimate."

All other terms used in the material adopted by reference in this regulation shall have the meanings specified in the adopted portions of the "AOSA rules for testing seeds," unless a term is defined by K.S.A. 2-1415 and amendments thereto, in which case the term shall have the meaning specified in that statute.

(h) The following restrictions shall apply in addition to tolerances for the testing of seed in section 14 adopted by reference in paragraph (a)(8) of this regulation:

(1) Restricted weed seed tolerances shall not

exceed the limitations specified in K.S.A. 2-1415 and amendments thereto.

(2) No tolerance shall be applied to any seed component that is guaranteed as “none” on the label. (Authorized by K.S.A. 2016 Supp. 2-1427; implementing K.S.A. 2016 Supp. 2-1423; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended Jan. 1, 1989; amended Dec. 12, 1994; amended Jan. 18, 2008; amended Oct. 6, 2017.)

TOLERANCES

4-2-9. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked May 1, 1988.)

EXAMINATIONS IN THE ADMINISTRATION OF THE ACT

4-2-10. Indistinguishable seed. When the identification of the kind, variety, or type of seed is not possible by seed characteristics, identification may be based upon the seeding, growing plant, or mature plant characteristics according to such authentic information as is available. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966.)

4-2-11. Origin. The presence of incidental weed seeds, foreign matter, or any other existing circumstances shall be considered in determining the origin of seed. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966.)

GENERAL

4-2-12 and 4-2-13. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked May 1, 1982.)

4-2-14. Seed offered for sale. Agricultural seeds whether in bags, cartons, bins or other containers exposed in salesrooms, storerooms, warehouses, or other places where seeds are sold for sowing purposes, shall be considered as seed offered or exposed for sale for planting purposes and subject to the provisions of the act, unless clearly labeled otherwise. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966.)

4-2-15. (Authorized by K.S.A. 2-1425; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-78-32, Dec. 7, 1977; amended May 1, 1978; revoked May 1, 1983.)

4-2-16. (Authorized by K.S.A. 2-1427; effective Jan. 1, 1966; revoked May 1, 1986.)

4-2-17. (Authorized by K.S.A. 2-1425; implementing K.S.A. 2-1425; effective May 1, 1983;

revoked, T-4-7-5-89, July 5, 1989; revoked Aug. 14, 1989.)

4-2-17a. (Authorized by K.S.A. 2-1427; implementing K.S.A. 2-1425 as amended by 1989 HB 2133; effective, T-4-7-5-89, July 5, 1989; effective Aug. 14, 1989; revoked Oct. 6, 2017.)

4-2-18. Label requirements for seed delivered to wholesalers. Seed delivered in bulk to a wholesaler after conditioning shall be completely labeled by an invoice or master label attached to the bulk container. Seed delivered to a wholesaler in bags or other containers may be labeled by an invoice or master label that bears a lot number and all other information required by law provided that each individual bag or other container is properly identified with the lot number shown on the invoice or master label clearly and readably stenciled on each individual bag or other container. Each bag or other container which does not bear a lot number that corresponds to an invoice or master label shall be completely labeled. This regulation shall become effective on January 1, 1989. (Authorized by K.S.A. 2-1427; implementing K.S.A. 1987 Supp. 2-1417; effective Jan. 1, 1989.)

4-2-20. Adoption by reference. The following sections of 7 C.F.R. part 201, as revised on January 1, 2007, are hereby adopted by reference:

- (a) 201.39;
- (b) 201.40;
- (c) 201.41;
- (d) 201.42; and
- (e) 201.43.

(Authorized by K.S.A. 2006 Supp. 2-1427; implementing K.S.A. 2-1423; effective Dec. 12, 1994; amended Jan. 18, 2008.)

4-2-21. Registration fees for wholesalers and retailers. (a) Each wholesaler shall pay a registration fee of \$250 for each location at which the wholesaler is doing business.

(b) Each retailer shall pay a registration fee of \$30 for each location at which the retailer is doing business.

(c) Each person registering as both a wholesaler and a retailer at the same location shall pay a registration fee of \$280 for each location at which the person is doing business. (Authorized by K.S.A. 2016 Supp. 2-1421a and 2-1427; implementing K.S.A. 2016 Supp. 2-1421a; effective Oct. 6, 2017.)

Article 3.—COMMERCIAL FEEDING STUFFS

DEFINITIONS

4-3-1. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1982.)

4-3-2. Definitions. (a) International chick unit of vitamin D is the activity produced by one unit of vitamin D in the U. S. pharmacopoeia “vitamin D reference standard” determined according to the method of the association of official agricultural chemists.

(b) “U.S.P.” means the United States pharmacopoeia, volume XIII.

(c) “Crude protein” and “protein” means the product of the amount of nitrogen times the factor 6.25.

(d) “Person” means individuals, partnerships, associations or persons, and corporations.

(e) Livestock. “Livestock” means and includes horses, mules, cattle, sheep, swine and goats.

(f) Poultry. “Poultry” means fowl raised for meat, eggs, or feathers, and includes chickens, ducks, guineas, geese, turkeys and pigeons. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1001; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1983.)

LABELING

4-3-3. Legibility and conspicuousness. (a) A word, statement, or other information required by or under the authority of the act or these regulations to appear on the label may lack that legibility and conspicuousness by reason of:

(1) The failure of this word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The insufficiency of label space for the prominent placing of this word, statement, or information resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label; and

(3) Smallness of style or type in which this word, statement, or information appears, insufficient background contrast; obscuring designs or vignettes; or crowding with other written, printed, or graphic matter. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1002; effective Jan. 1, 1966; amended May 1, 1982.)

4-3-4. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1982.)

4-3-5. The name. (a) The name shall not be misleading or deceptive, or tend to mislead or deceive as to the materials of which the commercial feeding stuffs is composed. The name of a non-medicated feed shall be considered misleading or deceptive if:

(1) It includes or suggests the name of one or more but not all of the ingredients, even though the names of all these ingredients are stated elsewhere on the label;

(2) It indicates or suggests that the commercial feeding stuffs is intended or adapted for a specific use, unless the character, quality and nutritive composition of the product is satisfactory for the purpose;

(3) It contains the word “vitamin” or a contraction of it, or any word suggesting vitamin, unless the product is represented solely as a vitamin supplement and is labeled with the minimum vitamin content guaranteed as specified in K.A.R. 4-3-8;

(4) The word “dehydrated” appears in the name of an alfalfa product or in connection with it, unless the product has been produced from the freshly cut alfalfa plant, having a moisture content of not less than fifty (50) percent and had been artificially dried at a temperature of at least one hundred (100) degrees centigrade or two hundred and fifteen (215) degrees fahrenheit for a period of not more than forty (40) minutes and containing no admixture of sun-cured products;

(5) The germ has been wholly or partially removed from the product, unless the word “degermed” precedes the name;

(6) The word “defluorinated” is used as a part of it, and the product contains more than one (1) part of fluorine (F) to forty (40) parts of phosphorus (P);

(7) Superlative, ambiguous, or doubtful terms are used as a part of it, such as “perfect” or “best,” unless followed by the word “brand”; and

(8) The word “iodized” is used as a part of it unless the product contains more than .007% iodine (I), uniformly distributed. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1002; effective Jan. 1, 1966; amended May 1, 1982.)

4-3-6. Name and address of manufacturer. An unqualified name and address given on the label shall mean the name and address of the manufacturer. If the registrant’s name appears on the label and the registrant is not the manufactur-

er, or if the name of the person for whom manufactured appears on the label, it shall be qualified by appropriate wording such as "packed for . . .," "distributed by . . .," or "sold by . . .," to show that the name is not that of the manufacturer. When a person manufactures commercial feeding stuffs in two (2) or more places or in a place different from the manufacturer's principal office, the actual place of manufacture of each package need not be stated on the label except when the failure to name it may be misleading to the public. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1002; effective Jan. 1, 1966; amended May 1, 1982.)

4-3-7. Ingredient statement. (a) The specific name of each ingredient or collective term or terms shall be shown on the label. When a collective term or terms for a group of ingredients is used on the label, individual ingredients within the group shall not be listed on the label. The manufacturer shall provide upon request a listing of individual ingredients within a defined group. The specific name or collective term or terms shall be those products for which a definition or standard has been adopted. If the ingredient is a product that has not been defined, the name shall be descriptive and as approved by the secretary.

(b) If screenings are used as an ingredient, the source and condition shall be indicated.

(c) A statement of quality or grade of an ingredient shall not appear on the ingredient statement.

(d) A statement of vitamin content of an ingredient shall not appear in the ingredient statement, or any other part of the label, unless this statement is a guarantee of minimum vitamin content of the entire product given in terms as specified in K.A.R. 4-3-8.

(e) Statements or words explaining or qualifying the name of an ingredient shall not be used. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1002; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1982.)

4-3-8. Vitamin products, carriers and preparations. Vitamin products, carriers and preparations shall be labeled to show information or guaranties as to vitamin content in milligrams per pound, except that vitamin A shall be stated in United States pharmacopoeia (U.S.P.) units per pound, vitamin D in products offered for poultry feeding in international chick units per pound, vitamin D for other uses in U.S.P. units per pound. (Authorized by K.S.A. 2-1002; effective Jan. 1, 1966.)

4-3-9. Feeds containing drug ingredients.

Commercial feeding stuffs containing drug ingredients intended or represented for the cure, mitigation, treatment or prevention of any disease or ailment of livestock and/or poultry, and substances other than feeds intended to affect the structure or any function of the body of livestock and/or poultry, shall be labeled to show, in addition to the other information required by the act:

(a) The name of each therapeutically active ingredient or agent stated as such and listed separately from other ingredients.

(b) Adequate directions for use.

(c) Adequate warnings against use under those conditions in which its use may be dangerous to health.

Provided, however, That the terms "drug" and "substance" as used herein do not apply to vitamin, mineral, or other materials used solely for nutritional purposes, and not present in therapeutic amounts. (Authorized by K.S.A. 2-1002; effective Jan. 1, 1966.)

4-3-10. Urea. Urea and ammonium salts of carbonic and phosphoric acids are acceptable ingredients in proprietary cattle, sheep and goat feeds only; that these materials shall be considered adulterants in proprietary feeds for other animals and birds; and that the following statement of guaranty of crude protein for feeds containing these materials be used:

Crude Protein, not less than _____ percent. (This includes not more than _____ percent equivalent protein from non-protein nitrogen.)

If feed contains more than 3 percent of urea, or if the equivalent protein contributed by urea exceeds $\frac{1}{3}$ of the total crude protein, the label shall bear a statement of proper usage, and the following statement in type of such conspicuousness as to render it likely to be read and understood by ordinary individuals under customary conditions of purchase and use:

WARNING: This feed should be used only in accordance with directions furnished on the label.

(Authorized by K.S.A. 2-1002; effective Jan. 1, 1966.)

REGISTRATION

4-3-11. Registration. (a) After a commercial feeding stuffs is registered under the act, no further registration is required by persons selling the product, provided it remains in the registrant's

properly labeled, original unbroken, immediate container.

(b) Registration shall be effective on the date the registration is issued.

(c) The secretary may refuse registration if:

(1) The name, brand or trademark is misleading or deceptive or may tend to mislead or deceive as to the materials of which the product is composed;

(2) The person already has a product registered under the same name; or

(3) The copy of label does not show the information as required by the act and these regulations or fails to conform to any of the requirements of the act. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1003; effective Jan. 1, 1966; amended May 1, 1982.)

4-3-12. Permit system. (a) The permit holder shall keep the records of sales available for inspection for a period of three years.

(b) The secretary may cancel the permit if:

(1) The holder fails to report and pay the inspection fee within thirty days after due and payable;

(2) Refuses to permit the secretary or his duly authorized representative to examine the records; or

(3) Makes a false report of tonnage of feeding stuffs sold on which the inspection fee was due. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1004; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; amended May 1, 1982.)

ADMINISTRATION

4-3-13. Hearing. (a) The notice of hearing as specified in K.S.A. 2-1010, shall be in writing, and mailed first-class to the record address of the manufacturer or dealer. The person so notified shall be given an opportunity to present his views in writing or by representative.

(b) Upon request reasonably made, by the person to whom a notice appointing a time and place for the hearing as provided by K.S.A. 2-1010, has been given, or by his representative, such time and place, or both such time and place, may be changed if the request states reasonable grounds therefor. Such request shall be received by the secretary, or his agent who issued the notice.

(c) No notice of hearing shall be required prior to the seizure of any commercial feeding stuffs. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966.)

GENERAL

4-3-14. Artificial color. Artificial colors shall be considered an adulterant in a commercial feeding stuffs whereby its use would tend to enhance the natural color or conceal inferiority. Dyes certified for use under the federal food, drug and cosmetic act may be used to indicate the distribution of a valuable ingredient or ingredients, or to increase or aid in proper intake of a feeding stuffs. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966.)

4-3-15. Name of unmixed by-product feeds containing screenings or scourings. Unmixed by-product feeds, to which either screenings or scourings or both have been added, shall be labeled to clearly indicate this fact in the name. The word "screenings" or "scourings" together with the kind of screenings or scourings shall appear as a part of the name and shall be printed in the same size and face of type as the remainder of the name. (Authorized by K.S.A. 2-1013; implementing K.S.A. 2-1002; effective Jan. 1, 1966; amended May 1, 1982.)

4-3-16 to 4-3-18. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1982.)

DEFINITIONS FOR COMMERCIAL FEEDING STUFFS

4-3-19 and 4-3-20. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-21 and 4-3-22. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1981.)

4-3-23 to 4-3-29. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-30. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1981.)

4-3-31 to 4-3-33. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-34. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1980; revoked May 1, 1981.)

4-3-35. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-36. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1981.)

4-3-37 to 4-3-40. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-41. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1980; revoked May 1, 1981.)

4-3-42 and 4-3-43. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1981.)

4-3-44 and 4-3-45. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1966; revoked May 1, 1981.)

4-3-46. (Authorized by K.S.A. 2-1013; effective Jan. 1, 1972; revoked May 1, 1981.)

4-3-47. Adoption by reference. (a) The following portions of the “2010 official publication” copyrighted in 2010 by the association of American feed control officials incorporated are hereby adopted by reference and shall apply to commercial feeding stuffs in this state:

(1) Regulations 1 through 13 of the “AAFCO model good manufacturing practice regulations for feed and feed ingredients” on pages 128 through 132, with the following changes:

(A)(i) In the first sentence of regulation 1, “section 3 of the model bill” shall be replaced with “K.S.A. 2-1001, and amendments thereto”; and

(ii) in the definition of “adulteration” in regulation 1, “section 7(a) of the model bill” shall be replaced with “K.S.A. 65-664, and amendments thereto”; and

(B) in the second sentence of regulation 11(b), the blank line following “agents of the” shall be replaced with “Kansas department of agriculture”;

(2) the text titled “official feed terms” on pages 314 through 323; and

(3) the text titled “official names and definitions of feed ingredients as established by the association of American feed control officials” on pages 324 through 415.

(b) Copies of the material adopted by reference in this regulation may be obtained from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2-1011 and K.S.A. 2009 Supp. 2-1013; implementing K.S.A. 2009 Supp. 2-1002 and K.S.A. 2009 Supp. 2-1013; effective May 1, 1981; amended May 1, 1982; amended

May 1, 1984; amended May 1, 1988; amended Oct. 21, 1991; amended Dec. 12, 1994; amended June 15, 2001; amended Jan. 18, 2008; amended, T-4-1-5-11, Jan. 5, 2011; amended April 29, 2011.)

4-3-48. (Authorized by K.S.A. 2-1013 as amended by L. 1987, Ch. 7, Sec. 1; implementing K.S.A. 2-1002 and 2-1013 as amended by L. 1987, Ch. 7, Sec. 1; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1988; revoked April 29, 2011.)

4-3-49. Good manufacturing practices; adoption by reference. (a) Except for those portions excluded by this subsection, 21 CFR Parts 225 and 226, as revised on April 1, 2010, are hereby adopted by reference and shall apply to good manufacturing practices for the production of commercial feeding stuffs in Kansas:

(1) Subpart (c) of section 225.1 is not adopted by reference.

(2) In section 225.115(b)(2), the following language shall be deleted: “, under §510.301 of this chapter.”

(3) Subpart (b) of section 226.1 is not adopted by reference.

(b) Copies of the regulations, or pertinent portions of the regulations, shall be available from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 2010 Supp. 2-1013; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Oct. 21, 1991; amended Dec. 12, 1994; amended, T-4-2-13-01, Feb. 13, 2001; amended June 15, 2001; amended Jan. 18, 2008; amended Sept. 9, 2011.)

4-3-50. Good manufacturing practices; definitions. The following terms as used in 21 C.F.R. Parts 225 and 226, which are adopted by reference in K.A.R. 4-3-49, shall have the following meanings: (a) The term “form,” referred to either by number or by any other designation, shall mean a form supplied by the agricultural commodity assurance program, Kansas department of agriculture.

(b) The term “state feed control officials” shall mean the secretary of the Kansas department of agriculture or the secretary’s authorized representative.

(c) The term “center for veterinary medicine” shall mean the agricultural commodity assurance program, Kansas department of agriculture unless the context requires otherwise.

(d) The term “type A medicated article” shall mean a feeding stuff or ingredient for a feeding stuff that is intended solely for use in the manufacture of either another type A medicated article or a type B or type C medicated feed.

(e) The term “type B medicated feed” shall mean a feeding stuff or an ingredient for a feeding stuff that contains a substantial quantity of nutrients including vitamins or minerals or other nutritional ingredients in an amount not less than 25% of the weight of the type A medicated article and that is intended solely for the manufacture of other medicated feeds, either type B or type C.

(f) The term “type C medicated feed” shall mean a feeding stuff or an ingredient for a feeding stuff that contains a substantial quantity of nutrients including vitamins, minerals, or other nutritional ingredients and that is intended as the complete feed for the animal. (Authorized by and implementing K.S.A. 2009 Supp. 2-1013; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended April 29, 2011.)

4-3-51. Prohibited feeding stuffs; adoption by reference. (a) The following portions of 21 CFR Part 589, revised on April 1, 2010, with the changes specified in this subsection, are hereby adopted by reference and shall apply to the production of all commercial feeding stuffs and custom-mixed feed in Kansas:

(1) The second sentence of section 589.1000 shall be replaced with the following sentence: “Use of gentian violet in animal feed causes the feed to be adulterated under K.S.A. 65-664.”

(2) The second sentence of section 589.1001 shall be replaced with the following sentence: “Use of propylene glycol in or on cat food causes the feed to be adulterated under K.S.A. 65-664.”

(3) In section 589.2000(d)(5), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(4) In section 589.2000(f), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(5) In section 589.2000(g)(1), “section 402(a)(2)(C) or 402(a)(4) of the act” shall be replaced with “K.S.A. 65-664.”

(6) In section 589.2000(g)(2), “section 403(a)(1) or 403(f) of the act” shall be replaced with “K.S.A. 65-665.”

(7) In section 589.2000(h)(2), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(8) In section 589.2001(c)(2)(vi), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(9) In section 589.2001(c)(3)(i), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(10) In section 589.2001(d)(1), “section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act)” shall be replaced with “K.S.A. 65-664 and K.S.A. 2-1011.”

(11) In section 589.2001(d)(2), “section 402(a)(2), 402(a)(3), or 402(a)(5) of the act” shall be replaced with “K.S.A. 65-664 and K.S.A. 2-1011.”

(12) In section 589.2001(d)(3), “section 403(a)(1) or 403(f) of the act” shall be replaced with “K.S.A. 65-665 and K.S.A. 2-1011.”

(13) In section 589.2001(d)(4), “section 402(a)(4) of the act” shall be replaced with “K.S.A. 65-664 and K.S.A. 2-1011.”

(14) In section 589.2001(e), “Food and Drug Administration” shall be replaced with “Kansas department of agriculture.”

(b) Copies of the regulations, or pertinent portions of the regulations, shall be available from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 2010 Supp. 2-1013; effective, T-4-2-13-01, Feb. 13, 2001; effective June 15, 2001; amended Jan. 18, 2008; amended Sept. 9, 2011.)

Article 4.—COMMERCIAL FERTILIZERS

4-4-1. Micronutrients. Additional plant nutrients, besides nitrogen, phosphorus and potassium, when mentioned or claimed on the label or container shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the application for registration. When claims for such nutrients are made on the label, container, or application for registration, the minimum percentages which will be accepted for registration are as follows:

	Percent
Calcium (Ca)	1.00
Magnesium (Mg).....	0.50
Sulfur (S).....	1.00
Boron (B).....	0.02
Chlorine (Cl)	0.10
Cobalt (Co).....	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10

	Percent
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Warning or caution statements are required on the label for any product which contains 0.03% or more of boron in a water-soluble form or 0.001% or more of molybdenum. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium. (Authorized by K.S.A. 2-1210; effective Jan. 1, 1966.)

4-4-2. Inspection fee. The inspection fee for commercial fertilizers shall be \$1.67 for each 2,000 pounds. (Authorized by and implementing K.S.A. 2-1205, as amended by L. 2002, Ch. 181, § 1; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended, T-87-6, May 1, 1986; amended May 1, 1987; amended, T-4-6-22-89, June 22, 1989; amended Aug. 14, 1989; amended Oct. 25, 2002.)

4-4-900. Definitions. (a) "Alternative design" means any process or technique for either primary or secondary containment that has been approved by the secretary in accordance with K.A.R. 4-4-956.

(b) "Application equipment" means any equipment used to apply fertilizer to land.

(c) "Appurtenance" means any device used in connection with a bulk fertilizer storage container or bulk fertilizer secondary containment area, structure, or device, including any safety device, liquid-level gauging device, auger, pump, valve, pipe, hose, fitting, and measuring or dispensing device.

(d) "Berm" means a dike, wall, or embankment used to contain liquid fertilizer.

(e) "Bladder tank" means any liquid fertilizer storage system consisting of the following:

(1) An external tank capable of holding the bladder tank's maximum volume without leakage;

(2) an internal, liquid-tight bladder that obtains its structural support from the external tank and is capable of holding the bladder tank's maximum volume without leakage; and

(3) a permanent cover to prevent the entry of precipitation.

(f) "Blending" means combining fertilizers or fertilizer ingredients to the customer's specifications.

(g) "Bulk fertilizer" means any fertilizer, whether dry or liquid, that is stored in quantities specified in K.A.R. 4-4-900 through K.A.R. 4-4-986.

(h) "Bulk fertilizer storage container" means any receptacle or device in which a bulk fertilizer is stored.

(i) "Bulk fertilizer storage facility" and "facility" mean any warehouse or other area where a bulk fertilizer, either in bulk or bagged, is held for storage. These terms shall include any facility in which fertilizer is mixed, blended, loaded, or unloaded. Each bulk fertilizer storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of determining the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986.

(j) "Chemically compatible" means that the material will not react adversely with the bulk fertilizer that is being or will be stored, loaded, unloaded, mixed, blended, or otherwise handled.

(k) "Discharge" means any spill, leak, deposit, pumping, dumping, or emptying, whether accidental or intentional, that results in the release of a fertilizer. This term shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, or disposing of a fertilizer, and the normal washing and rinsing activities on loading areas.

(l) "Dry fertilizer" means any fertilizer that is in solid form before any end-use application or mixing or blending for end-use application. This term shall include formulations including dusts, powders, and granules.

(m) "Elephant ring" means an open-top storage container that serves as a secondary containment vessel into which a smaller primary storage container has been placed.

(n) "Empty storage container" means a bulk fertilizer storage container that has a liquid volume of less than one percent of the container capacity.

(o) "End-use application" means the application of fertilizer to soil or plants in the course of normal agricultural or horticultural practice.

(p) "Existing facility" means any facility already built and either in operation or capable of being in operation on the effective date of these regulations.

(q) "Fertilizer products" means any substance, including rinsates, that contains elements or compounds used to promote the growth of agricultural or horticultural plants.

(r) "Floodplain" means the lowlands and relatively flat areas adjoining inland waters, including flood-prone areas that are inundated by floods and that have a one percent or greater chance of recurring flooding in any given year.

(s) "Flood-proof facility" means a facility that has been constructed and maintained to withstand waters from a 100-year flood event and prevent floodwater from contacting the fertilizer.

(t) "Gallon" means the United States standard measure of one gallon.

(u) "Inspection port" means a secured opening that allows access into the interior of a bulk fertilizer storage container for the purpose of inspection.

(v) "Liquid fertilizer" means any bulk fertilizer in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels. This term shall not include anhydrous ammonia.

(w) "Loading pad" means a permanent or portable structure in the operational area designed and constructed to intercept and contain spills, rinse water, and precipitation to prevent runoff and the leaching of fertilizer.

(x) "Low-volume pass-through" means the tonnage of fertilizer transferred away from the facility, during any consecutive 365-day period, below which an operational area shall not be required.

(y) "Mixing" means the combining of fertilizers or fertilizer ingredients into a fertilizer product for resale to nonspecific customers.

(z) "Mobile storage container" means a bulk fertilizer storage container that is used for transportation or temporary storage of bulk fertilizer.

(aa) "Modification" means any change in structures, processes, or activities at a bulk fertilizer storage facility that alters the efficacy of containment structures or systems, including changes in capacity. Modification to an existing facility shall void any applicable exemption as specified in this article. "Modified" shall describe a fertilizer facility that has any modifications, as defined in this subsection.

(bb) "Operational area" means any area at the fertilizer facility where fertilizers are mixed, loaded, unloaded, or blended, or where fertilizers are washed from application, storage, or transportation equipment.

(cc) "Permanent cessation of operations" means that, for at least 12 consecutive months, the facility

has not been used to load, unload, mix, or blend any fertilizers.

(dd) "Plot plan" means a map or diagram showing the general layout of the facility.

(ee) "Primary containment" means the bulk fertilizer storage container that is in direct contact with the fertilizer being stored.

(ff) "Process flow diagram" means a schematic design showing the movement of fertilizer through the facility.

(gg) "Reasonably foreseeable" means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. This term shall include consideration of the facility owner's or operator's knowledge of conditions at the time the condition was created or the decision was made.

(hh) "Secondary containment" means any structure, tank, liner, or container that is designed, constructed, and maintained to perform the following:

(1) Intercept, hold, contain, or confine a discharge of fertilizer from primary containment;

(2) prevent runoff; and

(3) avoid leaching.

(ii) "Secretary" means the secretary of the Kansas department of agriculture or the secretary's authorized representative.

(jj) "Sump" means a recessed reservoir designed to be a receptacle for the collection of liquids.

(kk) "Temporary storage" means the storage of bulk fertilizer for no more than 60 consecutive days.

(ll) "Tip tank" means any tank or combination of tanks that is built on a frame having wheels and that is designed solely for the temporary storage of liquid fertilizer before its transfer to application equipment and not for the transportation of liquid fertilizer.

(mm) "Ton" means 2,000 pounds.

(nn) "Wastewater" means any water that is a result of precipitation collected in the facility or rinsates from cleaning the equipment or facility. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993; amended, T-4-7-1-94, July 1, 1994; amended Aug. 22, 1994; amended July 18, 2003.)

4-4-901. Storage containers and appurtenances; basic requirements. (a) Each storage container and appurtenance shall be constructed, installed and maintained to prevent the discharge of fluid fertilizer.

(b) Each storage container and appurtenance shall be constructed of materials which are resistant to corrosion, puncture or cracking.

(c) All materials used in the construction or repair of any storage container or appurtenance shall not be of a type which react either chemically or electrolytically with stored fluid fertilizer and which might weaken the storage container or appurtenance, or create a risk of discharge.

(d) All metals used for valves, fittings and repairs shall be compatible with the metals used in the construction of the storage container or appurtenance, so that the combination of metals does not cause or increase any corrosion which might weaken the storage container or any appurtenance, or create a risk of discharge.

(e) Each storage container and appurtenance shall be designed to handle all operating stresses, taking into account static-head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container and appurtenance may be subject in the foreseeable course of operations.

(f) Every storage container connection shall be equipped with a shut-off valve located on the storage container as indicated by standard engineering practice except for any safety relief connection. Shut-off valves shall be left closed and secured except during periods of use. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-902. Prohibition against underground storage. (a) From and after the effective date of this regulation, no person shall construct new storage containers for underground storage of fluid fertilizer. This prohibition does not apply to:

(1) a watertight catch basin used for the temporary collection of runoff or rinsate from transfer and loading areas; or

(2) storage in a stainless steel storage container, or other approved storage container, if:

(A) the storage container is enclosed within an approved liner as required by K.A.R. 4-4-933; and

(B) an approved program of ground water monitoring has been established to detect leakage.

(b) From and after the effective date of this regulation, wherever an underground storage container for the storage of bulk fertilizer already exists, a leak detection and liquid recovery system shall be installed within the time prescribed by K.A.R. 4-4-952.

(c) The liquid recovery portion of the system shall be located under the lowest area of the storage container and shall contain:

(1) a moisture barrier located below the storage container extending at least to the storage container's edges and draining into a collection sump;

(2) a collection sump equipped with a liquid activated pump to transfer collected liquid to another storage container located on or above ground level; and

(3) an alarm system which is activated whenever the pump is activated and which remains activated until manually reset.

(d) For purposes of this regulation, the term "underground storage container" includes every storage container having more than 10% of its capacity, including the capacity of any piping, located below the soil surface.

(e) From and after January 1, 1994, no fertilizer shall be stored in an underground storage container. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-903. Prohibited materials. (a) Storage containers, elephant rings, and appurtenances shall not be constructed of copper, brass, zinc, or copper-base alloys unless recommended in writing by the manufacturer.

(b) Storage containers, elephant rings, and appurtenances used for the storage of fluid fertilizers containing phosphates or chlorides shall not be constructed of aluminum or aluminum alloys unless recommended in writing by the manufacturer.

(c) Storage containers, elephant rings, and appurtenances used for the storage of fertilizers or fluid fertilizer materials which have a pH of five or less shall not be constructed of ferrous materials other than stainless steel unless the ferrous materials have been coated or treated with protective substances adequate to prevent corrosion caused by the substance being stored or unless recommended in writing by the manufacturer.

(d) Storage containers, elephant rings, and appurtenances used for the storage of aqueous solutions of anhydrous ammonia shall not be constructed of galvanized brass or bronze materials and shall not be constructed of mild steel, stainless steel, aluminum, fiberglass, polyolefins or plastic unless recommended by the manufacturer.

(e) Storage containers, elephant rings, and appurtenances used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is

lined with a suitable substance to prevent corrosion caused by the substance being stored unless recommended in writing by the manufacturer.

(f) Storage containers, elephant rings, and appurtenances used for the storage of fluid fertilizers containing potassium chloride shall not be constructed of ferrous materials other than stainless steel or mild steel, unless:

(1) the container and appurtenances have been coated or treated with protective substances which are adequate to prevent corrosion resulting from the material being stored; or

(2) unless storage of fluid fertilizers containing potassium chloride in storage containers constructed of ferrous materials other than stainless steel or mild steel has been recommended in writing by the manufacturer of the container; and

(3) the container or appurtenance is used for storage periods of not more than a total of 90 calendar days within any period of 365 consecutive days. In such instances, the storage container shall be completely emptied between storage periods; or

(4) the empty container and appurtenances are cleaned and inspected for leaks prior to being refilled. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-904. Grounding and anchoring storage containers. Storage containers shall be anchored, as necessary, to prevent flotation or instability which might occur as a result of liquid accumulations within a secondary containment facility constructed in accordance with K.A.R. 4-4-900 et seq. Metal storage containers shall be grounded when necessary to prevent corrosion or other damage which may be caused by electrolytic reaction with the material being stored. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-905. Security. (a) All storage containers and appurtenances shall be either locked, located within a fenced enclosure or otherwise adequately secured to provide reasonable protection against vandalism or unauthorized access which might result in a discharge of fertilizer or fertilizer materials.

(b) Valves on storage containers shall be locked or otherwise secured except when persons responsible for facility security are present at the facility.

(c) Valves on nurse tanks and other mobile fertilizer containers parked overnight at a storage facility shall be adequately secured, locked or lo-

cated within a fenced enclosure except when persons responsible for facility security are present at the facility.

(d) Valves on empty containers need not be secured. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-906. Filling storage containers. Storage containers shall not be filled beyond the capacity for which they are designed taking into account the density of the fluid being stored and the thermal expansion of the stored material during storage. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-907. Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage due to gravity and other forces which might be encountered in the ordinary course of operations. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-908. Liquid-level-gauging device. (a) Except as provided in paragraph (b) of this regulation, each storage container shall be equipped with a liquid-level-gauging device by which the level of fluid in the storage container can be readily and reliably measured.

(b) A liquid-level-gauging device shall not be required if the level of fluid in a storage container can be readily and reliably measured by other means approved by the secretary.

(c) Liquid-level-gauging devices shall be locked or secured, in a safe manner, to protect against breakage or vandalism which could result in a discharge.

(d) External sight gauges shall be prohibited unless:

(1) the gauge has a positive shut-off valve constructed from stainless steel;

(2) all pipes or other plumbing components which connect the shut-off valve to the storage container shall be constructed from stainless steel;

(3) the sight gauge's shut-off valve remains closed except when the amount of material stored in the storage container is being determined; and

(4) the shut-off valve is located on the storage container in a location which is readily accessible and which conforms to the storage container manufacturer's specifications. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-909. Labeling of storage containers.

(a) Each storage container or building in which fertilizer or fertilizer materials are stored shall be clearly marked with a description of the contents.

(b) In lieu of marking the building or storage container, a sign containing a written description of the fertilizer or fertilizer materials being stored may be posted outside the container.

(c) All descriptions shall be made in letters at least two inches high. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-910. Inspection and maintenance. (a)

On a regularly scheduled basis, at least monthly, the operator of a storage facility shall:

(1) routinely inspect and maintain storage facilities, storage containers and appurtenances to minimize the risk of a discharge;

(2) inspect valves and other appurtenances for leakage; and

(3) make a written record of all inspections and major maintenance or repair on the day of the inspection, maintenance or repair.

(b) Inspection and maintenance records shall be kept at the storage site, or at the nearest local office from which the storage site is administered.

(c) For the purposes of this regulation, major maintenance or repair means any repair or maintenance which requires taking the pump appurtenance or storage container affected out of service. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-911. Operational area containment for fertilizer. (a) Loading pads.

(1) Each area or pad used for loading fluid bulk fertilizer into storage containers or for unloading fluid bulk fertilizer from storage containers into mobile containers shall be curbed and paved with asphalt, concrete or other similar material approved by the secretary or be otherwise adequately designed to contain and allow recovery of any discharged fertilizer materials resulting from loading or unloading fertilizer materials or rinsates resulting from the cleaning of fertilizer application equipment.

(2) Each area or pad shall be sufficient to hold the entire mobile container during loading or unloading. This pad shall be designed, constructed and maintained to handle all reasonably foreseeable loading conditions to which it is exposed. Cracks and seams shall be kept sealed.

(3) Each area or pad shall be designed to prevent accumulation and overflow resulting from precipitation.

(4) Any cleaning at the storage facility of equipment used to apply fertilizer or fertilizer materials shall be cleaned upon a loading pad or area described in subsections (1), (2) and (3) of this section.

(5) Each facility where 125 tons or more of liquid fertilizer or 25 tons or more of dry fertilizer are received into or transferred out of one or more storage containers located at the facility during any period of 365 consecutive days shall have at least one loading pad or area which complies with the provisions of this regulation.

(b) Catch basins.

(1) The curbed and paved surface of the loading pad or area shall form or drain into a liquid-tight catch basin. If the curbed and paved surface of the loading pad or area drains to a sump, the catch basin may include the sump and an above-ground container if a pump is installed which transfers the contents of the sump into the above-ground container.

(2) The curbed surface and catch basin shall be of adequate design and size to contain a combined total of 110% of the largest volume of fertilizer or fertilizer material to be loaded or unloaded or 5,500 gallons of fluid whichever is greater and a minimum of 2,000 gallons of discharged fluid.

(d) Protection of containers and appurtenances. Each storage container and appurtenance, including pipes, shall be protected against any reasonably foreseeable risk of damage by trucks and other moving vehicles engaged in the loading or unloading of bulk fertilizer.

(e) Exceptions.

(1) This regulation shall not apply to the unloading of fertilizer or fertilizer materials from a mobile container into an application device at the site where the fertilizer is to be applied.

(2) In lieu of the requirements of paragraphs (a) and (b) of this regulation, a portable pad or device which provides confinement and allows recovery of fertilizer leaks, spills or other discharged fertilizer and which has been approved by the secretary may be used during the loading and unloading of fertilizer from rail cars.

(3) This regulation shall not apply to the unloading of rail cars directly into a permanent riser or manifold system which has been approved by the secretary as part of storage facility which complies with the requirements of K.A.R. 4-4-900 et seq.

(4) This regulation shall not apply to any storage facility through which a volume of less than 125

tons of liquid fertilizer or less than 25 tons of dry fertilizer is sold or transferred in any period of 365 consecutive days.

(f) Inspection and maintenance.

(1) The operator of every storage facility shall routinely inspect and maintain loading pads and catch basins. These inspections shall be conducted on a regularly scheduled basis at least monthly.

(2) The operator of a storage facility shall make a written record of each inspection and each major maintenance or repair on the day of the inspection, maintenance or repair. Inspection and maintenance records shall be kept at the storage site or at the nearest local office from which the storage site and operational area is administered.

(3) For the purposes of this regulation, major maintenance or repair means any repair or maintenance which requires taking the pump appurtenance or storage container affected out of service. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-912. Abandoned containers. (a) Each storage container and other container used at a storage facility to hold fluid bulk fertilizer or fertilizer rinsate shall be deemed abandoned if:

(1) it has been out of service for more than six consecutive months because of a weakness or leak;

(2) or it has been out of service for any reason other than nonuse for more than two consecutive years.

(b) Each abandoned underground container, including each abandoned underground catch basin, shall be thoroughly cleaned and removed from the ground or filled with an inert solid. Each connection and vent in such a container shall be disconnected and sealed. A record of the catch basin size, location, and method of closing shall be maintained at the storage facility as provided in K.A.R. 4-4-921.

(c) Each abandoned aboveground container shall be thoroughly cleaned. All hatches on each such container shall be closed, and all valves or connections shall be closed and sealed.

(d) A secondary containment facility shall not be deemed abandoned merely because there have been no discharges into it.

(e) Prior to placing an abandoned container back into service, the container shall have been inspected for compliance with the provisions of K.A.R. 4-4-900 et seq.

(f) For each tank which will remain unused for a period of at least two years, the owner of a fertil-

izer storage facility shall notify the secretary of the date when the tank is taken out of service and the date it is returned to service.

(g) All records required to be kept pursuant to this regulation shall be made available to the secretary as specified in K.A.R. 4-4-921. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-920. Storage and handling of dry bulk fertilizer. (a) Dry fertilizer materials shall be stored and handled in a manner which prevents pollution of groundwater by minimizing losses of the dry fertilizer or dry fertilizer materials to the air, surface water, groundwater, or subsoil.

(b) Non-fluid fertilizer or fertilizer materials shall be stored inside a properly designed structure or device with a cover or roof top, sidewalls and base sufficient to prevent fertilizer contact with precipitation and surface waters. Floors and sidewalls shall be strong enough to support the weight of the fertilizer being stored.

(c) All loading, unloading, mixing and handling of dry fertilizer, unless performed in the field where applied, shall be done using a containment method, device, or structure, which is of a size and design that will contain the fertilizer and can be operated to minimize emission of dust, vapors or both beyond the facility boundaries. Any collected materials shall be applied to a field at agronomic fertilizer rates or be otherwise recycled with other fertilizer mixes.

(d) Handling or work areas where any dry fertilizer is stored, loaded, unloaded or handled shall be constructed of concrete, asphalt or other material that is sealed with a product approved by the secretary to maintain a permeability rate at least equivalent to that of concrete or asphalt.

(e) Conveyors and augers shall be equipped with dust control boots or socks.

(f) Roof and surface runoff water shall be diverted away from the fertilizer buildings or loading area by use of grading or other means of water diversion.

(g) Railside unloading areas shall have a large enough area, including the area between the rails, surfaced with concrete or asphalt to provide for sufficient clean-up of all spilled fertilizer materials. As an alternative, a portable device approved by the secretary may be used if the user demonstrates that all spilled materials can be controlled and contained by the device.

(h) All doors shall be locked when facility is not in use.

(i) Mixing and blending devices shall be covered with a suitable roof or otherwise be suitably designed and installed to prevent rain, sleet, snow or hail from coming into contact with the dry fertilizer.

(k) The name of the storage facility and the name and telephone number of individuals who may be contacted in case of emergency shall be posted on the storage facility using letters not less than two inches high.

(l) Buildings used to store dry fertilizer or fertilizer materials shall be marked with a general description of their contents.

(m) Handling or working areas where dry fertilizers are stored, loaded, unloaded or handled shall be cleaned daily after use. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-921. Record keeping. (a) Records required to be maintained. Each of the following records shall be prepared by the operator of the storage facility and kept at the storage facility affected, or at the nearest local office from which the storage facility is administered.

(1) A record shall be completed on the day of discovery of all discharges of either 1,000 pounds or more of dry fertilizer outside the handling or working area or 100 gallons or more of liquid fertilizer into the secondary containment structure or area or any other portion of the storage facility including:

- (A) the date and time of discharge, if known;
- (B) the type of fluid or dry bulk fertilizer discharged;
- (C) the volume of the discharged fertilizer;
- (D) the cause of the discharge;
- (E) the action taken, if any, to control or recover the discharged fertilizer; and
- (F) the method of use or disposal of any recovered discharge. Updates of this record shall be made promptly showing the measures taken to control, recover, use or dispose of the discharge.

(2) An inventory record shall be kept of each fertilizer product.

(3) Any difference between the volume of each fertilizer product as shown in the inventory and the volume as measured which exceeds one per cent for a liquid fertilizer product or two per cent for a dry fertilizer product shall be reported to the secretary within three working days.

(4) A semi-annual inventory reconciliation shall be made at the end of June and December each

year which shows the amount of fluid and dry bulk fertilizer which has been lost or unaccounted for from each storage container.

(5) Any difference between the volume of each fertilizer product as shown in the inventory and the volume as shown in the preceding inventory reconciliation which exceeds one per cent of the current inventory for each liquid fertilizer product or two per cent of the current inventory for each dry fertilizer product shall be reported to the secretary within three working days.

(6) A record shall be kept of the dates storage containers, appurtenances, operational area containment facilities, and secondary containment facilities were inspected and what maintenance or repairs, if any, were made.

(7) A record shall be kept listing the size and location of each abandoned storage container, if any.

(b) Period required for maintenance of records.

(1) Except as provided in subparagraph (b)(2), the records required by paragraph (a) shall be maintained for at least 5 years.

(2) Records required under subparagraph (a)(7) of this regulation shall be maintained as permanent records.

(3) Except for records required by paragraph (a), all other records required by K.A.R. 4-4-900 et seq. shall be maintained for at least 3 years.

(c) All records shall be available for inspection and copying by the secretary. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-922. Discharge response plan. (a) The operator of each storage facility shall prepare a written discharge response plan for the storage facility. This plan shall include:

(1) the name and telephone number of each person or agency which is to be contacted in the event of a discharge, including any persons responsible for the stored fertilizer;

(2) a complete copy of the storage container labeling required by K.A.R. 4-4-909 for each bulk fertilizer stored and the labeling required under K.S.A. 2-1201 et seq. for each fertilizer stored;

(3) identification, by location, of each storage container and the type of bulk fertilizer stored in it;

(4) the procedures to be used in controlling and recovering, or otherwise responding to a discharge for each type of bulk fertilizer stored at the facility; and

(5) the procedures for using or disposing of a recovered discharge.

(b) The operator shall keep the discharge response plan current at all times and shall update it at least annually.

(c) A copy of the discharge response plan shall be kept readily available at both the storage facility and the nearest local office from which the storage facility is administered.

(d) The operator of the storage facility shall provide a current copy of the plan to the local fire and police departments and the secretary.

(e) As an alternative, any environmental response plan or other plan which has been prepared to meet the requirements of another law or regulation, either state or federal, which contains the information required by this regulation may be accepted by the secretary. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-923. Existing storage tanks which have a capacity of 100,000 gallons or more.

(a) Liquid fertilizer storage containers with a capacity of 100,000 gallons or more shall be located within an approved secondary containment area designed to allow the containment and recovery of any discharged fertilizer material.

(b) Unless otherwise approved pursuant to K.A.R. 4-4-956, the surface supporting the storage container shall be elevated above the surrounding surface of the containment area so that the lowest point of the storage container shall be at least six inches above the surrounding surface of the containment area to permit visual identification of any leaks which may develop in the floor of the storage container.

(c) This regulation shall apply to all storage containers with a capacity of 100,000 gallons or more which were placed in service on or before January 13, 1991. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-924. Storage tanks which have a capacity of 100,000 gallons or more; new construction.

(a) This regulation shall apply to all storage containers with a capacity of 100,000 gallons or more which are constructed or placed in service on or after the effective date of this regulation.

(b) Liquid fertilizer storage containers with a capacity of 100,000 gallons or more shall be:

(1) located within an approved secondary containment area designed to allow the containment and recovery of any discharged fertilizer material; and

(2) placed on a surface which has been sealed with asphalt, concrete, attapulgitic clay, sodium bentonite, or other material approved by the secretary.

(c) The bottom surface of the storage container shall be elevated above the surrounding surface of the containment area so that the lowest point of the storage container shall be at least six inches above the sealed surface to permit installation of a leak detection system.

(d) The leak detection system shall consist of:

(1) three or more perforated pipes or tile which shall:

(A) be placed on the sealed surface and below the storage container;

(B) be placed parallel to each other on not more than 10 foot centers; and

(C) extend to the outer edge of both sides of the tank; or

(2) any other leak detection system approved by the secretary.

(e) Unless otherwise approved pursuant to K.A.R. 4-4-956, each storage container shall be located in a secondary containment area which has been designed to permit both visual and sampling access to the leak detection system described in paragraph (d) of this regulation. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-931. Approved secondary containment of bulk fertilizer; general requirements.

(a) Primary containment of liquid bulk fertilizer shall be located within a secondary containment area. Diked areas shall be constructed with a base, perimeter wall and sloped floor drain, except as provided by K.A.R. 4-4-934.

(b) The diked secondary containment area for fluid bulk fertilizer shall be physically separated and distinct from any secondary containment area for pesticides or other nonfertilizer materials; however adjoining secondary containment areas may share common walls.

(c) The diked area for secondary containment of storage facilities shall be able to contain, below the height of the dike, at least 110% of the capacity of the largest storage container plus the volume displaced by all other storage containers, fixtures, and materials located within the diked area.

(d) All pumps used for handling liquid fertilizer shall be located within the secondary containment structure or area.

(e) Except where used as a method of monitoring a secondary containment system, drainage

within or underlying the area to be diked shall be eliminated.

(f) This regulation shall apply to:

(1) each storage facility in existence on the effective date of this regulation which has a total storage capacity of 5,000 gallons or more;

(2) each storage facility in existence on the effective date of this regulation which has a total storage capacity of 2,000 gallons or more and less than 5,000 gallons where 125 tons or more of liquid fertilizer is received into or transferred out of one or more storage containers located at the storage facility during any period of 365 consecutive days; and

(3) each storage facility which was not in existence on the effective date of this regulation and which has a total storage capacity of 2,000 gallons or more. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-932. Secondary containment requirements; walls. (a) The walls of each secondary containment facility shall be constructed of earth, steel, concrete, solid masonry or any other material approved by the secretary, and be designed to withstand a full hydrostatic head of any discharged fluid and weight load of material used in construction.

(b) All cracks, joints, and seams shall be sealed to prevent leakage.

(c) Walls constructed of earth or other permeable materials shall be lined as provided in K.A.R. 4-4-933.

(d) Earthen walls shall have a horizontal-to-vertical slope of at least three to one, unless a steeper slope is consistent with good engineering practice, and shall be packed and protected from erosion. An exterior slope of 30 degrees or less shall be protected with grass or crushed stone. Slopes greater than 30 degrees and all interior slopes shall be protected with flat road stone or a similar crushed stone material.

(e) Walls shall not exceed six feet in height above interior grade unless provisions are made for normal access, necessary emergency access to tanks, valves and other equipment, and safe exit from the secondary containment facility.

(f) Walls constructed of concrete or solid masonry shall rest upon a floating base of concrete prepared as required in K.A.R. 4-4-933 or upon suitable concrete footings which extend below the average frost depth to provide structural integrity.

(Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-933. Secondary containment requirements; lining. (a) General requirement. The base of a secondary containment facility, and any earthen walls of the facility shall be lined with asphalt, concrete, an approved synthetic liner, a clay soil liner or other product approved by the secretary, designed to limit permeability of the base and walls. Liners shall meet the requirements of this regulation.

(b) Asphalt or concrete liners. Asphalt or concrete liners shall be designed, according to good engineering practices, to withstand any foreseeable loading conditions, including a full hydrostatic head of discharged fluid and static loads of storage containers, including appurtenances, equipment, and contents. Cracks and seams shall be sealed to prevent leakage.

(c) Synthetic liners.

(1) All synthetic liners and installation plans shall be approved by the secretary. Until the manufacturer of the synthetic liner provides the secretary with a written confirmation of compatibility and a written estimate of the life of the liner, no approval shall be given.

(2) Synthetic liners shall not react either chemically or electrolytically with the materials being stored within the storage facility.

(3) Synthetic liners shall be installed according to manufacturer's specifications. All field constructed seams shall be tested and repaired, if necessary, in accordance with the manufacturer's recommendations.

(d) Clay soil liners. The surface soil, including the berm of an earthen dike and 10 feet beyond the berm, shall be sealed with a sealing agent such as sodium bentonite, attapulgite clay or a similar clay material approved by the secretary. The liner shall be constructed in accordance with reliable civil engineering recommendations to establish a barrier layer which will maintain a water level up to the working height of the containment structure for 72 hours, or a clay application which results in a downward water movement of not greater than one-half of an inch per 24 hour period. The floor of the containment area shall be protected with a layer of gravel, sand, earth or crushed stone at least six inches thick placed on top of the clay liner.

(e) Exemptions.

(1) A liner need not be installed directly under a storage container with a capacity of 100,000 gal-

lons or more that has been constructed on site and put into use prior to the effective date of this regulation if all of the following conditions are met:

(A) A second bottom made of steel or other material approved by the secretary is constructed for the storage container, placed over the original bottom, and topped with a layer of smooth, fine gravel or coarse sand at least six inches thick;

(B) the original bottom of the storage container is tested for leaks before the sand layer or second bottom, as described in (A) are installed; and

(C) the newly constructed bottom is tested for leaks before any fluid fertilizer is stored in the storage container;

(D) records of the tests described in (B) and (C) are kept on file at the storage facility, or at the nearest local office from which the storage facility is administered; and

(E) a method to readily detect leaks from the newly constructed bottom into the sand layer is in place.

(2) The secondary containment requirements in this regulation shall not apply to rail cars which are periodically removed from the storage facility. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-934. Use of elephant rings for secondary containment. (a) Individual storage containers may be contained within an elephant ring as an alternative to a diked containment area. The elephant ring shall serve as a second containing wall in the event that the primary storage container develops a leak. The elephant ring shall be designed and installed to withstand a full hydrostatic head from the fluid stored in the enclosed primary storage container and all other stresses reasonably foreseeable from secondary containment of stored fertilizer.

(b) Both the primary storage container and the elephant ring shall be fabricated of materials compatible with each other and which do not react either chemically or electrolytically the fertilizer being stored. Use of any combination of metals or other materials which contribute to chemical or electrolytic corrosion is prohibited.

(c) The height of the elephant ring wall shall not exceed six feet. The volume contained within the secondary storage walls up to the working height of the elephant ring shall be sufficient to contain a volume of 110% of the volume contained in the primary storage container plus the volume displaced by the footings of any equipment such as

pumps, meter or other devices, placed within the secondary containment vessel.

(d) The elephant ring shall be free of leaks and structural defects. The base of the elephant ring shall be protected from corrosion, both from inside and outside, and underlain:

(1) by a concrete pad; or

(2) with eight inches of compacted gravel beneath four inches of compacted sand; or

(3) as recommended by the manufacturer of the elephant ring and approved by the secretary.

(e) All piping connections to the primary storage container shall be made over the wall of the elephant ring and adequately supported and braced. Pumps and other fixtures, if located within the elephant ring containment structure, shall be placed on an elevated platform.

(f) Accumulations of storm water and other material shall be pumped over the wall of the elephant ring by a sump pump within the secondary container, or by an exterior pump, and disposed of according to K.A.R. 4-4-935.

(g) Inspection and maintenance of the primary storage container and of the elephant ring shall be conducted as required by K.A.R. 4-4-920, and records of inspections and maintenance shall be made and maintained as required by K.A.R. 4-4-921. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-935. Drainage from contained areas within secondary containment. (a) Earthen or prefabricated containment area. An earthen or prefabricated containment area shall not have a relief outlet and valve. The base shall slope to a collecting spot where storm water can be discharged by pump over the berm for use in the blending process or for proper disposal in accordance with local requirements for disposal of storm water.

(b) Asphalt or concrete lined areas.

(1) An asphalt or concrete lined area shall have a recessed catch drain running through the center of the base or a sump as provided for in K.A.R. 4-4-936.

(2) The catch drain shall be at least six inches deep and 12 inches wide with an open grate cover.

(3) The asphalt or concrete slab located beneath the catch drain shall be at least the same thickness below and to the sides of the drain as the base is throughout the contained area and comply with K.A.R. 4-4-933.

(4) The asphalt or concrete base shall slope to the drain, and the drain shall slope to a discharge valve at the edge of the dike.

(5) The discharge valve shall be closed and secured except when used permitted by K.A.R. 4-4-905.

(6) The discharge valve shall drain to an underground concrete sump. A self-priming recovery pump shall be used to move all materials from the sump to alternate storage. The sump tank shall not be used as a permanent storage container. It shall be pumped periodically to remove any water, fertilizer material or both which it collects.

(7) Precipitation may be used for make-up water in fertilizer mixes or disposed of in accordance with local requirements if it is compatible with fertilizer materials being handled at the storage facility.

(c) Other areas.

(1) Earthen areas which are not lined with asphalt or concrete shall be lined with a synthetic liner approved by the secretary.

(2) Earthen areas lined with a synthetic liner shall be constructed as required in subsections (1) through (7) inclusive of section (b) of this regulation. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 14, 1991; amended Jan. 25, 1993.)

4-4-936. Alternative to a recessed catch drain in containment areas. A sump may be located within the diked or secondary containment area as an alternative to the recessed catch drain if:

(a) the sump construction conforms to the thickness specifications for the remainder of the containment base;

(b) the sump is drained over the wall of the containment structure by means of a pump;

(c) no valve is plumbed into the sump unless the sump has a permanent catchment system as described in K.A.R. 4-4-911; and

(d) materials removed from the sump are disposed of in a manner consistent with K.A.R. 4-4-935. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-937. Inspection and maintenance requirements; secondary containment. (a) Every secondary containment area, structure or device shall be inspected by the operator of the storage facility at least every six months and be maintained as necessary to assure compliance with these regulations.

(b) The operator shall make a written record of all inspections and maintenance on the day of the inspection or maintenance which shall be kept at the storage facility or at the nearest local office from which the storage facility is administered.

(c) All secondary containment areas, structures and devices shall be kept free of debris and foreign matter. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-950. Time frames for submission of initial diagram or plans. (a) Within one year after the effective date of this regulation, the owner of each existing or proposed storage facility shall submit a diagram or plans of the storage facility containing the following information:

(1) the location and size of each storage container;

(2) the drainage pattern of the storage facility;

(3) any source of drinking water within the facility, if any;

(4) any source of ground or surface water within 1320 feet of the storage facility, if any;

(5) any tank or other container used for the storage of petroleum products within the storage facility, if any;

(6) the location of each pump, pipe or other appurtenance used in the storage or transfer of fertilizer within the storage facility, if any;

(7) the location of each pad used for the loading of bulk fertilizer, if any; and

(8) the location of the storage facility for the dry fertilizer, if any;

(9) the standards and specifications for the construction of the storage facility for dry fertilizer, if any;

(10) the size and location of each proposed secondary containment structure to be located within the storage facility to comply with the requirements of K.A.R. 4-4-900 et seq.;

(11) the size and location of each proposed loading pad or area to be located within the storage facility to comply with the requirements of K.A.R. 4-4-900 et seq.; and

(12) any other information required by the secretary.

(b) The diagram shall be drawn to an appropriate scale which permits all required information to be shown and be easily readable without magnification. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-951. Requirements for plans and specifications. (a) Whenever a storage facility is

constructed or extensively remodeled or an existing structure is converted to use as a storage facility, properly prepared plans and specifications for the construction, remodeling or conversion shall be submitted by the owner of the storage facility to the secretary for review and approval before construction, remodeling or conversion is begun.

(b) The plans and specifications shall include the proposed layout, mechanical plans, construction materials, work areas, and type of equipment to be fixed and facilities which will be remodeled, converted or constructed.

(c) The plans shall also contain the information required by K.A.R. 4-4-950.

(d) Any person, after submitting the plans required by this regulation, shall be given a time period not exceeding six months by the secretary in which to resubmit the plans with any corrections or additions required by the secretary.

(e) Upon approval of the plans by the secretary, the owner of the fertilizer storage facility shall be given a time period in which to complete any changes, corrections or additional construction at the storage facility as contained in the approved plans. The time period shall not exceed two years for the construction of loading pads and shall not exceed three years for the construction or installation of dikes or secondary containment facilities. Time periods shall run from the date the plans are approved.

(f) The secretary may grant additional time for construction or installation of storage containers, structures, dikes, or other equipment for good cause upon receipt of a written request. Such request shall state the reason for the additional time and the amount of additional time needed. The request may be granted if the request was made in good faith and the circumstances underlying the request were beyond the control of applicant. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-952. Time frames for construction; liquid fertilizer storage facilities. (a) Within three years after approval of construction plans by the secretary, the owner of each storage facility shall complete construction or installation of secondary containment facilities required by K.A.R. 4-4-900 et seq.

(b) Within two years after approval of construction plans by the secretary, the owner of each storage facility shall complete construction or installation of loading and unloading pads required by K.A.R. 4-4-900 et seq.

(c) The secretary may grant additional time for construction or installation of storage containers, structures, dikes, or other equipment for good cause upon receipt of a written request. Such request shall state the reason for the additional time and the amount of additional time needed. The request may be granted if the request was made in good faith and the circumstances underlying the request were beyond the control of applicant. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-953. Time frames for construction plans; dry fertilizer. (a) Within three years after approval of construction plans by the secretary, the owner of each storage facility shall complete construction or installation of secondary containment facilities required by K.A.R. 4-4-900 et seq.

(b) Within two years after approval of construction plans by the secretary, the owner of each storage facility shall complete construction or installation of loading and unloading pads required by K.A.R. 4-4-900 et seq.

(c) The secretary may grant additional time for construction or installation of storage containers, structures, dikes, or other equipment for good cause upon receipt of a written request. Such request shall state the reason for the additional time and the amount of additional time needed. The request may be granted if the request was made in good faith and the circumstances underlying the request were beyond the control of applicant. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-954. Fertilizer discharge report requirement. Any discharge of either 1000 pounds or more of dry fertilizer outside the handling or working area or 100 gallons or more of liquid fertilizer into the secondary containment structure or area or any other portion of the storage facility shall be reported to the secretary within 48 hours. (Authorized by and implementing K.S.A. 1989 Supp. 2-1227; effective Jan. 14, 1991.)

4-4-956. Alternative designs for bulk fertilizer storage facility. (a) A bulk fertilizer storage facility's alternative design that does not meet the requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986 may be approved by the secretary. The applicant shall provide proof sufficient to the secretary that the alternative design meets or exceeds the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986.

(b) Each application for approval of an alternative design shall include the following:

(1) The plans and specifications required by the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986;

(2) data from the manufacturer or designer of the proposed bulk fertilizer storage facility documenting that the alternative design meets or exceeds the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986;

(3) a description of the facility's system for the detection of leaks or other malfunctions that meets the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986;

(4) a statement by a licensed professional engineer certifying that the design provides protection to the environment that meets or exceeds the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986;

(5) the construction timelines; and

(6) any other relevant information regarding the safe handling of bulk fertilizers required by the secretary.

(c) Upon completion of construction and before using the bulk fertilizer storage facility, the owner or operator of the bulk fertilizer storage facility shall submit to the secretary a detailed record of construction and a statement certifying that the bulk fertilizer storage facility was constructed according to the approved application. (Authorized by and implementing K.S.A. 2-1227; effective Jan. 25, 1993; amended July 18, 2003.)

4-4-982. Marking of mobile storage containers. (a) Each owner or operator of any mobile storage container shall mark each mobile storage container with the following information on at least two opposing exterior surfaces of the container:

(1) The word "fertilizer";

(2) the name and address of, and the emergency contact information for, the individual, corporation, association, or entity responsible for the mobile storage container; and

(3) the type of fertilizer in the mobile storage container.

(b) All information required by this regulation shall be marked in letters and numbers at least two inches high and in colors that sharply contrast with the color of the background. (Authorized by and implementing K.S.A. 2-1227; effective, T-4-7-1-94, July 1, 1994; effective Aug. 22, 1994; amended July 18, 2003.)

4-4-983. Mobile storage containers. (a) Each mobile storage container or combination of mobile storage containers that has a combined storage capacity of 2,000 gallons or more and is used to store liquid fertilizer at the same location for more than 60 consecutive days of storage shall meet the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986.

(b) The 60-day period specified in subsection (a) of this regulation shall begin when the liquid fertilizer is delivered to an empty mobile storage container or when the mobile storage container is moved to a separate location more than 300 feet from the previous location and in accordance with K.A.R. 4-4-900(i) and K.A.R. 4-4-901.

(c) Each seller that delivers liquid fertilizers to any mobile storage container shall make and, for a minimum of three years, maintain records of the following for each delivery:

(1) The date of the delivery;

(2) the name of the person making the delivery;

(3) the number of gallons delivered;

(4) the legal description, to the nearest 10-acre quarter of the section, of the mobile storage container location at the time of delivery;

(5) a description of the fertilizer transported;

(6) the approximate quantity of fertilizer in the mobile storage container before delivery;

(7) the name of the owner or user of the mobile storage container; and

(8) the name and address of the buyer, seller, and transporting company, if different from the seller.

(d) Each seller shall provide written receipts containing the information specified in subsection (c) of this regulation to the owner or operator of the mobile storage tank, who shall retain these records for a minimum of three years.

(e) The records required by this regulation shall be made available to the secretary upon request. (Authorized by and implementing K.S.A. 2-1227; effective, T-4-7-1-94, July 1, 1994; effective Aug. 22, 1994; amended July 18, 2003.)

4-4-984. Mobile containers. Each mobile container used for the storage of liquid fertilizer shall meet the requirements of K.A.R. 4-4-901 and K.A.R. 4-4-903. (Authorized by and implementing K.S.A. 2-1227; effective, T-4-7-1-94, July 1, 1994; effective Aug. 22, 1994.)

4-4-985. Application for new or modified bulk fertilizer storage facilities. (a) Before beginning construction, the owner or

operator of each proposed new or modified bulk fertilizer storage facility shall submit to the secretary a complete application. The applicant shall provide proof sufficient to the secretary that the design will meet or exceed the applicable requirements contained in K.A.R. 4-4-900 through K.A.R. 4-4-986.

(b)(1) Each application shall be submitted on forms provided by the secretary. Each applicant shall complete and submit the application according to the directions on the forms. The applicant shall identify all confidential business information. Each application shall include the following:

- (A) A location area map;
- (B) a detailed plot plan of the facility;
- (C) a water line backflow protection schematic diagram;
- (D) detailed construction plans and specifications;
- (E) a process flow diagram for the facility; and
- (F) any additional relevant information regarding the safe handling of bulk fertilizers that the applicant or secretary deems necessary.

(2)(A) In addition to meeting the requirements listed in paragraph (b)(1) of this regulation, each application for a bladder tank shall also meet the requirements of K.A.R. 4-4-986.

(B) In addition to meeting the requirements listed in paragraph (b)(1) of this regulation, each application for an alternative design shall meet the requirements of K.A.R. 4-4-956.

(c) The application shall specify the physical location and the mailing address of the facility, if different from the address on the application.

(d) All construction plans and specifications for the facility submitted as part of the application shall be drawn to scale, be clearly and completely labeled, and be legible without magnification. The plans and specifications shall at a minimum contain the following:

- (1) A plot plan or map of the property that shows all structures and the location of all wells, utility poles, and drainage systems on the site;
- (2) the location of the facility relative to the floodplain;
- (3) the approximate distance from, the direction to, and the identity of all lakes, streams, drainage ditches, and storm drains within 1,320 feet of the facility;
- (4) the drainage pattern of the facility;
- (5) the distance from and direction to all public and private water wells within the facility or within 1,320 feet of the facility;

(6) the location of all abandoned wells within 300 feet of the facility;

- (7) the site soil characteristics;
- (8) the depth to groundwater;
- (9) the location of all utility service entrances and easements or rights-of-way within the facility;
- (10) the construction plans for the secondary and operational area containment;
- (11) the manufacturer's installation instructions, estimated life expectancy, and confirmation of compatibility with fertilizer material, if any synthetic liners, synthetic materials, or prefabricated basins are used in the containment structure; and
- (12) the location of any tank or other container used for the storage of petroleum products within the storage facility, if any.

(e) Each set of construction plans and specifications for a bulk fertilizer secondary containment structure shall, at a minimum, contain the following:

- (1) The size and location of each proposed secondary containment structure;
- (2) the size and location of all bulk fertilizer storage containers or bins, pumps, piping, and appurtenances;
- (3) the size and location of all operational areas and load pads;
- (4) the drainage pattern and sump location; and
- (5) the calculated capacity of each containment structure in gallons or cubic feet.

(f) Elevation plans or maps shall be included with the application and shall show the location of all bulk fertilizer storage tanks and their horizontal, raised, or vertical positioning within the secondary containment and a tank schedule that provides all of the following information for each tank:

- (1) The construction material;
 - (2) the capacity;
 - (3) the diameter or dimensions;
 - (4) the height; and
 - (5) the date of installation.
- (g) Each construction or modification project shall conform with the plans and specifications identified in the approved application and required by this regulation.

(h) Upon completion of construction or modification and before use of the newly constructed or modified portion of the facility, the owner or operator shall provide the secretary with certification that all construction or modification was completed in accordance with this regulation.

(i) Sources outside of the Kansas department of agriculture may be utilized by the secretary for assistance in evaluating any alternative design

application submitted. (Authorized by K.S.A. 2-1227; implementing K.S.A. 2-1228; effective July 18, 2003.)

4-4-986. Liquid bulk fertilizer bladder tank requirements. (a) Each liquid bulk fertilizer bladder tank design shall be required to be approved by the secretary before use. Each applicant shall provide the information specified in this regulation to the secretary establishing that the bladder tank design meets or exceeds the applicable requirements of K.A.R. 4-4-900 through K.A.R. 4-4-986.

(b) Each application shall be submitted on one or more forms provided by the secretary. Each applicant shall complete these forms and submit the application in compliance with the directions on the forms. The applicant shall designate all trade secrets that the applicant wishes to be considered as confidential.

(c) Each application submitted for approval shall include the plans and specifications, which shall be certified and stamped by a registered professional engineer. These plans and specifications shall include the following:

(1) All information required by K.A.R. 4-4-985;
 (2) the results of a soil compaction study and an evaluation of these findings showing that the underlying soil and support pad can support the weight of the filled tank;

(3) construction details of the support pad, including details of the external leak detection;

(4) the wind loading and buoyancy calculations for the tank when empty; and

(5) construction and assembly details of the tank and liner, which shall include the following:

(A) The liner manufacturer's detailed information, including liner thickness, composition, chemical compatibility, and life expectancy;

(B) a description of the protective barriers between the liner and the tank, including cross-sections of each wall and the floor;

(C) detailed information about liner suspension;

(D) detailed information about roof support;

(E) detailed information about the method to be used to remove condensate, overage, and liner leakage, if any;

(F) detailed information about all external openings through the tank, including any leak detection ports, valves, manways, and other inspection ports;

(G) detailed information about all openings through the tank liner;

(H) detailed information about the liquid-level gauging device, including overage prevention;

(I) detailed information about the internal leak detection system;

(J) the method of securing the tank and appurtenances to prevent any discharge of stored fertilizer;

(K) each manufacturer's recommendations for inspection and maintenance of the tank, liner, and appurtenances and a statement specifying how these recommendations will be implemented; and

(L) any other relevant information regarding the safe handling of bulk fertilizer required by the secretary.

(d) All external appurtenances, including leak detection ports and valves, shall meet the following requirements:

(1) Be encased or enclosed to contain any leaks;

(2) have a leak detection method; and

(3) have a method to secure the enclosure from unauthorized access.

(e) All pipes outside the tank shall be double-walled from the storage tank to the loading pad and shall have a leak detection method.

(f) All tanks and appurtenances shall be protected from damage due to vehicle traffic.

(g) Each applicant shall verify the manufacturer's certification that the external tank has been built to the applicable provisions of the American petroleum institute's API standard 650, published November 1998 and including the January 2000 addenda, November 2001 addenda, and all appendices, which is hereby adopted by reference.

(h) Upon completion of construction and before use, the owner or operator of the facility shall submit to the secretary a detailed record of construction and a statement certifying that the facility was constructed according to the approved application.

(i) Each bladder tank shall be inspected and maintained according to the approved plan. (Authorized by K.S.A. 2-1227; implementing K.S.A. 2-1228; effective July 18, 2003.)

Article 5.—AGRICULTURAL LIMING MATERIALS

4-5-1. (Authorized by K.S.A. 1981 Supp. 2-2910; implementing K.S.A. 1981 Supp. 2-2902; effective May 1, 1982; revoked April 15, 2016.)

4-5-2. (Authorized by K.S.A. 1981 Supp. 2-2910; implementing K.S.A. 1981 Supp. 2-2903; effective May 1, 1982; revoked April 15, 2016.)

4-5-3. Inspection tonnage report. (a) When a manufacturer, producer, or distributor submits a tonnage report which covers several locations, the report shall include the following:

(1) Name and address of each location registered; and

(2) The number of tons sold or distributed from each location.

(b) Each manufacturer, producer, or distributor shall keep adequate records for a period of three (3) years of the tonnage of agricultural liming material sold and distributed from each of its business locations within the state. (Authorized by K.S.A. 1981 Supp. 2-2910; implementing K.S.A. 1981 Supp. 2-2906; effective May 1, 1982.)

4-5-4. Agricultural liming material testing. The process for determining the effective calcium carbonate equivalent of agricultural liming materials shall be in accordance with Kansas state university's document titled "Kansas state university soil testing lab agricultural liming material testing procedure," dated October 15, 2015, which is hereby adopted by reference. (Authorized by K.S.A. 2-2910; implementing K.S.A. 2015 Supp. 2-2903 and 2-2907; effective April 15, 2016.)

Article 6.—CERTIFICATE OF FREE SALE

4-6-1. Certificate of free sale; definitions.

(a)(1) "Certificate of free sale" and "certificate" shall mean a written document in English that states that the product described in the document was manufactured in Kansas by a business whose owner or operator meets the following requirements:

(A) Holds a license, registration, permit, or other authority issued by the Kansas department of agriculture for that business; and

(B) complies with the requirements of the Kansas laws for distribution of the product in Kansas and, where applicable, the United States.

(2) "Person" shall mean any individual, partnership, association of persons, corporation, or governmental agency.

(3) "Secretary" shall mean the secretary of agriculture or a designee of the secretary.

(b) When used in a certificate of free sale, "U.S. regulations" shall mean those regulations promulgated by agencies of the federal government as follows:

(1) Regulations that have been adopted by ref-

erence in regulations of the Kansas department of agriculture; or

(2) regulations administered by the Kansas department of agriculture pursuant to a cooperative agreement with a federal agency. (Authorized by and implementing K.S.A. 2008 Supp. 74-5,100; effective Jan. 1, 2009; amended Nov. 20, 2009.)

4-6-2. Certificate of free sale. Any person may request one or more certificates of free sale by providing the following information to the secretary on a form provided by the Kansas department of agriculture:

(a) The name, address, and telephone number of the person requesting each certificate;

(b) the name of the licensed, registered, or permitted establishment where the product was manufactured;

(c) the name and type of product for which each certificate is requested;

(d) either an original label or an exact and unaltered photocopy of the label in English for the product;

(e) the country or countries to which the product is to be shipped;

(f) the number of certificates requested;

(g) if more than one product is included in the request, specification of which products are to be listed on each certificate; and

(h) the address to which each certificate is to be sent. (Authorized by and implementing K.S.A. 2008 Supp. 74-5,100; effective Jan. 1, 2009; amended Nov. 20, 2009.)

4-6-3. Certificate of free sale; fees. (a) Each person requesting a certificate of free sale shall pay a \$25.00 fee for processing and a \$3.00 fee for each duplicate certificate.

(b) No additional fee shall be charged if the certificate of free sale is sent by first-class U.S. mail to an address in the continental United States. The person requesting the certificate of free sale shall pay the actual costs for delivery of the certificate in any other manner or to any other address.

(c) Except as specified in subsection (d), all fees and costs shall be due upon issuance of the certificate of free sale.

(d) Issuance of a certificate of free sale may be refused by the secretary until payment of all fees and costs is received. (Authorized by and implementing K.S.A. 2017 Supp. 74-5,100; effective Jan. 1, 2009; amended June 15, 2018.)

Article 7.—MILK AND DAIRY PRODUCTS**A. UNGRADED MILK AND CREAM FOR HUMAN CONSUMPTION**

4-7-1. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-2. Health of herd. (a) All ungraded raw milk shall be from herds, and additions to herds, that meet the requirements of sec. (D)(1) of “milk for manufacturing purposes and its production and processing,” as adopted by reference in K.A.R. 4-7-213.

(b) Milk and cream from cows affected with mastitis or containing any residue from drugs used in the treatment of mastitis shall not be sold. (Authorized by K.S.A. 2001 Supp. 65-772 and K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773; effective Jan. 1, 1966; amended Jan. 14, 1991; amended Oct. 21, 1991; amended Dec. 20, 2002.)

4-7-3. Production requirements. Each business owner or operator and each person subject to the Kansas dairy law shall ensure that the requirements in this regulation are met. (a) Milk barn. The milk barn shall be kept clean, dry, well lighted, well ventilated, and well drained. The floor shall be constructed so that it is easily cleanable. No swine, fowl, or horses shall be permitted in the milk barn.

(b) Milk room. A clean, sanitary, well-constructed building or room that is free from sources of contamination and is properly equipped to wash, sanitize, and store bottles and equipment shall be provided. The building or room shall be constructed in a manner preventing the entrance of dust, dirt, flies, and other pests or contamination. The building or room shall be well lighted and well ventilated.

(c) Utensils. All utensils used in handling milk or cream shall be easily cleanable, free of rust, and in good repair. These utensils shall be made from smooth, nonabsorbent, noncorrodible, nontoxic material. All milk pails shall be of the seamless, hooded type.

(d) Toilet. A sanitary toilet conveniently located and properly constructed shall be provided. The toilet shall be operated and maintained so that all waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

(e) Water supply. The water supply shall be easily accessible, adequate, and compliant with all applicable sanitary and quality standards. (Autho-

rized by K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended Dec. 20, 2002.)

4-7-4. Handling requirements. (a) Cooling. All milk shall be cooled to 45°F or less within one hour after milking and shall be maintained at these temperatures until delivery to the consumer.

(b) Containers. All containers shall be stored in a sanitary place and manner and protected from possible contamination. All bottles, cans, and other multiuse containers shall be thoroughly washed and sanitized before each usage. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773; effective Jan. 1, 1966; amended Jan. 14, 1991; amended Dec. 20, 2002.)

4-7-5. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-6. Bacterial and coliform count. (a) Raw milk shall not have a bacterial plate count exceeding 100,000 per milliliter.

(b) Raw cream shall not have a bacterial plate count exceeding 200,000 per milliliter. (Authorized by K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended Dec. 20, 2002.)

4-7-7. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

B. GRADE A MILK AND MILK PRODUCTS FOR HUMAN CONSUMPTION

4-7-100 to 4-7-115. (Authorized by K.S.A. 75-1401, 74-531; effective Jan. 1, 1966; revoked Jan. 1, 1967.)

C. MILK FOR MANUFACTURING PURPOSES; PRODUCTION AND PROCESSING

4-7-200 to 4-7-212. (Authorized by K.S.A. 75-1401; effective Jan. 1, 1966; revoked, E-81-24, Aug. 27, 1980; revoked May 1, 1981.)

4-7-213. Adoption by reference. The United States department of agriculture’s recommended requirements titled “milk for manufacturing purposes and its production and processing,” effective September 1, 2005, are hereby adopted by reference, except for the following: (a) Subpart A;

(b) subpart B, section B2, paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (k), (m), (r), (s), (t), and (u);

(c) subpart D, section D9; and

(d) subpart F.

Copies of the pertinent portions of these requirements may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-773 and 65-775; effective, E-81-24, Aug. 27, 1980; effective May 1, 1981; amended May 1, 1986; amended, T-87-21, Aug. 21, 1986; amended May 1, 1987; amended Jan. 14, 1991; amended Feb. 27, 1998; amended Feb. 11, 2000; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

4-7-213a. (Authorized by K.S.A. 65-720n, 75-1401; implementing K.S.A. 65-701, 65-720n; effective, T-4-10-30-97, Oct. 30, 1997; effective Feb. 27, 1998; revoked Dec. 20, 2002.)

4-7-214. Additional definitions. Whenever the following terms are used in the United States department of agriculture's recommended requirements regarding "milk for manufacturing purposes and its production and processing," adopted by reference in K.A.R. 4-7-213, the terms shall have the meanings assigned in this regulation: (a) All references to "the act" or "act" shall mean K.S.A. 65-771 et seq., and amendments thereto.

(b) All references to "Brucellosis test" shall mean any and all requirements of the Kansas department of animal health pertaining to brucellosis.

(c) All references to any "form" shall mean a form supplied by the Kansas secretary of agriculture.

(d) All references made to an "inspector" shall mean the individual who inspects for compliance with the Kansas dairy law.

(e) All references to "official methods" shall mean the "official methods of analysis of AOAC international," adopted by reference in K.A.R. 4-7-716.

(f) All references to "regulatory agency" shall mean the Kansas department of agriculture.

(g) All references to "standard methods" shall mean the edition of "standard methods for the examination of dairy products," adopted by reference in K.A.R. 4-7-716.

(h) All references to equipment, whenever "3-A sanitary standards," "3-A standards," "3-A suggested methods," and "3-A accepted practices" are used, shall mean that the equipment referred to in that context is 3-A sanitary standards-approved before use in producing manufacturing-grade

milk. (Authorized by K.S.A. 2001 Supp. 65-772 and K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773, K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16, and K.S.A. 2001 Supp. 74-568; effective, E-81-24, Aug. 27, 1980; effective May 1, 1981; amended Jan. 14, 1991; amended Feb. 11, 2000; amended Dec. 20, 2002.)

4-7-215. Insertions. (Authorized by K.S.A. 75-1401 and L. 1990, Ch. 219, Sec. 17; implementing K.S.A. 65-701 as amended by L. 1990, Ch. 219, Sec. 1 and L. 1990, Ch. 219, Sec. 17; effective, E-81-24, Aug. 27, 1981; effective May 1, 1981; amended Jan. 14, 1991; revoked Feb. 11, 2000.)

4-7-216. (Authorized by K.S.A. 2001 Supp. 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-785 and 74-568; effective Feb. 11, 2000; amended Dec. 20, 2002; revoked Sept. 1, 2006.)

D. MILK OR CREAM BUYING

4-7-300 and 4-7-301. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-302. (Authorized by K.S.A. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-303 to 4-7-306. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

E. MILK, CREAM; SAMPLING, WEIGHING, TESTING

4-7-400 to 4-7-405. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-406. (Authorized by K.S.A. 75-1401; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked Jan. 14, 1991.)

4-7-407. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-408. (Authorized by K.S.A. 75-1401; effective Jan. 1, 1972; revoked Dec. 20, 2002.)

F. FROZEN DAIRY DESSERTS

4-7-500 to 4-7-506. (Authorized by K.S.A. 1965 Supp. 65-720a, 75-1401; effective Jan. 1, 1966; revoked May 1, 1984.)

4-7-507. Special dietary frozen desserts.

(a) The term “special dietary frozen desserts” shall mean frozen dairy desserts for special dietary purposes that are made in semblance of ice cream or ice milk and that contain sweetening ingredients other than nutritive carbohydrate sweeteners.

(b) Special dietary frozen desserts shall be labeled to meet the requirements of the Kansas food, drug, and cosmetic act, code of federal regulations, title 21. (Authorized by and implementing K.S.A. 2001 Supp. 65-772; effective Jan. 1, 1966; amended May 1, 1984; amended Dec. 20, 2002.)

4-7-508. (Authorized by K.S.A. 1965 Supp. 65-720a, 75-1401; effective Jan. 1, 1966; revoked May 1, 1984.)

4-7-509. (Authorized by K.S.A. 1965 Supp. 75-1401; effective Jan. 1, 1966; revoked Jan. 14, 1991.)

4-7-510. Adoption by reference. Except for 21 C.F.R. 135.160, pertaining to water ices, 21 C.F.R. part 135, revised on April 1, 2005, titled “frozen desserts,” is hereby adopted by reference. Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1984; amended March 26, 1990; amended Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

4-7-511. (Authorized by K.S.A. 75-1401 and K.S.A. 65-720a as amended by L. 1989, Ch. 190, Sec. 1; implementing K.S.A. 65-720a as amended by L. 1989, Ch. 190, Sec. 1; effective March 26, 1990; revoked Dec. 20, 2002.)

4-7-512. (Authorized by K.S.A. 75-1401 and K.S.A. 65-720a as amended by L. 1989, Ch. 190, Sec. 1; implementing K.S.A. 65-720a as amended by L. 1989, Ch. 190, Sec. 1; effective March 26, 1990; revoked Dec. 20, 2002.)

4-7-513. (Authorized by K.S.A. 75-1401, K.S.A. 1990 Supp. 65-720a and 65-720n; implementing K.S.A. 1990 Supp. 65-720a and 65-720n; effective March 26, 1990; amended Oct. 21, 1991; revoked Dec. 20, 2002.)

4-7-530. Adoption by reference. (a) The following sections of 7 C.F.R. part 58, revised on January 1, 2006, are hereby adopted by reference:

- (1) All of section 58.126;
- (2) all of sections 58.132 through 58.138; and

(3) all of sections 58.605 through 58.654, except sections 58.646, 58.648, and 58.653.

(b) Copies of these federal regulations, or pertinent portions of the regulations, may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

4-7-531. Additional definitions. (a) Notwithstanding any language to the contrary, all references to any “standard of identity” in 7 C.F.R. 58.605, as adopted by reference in K.A.R. 4-7-530, shall mean the corresponding standard of identity established by K.A.R. 4-7-510.

(b) All references to “standard methods for the examination of dairy products” in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the “standards for examination of dairy products” adopted by reference in K.A.R. 4-7-716.

(c) All references to “official methods of analysis of the association of analytical chemists” in the regulations adopted by reference in K.A.R. 4-7-530 shall mean the edition of the “official methods of analysis of AOAC international” adopted by reference in K.A.R. 4-7-716. (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

4-7-532. Examination of frozen dairy desserts and frozen dairy dessert mixes. (a) A sample of any frozen dairy dessert or frozen dairy dessert mix may be taken by the Kansas secretary of agriculture as often as the secretary deems necessary to prevent the introduction of or to remove any adulterated, misbranded, or unclean frozen dairy desserts or frozen dairy dessert mixes from the marketplace.

(b) Samples shall be taken at least annually at each business or location owned or operated by any person required to obtain a license to operate a dairy manufacturing plant. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

4-7-533. Coliform and bacteria standards for frozen dairy desserts and frozen dairy dessert mixes. (a) A frozen dairy dessert

product shall not contain more than 50,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples.

(b) A frozen dairy dessert mix shall not contain more than 20,000 bacteria per gram as determined by the standard plate count and shall not contain more than 10 coliform organisms per gram in three out of the last five samples. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-773 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective Oct. 21, 1991; amended Dec. 20, 2002.)

G. GRADE A MILK AND MILK PRODUCTS FOR HUMAN CONSUMPTION

4-7-600 to 4-7-616. (Authorized by K.S.A. 74-531, K.S.A. 1970 Supp. 75-1401; effective Jan. 1, 1967; revoked July 1, 1970, by act of legislature, see L. 1968, ch. 120, § 1.)

H. GRADE A PASTEURIZED MILK AND MILK PRODUCTS

4-7-700. (Authorized by K.S.A. 1979 Supp. 65-737a; effective July 1, 1970; amended May 1, 1980; revoked Jan. 14, 1991.)

4-7-701. (Authorized by K.S.A. 1979 Supp. 65-737a; effective July 1, 1970; amended Jan. 1, 1972; revoked May 1, 1980.)

4-7-702. (Authorized by K.S.A. 1967 Supp. 65-737a; effective July 1, 1970; revoked Jan. 14, 1991.)

4-7-703 to 4-7-708. (Authorized by K.S.A. 1979 Supp. 65-737a; effective July 1, 1970; revoked May 1, 1980.)

4-7-709. (Authorized by K.S.A. 1967 Supp. 65-737a; effective July 1, 1970; revoked Jan. 14, 1991.)

4-7-710 to 4-7-714. (Authorized by K.S.A. 1979 Supp. 65-737a; effective July 1, 1970; revoked May 1, 1980.)

4-7-715. Enforcement. K.A.R. 4-7-715 through K.A.R. 4-7-722 shall be enforced by the Kansas secretary of agriculture in accordance with the corresponding provisions contained in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, a copy of which shall be on file in the office of the Kansas secretary

of agriculture. (Authorized by and implementing K.S.A. 2001 Supp. 65-772; effective July 1, 1970; amended May 1, 1980; amended May 1, 1983; amended Jan. 14, 1991; amended Dec. 20, 2002.)

4-7-716. Adoption by reference. (a) The following documents are hereby adopted by reference:

(1) Except for sections 1 (JJ), 2, 9, 15, 16, 17, and 18, the “grade ‘A’ pasteurized milk ordinance,” 2009 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration;

(2) the “methods of making sanitation ratings of milk shippers,” including appendices, published by the U.S. department of health and human services, public health service, and food and drug administration, 2009 revision;

(3) the 2009 revision of the “procedures governing the cooperative state-public health service/food and drug administration program of the national conference on interstate milk shipments,” including pages 49 through 68;

(4) the 17th edition of the “standard methods for the examination of dairy products,” dated 2004 and published by the American public health association;

(5) the 17th edition of the “official methods of analysis of AOAC international,” volumes I and II, revision 1, including appendices, dated 2002 and published by the association of official analytical chemists; and

(6) the 2007 revision of the “evaluation of milk laboratories,” published by the U.S. department of health and human services, public health service, and food and drug administration.

(b) Copies of the pertinent portions of the material adopted by reference shall be available from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Dec. 26, 1988; amended Jan. 14, 1991; amended Oct. 21, 1991; amended July 1, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

4-7-717. Additional definitions. (a) All references to “this ordinance” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean K.A.R. 4-7-716.

(b) All references to “regulatory agency” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the department.

(c) All references to “jurisdiction” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the state of Kansas.

(d) “Cottage cheese” means the product defined in 21 C.F.R. 133.128 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(e) “Dry curd cottage cheese” means the product defined in 21 C.F.R. 133.129 as revised on April 1, 2005 and hereby adopted by reference. Grading of this product shall be optional.

(f) All references to the “standard methods for the examination of dairy products of the American public health association” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(4).

(g) All references to the “official method of analysis of AOAC international” in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall mean the publication adopted by reference in K.A.R. 4-7-716(a)(5).

(h) Whenever reference is made in the “grade ‘A’ pasteurized milk ordinance,” as adopted by reference in K.A.R. 4-7-716, to the requirements or responsibilities of a “vendor,” the reference shall obligate the processor of milk. (Authorized by and implementing K.S.A. 2005 Supp. 65-772 and K.S.A. 65-775; effective May 1, 1980; amended Jan. 14, 1991; amended Oct. 21, 1991; amended Dec. 20, 2002; amended Sept. 1, 2006.)

4-7-718. Insertions. Each reference to the proper legal jurisdiction in the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716 shall be completed by insertion of the word “Kansas” or the phrase “state of Kansas,” whichever the context requires. (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective May 1, 1980; amended Jan. 14, 1991; amended Dec. 20, 2002.)

4-7-719. Additions. (a) In item 10p appearing in section 7 of the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: “However, cottage cheese, cheese dressings, or cheese in-

gredients may be transported by other methods which protect the product from contamination.”

(b) In item 18p appearing in section 7 of the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716, the following language shall be inserted after the last sentence in the first paragraph: “However, cottage cheese, dry curd cottage cheese, and reduced-fat or low-fat cottage cheese may be transported in sealed containers in a protected sanitary manner from one plant to another for creaming or packaging.” (Authorized by and implementing K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; effective May 1, 1980; amended Jan. 14, 1991; amended March 2, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002.)

4-7-720. (Authorized by and implementing K.S.A. 65-737a as amended by L. 1990, Ch. 220, Sec. 3; effective Jan. 14, 1991; revoked Dec. 20, 2002.)

4-7-721. (Authorized by and implementing K.S.A. 65-737a as amended by L. 1990, Ch. 220, Sec. 3; effective Jan. 14, 1991; revoked Dec. 20, 2002.)

4-7-722. (Authorized by and implementing K.S.A. 1990 Supp. 65-720n and 65-737a; effective Jan. 14, 1991; amended Oct. 21, 1991; revoked Dec. 20, 2002.)

I. TAXES AND FEES

4-7-800. (Authorized by K.S.A. 75-1401, K.S.A. 1982 Supp. 65-708; implementing K.S.A. 1982 Supp. 65-708; effective, T-83-25, Oct. 1, 1982; effective May 1, 1983; revoked Oct. 29, 1990.)

4-7-801. (Authorized by K.S.A. 75-1402, K.S.A. 1982 Supp. 65-708, 65-719; implementing K.S.A. 1982 Supp. 65-708, 65-719; effective, T-83-25, Oct. 1, 1982; effective May 1, 1983; revoked Oct. 29, 1990.)

4-7-802. (Authorized by K.S.A. 75-1401 and K.S.A. 65-745 as amended by Sec. 3 of 1990 SB 419; implementing K.S.A. 65-745 as amended by Sec. 5 of 1990 SB 419; effective, T-83-25, Oct. 1, 1982; effective May 1, 1983; amended, T-4-7-2-90, July 2, 1990; amended Oct. 29, 1990; revoked Dec. 20, 2002.)

4-7-803. (Authorized by K.S.A. 75-1401, 1982 Supp. 65-708, 65-719; implementing K.S.A. 1982 Supp. 65-708, 65-719; effective, T-83-25,

Oct. 1, 1982; effective May 1, 1983; revoked Oct. 29, 1990.)

4-7-804. Schedule of fees for non-regulatory laboratory work. (a) Each person for whom a test is performed by the dairy laboratory of the Kansas department of agriculture for non-regulatory purposes shall pay the department \$5.00 for each of the following tests:

- (1) Standard plate count for raw or pasteurized milk or milk products;
- (2) coliform plate count with confirmation for raw or pasteurized milk or milk products;
- (3) direct microscopic somatic cell count for raw milk products;
- (4) B-lactam analysis with confirmation for raw and pasteurized milk or milk products;
- (5) dairy water coliform bacteria and heterotrophic plate count;
- (6) empty container sterility analysis;
- (7) thermometer calibration at two temperature points;
- (8) added water analysis in raw milk; and
- (9) butterfat analysis for raw or retail milk or milk products.

(b) Each person for whom a test is performed by the dairy laboratory of the Kansas department of agriculture for non-regulatory purposes shall pay the department \$10.00 for each of the following tests:

- (1) Electronic somatic cell count;
- (2) inhibitor analysis other than a B-lactam analysis; and
- (3) aflotoxin analysis.

(c) Any non-regulatory laboratory test may be refused to be performed by the secretary, at the secretary's discretion. (Authorized by and implementing K.S.A. 2001 Supp. 65-777; effective Dec. 20, 2002.)

4-7-900. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A general statement citing the section of the act authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty; and

(e) notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan.

22, 1990; amended Dec. 12, 1994; amended Dec. 20, 2002; amended July 18, 2008.)

4-7-901. (Authorized by K.S.A. 2001 Supp. 65-772; implementing K.S.A. 2001 Supp. 65-788; effective Jan. 22, 1990; amended Dec. 12, 1994; amended Dec. 20, 2002; revoked July 18, 2008.)

4-7-902. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of the Kansas dairy law, K.S.A. 65-771 *et seq.*, and amendments thereto, that results from each independent act or failure to act by any dairy manufacturing plant or agent or employee of the plant or agent. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) A penalty of not more than \$300 may be assessed by the secretary if a violation ultimately could result in harm or danger to the public health or is a repeat violation identified in subsection (c).

(c) For the second occurrence and for each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed shall be the maximum amount allowed by law. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 22, 1990; amended Dec. 20, 2002; amended July 18, 2008.)

4-7-903. Criteria to determine dollar amount of the civil penalty. In determining the amount of civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered may include the following: (a) The potential of the act to injure or endanger the health of any consumer, or the general public;

(b) the severity of actual or potential injuries;

(c) the respondent's history of compliance with K.S.A. 65-789, and amendments thereto, and the regulations adopted thereunder;

(d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects that were the result of the violation; and

(e) any misrepresentation or fraud associated with the violation. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 20, 1990; amended Oct. 29, 1990; amended Dec. 20, 2002; amended July 18, 2008.)

4-7-904. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-788; effective Jan. 22, 1990; amended Dec. 12, 1994; amended Dec. 20, 2002; amended July 18, 2008.)

4-7-905. (Authorized by K.S.A. 75-1401 and 65-720n; implementing K.S.A. 65-770; effective Jan. 22, 1990; amended Dec. 12, 1994; revoked Dec. 20, 2002.)

4-7-1000. Milk hauler license. (a) Each milk hauler shall sample, weigh, handle, and transport milk or cream samples in accordance with the “standard methods for examination of dairy products,” the “official methods of analysis of AOAC international,” and the provisions of the “grade ‘A’ pasteurized milk ordinance” adopted by reference in K.A.R. 4-7-716.

(b) Before the initial issuance of the milk hauler license, each applicant shall pass a written examination on the proper procedures for sampling, testing, and weighing milk or cream, and on the state laws and regulations pertaining to milk and dairy products.

(c) Each milk hauler license shall be renewed when the applicant pays the required fees and attends renewal training provided by the secretary at least once during any three consecutive licens-

ing periods. (Authorized by K.S.A. 2001 Supp. 65-772 and 65-775, as amended by L. 2002, Ch. 181, § 16; implementing K.S.A. 2001 Supp. 65-778; effective Jan. 14, 1991; amended Dec. 20, 2002.)

4-7-1001. (Authorized by L. 1990, Ch. 219, Sec. 17; implementing K.S.A. 65-704 as amended by L. 1990, Ch. 219, Sec. 4; effective Jan. 14, 1991; revoked Dec. 20, 2002.)

Article 8.—NOXIOUS WEEDS

4-8-1 to 4-8-3. (Authorized by K.S.A. 2-1315; effective Jan. 1, 1966; amended, E-67-3, April 24, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; amended, E-77-19, May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1982.)

4-8-4. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-5 and 4-8-6. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended, E-67-3, April 24, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-7. (Authorized by K.S.A. 2-1315; effective Jan. 1, 1966; amended, E-67-3, April 24, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; amended, E-77-19, May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1982.)

4-8-8. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended, E-67-3, April 24, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-9. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-77-19, May 1, 1976; amended Feb. 15, 1977; revoked May 1, 1982.)

4-8-10. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-11. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-12. (Authorized by K.S.A. 1971 Supp. 2-1315; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1972; revoked May 1, 1982.)

4-8-13. Service of notices and statements.

(a) Service of notices and statements required by K.S.A. 2-1320, and amendments thereto, shall be deemed sufficient when made upon the owner of the land to which the notice or statement pertains or the landowner's agent or trustee, the executor or administrator of the estate of a deceased landowner, the guardian or conservator of the estate of a minor or legally disabled person, or one of several joint owners or tenants in common, by either of the following means:

- (1) Personal delivery; or
- (2) certified mail.

(b) The notices and statements required by K.S.A. 2-1320, and amendments thereto, may be served by any of the following:

(1) The county, city, township, or district weed supervisor for the county, city, township, or district where the land specified in the notice or statement is located;

(2) a county commissioner of the county where the land specified in the notice or statement is located;

(3) the sheriff of the county where the land specified in the notice or statement is located; or

(4) a member of the governing body of a city or the marshal or a law enforcement officer of any city having jurisdiction over land described in the notice or statement.

(c) If personal service or service by certified mail cannot be achieved within 45 days of the date on which any weed control activities are performed pursuant to K.S.A. 2-1320 and amendments thereto, then the notice or statement may be posted at the property where the weed control activity was performed, and the posting shall be considered valid notice. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315 and 2-1320; effective Jan. 1, 1966; amended March 26, 2021.)

4-8-14. (Authorized by and implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended Dec. 26, 1988; revoked Oct. 21, 1991.)

4-8-14a. Herbicides approved for cost-share. The Kansas department of agriculture's document titled "approved herbicides for cost-share," dated May 20, 2020, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective Oct. 21, 1991; amended Jan. 25, 1993; amended Sept. 27, 1993;

amended Oct. 27, 2000; amended, T-4-5-27-04, May 27, 2004; amended Aug. 6, 2004; amended, T-4-5-20-05, May 20, 2005; amended, T-4-3-29-06, March 29, 2006; amended April 27, 2007; amended March 26, 2021.)

4-8-15. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-16. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May, 1 1986; revoked May 1, 1988.)

4-8-17. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1984; revoked May 1, 1988.)

4-8-18. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-19. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-20. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1988.)

4-8-21. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1988.)

4-8-22. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-23. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1988.)

4-8-24. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-25. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; revoked May 1, 1988.)

4-8-26. (Authorized by K.S.A. 2-1315; implementing K.S.A. 2-1315; effective May 1, 1982; amended May 1, 1986; revoked May 1, 1988.)

4-8-27. Adoption of control methods for musk thistle. (a) The Kansas department of agriculture's document titled "official control methods

for musk thistle,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of musk thistle in Kansas.

(b) If a county, city, township, or district weed supervisor determines that musk thistles in the weed supervisor’s county, city, township, or district have reached a stage of maturity that will render the weed control methods currently being used in that county, city, township, or district ineffective, the weed supervisor may give notice requiring the effective control methods to be implemented within 10 business days of the date the notice was issued. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Jan. 22, 1990; amended March 2, 1992; amended June 1, 1992; amended Oct. 27, 2000; amended Aug. 6, 2004; amended, T-4-5-20-05, May 20, 2005; amended, T-4-3-29-06, March 29, 2006; amended April 27, 2007; amended March 26, 2021.)

4-8-28. Adoption of control methods for Johnsongrass. The Kansas department of agriculture’s document titled “official control methods for Johnsongrass,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of Johnsongrass in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Jan. 25, 1993; amended Sept. 27, 1993; amended Oct. 27, 2000; amended Aug. 6, 2004; amended April 27, 2007; amended March 26, 2021.)

4-8-29. Adoption of control methods for field bindweed. The Kansas department of agriculture’s document titled “official control methods for field bindweed,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of field bindweed in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Oct. 27, 2000; amended Aug. 6, 2004; amended April 27, 2007; amended March 26, 2021.)

4-8-30. Adoption of control methods for hoary cress. The Kansas department of agriculture’s document titled “official control methods for hoary cress,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of hoary cress in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Oct. 21, 1991; amended Aug. 6, 2004; amended April 27, 2007; amended March 26, 2021.)

4-8-31. Adoption of control methods for Russian knapweed. The Kansas department of agriculture’s document titled “official control methods for Russian knapweed,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of Russian knapweed in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Aug. 6, 2004; amended April 27, 2007; amended March 26, 2021.)

4-8-32. Adoption of control methods for bur ragweed. The Kansas department of agriculture’s document titled “official control methods for bur ragweed,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of bur ragweed in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Sept. 27, 1993; amended Oct. 27, 2000; amended Aug. 6, 2004; amended March 26, 2021.)

4-8-33. Adoption of control methods for Canada thistle. The Kansas department of agriculture’s document titled “official control methods for Canada thistle,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of Canada thistle in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Jan. 25, 1993; amended Aug. 6, 2004; amended, T-4-3-29-06, March 29, 2006; amended April 27, 2007; amended March 26, 2021.)

4-8-34. Adoption of control methods for leafy spurge. The Kansas department of agriculture’s document titled “official control methods for leafy spurge,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of leafy spurge in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Oct. 29, 1990; amended Oct. 27, 2000; amended Aug. 6, 2004; amended, T-4-5-20-05, May 20, 2005; amended, T-4-3-29-06, March 29, 2006; amended April 27, 2007; amended March 26, 2021.)

4-8-35. Adoption of control methods for quackgrass. The Kansas department of agriculture’s document titled “official control methods for quackgrass,” dated May 20, 2020, is hereby adopted by reference and shall apply to the control of quackgrass in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective

May 1, 1988; amended Aug. 6, 2004; amended April 27, 2007; amended March 26, 2021.)

4-8-36. Adoption of control methods for pignut. The Kansas department of agriculture's document titled "official control methods for pignut," dated May 20, 2020, is hereby adopted by reference and shall apply to the control of pignut in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Aug. 6, 2004; amended March 26, 2021.)

4-8-37. Adoption of control methods for kudzu. The Kansas department of agriculture's document titled "official control methods for kudzu," dated May 20, 2020, is hereby adopted by reference and shall apply to the control of kudzu in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Aug. 6, 2004; amended March 26, 2021.)

4-8-38. Weed supervisor employment. (a) Each individual hired to serve as a county, city, township, or district weed supervisor shall be hired as an employee of the county, city, township, or district and not as an independent contractor. Any county, city, township, or district weed supervisor serving as an independent contractor when this regulation becomes effective may continue to serve as an independent contractor until the expiration of the current term under that individual's existing contract, which shall not be renewed or extended.

(b) Any individual seeking employment as a county, city, township, or district weed supervisor may be conditionally approved for employment by the secretary if the individual has education, training, or experience sufficient to allow the individual to carry out the employment duties of a county, city, township, or district weed supervisor.

(c) Final approval of the employment of each individual who has been conditionally approved to be employed as a county, city, township, or district weed supervisor may be issued by the secretary when the individual has met the following requirements:

(1) Obtained certification as a pesticide applicator in category 9a, regulatory pest control, noxious weed control, pursuant to K.S.A. 2-2438a *et seq.* and amendments thereto; and

(2) successfully completed the noxious weed basic short course offered by the Kansas department of agriculture, plant protection and weed control program.

(d) Approval of the employment of each individual previously approved for employment as a county, city, township, or district weed supervisor may be renewed by the secretary on or before January 1 of each year if the individual meets the following requirements:

(1) Is still employed as a county, city, township, or district weed supervisor by the same county, city, township, or district when renewal is sought;

(2) is currently certified as a pesticide applicator as specified in paragraph (b)(1); and

(3) has timely filed the annual weed eradication progress report and any other records or reports requested by the secretary.

(e) Approval of the employment of any county, city, township, or district weed supervisor shall be withdrawn by the secretary if the county, city, township, or district weed supervisor has failed, without just cause, to comply with any of the requirements specified in subsection (c). (Authorized by K.S.A. 2019 Supp. 2-1315; implementing K.S.A. 2019 Supp. 2-1316; effective May 1, 1988; amended March 26, 2021.)

4-8-39. (Authorized by and implementing K.S.A. 2006 Supp. 2-1315; effective May 1, 1988; amended Jan. 1, 1989; amended Oct. 21, 1991; amended Aug. 6, 2004; amended April 27, 2007; revoked March 26, 2021.)

4-8-40. Adoption of control methods for sericea lespedeza. The Kansas department of agriculture's document titled "official control methods for sericea lespedeza," dated May 20, 2020, is hereby adopted by reference and shall apply to the control of sericea lespedeza in Kansas. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective May 1, 1988; amended Jan. 1, 1989; amended Oct. 29, 1990; amended Oct. 21, 1991; amended Jan. 25, 1993; amended, T-4-5-27-04, May 27, 2004; amended Aug. 6, 2004; amended March 26, 2021.)

4-8-41. (Authorized by and implementing K.S.A. 2-1315; effective June 1, 1992; amended Oct. 27, 2000; revoked March 26, 2021.)

4-8-42. (Authorized by and implementing K.S.A. 2006 Supp. 2-1315; effective Oct. 27, 2000; amended Aug. 6, 2004; amended, T-4-3-29-06, March 29, 2006; amended April 27, 2007; revoked March 26, 2021.)

4-8-43. (Authorized by and implementing K.S.A. 2-1315, as amended by L. 2002, Ch. 37,

Sec. 1; effective, T-4-1-2-03, Jan. 2, 2003; effective April 18, 2003; revoked March 26, 2021.)

4-8-44. Designation of noxious weeds.

(a) Pursuant to K.S.A. 2-1314 and amendments thereto, the weeds designated noxious by the secretary shall be placed in the following categories:

(1) Category A noxious weeds, which are weed species that are generally not found in the state or that are found limited in distribution throughout the state;

(2) category B noxious weeds, which are weed species with discrete distributions throughout the state; and

(3) category C noxious weeds, which are weed species that are well established within the state and known to exist in larger or more extensive populations in the state.

(b) Category A noxious weeds shall be subject to control efforts directed at excluding the noxious weeds from the state or eradicating the population of noxious weeds wherever detected statewide, in order to protect neighboring lands and the state as a whole. Category A noxious weeds shall include the following:

- (1) Hoary cress, *Lepidium draba*;
- (2) leafy spurge, *Euphorbia virgata*;
- (3) quackgrass, *Elymus repens*;
- (4) Russian knapweed, *Rhaponticum repens*;
- (5) kudzu, *Pueraria montana* variety *lobata*; and
- (6) pignut, *Hoffmannseggia glauca*.

(c) Category B noxious weeds shall be subject to control wherever populations have become established within the state and subject to control efforts directed at eradication wherever populations are not established. Category B noxious weeds shall include Canada thistle, *Cirsium arvense*.

(d) New populations of category C noxious weeds shall be subject to control efforts directed at reducing or eradicating those populations. Known and established populations of category C noxious weeds shall be managed by any approved control method. Category C noxious weeds shall include the following:

- (1) Field bindweed, *Convolvulus arvensis*;
- (2) musk thistle, *Carduus nutans*;
- (3) sericea lespedeza, *Lepedeza cuneata*;
- (4) Johnsongrass, *Sorghum halepense*; and
- (5) bur ragweed, *Ambrosia grayii*.

(e) Any county, city, township, or district weed supervisor or any official of another government agency may require the most stringent control measures specified in this regulation for any nox-

ious weed, regardless of the category in which this regulation places that noxious weed, if the county, city, township, or district weed supervisor or government agency official determines that it is necessary to do so based on the results of the survey provided pursuant to K.S.A. 2-1316, and amendments thereto. (Authorized by and implementing K.S.A. 2019 Supp. 2-1314 and 2-1315; effective March 26, 2021.)

4-8-45. Official control plans. (a) Each official control plan adopted by the secretary shall be based on the most current available science and shall include, if applicable, biological, chemical, cultural, and mechanical methods of control.

(b) A control method adopted by the secretary as part of an official control plan that includes more than one control method shall not be used alone for the control of noxious weeds, except that any chemical control method may be used alone and any county, city, township, or district weed supervisor may, at the county, city, township, or district weed supervisor's discretion, use any integrated weed management technique alone for the control of any perennial noxious weed.

(c) The control of each noxious weed species shall be undertaken in accordance with the official control plan adopted by the secretary for that noxious weed species. (Authorized by and implementing K.S.A. 2019 Supp. 2-1315; effective March 26, 2021.)

4-8-46. Annual report. Each annual weed eradication progress report that a weed supervisor submits to the secretary pursuant to K.S.A. 2-1316, and amendments thereto, shall include, at a minimum, the following:

(a) The approximate acreage of land, including roadside areas, currently infested with each species of noxious weed and the location of each infestation in the county;

(b) the dollar amount of all expenditures made during the year to purchase materials, chemicals, and other equipment for the control of noxious weeds;

(c) the dollar amount of all sales made during the year, for cash or charge, of materials, chemicals, and other equipment for the control of noxious weeds;

(d) the dollar amount of all charges and receipts made during the year for use of equipment owned by each county, city, township, or district on public or private land;

(e) the approximate acreage of land, including roadside areas, treated for each species of noxious weed during the year and the control methods used for treatment; and

(f) any other relevant information that the secretary deems necessary. (Authorized by K.S.A. 2019 Supp. 2-1315; implementing K.S.A. 2019 Supp. 2-1315 and 2-1316; effective March 26, 2021.)

4-8-47. Management plan. Each county, city, township, or district weed supervisor, with the aid of that county, city, township, or district weed supervisor's board of county commissioners or city or township board, shall submit a management plan to the secretary no later than March 15 of each year pursuant to K.S.A. 2-1316, and amendments thereto. Each management plan shall be submitted on a form provided by the department and shall include, at a minimum, the following:

(a) The goals and priorities of the county, city, township, or district's noxious weed control program;

(b) the distribution and abundance of each noxious weed species known to exist within the county, city, township, or district; specific locations of new infestations; and areas particularly susceptible to new infestations;

(c) integrated weed management goals and procedures, including goals and procedures regarding biological control agent selection and distribution, pesticide selection and application, and cultural and mechanical controls;

(d) the estimated personnel, operations, and equipment costs of the proposed program;

(e) a compliance plan or strategy;

(f) a strategy for working with state agencies to control noxious weeds on state lands; and

(g) any other relevant information that the secretary deems necessary. (Authorized by K.S.A. 2019 Supp. 2-1315; implementing K.S.A. 2019 Supp. 2-1315 and 2-1316; effective March 26, 2021.)

4-8-48. Contents of notices and statements. Each notice or statement given to the owner, operator, or supervising agent of any noxious weed-infested land pursuant to K.S.A. 2-1331, and amendments thereto, shall include, at a minimum, the following:

(a) The legal description of the noxious weed-infested land;

(b) the name of the owner, operator, or supervising agent of the noxious weed-infested land, as

indicated by the records of the clerk of the county where the land is located;

(c) the approximate acreage of the noxious weed infestation or infestations specified in the notice or statement;

(d) the official methods adopted by the secretary for the control of the noxious weeds specified in the notice or statement;

(e) a time frame, which shall not be fewer than five days after mailing the notice, in which the owner or operator or supervising agent of the noxious weed-infested land shall implement the required noxious weed control methods;

(f) a statement that if the owner, operator, or supervising agent fails to implement the required noxious weed control methods within the time frame provided in the notice or statement, the county, city, township, or district weed supervisor may enter the noxious weed-infested land or cause the noxious weed-infested land to be entered upon as often as necessary to control the noxious weed infestation and may use approved noxious weed control methods that the county, city, township, or district weed supervisor deems best adapted for the control of noxious weeds on the particular area of land;

(g) a statement that if the county, city, township, or district weed supervisor enters the noxious weed-infested land or causes the noxious weed-infested land to be entered upon to control the noxious weed infestation, the owner, operator, or supervising agent shall be served notice of the costs of treatment pursuant to K.S.A. 2-1332, and amendments thereto; and

(h) a statement that the owner, operator, or supervising agent may be prosecuted pursuant to K.S.A. 2-1323, and amendments thereto, and, if convicted, fined as established by law. (Authorized by K.S.A. 2019 Supp. 2-1315, 2-1331, and 2-1332; implementing K.S.A. 2019 Supp. 2-1315 and 2-1331; effective March 26, 2021.)

Article 9.—CARCASS BEEF, CALF, VEAL: GRADES

4-9-1 to 4-9-4. (Authorized by K.S.A. 74-531; effective Jan. 1, 1966; revoked May 1, 1979.)

Article 10.—ANHYDROUS AMMONIA

4-10-1. Definitions. (a) "Appurtenances" means all devices that are used in connection with a container, including safety devices, liquid-level gauging devices, valves, pressure gauges, fittings, and metering or dispensing devices.

(b) "ASME" means American society of mechanical engineers.

(c) "ASME schedule 80" and "ASME schedule 40" mean pipe specifications contained in the 2007 edition of the ASME boiler and pressure vessel code, section II, part A, SA-53/SA-53M, titled "specification for pipe, steel, black and hot-dipped, zinc-coated, welded and seamless," and the appendices, which are hereby adopted by reference.

(d) "Backflow check valve" means a device designed to prevent ammonia from flowing in the wrong direction within a pipe or tube.

(e) "Capacity" means the total volume of a container as measured in standard U.S. gallons of 231 cubic inches, unless otherwise specified.

(f) "Chemical-splash goggles" and "Splashproof goggles" mean flexible-fitting chemical-protective goggles, with a hooded, indirect ventilation system that provides protection to the eyes and eye sockets from the splash of hazardous liquids. This term shall not include direct vented goggles.

(g) "Code" means the "introduction," the relevant parts of UG-1 through UG-137 titled "part UG: general requirements for all methods of construction and all materials," and parts UF-1 through UF-125 titled "part UF: requirements for pressure vessels fabricated by forging" of section VIII, division 1, of the ASME boiler and pressure vessel code, 2007 edition, which are hereby adopted by reference.

(h) "Container" means any vessel designed to hold anhydrous ammonia that is used for the storage, transportation, or application of anhydrous ammonia. This definition shall not apply to any refrigerated vessel with a design pressure of less than 15 psig.

(i) "Data plate" means a piece of noncorroding metal permanently attached by the manufacturer to the surface of a container that has been designed and constructed in accordance with paragraph UG-116 of section VIII, division 1 of the ASME code, 2007 edition, which is adopted by reference in subsection (g).

(j) "Densely populated area" means any location with either one or more multifamily housing units or eight or more single-family dwellings located within a quarter section.

(k) "Designed pressure" means maximum allowable working pressure.

(l) "Emergency shutoff valve" means a valve that stops the flow of product by spring closure, gravity, or pressure and can be activated by an

outside means including a cable pull, hose pull, air assists, electrical closure, or back pressure. The emergency shutoff valve shall be placed in the liquid line internally or externally to the container. If an external valve is used, the valve shall be after the manual shutoff valve but as close to the opening of the container as possible. The emergency shutoff valve shall work properly from a remote location or when activated at the valve.

(m) "Excess-flow valve" means a device placed in a line that is designed to close when the flow of vapor or liquid flowing through the line exceeds the amount for which the valve is rated.

(n) "Filling density" means the percent ratio of the weight of gas in a container to the weight of water that the container will hold at 60° F.

(o) "Implement of husbandry" means a farm wagon-type vehicle or application unit that has an anhydrous ammonia container mounted on it and that is used for transporting anhydrous ammonia from a source of supply to farms or fields or from one farm or field to another.

(p) "Mobile container" means any container that is not installed as a permanent storage container.

(q) "National board inspector" is a person who holds a valid national board commission from the national board of boiler and pressure vessel inspectors and has fulfilled the national board commission requirements as specified in section VIII of the ASME code, 2007 edition.

(r) "NIOSH" means the national institute for occupational safety and health.

(s) "Non-code welding" means welding that does not comply with parts UW-1 through UW-65 of the ASME boiler and pressure vessel code, section VIII, division 1, titled "part UW: requirements for pressure vessels fabricated by welding," 2007 edition, which is hereby adopted by reference.

(t) "PSIG" means pounds per square inch gauge pressure.

(u) "Permanent storage container" means a stationary container having a volume of at least 3,000 water gallons.

(v) "Permanent storage facility" means a site that includes one or more permanent storage containers and their connections and appurtenances.

(w) "Pressure-relief valve" means a device designed to open to relieve pressure above a specified value to prevent an increase in internal fluid or vapor and to close once acceptable pressure conditions have been restored.

(x) “Proof-of-inspection seal” and “current KDA-issued proof-of-inspection seal” mean the decal applied to a permanent system following a successful KDA inspection, which shall occur once per calendar year. The seal is current until it expires on December 31 of the year following the inspection.

(y) “Public assembly area” means any building or structure established to accommodate groups of people for commercial, civic, political, religious, recreational, educational, or similar purposes. This term shall include buildings or structures used for medical care, including hospitals, assisted care facilities, and prisons.

(z) “Reactor unit” means equipment that utilizes anhydrous ammonia to manufacture liquid fertilizer.

(aa) “Respirator” means an air-purifying device with a full face-piece that has been approved by NIOSH under the provisions of 30 CFR Part II, Subpart I [13], dated July 1, 2009, for use in an ammonia-contaminated atmosphere, in compliance with 29 CFR 1910.134, dated July 1, 2009.

(bb) “System” means an assembly of one or more containers, pipes, pumps, and appurtenances used for the storage, transfer, transportation, or application of anhydrous ammonia, which may be permanent or mobile. This definition shall not apply to interstate anhydrous ammonia pipelines.

(cc) “USDOT” and “D.O.T.” mean United States department of transportation. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 25, 1993; amended March 12, 2010.)

4-10-1a. Prohibited acts. It shall be a violation to perform any of the following: (a) Install, relocate, modify, repair, or use any system or equipment for storing, reacting, transferring, transporting, applying, or dispersing by any other means anhydrous ammonia unless the system, permanent storage facility, or equipment is in compliance with this article 10;

(b) except as provided under K.A.R. 4-10-4b(b), transfer anhydrous ammonia into a mobile container unless the container bears a legible manufacturer’s data plate or equivalent stamp;

(c) deface the manufacturer’s data plate or equivalent stamp;

(d) transfer any anhydrous ammonia into a container or system having structural damage or any other defect that would prevent the containment of anhydrous ammonia;

(e) transfer anhydrous ammonia into or out of any container without the consent of the owner of each container;

(f) transfer, or permit the transfer of, anhydrous ammonia into a permanent storage container unless the permanent storage container has a current KDA-issued proof-of-inspection seal attached to the respective system;

(g) conduct non-code welding directly on a container or any parts subject to pressure;

(h) fail to report any release of 100 pounds or more of anhydrous ammonia within 48 hours of the release;

(i) conduct a transfer without an attendant present at the transfer site;

(j) transfer anhydrous ammonia into any vessel that does not comply with K.A.R. 4-10-1 through 4-10-16; or

(k) maintain anhydrous ammonia in any vessel that does not meet the requirements of K.A.R. 4-10-1 through 4-10-16. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-1b. Reportable events. The owner or operator of each anhydrous ammonia storage facility or any equipment shall report, to the secretary or the secretary’s authorized representative, each accidental or unauthorized release of 100 pounds or more of anhydrous ammonia within 48 hours after the release. Nothing in this regulation shall require the reporting of an intentional release of anhydrous ammonia into the soil during the normal course of application. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-2 (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; revoked May 1, 1987.)

4-10-2a through 4-10-2c. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; revoked March 12, 2010.)

4-10-2d. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; amended Dec. 26, 1988; revoked March 12, 2010.)

4-10-2e. Container valves and appurtenances. (a) Connections to containers shall be limited to liquid-level gauges, emergency shutoff valves, pressure gauges, vapor-relief valves, liquid lines, vapor lines, and thermometers.

(b) Each vapor line and liquid line shall have a manually operated shutoff valve located as close to the container as practical.

(c) On or before July 1, 2012, each permanent storage container shall be equipped with an emergency shutoff valve that meets the requirements of K.A.R. 4-10-1 (l).

(d) No metal part or component of a system that is normally in contact with anhydrous ammonia shall be made of a metal that is incompatible with anhydrous ammonia, including galvanized metal, cast iron, zinc, copper, and brass.

(e) Openings from the container or through fittings that are not larger than a no. 54 drill size opening shall not be required to be equipped with an excess flow valve.

(f) Each valve and appurtenance shall be suitable for use with anhydrous ammonia and designed for not less than the maximum pressure to which the valve and appurtenance will be subjected. Each valve that could be subjected to container pressures shall have a rated working pressure of at least 250 psig.

(g) (1) Each vapor or liquid line greater than a no. 54 drill size opening shall be equipped with an excess flow valve that closes automatically at the rated flows of vapor or liquid specified by the manufacturer.

(2) The connections, lines, valves, and fittings protected by one or more excess flow valves shall have a greater capacity than the rated flow of the excess flow valves so that the valves will close in case of failure at any point in the lines or fittings.

(h) Each liquid connection used to fill a permanent storage container shall be fitted with a back-flow check valve.

(i) (1) All piping, tubing, and fittings subjected to container pressure shall be made of materials specified for use with anhydrous ammonia and shall be designed for a minimum working pressure of 250 psig.

(2) All piping, tubing, and metering or dispensing devices shall be securely mounted and protected against damage.

(3) Threaded joints may be used only with seamless black steel pipe that meets or exceeds ASME schedule 80 specifications. Black steel pipe that meets or exceeds ASME schedule 40 specifications

with at least 800 psig minimum bursting pressure may be used if pipe joints are welded or joined by means of welding type flanges. Pipe joint compounds used shall be resistant to ammonia.

(4) Each flexible connection shall have a bursting pressure of at least 1,000 psig. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended March 12, 2010.)

4-10-2f through 4-10-2h. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; revoked March 12, 2010.)

4-10-2i. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-2j. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended April 13, 2001; revoked March 12, 2010.)

4-10-2k. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; amended Jan. 1, 1989; revoked March 12, 2010.)

4-10-3. (Authorized by K.S.A. 1970 Supp. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1986.)

4-10-4. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-4a. Containers. (a) Each container shall be constructed and tested in accordance with the code and shall have a minimum design pressure of 250 psig.

(b) Subsection (a) shall not prohibit the continued use of permanent storage containers that were constructed and maintained in accordance with Kansas statutes and regulations in effect before the effective date of this regulation.

(c) Each permanent storage container shall be inspected according to K.S.A. 44-913 et seq., and amendments thereto, by the Kansas department of labor, division of industrial safety and health upon initial installation and relocation.

(d) (1) Each permanent storage container that has sustained structural damage shall be inspected and approved for use by the Kansas department of labor, division of industrial safety and health.

(2) Each mobile container that has sustained any structural damage shall be inspected and approved for use by a national board inspector.

(3) Structural damage shall include evidence of any of the following:

(A) Corrosion;

(B) any indentation or abrasion that meets any of the following conditions:

(i) Is over one-half inch deep and includes a weld;

(ii) is deeper than 1/10th of the greatest length of the dent but does not include a weld; or

(iii) is deeper than one inch;

(C) stretching;

(D) cracking;

(E) faulty welds;

(F) non-code welding;

(G) faulty couplings; or

(H) any other similar condition.

(e) All repairs and alterations of permanent and mobile containers shall meet the requirements of the code and shall be performed by a person or company that has a current certificate of authorization from the national board of boiler and pressure vessel inspections.

(f) Non-code welding shall be performed only on saddles or brackets that are not within the pressure-retaining boundaries of the container.

(g) All records of inspections and welding on the container shall meet the following requirements:

(1) Be maintained by the owner of the container;

(2) be made available to the secretary upon request; and

(3) be transferred with change of ownership of the container. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4b. Markings on containers and systems. (a) Except as provided by K.A.R. 4-10-4a(b) and 4-10-4b(b), each container shall have a data plate, or manufacturer's equivalent stamping, that is permanently attached to the container in a location that is both legible and readily accessible for inspection.

(b) A mobile container that does not have a legible data plate or equivalent stamping may be allowed for ammonia use only if the container is properly tested, registered, and marked under USDOT exemption # DOT-SP13554.

(c) Each shutoff valve within a system shall be identified to show whether the valve is in liquid or vapor service. The method of identification may be by color code or by use of the word "vapor" or

"liquid" placed within 12 inches of the valve by means of a stencil, tag, or decal.

(d) All container surfaces shall be maintained to avoid deterioration. Surfaces that require paint shall be painted white.

(e) Each permanent storage container or group of permanent storage containers shall be marked with the following:

(1) Letters at least four inches high, on at least two sides, with the words "CAUTION AMMONIA" or "ANHYDROUS AMMONIA," in a color that contrasts with the color of the container; and

(2) a national fire protection association diamond for anhydrous ammonia placed in a location that would be readily visible to emergency responders.

(f) Each mobile container shall be marked with the following, using a color that contrasts with the color of the container and letters at least two inches high:

(1) The words "ANHYDROUS AMMONIA" or "Anhydrous Ammonia" on both sides and on the rear of the container; and

(2) the words "INHALATION HAZARD" or "Inhalation Hazard" on two opposing sides of the container.

(g) In addition to the markings required in subsection (f), the following information shall appear on each implement of husbandry:

(1) The owner's name;

(2) the address of the owner's place of business;

(3) a telephone number to be contacted in case of an emergency;

(4) an alphabetical or numerical identification symbol; and

(5) a decal containing the following information:

(A) "CAUTION ANHYDROUS AMMONIA (UNDER PRESSURE) READ CAREFULLY";

(B) "Keep away from pop-off valve marked ↑. This is a safety device and shall not be tampered with or adjusted";

(C) "Stand upwind when working around equipment";

(D) "Wear goggles and rubber gloves when transferring product and bleeding hoses";

(E) "Do not fill tank in excess of 85% full";

(F) "Never place any part of body in line with valve or hose openings. Use extreme care in handling hoses. Never lift a hose by the valve wheel";

(G) "Slowly bleed hoses after transferring product";

(H) "Close valves firmly but do not wrench";

(I) "Do not permit children near this equipment";

(J) “Park equipment away from buildings or any possible fire hazards. Never allow tanks to be subjected to extreme heat”;

(K) “Do not attempt any repairs of this equipment. In event of any failure, call your dealer immediately”; and

(L) “Do not operate this equipment until you have received instructions from your dealer.” (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4c. Permanent storage facility design and permanent storage container location. (a) Before installing or relocating a permanent storage container or permanent storage facility, the owner may submit to the secretary a detailed diagram of the permanent storage facility for review or request a preliminary site survey to ensure that the proposed site meets the requirements in subsections (c), (d), (e), and (f).

(b) The name of the permanent storage facility and the telephone number to be contacted in case of an emergency shall be posted and be legible from each facility entrance using letters at least two inches high.

(c) No permanent storage container shall be located inside an enclosed structure unless the structure is specifically constructed for this purpose.

(d) The nearest edge of the nearest permanent storage container shall be located at a distance meeting the following conditions:

(1) At least 50 feet from the edge of any property not owned or leased by the permanent storage facility;

(2) at least 50 feet from a well or other point of diversion used as a source of drinking water;

(3) at least 50 feet from storage locations of flammables or explosives;

(4) at least 1,000 feet from the area accessible to the public of any public assembly area, as defined in K.A.R. 4-10-1; and

(5) not on or less than 100 feet from the surface of a public roadway.

(e) The site of the permanent storage facility shall be located on property of sufficient size to permit traffic in and out of the area and allow adequate access for emergency personnel.

(f) Each new permanent storage container or permanent storage facility shall be located outside of a municipality or other densely populated areas, unless the location has been approved in writing by the appropriate local governing body. The owner or operator of each permanent stor-

age container located in a municipality or densely populated area shall obtain written approval from the appropriate local governing body before relocating the permanent storage facility or installing additional permanent storage containers within the municipality or densely populated area.

(g) (1) Each permanent storage container shall be mounted on either of the following:

(A) A skid assembly with sufficient surface area to properly support the skid-mounted container; or

(B) either reinforced concrete footings and foundations or structural steel supports mounted on reinforced concrete foundations. The reinforced concrete foundations or footings shall extend below the established frost line and shall be constructed to support the total weight of the containers and their contents. If the container is equipped with bottom withdrawal, the container’s foundation shall maintain the lowest point of the container at not less than 18 inches above ground level.

(2) Each container shall be mounted on its foundation in a manner that permits expansion and contraction. Each container shall be adequately supported so as to prevent the concentration of excessive loads on the supporting portion of the shell. Corrosion prevention measures shall be utilized on any portion of the container that is in contact with either the foundation or saddles.

(3) Each container shall be securely anchored.

(h) All appurtenances to any permanent storage container shall be protected from tampering and mechanical damage, including damage from vehicles. Each manually controlled valve that, if open, would allow ammonia to be transferred or released, shall be kept locked when unattended and during nonbusiness hours. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4d. Pressure-relief valves. (a) Each container or system of containers shall have liquid and vapor pressure-relief valves to prevent pressure build-up in any portion of the system. Each pressure-relief valve shall be manufactured for use with anhydrous ammonia and be installed, maintained, and replaced according to the manufacturer’s instructions.

(b) Each vapor-relief valve shall be set to indicate discharge at a pressure of not less than 95 percent, and not more than 100 percent, of the design pressure of the container to which the vapor-relief valve is attached. Each vapor-relief valve shall be constructed to completely discharge

before the pressure exceeds 120 percent of the design pressure of the container to which the vapor-relief valve is attached.

(c) Pressure-relief valves shall not exhaust within or beneath any building or other confined area.

(d) Each pressure-relief valve discharge opening shall have a suitable rain cap or other device that allows free discharge of the vapor and prevents the entrance of water.

(e) Each pressure-relief valve shall be replaced if the valve meets any of the following conditions:

- (1) Fails to meet applicable requirements;
- (2) shows evidence of damage, corrosion, or foreign matter; and
- (3) does not have functional weep holes that permit moisture to escape.

(f) The discharge from each pressure-relief valve shall be vented according to one of the following:

(1) For vapor-relief valves, upward and away from where people could be located. The discharge shall flow in an unobstructed manner into the open air from a height of at least seven feet above the working area;

(2) for liquid-relief valves, downward with the opening positioned between six and 18 inches from the ground; or

(3) in any other manner that has been approved by the secretary or an authorized representative of the secretary.

(g) (1) Vent pipes or tubing used to channel releases from pressure-relief valves shall not be restricted or smaller in size than the pressure-relief valve outlet connection.

(2) Vent pipes may be connected and channeled into a common header if the cross-sectional area of the header is at least equal to the sum of the cross-sectional areas of each of the individual vent pipes.

(3) Unless a vent is directed toward the ground and rain will not be able to enter, each pressure relief valve discharge opening shall have a rain cap.

(4) If moisture accumulation could occur in a vent, suitable provision shall be made to drain the moisture from the vent. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4e. Hose specifications. (a) Each hose with a diameter of at least $\frac{1}{2}$ inch used in ammonia service and subject to container pressure shall withstand at least 350 psig and shall have the following information etched, cast, or impressed in a

legible format at intervals not to exceed five feet along the hose surface:

- (1) The phrase "Anhydrous Ammonia";
- (2) the maximum working pressure of the hose; and

(3) the date the hose is to be removed from service.

(b) Each hose shall meet or exceed ASME schedule 80 specifications and have factory-installed ends designed for use with anhydrous ammonia.

(c) Each hose shall be replaced before or upon the expiration of the manufacturer's removal date.

(d) A hose shall be removed from service if a visual examination reveals any of the following:

(1) Illegibility of any of the markings required in subsection (a);

(2) cuts exposing reinforcing fabric;

(3) soft spots or bulges in the hose;

(4) a blistering or loose outer covering;

(5) kinking or flattening;

(6) stretch marks;

(7) slippage at any coupling; or

(8) any other damage that could compromise the integrity of the safe use of the hose. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4f. Gauging devices. (a) Each container, except any container filled by weight, shall be equipped with a liquid-level gauging device designed for use with anhydrous ammonia and installed according to the manufacturer's instructions.

(b) Each gauging device shall be arranged so that the maximum liquid level to which the container may be filled is readily determinable.

(c) Each container shall be equipped with a fully operational pressure-indicating gauge with a dial graduated from 0-400 psig.

(d) Each gauging device shall have a design pressure at least equal to the design pressure of the container on which the device is used.

(e) Each device used to weigh or measure anhydrous ammonia shall meet all of the requirements of weighing and measuring devices in K.S.A. 83-201 et seq., and amendments thereto, and any implementing regulations adopted by the secretary. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-5. Tank trucks, semitrailers, and trailers for transportation of anhydrous ammonia. Each tank truck, semitrailer, and trailer,

except implements of husbandry, used for the transportation of anhydrous ammonia shall meet the following requirements: (a) Design pressure of containers.

(1) Each container shall be constructed in accordance with K.A.R. 4-10-2b and shall have a minimum design pressure of 250 psig.

(2) The shell or head thickness of each container shall not be less than $\frac{3}{16}$ of an inch.

(3) Baffles shall not be required for any cargo tank that is designed so that the container is loaded to capacity and discharged at one unloading point. All other containers having a capacity in excess of 500 gallons shall be equipped with suitable, semirigid baffle plates.

(4) Except for safety relief valves, liquid level gauging devices, and pressure gauges, all container openings shall be labeled to designate whether they communicate with liquid or vapor space. Labels may be located on valves.

(b) Mounting containers on truck.

(1) The container shall be attached to the cradle, frame, or chassis of a vehicle in a manner designed to withstand, in any direction, that amount of static loading equal to twice the weight of the container when filled and its attachments. The safety factor used shall be not less than four and shall be based on the ultimate strength of the material to be used.

(2) "Hold-down" devices, when used, shall anchor the container to the cradle, frame, or chassis in a suitable and safe manner that will not introduce an undue concentration of stresses.

(3) If any vehicle is designed and constructed so that cargo tanks constitute, in whole or in part, the stress member used in lieu of a frame, the cargo tanks shall be designed to withstand the stresses thereby imposed.

(4) All connections, including any hose installed in the bottom of a container, shall not be lower than the lowest horizontal edge of the trailer axle.

(5) While in transit, both ends of each transfer hose shall be secured.

(6) If the cradle and the container are not welded together, a suitable material shall be used between them to eliminate metal-to-metal friction.

(c) Container valves and appurtenances.

(1) Each container shall be equipped with a fixed liquid level gauge.

(2) Each container shall be equipped with a fully operational pressure-indicating gauge that has a dial graduated from 0-400 psi.

(3) Nonrecessed container fittings and appurtenances shall be protected against damage.

(4) Filling connections shall be provided with approved automatic valves to prevent backflow whenever the filling connection is broken.

(5) Except for safety relief valves and those connections specifically exempted by K.A.R. 4-10-2e(b) and K.A.R. 4-10-2e(d), all connections to containers shall be provided with approved excess-flow valves.

(6) All containers shall be equipped with an approved vapor return valve.

(d) Safety devices.

(1) The discharge from each safety relief valve shall be directed upward and away from the container and shall flow in an unobstructed manner into the atmosphere. Loosely fitting rain caps shall be used.

(2) Each unloading line shall be provided with an excess-flow valve at the point where the hose leaves the truck.

(e) Marking of containers. Each side and the rear of every container shall be conspicuously and legibly marked on a background of sharply contrasting color with the words "anhydrous ammonia" in letters at least four inches high and shall be placarded in compliance with applicable D.O.T. regulations.

(f) Piping, tubing, and fittings.

(1) All piping, tubing, and metering or dispensing devices shall be securely mounted and shall be protected against damage.

(2) Threaded pipe shall be extra heavy and comply with ASME schedule 80. Standard weight pipe that complies with ASME schedule 40 may be used if the joints are welded.

(g) Electrical equipment and lighting. Tank trucks, tank trailers, and tank semitrailers shall not be equipped with any artificial light other than electric light. Electric lighting circuits shall have suitable overcurrent protection.

(h) Trailers and semitrailers.

(1) Each trailer or semitrailer shall be equipped with a reliable system of brakes that comply with D.O.T. regulations.

(2) Each trailer or semitrailer shall have lights that comply with D.O.T. regulations.

(i) Safety equipment. All tank trucks, trailers, and semitrailers shall be equipped with the following:

(1) An approved gas mask that has current ammonia canisters having intact seals and that covers the entire face;

(2) one pair of rubber or suitable plastic protective gloves;

(3) one pair of rubber or suitable plastic protective boots;

(4) one rubber or suitable plastic protective slicker, or rubber or suitable plastic protective rain suit, or both;

(5) a pair of flexible-fitting, splash-proof goggles; and

(6) a container of not less than five gallons of clean water.

(j) Transfer of liquids.

(1) Each container shall be loaded by any of the following:

(A) Weight;

(B) a suitable liquid level gauging device; or

(C) a suitable meter.

(2) Pumps or compressors designed and installed in accordance with K.A.R. 4-10-2(j) and properly protected against physical damage may be mounted on ammonia tank trucks and trailers.

(k) Protection against collision. Each end-fitted tank truck and each semitrailer shall be provided with properly attached steel bumpers or a chassis extension to protect the tank, piping, valves, and fittings in case of collision.

(l) Conversion from other service to anhydrous ammonia. Tanks used for the transporting or storage of materials other than anhydrous ammonia shall be emptied of the material previously hauled, and the pressure in the tank shall be reduced to atmospheric pressure. If the material previously hauled in the container will be harmful to the anhydrous ammonia, then the tank shall be purged before being placed in anhydrous ammonia service, and all appurtenances shall be changed to comply with these regulations.

(m) Mobile containers. Except for tank trucks and semitrailers that comply with K.A.R. 4-10-5a, mobile containers shall be unloaded only at approved locations.

(n) Parking. Except in emergencies, tank trucks, semitrailers, or trailers transporting anhydrous ammonia shall not be parked in cities or in densely populated areas.

(o) Conversion of tanks from anhydrous ammonia to other service. Tanks used for the transportation of anhydrous ammonia shall be emptied and purged. Ammonia vapor shall be vented into an adequate portable supply of water and not into the atmosphere. An adequate supply of water shall be deemed to be five gallons of water per each one gallon of liquid ammonia. The aqueous ammonia solution resulting from the purging process shall be disposed of properly. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1,

1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 13, 2001.)

4-10-5a. Tank trucks and semitrailers used for transport for infield delivery. Tank trucks and semitrailers used to transport anhydrous ammonia may be used to fill an implement of husbandry with a capacity of 20,000 pounds or more. These trucks and semitrailers shall be exempt from the requirements in K.A.R. 4-10-6b if the following requirements are met: (a) The tank truck or the semitrailer transferring the anhydrous ammonia or the implement of husbandry shall carry at least 100 gallons of water for whole-person rinsing if exposure to anhydrous ammonia occurs.

(1) The water shall be clearly identified for safety use and be readily accessible.

(2) The water shall be visibly clean, free of debris, and maintained in a liquid state.

(b) When an implement of husbandry is being loaded, at least 100 gallons of water shall be present at the delivery site for the venting of anhydrous ammonia and shall be used in accordance with K.A.R. 4-10-6a(k). This water shall be separate from the water specified in subsection (a) and shall be maintained in a liquid state.

(c) Any tank truck, semitrailer, and implement of husbandry subject to this regulation may be inspected by the department of agriculture.

(d) Each tank truck, semitrailer, and implement of husbandry subject to this regulation shall meet all requirements of this regulation before loading, transporting, or off-loading anhydrous ammonia.

(e) During the transfer of anhydrous ammonia, the nearest edge of the nearest vehicle, tank, and hose involved with the transfer shall be located according to the following:

(1) At least 50 feet from the edge of any property not owned or leased by the owner or operator of the permanent storage facility;

(2) at least 50 feet from any well or other point of diversion used as a source of drinking water;

(3) at least 50 feet from storage locations of flammables or explosives;

(4) at least 500 feet from the area accessible to the public within any public assembly area as defined in K.A.R. 4-10-1; and

(5) at least 50 feet from the surface of a public roadway. (Authorized by and implementing K.S.A. 2-1212; effective April 13, 2001; amended March 12, 2010.)

4-10-6. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; revoked March 12, 2010.)

4-10-6a. Transfers. (a) Transfer to a permanent storage container shall be made only to a system displaying a current KDA-issued proof-of-inspection seal.

(b) Each container filled according to liquid level by any gauging method, other than a 85 percent fixed-length dip tube gauge, shall have a thermometer well and functional thermometer so that the internal liquid temperature can be easily determined and the amount of liquid in the container can be easily corrected to the volume the liquid would occupy at 60° F.

(c) A transfer shall not exceed one of the following:

(1) 85 percent of the container's capacity by volume; or

(2) 56 percent filling density for permanent storage containers or 54 percent filling density for implements of husbandry.

(d) The amount of anhydrous ammonia transferred shall be measured by one of the following:

(1) Weight;

(2) a liquid-level gauging device; or

(3) a flowmeter.

(e) Flammable gases, or gases that will react with anhydrous ammonia including air, shall not be used to transfer anhydrous ammonia.

(f) At least one attendant shall be present to monitor and control each transfer of anhydrous ammonia.

(g) Loading and unloading systems shall be protected to prevent a release if the transfer hose is severed.

(h) Each transfer shall occur only in the open air unless the transfer occurs within a structure specifically constructed for that purpose.

(i) (1) Only pumps and compressors designed for use with anhydrous ammonia shall be used.

(2) Liquid pumps and vapor compressors shall be designed for 250 psig working pressure.

(3) The pressure-actuated bypass valve and return piping shall be installed in accordance with the pump manufacturer's instructions.

(4) Each vapor compressor and liquid pump shall have an operational pressure gauge graduated from 0-400 psig at the inlet and at the outlet.

(5) Shutoff valves shall be installed within three feet of the inlet of a liquid pump and within two

feet of the discharge. With vapor compressors, the shutoff valves shall be located as close as is practical to the compressor connections.

(j) The piping used to transfer anhydrous ammonia from a tractor trailer or railroad tank car into a permanent storage container shall be equipped with an excess flow valve and backflow pressure valve, which shall be located as close as practical to where the piping connects with the transfer hose.

(k) (1) During the removal of anhydrous ammonia from a transfer hose, the anhydrous ammonia shall be vented into an adequate supply of water.

(2) For purposes of this regulation, an adequate supply of water shall mean at least five gallons of nonammoniated water for each gallon of liquid ammonia or fraction of a gallon that could be contained in the hose. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-6b. Transfers; tank cars and transport trucks; additional requirements. In addition to the transfer requirements in K.A.R. 4-10-6a, each transfer from a tank car or transport truck shall meet the following requirements:

(a) Except when loading into implements of husbandry or reactor units, tank cars and transport trucks shall be unloaded only through a permanently installed loading point and into a permanent storage container.

(b) A sign reading "Stop—Tank Car Connected" shall be displayed at the active end or ends of the siding while the tank car is connected for unloading.

(c) While tank cars are on a side track for unloading, the wheels at both ends shall be blocked on the rails. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-7. Implements of husbandry. In addition to the container requirements in K.A.R. 4-10-2e, 4-10-4a, 4-10-4b, 4-10-4d through 4-10-4f, and 4-10-6a, each system that is mounted on an implement of husbandry and is used for the transport of anhydrous ammonia shall meet the following requirements:

(a)(1) A stop or stops shall be attached to either the vehicle or the container to prevent the container from being dislodged from its mounting if the vehicle stops suddenly.

(2) A hold-down device shall anchor the container to the vehicle at one or more places on each side of the container.

(3) Each container mounted on a four-wheel trailer shall have the container's weight distributed evenly over both axles.

(4) If the cradle and the tank are not welded together, material shall be used between the cradle and the tank to eliminate metal-to-metal friction.

(b)(1) Each connection and appurtenance shall be protected from physical damage.

(2) A hose and connection installed in the bottom of a container shall not be lower than the lowest horizontal edge of the vehicle axle.

(3) The entire length of each hose shall be secured during transit in a manner that prevents damage to any portion of the hose or to the connections.

(4) When each hose is removed, the fittings shall be capped to prevent the accidental discharge of ammonia.

(c) Each implement of husbandry used for transportation shall meet the following requirements:

(1) Be securely attached to the pulling vehicle by use of a hitch pin or ball of proper size for the weight pulled. The hitch pin or ball shall be supplemented by two welded safety chains. Links of the safety chains shall be made of steel and shall have a breaking strength that exceeds the gross weight of the implement to which the chains are attached;

(2) be constructed, maintained, and utilized so as to follow in the path of the pulling vehicle and not swerve from side to side while being towed;

(3) be pulled at a speed not faster than is reasonable and safe under existing conditions;

(4) not be parked on any public street or other thoroughfare except in an emergency; and

(5) be equipped with at least five gallons of unfrozen and readily accessible water during the transport, transfer, or use of anhydrous ammonia, for use if exposure to anhydrous ammonia occurs.

(d) When any implement of husbandry is pulled on a public roadway, the following requirements shall be met:

(1) Each implement of husbandry with a capacity greater than 1,000 gallons shall be pulled as a single unit.

(2) When two implements of husbandry are pulled, the total capacity pulled shall be limited to not more than 2,000 gallons.

(3) No more than two implements of husbandry shall be pulled at the same time by the pulling vehicle. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1,

1971; amended Jan. 1, 1973; amended May 1, 1986; amended March 12, 2010.)

4-10-8 and 4-10-9. (Authorized by K.S.A. 1970 Supp. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1986.)

4-10-10. Safety. (a) The following personal safety equipment shall be available for use at each permanent storage facility and reactor unit when anhydrous ammonia is being transferred and when maintenance is being conducted on a system:

(1) A NIOSH-approved respirator that covers the entire face and has current ammonia canisters with intact seals;

(2) one pair of protective gloves made of rubber or any other material impervious to anhydrous ammonia;

(3) one pair of protective boots made of rubber or any other material impervious to anhydrous ammonia;

(4) one protective suit made of rubber or any other material impervious to anhydrous ammonia;

(5) a shower or at least 100 gallons of clean water to be used as safety water; and

(6) a pair of chemical-splash goggles.

(b) During each transfer, the attendant shall wear the personal protective equipment specified in paragraphs (a)(2) and (a)(6), at a minimum.

(c) An area of at least 10 feet around any container or system shall be kept free of combustibles. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-15. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-16. Reactor units. (a) Each reactor unit shall operate only at a site that meets the following requirements:

(1) The nearest edge of the reactor unit shall be located at a distance in accordance with the following requirements:

(A) At least 50 feet from the edge of any property not owned or leased by the owner or operator of the permanent storage facility;

(B) at least 50 feet from any well or other point of diversion used as a source of drinking water;

(C) at least 50 feet from storage locations of flammables or explosives;

(D) at least 500 feet from any area accessible to the public as defined in K.A.R. 4-10-1; and

(E) not on or less than 50 feet from the surface of a public roadway.

(2) Each reactor unit shall be operated outside of municipalities or other densely populated areas unless the location has been approved in writing by the appropriate local governing body.

(b) During the transfer of anhydrous ammonia from railroad tank cars or transport trucks to a reactor unit for the manufacture of ammoniated solutions, the portable reactor unit shall be equipped with the following safety devices:

(1) Remote-controlled shutoff devices located on the tank car connection immediately preceding the hose attachment and on the discharge side of the pump; and

(2) a backflow check valve in the inlet line to the reactor unit.

(c) When anhydrous ammonia is transported to a stationary reactor unit in an implement of husbandry, the implement of husbandry shall be equipped with the following:

(1) A manually operated remote-controlled shutoff device on the discharge valve immediately preceding any hose attachments; and

(2) a backflow check valve installed in the rigid piping leading to the reactor unit at the point of connection for the transfer hose.

(d) The implement of husbandry shall be monitored at all times during the reacting process.

(e) The transfer hose shall be disconnected from the reactor unit when the reactor unit is not in operation.

(f) The required air-operated or manually operated remote-controlled shutoff device shall be tested before each production run of ammoniated solutions. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1986; amended May 1, 1988; amended Jan. 1, 1989; amended March 12, 2010.)

4-10-17. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1988; revoked March 12, 2010.)

Article 11.—EGGS

4-11-1. (Authorized by K.S.A. 2-2504; effective Jan. 1, 1966; revoked May 1, 1982.)

4-11-2. Definitions. (a) “Advertisement” shall mean any of the following:

- (1) Placard;
- (2) handbill;
- (3) sign;
- (4) newspaper advertisement;

(5) radio, internet, or television advertisement; or
(6) any other means of calling the consumer’s attention to eggs.

(b) “Carton” shall mean a container of 18 eggs or less.

(c) “Case,” for inspection fee purposes, shall mean a container of more than 15 dozen and not more than 30 dozen eggs.

(d) “Consumer” shall have the meaning specified in K.S.A. 2-2501, and amendments thereto.

(e) “Eggs” shall have the meaning specified in K.S.A. 2-2501, and amendments thereto.

(f) “Eggs of current production” shall mean eggs that are subject to the Kansas egg law and have been held in refrigerated storage for not more than 30 days.

(g) “Fresh,” when used to describe eggs, shall mean eggs of current production that do not possess any undesirable odors or flavors.

(h) “Half case,” for inspection fee purposes, shall mean a container of more than one dozen and not more than 15 dozen eggs.

(i) “Lot” shall mean all of the eggs that are located at any place of business where eggs are held and that are labeled with the same grade, size, and pack date from the same packer, the person for whom the eggs are packed, or, if the eggs have been repacked, the retailer.

(j) “Person” shall have the meaning specified in K.S.A. 2-2501, and amendments thereto.

(k) “Point of first purchase or assembly” shall mean any place of business of any person or any agent of the person purchasing or assembling eggs from the producer.

(l) “Secretary” shall mean the secretary of agriculture or the secretary’s authorized representative. (Authorized by K.S.A. 2-2504 and 74-531; implementing K.S.A. 2-2501, as amended by L. 2006, Ch. 90, §1, 2-2504, and 2-2505, as amended by L. 2006, Ch. 90, §4; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1982; amended June 25, 2004; amended Feb. 9, 2007.)

4-11-3. Egg containers; requirements for marking and labeling. (a) A mark or label shall be deemed false or deceptive if any of the following conditions is met:

(1) The eggs in the container are not of the quality or size indicated on the container.

(2) The mark or label bears a statement that is false or misleading.

(3) The mark or label bears a qualifying word with reference to size or quality that is misleading.

(4) The mark or label bears the word “fresh,” unless the eggs are of “A” or “AA” quality.

(b) Each person who has not been issued a permit shall use the inspection fee stamp on each container to indicate the quality and size of the eggs and to indicate that the inspection fee has been paid on the contents.

(c) For cases and half cases, the marks or labels shall be located on either the outside surface of the top or on either end of the container. (Authorized by K.S.A. 2-2504 and 74-531; implementing K.S.A. 2-2502, as amended by L. 2006, Ch. 90, §2, and 2-2503, as amended by L. 2006, Ch. 90, §3; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan 1, 1972; amended May 1, 1982; amended June 25, 2004; amended Feb. 9, 2007.)

4-11-4. False advertisement. An advertisement shall be considered false or deceptive if it bears any reference to size or quality that is untrue or deceptive; or contains any qualifying words with reference to size or quality which are in any way misleading; or if there is any intent, design or purpose not to sell the eggs as advertised and priced therein. Eggs advertised in a manner which indicates price shall also indicate the full, correct and unabbreviated designation of size and quality to which the price refers. The term “fresh” shall be considered false and misleading except when used in connection with grades “AA” and “A,” and the term “fresh fancy” shall be considered false and misleading except when used in connection with eggs produced and marketed under a state or federal-state quality controlled program. (Authorized by K.S.A. 2-2504; effective Jan. 1, 1966; amended Jan. 1, 1972.)

4-11-5. (Authorized by K.S.A. 2-2502, 74-531; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1972; revoked May 1, 1982.)

4-11-6. (Authorized by K.S.A. 2-2504; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked June 25, 2004.)

4-11-7. (Authorized by K.S.A. 2-2504; effective Jan. 1, 1966; amended Jan. 1, 1972; revoked June 25, 2004.)

4-11-8. Sampling requirements. The minimum number of samples specified in the following table shall be drawn for inspection according to the size of each lot. At least 100 eggs shall be examined for each sample case or half case, pursuant to K.S.A. 2-2505 and amendments thereto.

For each lot consisting of fewer than 100 eggs, all eggs in that lot shall be examined.

Size of lot (cases or half cases)	Minimum number of samples to be drawn (cases or half cases)
1.....	1
2 through 10	2
11 through 25	3
26 through 50	4
51 through 100	5
101 through 200	8
201 through 300	11
301 through 400	13
401 through 500	14
501 through 600	16

For each additional 50 cases or half cases or fraction thereof, in excess of 600 cases, one additional case or half case shall be included in the sample. (Authorized by K.S.A. 2-2504 and 2-2505; implementing K.S.A. 2-2505; effective Jan. 1, 1966; amended June 25, 2004.)

4-11-9. Inspection fee. (a) Inspection fee stamps. Inspection fee stamps may be purchased from the secretary. Each minimum order shall consist of 1,000 carton stamps, 100 case or half-case stamps, or a combination of these.

(b) Cancellation of inspection fee stamp. The inspection fee stamp used on cartons, half cases, and cases shall be dated, which shall serve to cancel the stamp. (Authorized by K.S.A. 2-2504; implementing K.S.A. 2-2504 and 2-2507; effective Jan. 1, 1966; amended June 25, 2004.)

4-11-10. (Authorized by K.S.A. 2-2502, 74-531; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1982.)

4-11-11. (Authorized by K.S.A. 2-2504; effective Jan. 1, 1966; revoked May 1, 1982.)

4-11-12. (Authorized by K.S.A. 2-2502, 74-531; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked May 1, 1982.)

4-11-13. (Authorized by K.S.A. 2-2502, 74-531; effective Jan. 1, 1966; revoked May 1, 1982.)

4-11-14. Adoption by reference. In the “United States standards, grades, and weight classes for shell eggs,” AMS 56, published by the

USDA's agricultural marketing service and effective July 20, 2000, sections 56.200 through 56.217, except for section 56.215, are hereby adopted by reference. These sections shall apply to all eggs regulated pursuant to the Kansas egg law. Copies shall be available from the agricultural commodities assurance program of the Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2-2504 and 74-531; implementing K.S.A. 2-2502, 2-2504, and 74-531; effective May 1, 1982; amended June 25, 2004.)

4-11-15. License fee. The annual fee for an egg license shall be \$5.00. (Authorized by K.S.A. 2-2504; implementing K.S.A. 2-2508, as amended by L. 2006, Ch. 90, § 6; effective, T-4-11-2-06, Nov. 2, 2006; effective Feb. 9, 2007.)

Article 12.—PEST CONTROL

4-12-1 to 4-12-6. (Authorized by K.S.A. 1965 Supp. 2-2403; effective Jan. 1, 1966; revoked May 1, 1982.)

Article 13.—PESTICIDES

4-13-1. Definitions. For the purposes of this article, the following terms shall have the meanings specified in this regulation: (a) "Alternative treatment" means any method of pest control service performed for the purpose of controlling termites, other than those specified in subsections (b), (c), (d), (e), (g), and (i). This term shall include nonchemical methods of control and above-ground pesticide application.

(b) "Bait treatments" and "baiting system" mean the installation, servicing, and monitoring of termite bait stations and termite monitoring stations for the purpose of controlling termites within a structure. The placement of monitoring stations without a written agreement to periodically inspect the monitoring stations and replace monitoring stakes or other materials with a pesticide shall not constitute a bait treatment or baiting system.

(c)(1) "Complete soil treatment" and "complete treatment" mean a pesticide application to soil for the control of termites and shall include both of the following:

(A) Applying pesticide at the concentration, rate, and dosage required by the product labeling in such a manner that a chemical barrier is formed at all sites of potential termite entry into the structure from the soil, including the interior and ex-

terior foundation walls and cross walls; the area around any support piers, expansion joints, and cracks in concrete slabs; any void areas in masonry elements; and any other structural components that extend below soil grade; and

(B) removing wood scrap, paper scrap, and all other cellulose-containing debris from any accessible areas of crawl spaces under buildings being treated.

(2) Applications to wooden construction elements, the use of baits, and the use of alternative methods of control shall not be represented as complete treatments.

(d) "Limited soil treatment" and "limited treatment" mean a pesticide application that is intended to provide protection from termite infestation to the entire structure, but is not designed to provide a continuous barrier of pesticide to the soil, including treating only the exterior perimeter of a slab structure.

(e) "Partial soil treatment" and "partial treatment" mean applications of pesticide for soil treatment that are not intended to provide protection from termite infestation for the entire structure treated.

(f) "Restricted-use pesticide" means any pesticide product registered by the secretary under the provisions of the agricultural chemical act of 1947, K.S.A. 2-2204 and amendments thereto, that is either labeled as a restricted-use pesticide by the federal agency responsible for the classification or designated as a restricted-use pesticide by the secretary.

(g) "Spot treatment" means remedial applications of pesticide to control termites at a specific location within a structure that are not intended to control termites at any location beyond the treatment area.

(h) "Stump treatment" means the application of pesticide to the cut stump of any tree or other woody plant to prevent regrowth.

(i) "Wood treatment" means the application of pesticide to wooden structural components, including joints, voids, galleries, and chambers, that are present within wooden construction elements. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003; amended Feb. 29, 2008.)

4-13-2. Pesticide business license application. Each application for issuance or renewal of a business license shall provide the following information in addition to that required by K.S.A.

2-2440 (b) (1) through (3), and amendments thereto: (a) The home address and birth date of each owner, officer, representative, and any resident agent;

(b) the name of any other state in which the applicant holds or has held a pesticide business license within the last five years and a list of any such license that has been denied, modified, revoked, suspended, or surrendered;

(c) for each business location serving Kansas, the business name and street address of the business and the name of the certified applicator or other person responsible for pesticide business activity at that location. "Business location" shall include all locations where records of application are maintained, where application equipment and pesticide materials are stored, and from which customers are served;

(d) the name of each certified commercial applicator serving the applicant, for each business location;

(e) the name, home address, birth date, and driver's license number of each non-certified employee who applies pesticides for the applicant. If the applicant's uncertified commercial applicator does not have a driver's license, then the number assigned to any federal or state government-issued identification card shall be provided for that employee;

(f) the categories and subcategories in which the applicant business will operate;

(g) the signature and title of the applicant or authorized representative; and

(h) the date of submission of the application. (Authorized by and implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003; amended Feb. 5, 2010.)

4-13-3. Categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators. (a) The categories and subcategories of qualification for licensing of pesticide businesses and certification of commercial applicators shall include the following:

(1) Category 1: agricultural pest control. This category shall include any commercial application of pesticide in the production of agricultural plants or animals.

(A) Subcategory 1A: agricultural plant pest control. This subcategory shall include any commercial application of pesticide on grasslands and

noncrop agricultural lands, and in the production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits, and nuts.

(B) Subcategory 1B: agricultural animal pest control. This subcategory shall include any commercial application of pesticide to places on, or in which, animals are confined and on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock. This subcategory shall include any doctor of veterinary medicine who applies pesticides for hire, engages in the large-scale use of pesticides, or is publicly held out as a pesticide applicator.

(C) Subcategory 1C: wildlife damage control. This subcategory shall include any commercial application of pesticide for the management and control of wildlife in rangeland and agricultural areas. Wildlife shall mean nondomesticated vertebrate species that hinder agricultural and rangeland production.

(D) Subcategory 1D: stump treatment. This subcategory shall be limited to the commercial application of pesticide for the treatment of cut stumps to control resprouting in pastures, rangeland, or lands held in conservation reserve. Nothing in this subcategory shall prohibit stump treatment by pesticide businesses and commercial applicators in other categories and subcategories that include pesticide application to cut stumps.

(2) Category 2: forest pest control. This category shall include any commercial application of pesticide in forests, forest nurseries, and forest seed-producing areas.

(3) Category 3: ornamental and turf pest control. This category shall include any commercial application of pesticide in the maintenance of ornamental trees, shrubs, flowers, and turf.

(A) Subcategory 3A: ornamental pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of ornamental trees, shrubs, and flowers. This subcategory shall not include those pests included in subcategory 3C.

(B) Subcategory 3B: turf pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of turf.

(C) Subcategory 3C: interior landscape pest control. This subcategory shall include any commercial application of pesticide to control pests in the production and maintenance of houseplants and other indoor ornamental plants kept or locat-

ed within structures occupied by humans, including houses, apartments, offices, shopping malls, and other places of business and dwelling places.

(4) Category 4: seed treatment. This category shall include any commercial application of pesticide on seeds.

(5) Category 5: aquatic pest control. This category shall include any commercial application of pesticide to standing or running water. Applicators engaged in public health pest control and health-related pest control activities shall be excluded.

Subcategory 5S: sewer root control. This subcategory shall be limited to any commercial application of pesticide for the control of roots in sewer lines and septic systems.

(6) Category 6: right-of-way pest control. This category shall include any commercial application of pesticide to control vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, parking lots, or other similar areas.

(A) This category shall include the types of commercial pesticide application specified in subcategory 7C.

(B) This category shall not include those types of commercial pesticide application specified in paragraph (a)(9).

(7) Category 7: industrial, institutional, structural, and health-related pest control.

(A) This category shall include any commercial application of pesticide for the protection of stored, processed, or manufactured products. This category shall also include any commercial application of pesticide in, on, or around the following:

(i) Food handling establishments, human dwellings, institutions including schools and hospitals, and any other similar structures and the areas immediately adjacent to those structures; and

(ii) industrial establishments including warehouses, grain elevators, food processing plants, and any other related structures and adjacent areas.

(B) Subcategory 7A: wood-destroying pest control. This subcategory shall include any commercial application of pesticide in the control of termites, powder post beetles, wood borers, wood rot fungus, and any other wood-destroying pest.

(C) Subcategory 7B: stored products pest control. This subcategory shall include any commercial application of pesticide for the control of pests in stored grain and food products.

(D) Subcategory 7C: industrial weed control. This subcategory shall include any commercial application of pesticide for the control of pest weeds.

(E) Subcategory 7D: health-related pest control. This subcategory shall include any commercial application of pesticide in health programs for the management and control of terrestrial and aquatic pests having medical or public health significance.

(F) Subcategory 7E: structural pest control. This subcategory shall include any commercial application of pesticide in a structure for the control of any pest not covered in subcategories 7A and 7B.

(G) Subcategory 7F: wood preservation and wood products treatment. This subcategory shall include any commercial application of pesticide made to extend the life of wooden poles, posts, crossties, and other wood products to preserve or protect them from damage by insects, fungi, marine organisms, weather deterioration, or other wood-destroying agents.

(8) Category 8: public health pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide for the management and control of terrestrial and aquatic pests having medical or public health significance.

(9) Category 9: regulatory pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide in the control of federally regulated and state-regulated pests.

(A) Subcategory 9A: noxious weed control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of weed pests regulated under the Kansas noxious weed law.

(B) Subcategory 9B: regulated pest control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of federally regulated or state-regulated pests not covered in subcategory 9A.

(10)(A) Category 10: demonstration and research pest control. This category shall include the following:

(i) Those persons who demonstrate to the public the proper techniques for application and use

of restricted-use pesticides or who supervise such a demonstration. These persons shall include extension specialists, county agents, commercial representatives who demonstrate pesticide products, and persons who demonstrate, in public programs, methods of pesticide use;

(ii) those persons who use or supervise the use of restricted-use pesticides in conducting field research that involves the use of pesticides. These persons shall include state, federal, and commercial employees and other persons who conduct field research regarding or utilizing restricted-use pesticides; and

(iii) qualified laboratory personnel using restricted-use pesticides while engaged in pesticide research in areas where environmental factors beyond the control of laboratory personnel, including wind, rain, and similar factors, can affect the safe use of the pesticide or can cause the pesticide to have an adverse impact on the environment.

(B) The persons listed in paragraphs (a)(10)(A)(ii) and (iii) shall not be considered exempt from certification under the provisions of K.S.A. 2-2441a(d) and amendments thereto.

(b) Each pesticide business shall be licensed in all categories in which the pesticide business makes commercial pesticide applications and shall employ one or more persons who maintain commercial certification in each subcategory in which the pesticide business makes commercial pesticide applications.

(c) Each state, federal, and other governmental agency shall be registered in all categories and subcategories in which the agency makes commercial pesticide applications. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2444a and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-4. Written statement of service by business. (a) Any written statement of services or contract shall comply with the provisions of K.A.R. 4-13-4a and shall be presented to the customer before or upon completion of the work covered by said written statement or contract. Provided, that where the work covered involves two or more periodic applications over a specified period of time, such as monthly service calls for one year, the written statement shall be presented to the customer upon completion of the initial

treatment. Supplemental statements setting forth the application date, each pesticide used, including the quantity applied, the wind direction and velocity, if any, and the applicator's signature shall be presented to the customer following each periodic application.

(b) This regulation shall be in force and effect from and after January 1, 1991. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, § 16, implementing K.S.A. 2-2455 as amended by L. 1989, Ch. 6, § 15; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Jan. 1, 1991.)

4-13-4a. Requirements for written contract or statement of services by business. (a) Each written contract or statement of services issued by a pesticide business licensee shall meet the following requirements, in addition to the requirements of K.S.A. 2-2455 and amendments thereto:

(1) The address of the pesticide business licensee shall include the street address of the pesticide business licensee's office that provides the pest control service for the named customer.

(2) The address of the customer shall include either the street address or the rural route and box number, whichever is applicable.

(3) The name of each pest to be controlled shall be stated in terms of the common name for each pest or, in the alternative, shall be stated in terms of the scientific name for each pest.

(4) Notwithstanding the requirements of paragraph (3) of this subsection, if the pest to be controlled is a weed, the name of the pest may be stated as grassy or broadleaf weeds.

(b)(1) For each pesticide applied, the statement of services shall include the complete product name of the pesticide, as the name appears on the label, and the pesticide's EPA registration number. If the pesticide applied does not have an EPA registration number, the Kansas registration number shall be provided.

(2) The concentration of the pesticide shall include the percent of the active ingredient in the pesticide mixture or solution actually applied. The quantity of pesticide mixture actually applied shall be stated in gallons or other appropriate volumetric unit if the pesticide applied has been diluted. For granular pesticides or other pesticides that are applied undiluted, the quantity applied shall be expressed in terms of pounds or other appropriate units using dry weight. Rates of application shall be expressed in terms of a unit volume or

weight of pesticide per unit of length, surface area, or volume corresponding to the mixing directions shown on the pesticide's label.

(3) Each statement of services shall include wind direction and velocity, except that this requirement shall not apply when the pesticide application is made in any of the following manners or locations or for any of the following reasons:

- (A) Inside an enclosed structure;
- (B) to control structural pests by use of a barrier treatment within 10 feet of the exterior of a building;
- (C) for seed treatment;
- (D) by direct injection of the pesticide into the soil or other substrate;
- (E) by direct application to the soil in a trench around a structure; or
- (F) by use of baiting stations, including the installation, servicing, and monitoring of the stations.

(c) Whenever any pesticide mixture or solution is applied at a dosage, concentration, or frequency of application that is less than that specified on the pesticide's label or labeling, at least one of the following requirements shall be met:

(1) The written statement of services shall state the following, or its equivalent, in a conspicuous manner: "PESTICIDE APPLIED AT LESS THAN LABEL RATE."

(2) In addition to or in lieu of the requirements of paragraph (c)(1), the licensee shall provide the customer with information about the conditions under which applications may be made at less than label dosage, concentration, or frequency, before the time of the initial application. The licensee shall obtain the customer's written acceptance of the use of these methods in writing before the initial application, which may be incorporated into any statement of service or contract, or both.

(d) Whenever any pesticide is applied in office buildings, apartment houses, or other multiple-tenant structures, the pesticide business licensee shall make available to the owner or manager of the structure information concerning any pesticide applied in the structure. In addition, information regarding any specific residence or business that has been treated with any pesticide shall be made available, upon the tenant's request, to the tenant of the residence or business treated.

(e) Whenever any pesticide is applied for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus, or any other

wood-destroying pest, the licensee shall meet the following requirements:

(1) The diagram required by K.S.A. 2-2455(b)(3), and amendments thereto, shall clearly represent the structure being treated and indicate the location of basement areas, crawl spaces, concrete slab floors, and any concrete slabs adjacent to the outside of the foundation walls of the structure.

(2) If the pesticide application is not for a complete treatment of the entire structure, as defined by K.A.R. 4-13-1 and K.A.R. 4-13-7, the written statement of services shall state the following in a conspicuous manner: "LIMITED TREATMENT," "PARTIAL TREATMENT," "SPOT TREATMENT," "BAITING SYSTEM," "ALTERNATIVE TREATMENT," or other equivalent statement. Each pesticide application that is not for a complete treatment of the entire structure shall show the areas of treatment on the representative diagram. If the pesticide application is not for a complete treatment of the entire structure due to exigent circumstances, in addition to requirements listed above, the exigent circumstances shall be described on the statement of services.

(3) Each statement of services for termite control involving the use of baiting systems shall clearly state whether the pest control service performed consists of placement or inspection, or both, of baiting material that contains pesticide or consists of placement or inspection, or both, of monitoring stations that do not contain pesticide. Each statement of services shall include records of the dates of placement and inspection and the locations of all bait stations and monitoring stations. Diagrams of the structure being treated shall clearly show the locations of all monitors and baits.

(4) The dates of inspection or inspection intervals and the conditions under which monitoring materials will be replaced by baiting materials shall be stated in any contract for service or statement of services. Each licensee shall maintain records of the dates of placement and inspection and the locations of bait stations and monitoring stations. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2455; effective March 26, 1990; amended July 18, 2003.)

4-13-5. Written statement of service by certified commercial applicator not acting for business. (a) Any certified commercial applicator who is not employed by or otherwise acting for a pesticide business licensee shall prepare a

written statement of work performed for each application of restricted use pesticides either made by or made under the direct supervision of the certified commercial applicator. Each such written statement of work performed shall set forth the following information:

(1) The name and address of the certified commercial applicator;

(2) All information required by K.S.A. 2-2455 as amended and supplemented and K.A.R. 4-13-4a except the name and address of the pesticide business licensee.

(b) This regulation shall be in force from and after January 1, 1991. (Authorized by and implementing K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Jan. 1, 1991.)

4-13-6. Marking of vehicles. Each business licensee with a license in category 3 or 7, as specified in K.A.R. 4-13-3, shall mark any vehicle used in the application of pesticides, including any vehicle used in transporting pesticide application equipment to an application site. Each licensee shall place the business name or registered trade name and the pesticide business license number on each side of the vehicle, with letters and numbers not less than 1½ inches in height and in a color contrasting from that of the vehicle. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2456; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-7. Termite control application procedures. (a) Except as provided in subsection (c), each structure shall be treated by applying pesticide at the rate, concentration, and dosage specified on the product label in a manner that provides wooden construction elements with protection from termites in the entire structure.

(b) Wood, paper scrap, cardboard scrap, and other cellulose-containing debris shall be removed from any accessible crawl space under the building to be treated.

(c) An application procedure different from that required by subsection (a) may be employed by a certified applicator. When a different application procedure is used, the pest control operator shall furnish adequate control and shall state on the required written statement the application procedure used. These methods of control shall be requested or agreed to by the customer in writing

before completion of application. The applicator shall state, on the required statement of services and diagram, the application procedures used and how the procedures differ from the requirements of subsection (a). (Authorized by and implementing K.S.A. 2-2467a and K.S.A. 2-2471; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-8. Surety bond requirement. Any surety bond submitted by a pesticide business licensee to comply with the provisions of K.S.A. 2-2448 as amended shall provide bond coverage of not less than \$6,000. The bond shall be effective for a period not to exceed one year and shall extend to December 31 of the licensing year. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; implementing K.S.A. 2-2448 as amended by L. 1989, Ch. 6, §17; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1983; amended March 26, 1990.)

4-13-9. Report of address, name, or personnel change by business. (a) Each pesticide business licensee shall provide the secretary with written notification of any modification or change to the initial application regarding the business address or business name and of any change in service personnel involved in the application of pesticides. Each notification shall be provided within 30 days of the modification or change made by the pesticide business licensee. Notification shall be required for the following:

(1) Hiring or terminating, or both, any employees involved in the application of pesticides;

(2) making any change in certification or technician status, or both; and

(3) making any change in the manager, operator, authorized representative, or resident agent.

(b) The pesticide business licensee shall submit with each such notification the required \$15.00 fee for each previously unreported uncertified individual employed to apply pesticides for a total of more than 10 days or for a period of five or more consecutive days during any 30-day period.

(c) Each notification shall include the full name, home address, birth date, and social security number of each applicator of pesticides listed who is a certified applicator or a registered pest control technician.

(d) Each notification shall also include the full name, home address, birth date, and driver's license number of each applicator of pesticides list-

ed who is not a certified commercial applicator of pesticides or a registered pest control technician.

(e) The \$15.00 fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-10. Application for governmental agency registration. An application for a governmental agency registration or for renewal of a governmental agency registration shall provide the following information in addition to that required by K.S.A. 2-2440 (e):

(1) If the applicant is a township, the county in which said township is located.

(2) Names of certified applicators and uncertified persons working under their supervision who will work under the governmental agency registration being applied for.

(3) Signature and title of the official submitting the application.

(4) Date the application is submitted. (Authorized by K.S.A. 1977 Supp. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978.)

4-13-11. (Authorized by K.S.A. 1987 Supp. 2-2467a; implementing K.S.A. 2-2444a and K.S.A. 1987 Supp. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1985; amended, T-87-39, Nov. 19, 1986; amended May 1, 1987; amended Jan. 1, 1989; revoked Feb. 29, 2008.)

4-13-12. Age restriction for certification.

To be eligible for certification as a commercial applicator of restricted use pesticides, an individual shall be eighteen (18) years of age or older. (Authorized by K.S.A. 1977 Supp. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978.)

4-13-13. Commercial applicator examinations.

(a) Each general core examination for commercial applicator certification shall test the applicant's knowledge in the following subjects, in addition to testing the applicant's knowledge in those subjects specified in K.S.A. 2-2443a (a) through (h), and amendments thereto:

(1) The general format and terminology of pesticide labels and labeling, the instructions, warn-

ings, symbols and other information appearing on pesticide labels, the classification designation on pesticide labels, and the necessity of using each pesticide in a manner that is consistent with the information and instructions on its label;

(2) safety factors, including pesticide toxicity; types and causes of pesticide accidents; precautionary measures that are necessary to guard against injury to the applicator and other individuals; symptoms of pesticide poisoning; first aid and other procedures to follow in case of a pesticide accident; proper identification, storage, transportation of, mixing, and handling of pesticides; prevention of and cleanup of pesticide spills; and disposal of pesticide containers;

(3) the potential for damage to the environment from use and misuse of pesticides as influenced by factors including types of terrain, soil, and other substrata and drainage patterns;

(4) pest development and biology relevant to pest identification and control;

(5) the types of pesticides and pesticide formulations used, compatibility, synergism, persistence and animal and plant toxicity of pesticides, practices that cause pesticide resistance, and dilution procedures;

(6) the types of equipment used and the limitations of each and equipment use, maintenance, and calibration;

(7) proper application techniques for various pesticides and formulations of pesticide in given situations, relationship of placement of pesticides to proper use, unnecessary pesticide use and pesticide misuse, and prevention of pesticide loss into the environment through drift and other means; and

(8) requirements that must be met by a certified applicator in supervising noncertified applicators of restricted pesticides, including practical knowledge of federal and state supervisory requirements, requirements found on labeling, requirements regarding verifiable instruction of the noncertified applicator and availability of certified applicator during application, and any added restrictions that may be imposed for specific pesticides through labeling, including the required physical presence of the supervising applicator during the application.

(b) As specified in this subsection, each category or subcategory examination for commercial applicator certification shall test the applicant's practical knowledge of the category or subcategory of certification in which the applicant wishes to be certified, in addition to testing the applicant's

practical knowledge in those subjects specified in K.S.A. 2-2443a and amendments thereto.

(1) Agricultural pest control.

(A) Each examination for agricultural plant pest control applicators shall test the applicant's practical knowledge of the crops grown in Kansas and the specific pests commonly associated with these crops, potential soil and water damage, preharvest intervals, reentry intervals, phytotoxicity, environmental contamination, nontarget injury, and potential adverse effects on the community that are related to the use of restricted pesticides in agricultural areas.

(B) Each examination for agricultural animal pest control applicators shall test the applicant's practical knowledge of Kansas agricultural animals and their pests, specific pesticide toxicity levels, residue potential and relative hazards associated with various pesticide formulations, application techniques, ages of animals, and the stress and extent of treatment.

(C) Each examination for wildlife damage control applicators shall test the applicant's practical knowledge of vertebrate pest species and damage associated with each species, methods useful in damage prevention, products used in damage control, the potential for direct poisoning of nontarget species, the potential for secondary poisonings, effects upon threatened and endangered species, specific pesticide toxicity and residue levels, and methods of application necessary to minimize hazards to humans, the environment, pets, and domestic animals.

(D) Each examination for stump treatment applicators shall test the applicant's practical knowledge of stump control methods, limited area applications, and the potential adverse effects of pesticides.

(2) Forest pest control. Each examination for forest pest control applicators shall test the applicant's practical knowledge of types of forests, forest nurseries and forest seed production in Kansas and of the pests associated with them, pest cycles and population dynamics as they influence control programming, biotic agents and their relative vulnerability to pesticides, and proper use of specialized equipment as it relates to adjacent land use.

(3) Ornamental and turf pest control.

(A) Each examination for ornamental pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of ornamental trees, shrubs and flowers in Kansas,

potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(B) Each examination for turf pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of turf in Kansas, potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(C) Each examination for interior landscape pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of houseplants and other ornamental plants kept or located within structures occupied by humans, including houses, apartments, offices, shopping malls, other places of business, and other dwelling places. The examination shall also test the applicant's practical knowledge of potential phytotoxicity problems related to treatment of plants in enclosed areas, pesticide persistence beyond the intended period of control, and application methods that minimize hazards to humans, pets, and domestic animals.

(4) Seed treatment. Each examination for seed treatment applicators shall test the applicant's practical knowledge of the types of seeds that require protection against pests, factors that could affect germination, including seed coloration, carriers and surface-active agents, hazards associated with handling, storing, mixing and misuse of treated seeds, and the proper disposal of unused treated seeds.

(5) Aquatic pest control.

(A) Each examination for aquatic pest control applicators shall test the applicant's practical knowledge of secondary effects caused by improper application rates, incorrect formulations, and faulty aquatic pesticide applications; knowledge of various water use situations and the potential of downstream effects; knowledge of potential effects on plants, fish, birds, beneficial insects, and other organisms in the aquatic environment; and knowledge of the principles of limited area application.

(B) Each examination for sewer root control shall test the applicant's practical knowledge of sewer control methods, limited area applications, and potential adverse effects of pesticides.

(6) Right-of-way pest control. Each examination for right-of-way pest control applicators shall test the applicant's practical knowledge of the wide variety of environments crossed by rights-of-way, problems of runoff, drift and excessive foliage destruction, the nature of herbicides, the need for containment of herbicides within the right-of-way area, and the impact of the applicator's activities on adjacent areas and communities.

(7) Industrial, institutional, structural, and health-related pest control.

(A) Each examination for wood-destroying pest control applicators shall test the applicant's practical knowledge of wood-destroying pests and their life cycles, pesticide formulations appropriate for the control of these pests, methods of application that avoid exposure of people and pets, and specific factors that can lead to hazardous conditions, including continuous exposure to the pesticide.

(B) Each examination for stored products pest control shall test the applicant's practical knowledge of pests found in stored grain and food processing areas, their life cycles, pesticide formulations appropriate for their control, methods of application that avoid contamination of food products and exposure of people, and specific factors that can lead to a hazardous condition, including continuous exposure.

(C) Each examination for industrial weed control applicators shall test the applicant's practical knowledge of weed pests found in industrial areas, pesticide formulations appropriate for the control of these pests, methods of application that avoid contamination of habitat and exposure of people and pets, and environmental conditions particularly related to this activity.

(D) Each examination for health-related pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests that adversely affect public health and their life cycles and habitats, and the variety of environments in which these pests are encountered.

(E) Each examination for structural pest control applicators shall test the applicant's practical knowledge of the wide variety of pests found in buildings, including their life cycles; types of pesticide formulations appropriate for their control and methods of application that avoid contamination of food, damage to and contamination of habitat, and exposure of people and pets; specific factors that can lead to a hazardous condition, including continuous exposure in the various situations encountered in this

category; and environmental conditions particularly related to this activity.

(F) Each examination for wood preservation and wood-products treatment applicators shall test the applicant's practical knowledge of pest problems and pests associated with wood degradation, including their life cycles, types of pesticide formulations appropriate for their control, methods of application, application hazards and safety, and the proper means of container storage and container and waste disposal. The examination shall also test the applicant's practical knowledge of procedures to contain spills and to avoid contamination and exposure of the environment, including people, domestic animals, and wildlife.

(8) Public health pest control. Each examination for public health pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests that adversely affect public health and their life cycles and habitats, the variety of environments in which these pests are encountered, and the importance of nonchemical control methods including sanitation, waste disposal, and drainage.

(9) Regulatory pest control.

(A) Each examination for noxious weed control applicators shall test the applicant's practical knowledge of pest weeds as regulated by the Kansas noxious weed law, the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs, and factors influencing the introduction, spread, and population dynamics of those pest weeds.

(B) Each examination for regulated pest control applicators shall test the applicant's practical knowledge of federally regulated and state-regulated pests, applicable laws relating to quarantine and other regulations regarding pests, the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs, and factors influencing the introduction, spread, and population dynamics of relevant pests.

(10) Demonstration and research pest control. Each examination for demonstration and research pest control applicators shall test the applicant's practical knowledge of the many different pest problems encountered in the course of activities associated with demonstration, field research and method improvement work, pesticide-organism interactions, and the importance of integrating pesticide use with control methods. Each appli-

cator shall meet the examination requirements for application in the other categories that are applicable to the applicator's particular activity.

(c) A grade of at least 75% correct answers shall be required to pass each commercial applicator examination. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2006 Supp. 2-2443a and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1985; amended, T-87-39, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 1, 1989; amended Feb. 29, 2008.)

4-13-14. Private applicator examination.

Initial examinations for certified private applicators shall be taken in the presence of a representative of the Kansas department of agriculture or the Kansas state university extension service. Each applicant for this certification shall be required to answer at least 75% of the questions correctly to pass the examination.

Examinations for private applicator certification shall test the applicant's knowledge in those subject areas specified in K.S.A. 2-2445, and amendments thereto, involving pest control practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified applicator of restricted pesticides. Each applicant shall be tested to determine the applicant's ability to meet the following requirements:

(a) Recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide applied, pest or pests to be controlled, timing and methods of application, safety precautions, any preharvest reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination;

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident; and

(f) understand federal and state supervisory requirements, including labeling, that must be

met by a certified private applicator in supervising the non-certified application of restricted pesticides. These supervisory requirements shall include verifiable instruction of the applicator, availability during application, and any added restrictions that may be imposed for specific pesticides through labeling. These restrictions may include the required physical presence of the supervising applicator during the application. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1988; amended Feb. 5, 2010.)

4-13-15. Certificates and pocket cards. A certificate and pocket card shall be issued to each certified person upon satisfactory completion of the requirements for certification. Such certificate and pocket card shall show the applicator's name, type of certificate issued, the category of issuance including subcategory, if any, the expiration date of the certification and other pertinent information. The certified applicator shall produce such certificate or pocket card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary. (Authorized by K.S.A. 1989 Supp. 2-2467a; implementing K.S.A. 2-2441a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended June 4, 1990.)

4-13-16. Supervision of uncertified applicators. (a) An uncertified commercial applicator of any pesticide and an uncertified private applicator of restricted-use pesticides shall be considered to be under the supervision of a certified applicator if the certified applicator has provided the uncertified applicator with instructions in the handling and application of the pesticide being used.

(b) The certified applicator shall be available to the uncertified applicator by telephone, two-way radio, or other comparable means of communication when the pesticide is being applied.

(c) The certified applicator shall be physically present if that person's presence is required by the pesticide label.

(d) The certified applicator shall verify that the requirements of this regulation were met when requested to do so by the secretary or the secretary's authorized representative.

(e) An uncertified applicator of pesticides, including registered pest control technicians, shall

be considered to be under the supervision of a certified commercial applicator only if both individuals are stationed at and work from the same business address. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2441a, as amended by L. 2009, Ch. 128, §16; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended Feb. 5, 2010.)

4-13-17. Report of address change by certified applicators. Each certified commercial applicator shall notify the secretary of any change in that applicator's mailing address within 30 days of the change. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

4-13-18. Disposal of pesticides and containers. Any amount of unused pesticide and each empty pesticide container shall be stored in the same manner as the pesticide involved until the unused pesticide or empty container is disposed of in a manner consistent with technology current at the time of disposal. Questions regarding the latest technology shall be submitted to any of the following: (a) The Kansas department of agriculture;

(b) Kansas state university extension service;

(c) Kansas department of health and environment; or

(d) the United States environmental protection agency. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

4-13-19. Marking of aircraft. Each pesticide business licensed in category one (1) which uses aircraft to apply pesticides shall identify each aircraft with a decal furnished by the secretary. Decals shall not be issued until all licensing requirements have been satisfied. Decals shall not be transferable. For fixed wing aircraft, the decal shall be affixed to and prominently displayed on the left rear portion of the cockpit or the canopy or on the left rear portion of the fuselage near the rear of the cockpit or canopy. For rotorcraft, the decal shall be affixed to and prominently displayed on the left side of the aircraft but not on the tail rotor. (Authorized by K.S.A. 1980 Supp. 2-2467a; implementing K.S.A. 1980 Supp. 2-2456; effective May 1, 1981.)

4-13-20. Pesticide business license, renewal, and uncertified commercial applicator fees. The application fee for a pesticide business license or for the renewal of a pesticide business license shall be \$140.00 for each category in which the applicant applies for a pesticide business license or renewal of that license. An additional fee of \$15.00 for each uncertified commercial applicator employed by the applicant to apply pesticides shall also be paid. This regulation shall apply to all pesticide business licenses, or renewals of these licenses, that will be effective through June 30, 2015, regardless of when the application is received by the agency.

The \$140.00 pesticide business license fee shall revert to \$112.00 on and after July 1, 2015, unless this date is modified by statute. The \$15.00 uncertified commercial applicator shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-21. Government agency registration and renewal fees. The application fee for a government agency registration shall be \$50.00. This regulation shall apply to all government agency registrations, or renewals of these registrations, effective through June 30, 2015, regardless of when the agency receives the application. The \$50.00 government agency registration fee shall revert to \$35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-22. (Authorized by K.S.A. 2006 Supp. 2-2441a and K.S.A. 2-2467a; implementing K.S.A. 2006 Supp. 2-2441a; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; revoked Feb. 5, 2010.)

4-13-23. Examination fees. The examination fee for a commercial applicator's certificate shall be \$45.00 through June 30, 2015, for each category, subcategory, and general core examination taken. The fee shall also apply if the applicant seeks reexamination. The \$45.00 examination fee shall revert to \$35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-24. Certified private applicator's certificate fee. The certified private applicator's certificate fee shall be \$25.00. This regulation shall apply to certified private applicator certificates that will be effective through June 30, 2015, regardless of when the department receives the application. The \$25.00 certified private applicator's certificate fee shall revert to \$10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-25. Bulk pesticide storage and handling of pesticides; definitions. As used in K.A.R. 4-13-25 through 4-13-25m, the following terms shall be defined as follows:

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container. "Dispensing device" shall include any device that is used to transfer bulk pesticides into or out of a container.

(b) "Bulk pesticide" means any pesticide, whether liquid or solid, that is kept at ambient temperature and pressure and is stored, loaded, or unloaded in an individual container of undivided capacity in quantities identified in K.A.R. 4-13-25b.

(c) "Bulk pesticide container" means any receptacle or device in which a pesticide is stored, mixed, treated, disposed of, or handled in any manner in quantities greater than 55 gallons liq-

uid measure or quantities greater than 100 pounds net dry weight.

(d) "Bulk pesticide storage facility" and "facility" mean any warehouse, loading pad, or other area where a bulk pesticide is stored, mixed, loaded, or unloaded, unless otherwise exempted. Each bulk pesticide storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of finding the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25m.

(e) "Chemically compatible" means that the material will not react chemically adversely or electrolytically adversely to the bulk pesticide being stored, loaded, unloaded, mixed, or handled.

(f) "Discharge" means any spilling, leaking, depositing, pumping, dumping, or emptying, whether accidental or intentional, resulting in the release of a pesticide or material containing a pesticide at a bulk pesticide storage facility. "Discharge" shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, disposing, or application of a pesticide. This term shall also exclude the normal washing and rinsing activities on a mixing and loading pad.

(g) "Dry bulk pesticide" means any bulk pesticide that is in solid form before any end-use application or before any mixing for end-use application. This term shall include making formulations including dusts, powders, and granules.

(h) "End-use application" means the application of a pesticide by the owner or lessee of the real property upon which the application is made to control a pest covered by the pesticide label.

(i) "Flood plain" means an area at one percent or greater risk of flood occurrence in any given year.

(j) "Gallon" means the United States standard measure of a gallon.

(k) "Liquid bulk pesticide" means any bulk pesticide in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels.

(l) "Mixing and loading pad" and "pad" mean a surface designed to provide containment of a pesticide during the loading, unloading, mixing, or handling of a pesticide, or during the cleaning, rinsing, or refilling of a pesticide container.

(m) "Mobile container" means a bulk pesticide container that is designed and used for transporting bulk pesticides.

(n) "Owner or operator" shall include any agent or employee of an owner or operator and mean any of the following:

(1) A pesticide dealer as defined by K.S.A. 2-2438a(q) and amendments thereto;

(2) a pesticide business licensee as defined by K.S.A. 2-2438a(p) and amendments thereto;

(3) a government agency registrant as addressed in K.S.A. 2-2440(e) and amendments thereto;

(4) a certified private applicator, as defined by K.S.A. 2-2438a(c)(2) and amendments thereto, of a bulk pesticide storage facility; or

(5) any other person, as defined by K.S.A. 2-2438a(l) and amendments thereto, responsible for the storage of bulk pesticides as defined by subsection (b).

(o) "Permanent cessation of operations" means either of the following:

(1) No pesticides have been loaded, unloaded, or stored at the facility for 12 consecutive months.

(2) The facility has gone out of business and is no longer a going concern.

(p) "Reasonably foreseeable" means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. "Reasonable foreseeability" shall include consideration of the owner's or operator's knowledge of conditions at the time the condition was created or the decision was made.

(q) "Secondary containment" means any structure, tank, or container, including rigid diking, that is designed, constructed, and maintained to intercept, hold, contain, or confine a discharge from a bulk pesticide container and to contain spills, prevent runoff, and avoid leaching.

(r) "Static pressure" means the pressure exerted by a fluid that is not flowing or moving.

(s) "Sump" means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment that constitutes the loading pad. (Authorized by and implementing K.S.A. 2-2467a; effective May 1, 1985; amended Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25a. Exemptions. (a) The regulations found in K.A.R. 4-13-25 through K.A.R. 4-13-25k shall not apply to any of the following:

(1) A mobile container of 350-gallon capacity or less, if the use of the container is solely incidental to the end-use application of the bulk pesticide and if the container is not at a specific location for

more than 60 days of storage in any consecutive 365-day period;

(2) a sealed or an unopened pesticide manufacturer's storage container being loaded or unloaded;

(3) a railcar in which the storage of bulk pesticides is solely incidental to the transportation of the pesticide and that remains on a train track; or

(4) a bulk pesticide stored, loaded, or unloaded in quantities less than all the quantities specified in K.A.R. 4-13-25b.

(b) The owner or operator of a facility shall have the burden of establishing the applicability of an exemption under paragraph (a)(4) of this regulation.

(c) Contemporaneously kept records maintained pursuant to K.A.R. 4-13-25k shall constitute prima facie evidence of an exemption. (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002.)

4-13-25b. Quantities of bulk pesticide. A facility shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k if any of the following conditions is met:

(a) A cumulative total of 1,000 gallons or more of liquid bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(b) A total of 1,000 gallons or more of liquid bulk pesticide is stored, held, or maintained at the facility at any time.

(c) A cumulative total of 3,000 pounds or more of dry bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(d) A total of 3,000 pounds or more of dry bulk pesticide is stored, held, or maintained at the facility at any time. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25c. Location, design, and construction requirements of a bulk pesticide storage facility. Each owner or operator shall meet the following requirements: (a)(1) Each bulk pesticide storage facility shall be designed, constructed, and maintained according to the pesticide manufacturers' directions, instructions, or recommendations. The facility shall be constructed of materials that contain spills, prevent runoff, and avoid leaching of the pesticide being mixed, loaded, or unloaded. Construction materials shall be chemically compatible with the pesticides that come in contact with the material.

(2) Each bulk pesticide storage facility shall be designed, constructed, and maintained to accom-

modate all reasonably foreseeable loading and unloading conditions, including the anticipated wheel load of a vehicle, and to protect appurtenances and bulk pesticide containers against damage from operating personnel and moving equipment through the use of flexible connections, guard rails, barriers, and protective cages, where necessary.

(3) Asphalt shall not be used as a material in the construction of a bulk pesticide storage facility.

(b) No bulk pesticide storage facility shall be constructed or maintained in a flood plain unless the bulk pesticide is stored above the base flood elevation.

(c) The floor of each bulk pesticide storage facility shall be constructed of material that prevents the movement of pesticide materials and moisture through the floor and shall be designed, constructed, and maintained in a manner that allows discharges to be collected, contained, and recovered.

(d) All electrical equipment and wiring shall be elevated to prevent the equipment and wiring from becoming submerged and shall be grounded to dissipate static electricity.

(e) Both private and public water supplies shall be protected from contamination from the bulk pesticide storage facility.

(f) Each bulk pesticide storage facility shall contain a mixing and loading pad.

(g) Each bulk pesticide storage facility shall be secured to protect against reasonably foreseeable unauthorized access that could result in a discharge.

(h) Each bulk pesticide storage facility shall be designed, constructed, and maintained to prevent contact of any dry bulk pesticide with precipitation. Contact with precipitation shall be prevented by the following:

(1) Using a permanent cover; and

(2) placing dry bulk pesticide on pallets or a raised concrete platform enclosed by a curb that is at least six inches high and extends at least two feet beyond the perimeter of the dry bulk pesticide storage area.

(i) Each bulk pesticide storage facility shall be designed, constructed, and maintained to avoid the creation of pesticide waste and to prevent cross-contamination of pesticides.

(j) Bulk pesticides shall not be stored or mixed in underground containers. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25d. Secondary containment for bulk pesticide storage. Each owner or operator shall meet the following requirements: (a) All bulk pesticide shall be stored within secondary containment. The secondary containment capacity shall be at least 110 percent of the capacity of the largest single bulk pesticide container in addition to the displacement of tanks, appurtenances, fixtures, equipment, and material located within the secondary containment.

(b) The secondary containment, including the floor or bottom of the secondary containment, shall meet the following requirements:

(1) Be constructed of steel, reinforced concrete, or any other material of sufficient thickness, density, and composition to contain any discharged pesticide material;

(2) be leakproof with cracks, seams, and joints sealed; and

(3) for liquids, be capable of withstanding the static pressure resulting from the secondary containment being completely filled with a liquid having a density greater than or equal to the density of the most dense liquid bulk pesticide to be stored within the containment.

(c) A soil liner shall not be considered adequate for the secondary containment of pesticides. Masonry block, asphalt, earthen materials, unfired or fired clay, clay, natural soil-clay mixtures, clay-bentonite mixtures, and prefabricated bentonite liners shall not be deemed to be of appropriate density and composition to contain discharged pesticide material and shall not be used as secondary containment. Sealant-coated concrete blocks may be used if the facility owner's or operator's use of the blocks is approved in writing by the manufacturer of the pesticide.

(d) The floor of the secondary containment shall drain to a sump or other specific point of recovery.

(e) The sump or other specific point of recovery shall be emptied daily in accordance with K.A.R. 4-13-25g(a) by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container.

(f) No outlet, drain, or other means of penetration shall be located through the floor, bottom, or walls of the secondary containment.

(g) Secondary containment shall be constructed to allow the interior and exterior of the walls to be viewed.

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the liner manufacturer's requirements. In no event shall a liner that is incapable of containing bulk pesticides independent of the support of another container be used in lieu of secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25e. Requirements for mixing and loading pads for bulk pesticides. Each owner or operator shall meet the following requirements: (a) Each mixing and loading pad not connected to a storage area shall be of adequate size and design to contain at least 110 percent of the capacity of the container or tank on the pad and the displacement of tanks, equipment, appurtenances, fixtures, and material located on the pad.

(b) Each mixing and loading pad shall be constructed to contain any discharge and shall be leakproof with all cracks, seams, and joints sealed. The pad shall be impervious to spills and capable of supporting the weight of the heaviest vehicle plus all loading, unloading, and mixing operations. The floor of the mixing and loading pad shall slope to a single point or to a sump, for the recovery of liquid spills.

(c) The sump shall be emptied daily by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(d) The following activities conducted at the facility shall be performed on the mixing and loading pad or within secondary containment:

- (1) Filling pesticide containers;
- (2) washing application equipment;

(3) rinsing pesticide containers or application equipment;

(4) mixing operations; and

(5) loading application equipment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25f. Requirements for bulk pesticide containers and appurtenances. Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container could be subject during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

(b) Each bulk pesticide container connection, except for safety relief connections, shall be equipped with a shutoff valve accessible and located within the secondary containment.

(c) Except while the stored pesticide is being removed from the container, shutoff valves shall be left either closed and locked or otherwise secured from access. The transfer of pesticide from one bulk pesticide container to another and between a bulk pesticide container and a transport vehicle shall be attended at all times by an on-site operator.

(d) Bulk pesticide containers and appurtenances shall be supported to prevent sagging.

(e) Sight gauges shall not be used on bulk pesticide containers.

(f) Each bulk pesticide container that is not located within a structure with a roof and walls shall be designed, installed, and maintained to prevent flotation and to withstand winds of 90 miles per hour or less.

(g) Each bulk pesticide container shall be designed to protect against excessive internal pressure or vacuum.

(h) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25g. Discharge, recovery, and reporting requirements. (a) Each owner or op-

erator shall recover promptly any discharge. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label or labeling. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(b) The owner or operator shall notify the secretary within 48 hours of any discharge not contained by secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25h. Submission of diagrams, plans, and specifications. (a) The owner or operator of each bulk pesticide storage facility shall maintain diagrams, plans, and specifications of the facility on site and with the secretary. The copy maintained at the facility shall be made available to a representative of the secretary upon request.

(b)(1) Each owner or operator of a bulk pesticide storage facility that is to be remodeled, an existing structure that is to be converted to use as a bulk pesticide storage facility, or a proposed bulk pesticide storage facility shall submit diagrams, plans, and specifications to the secretary before commencement of remodeling, conversion, or construction. Remodeling, conversion, or construction shall not commence until the owner or operator receives written notice from the secretary that no further information is required.

(2) The owner or operator of each facility under this subsection shall complete remodeling, conversion, or construction within two years after the secretary's written notice that no additional information is required. Upon completion of the remodel, conversion, or construction, the owner or operator of a facility under this subsection shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary.

(c) The diagrams, plans, and specifications shall include the facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagrams shall be drawn to scale and shall be legible without magnification. The diagrams, plans, and specifications shall contain all information required in subsection (d).

(d) The diagrams, plans, and specifications of the bulk pesticide storage facility shall be submitted with the form prescribed by the secretary. The required documentation shall include, at a minimum, the following information:

(1) The location of the facility relative to the flood plain;

(2) the location of the facility relative to any surface water within 1,320 feet of the facility and the distance between the facility and the surface water;

(3) the distance from both the facility and the area within 100 feet of the facility to groundwater, and the location of the groundwater relative to the facility;

(4) the location of any plumbing and access to private and public water supplies and the distance from the plumbing and access to the private and public water supplies;

(5) the drainage pattern of the facility;

(6) certification that the facility is not located on any abandoned or active oil, gas, or water well;

(7) certification that the facility is not located on a utility easement;

(8) the size and location of the proposed walls and flooring to be located within the facility;

(9) the location and size of each bulk pesticide storage container;

(10) the location and size of each loading and mixing pad;

(11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;

(12) the location of electrical equipment, wiring, and static grounding wires;

(13) the location and size of dry bulk pesticide storage; and

(14) any other relevant information required by the secretary.

(e) Each owner or operator of a bulk pesticide storage facility shall submit the diagrams, plans, and specifications required in this regulation to the secretary at least 30 days before the date the owner or operator proposes that the construction will commence.

(f) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time requested. Each request shall state the reason for the additional time requested and the amount of additional time needed.

(g) The construction, remodeling, conversion, and maintenance of a facility shall conform with

the diagrams, plans, and specifications submitted and required by K.A.R. 4-13-25a through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25i. (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002; revoked Sept. 3, 2010.)

4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements.

(a) Each owner or operator shall inspect the bulk pesticide storage facility and secondary containment, including all appurtenances, at least monthly for any defects, including the following:

- (1) Corrosion;
- (2) leaks;
- (3) cracks;
- (4) spills;
- (5) gaps;
- (6) tears;
- (7) unsealed joints;
- (8) cross-contamination of pesticides;
- (9) structural defects;
- (10) equipment defects; and

(11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through K.A.R. 4-13-25k.

The owner or operator shall promptly correct any defect.

(b) Upon the discovery of each defect or potential violation specified in subsection (a) that compromises the facility's ability to contain the pesticide, the owner or operator shall, within 24 hours after the discovery, either initiate repairs to correct the defect or take the appurtenance or secondary containment out of service. If the appurtenance or secondary containment is left in service, the defect or potential violation shall be corrected within 14 days following the discovery. If the defect or potential violation is not corrected within 14 days following the discovery, the appurtenance or secondary containment shall be removed from service.

(c) The owner or operator shall make a record of the following:

- (1) Each inspection performed pursuant to subsection (a);
- (2) each discharge within the facility in excess of 55 gallons; and
- (3) more than one discharge within the facility in a 24-hour period totaling or exceeding 55 gallons.

- (d) Each record made pursuant to subsection (c) shall include the following:
 - (1) The name of the person making the record;
 - (2) the date the record was made;
 - (3) if any inspection is performed, the following:
 - (A) The date of the inspection;
 - (B) a description of any defect found; and
 - (C) a description of any repairs made to remedy the defect;
 - (4) if a discharge occurred, the following:
 - (A) The date of the discharge;
 - (B) the amount of the discharge;
 - (C) the cause of the discharge;
 - (D) a description of any repairs made; and
 - (E) the date and time the secretary was notified pursuant to K.A.R. 5-13-25g;
 - (5) the date any defective equipment at the facility is taken out of service; and
 - (6) the date any defective equipment is placed back into service.

(e) All records maintained at the facility shall be retained for three years from the date of the record and shall be made available to the secretary or an authorized representative of the secretary upon request. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25k. Site closure and discontinuation of operation. (a) The owner or operator shall notify the secretary within 30 calendar days following the permanent cessation of operations of a bulk pesticide storage facility.

(b) Whenever a bulk pesticide storage facility permanently ceases operations, the owner or operator shall provide the secretary with written verification of both of the following, on a form prescribed by the secretary:

(1) All pesticides, solutions containing a pesticide, wash waters, and other materials that may contain pesticides have been removed from the facility and have been used or disposed of according to the pesticide's label or labeling and according to all federal, state, and local requirements.

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions, directions, or recommendations or, if none exist, according to standard industry practice. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25l. Penalty for noncompliance with pesticide containment. (a) The license, certification, or registration of any pesticide business licensee, governmental agency registrant, pesticide dealer, or certified private applicator who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25a through 4-13-25k shall be subject to suspension, revocation, nonrenewal, or cancellation.

(b) Any pesticide business licensee or pesticide dealer who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25 through 4-13-25k may incur a civil penalty in accordance with K.A.R. 4-13-62.

(c) Enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall be conducted in accordance with the provisions of the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by K.S.A. 2009 Supp. 2-2449 and K.S.A. 2-2467a; implementing K.S.A. 2-2440e, K.S.A. 2009 Supp. 2-2449, K.S.A. 2-2453, 2-2454, and 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25m. Change in owner or operator of bulk pesticide storage facility; reporting requirements. (a) If the owner or operator of a bulk pesticide storage facility changes, the new owner or operator shall notify the secretary of the change within 30 days after the effective date of the change, on a form prescribed by the secretary.

(b) The new owner or operator shall meet one of the following requirements:

(1) Submit to the secretary the diagram, plans, and specifications of the bulk pesticide storage facility required by K.A.R. 4-13-25h; or

(2)(A) State on the notification form that the owner or operator has reviewed the existing diagrams, plans, and specifications maintained by the secretary;

(B) certify that the bulk pesticide storage facility remains consistent with those existing diagrams, plans, and specifications; and

(C) certify that the bulk pesticide storage facility has been constructed, remodeled, or converted and is maintained and operated in accordance with K.A.R. 4-13-25 through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Sept. 3, 2010.)

4-13-26. Preconstruction application of pesticide for termite control. In addition to the requirements of the label, each preconstruction

application of pesticide for the control of termites shall consist of establishing both horizontal and vertical chemical barriers, as specified in this regulation. (a) Horizontal chemical barriers shall be established in areas intended to be covered, including the soil beneath slab floors and porches, footing trenches for monolithic slabs, and the soil beneath stairs.

(b) Vertical chemical barriers shall be established in the soil around the base of foundations, plumbing fixtures, foundation walls, support piers, and voids in masonry, and any other critical areas where structural components extend below grade. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2471; effective March 26, 1990; amended July 18, 2003.)

4-13-27. Certificate of liability insurance.

Each applicant for a pesticide business license shall provide the secretary with a certificate of liability insurance which shall contain the following information:

(a) the name of the insured pesticide business licensee;

(b) the name of the insurance company which issued the policy;

(c) the effective date of the policy;

(d) the expiration date of the policy; and

(e) the policy number.

If a surety bond is furnished in lieu of a certificate of liability insurance, the bond shall be executed on a form provided by the secretary and shall comply with the provisions of K.A.R. 4-13-8. (Authorized by K.S.A. 1988 Supp. 2-2467a as amended by L. 1989, Ch. 6, §16; implementing K.S.A. 2-2448 as amended by L. 1989, Ch. 6, §17; effective March 26, 1990.)

4-13-28. Target pests which are not specified on the pesticide's label or labeling. Any pesticide may be applied for the purpose of controlling a pest which is not specified on the pesticide's label or labeling provided that: (a)(1) the pesticide's label or labeling authorizes application of the pesticide to the same crop, animal or site requiring application;

(2) the pest to be controlled belongs to the same general group of pests intended to be controlled by the pesticide to be applied;

(3) the pesticide's label or labeling does not specifically prohibit its application to the target pest to be controlled, or to the crop, animal or site to which the pesticide is to be applied; and

(3) the pesticide's label or labeling does not specifically prohibit its application to the target pest to be controlled, or to the crop, animal or site to which the pesticide is to be applied; and

(4) the application of the pesticide to the target pest, or to the crop, animal or site, has not been prohibited by rules and regulations promulgated by the secretary.

(b) Each pesticide which is applied in accordance with the provisions of subsection (a) of this regulation shall be deemed not to cause any unreasonable adverse effects on the environment, nor to endanger the health, safety or welfare of the citizens of this state. (Authorized by K.S.A. 1990 Supp. 2-2467a; implementing K.S.A. 1990 Supp. 2-2470 and 2-2471; effective Oct. 21, 1991.)

4-13-29. General use pesticides for household application or use for the purpose of pesticide dealer registrations. General use pesticide products sold for household application or use shall include only those ready-to-use general use pesticide products which:

(a) are to be applied undiluted, in accordance with use instructions shown on the pesticide's label; and

(b) are to be applied by homeowners or occupants to control pests in and around the family dwelling and associated structures. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 1985 Supp. 2-2469; effective May 1, 1987.)

4-13-30. Dealer recordkeeping requirements. (a) Each pesticide dealer shall maintain records of all restricted-use pesticide products sold or otherwise conveyed. These records shall be made available during reasonable business hours to the secretary or the secretary's authorized representative for purposes of inspection and copying. Each record required by this regulation shall be kept for at least two years after the date of the sale or conveyance.

(b) The records specified in subsection (a) shall contain the following information:

(1) The name of each person to whom the restricted-use pesticide product has been sold or conveyed, as verified by the person's presentation of a federal or state government-issued identification card;

(2) the address of either the residence or principal place of business of each person to whom the restricted-use pesticide product has been sold or conveyed;

(3) the name and address of either the residence or principal place of business of the individual to whom the restricted-use pesticide

product has been delivered or conveyed, if different from the purchaser;

(4) the certification number of the applicator's certificate;

(5) the name of the state issuing the certificate;

(6) the expiration date of the certificate;

(7) if the applicator is a certified commercial applicator of pesticides, then, if applicable, the categories and subcategories in which the applicator is certified;

(8) the registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the "special local need" state registration number of the restricted-use pesticide product;

(9) the quantity of the restricted-use pesticide product sold or conveyed; and

(10) the date of the transaction.

(c) If the pesticide dealer makes a restricted-use pesticide product available to an uncertified person for use by a certified applicator, then the following records shall be kept in addition to those required in subsection (a):

(1) The name of the uncertified person to whom the restricted-use pesticide product has been made available, as verified by the uncertified person's presentation of a federal or state government-issued identification card;

(2) the address of either the residence or principal place of business of the uncertified person to whom the restricted-use pesticide product has been made available;

(3) the name of the certified applicator who will use the restricted-use pesticide product; and

(4) the address of either the residence or principal place of business of the certified applicator who will use the restricted-use pesticide product.

(d) Each pesticide dealer shall submit an annual report for each restricted-use pesticide product that the dealer has sold or otherwise conveyed. The report shall include the following:

(1) The registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the "special local need" state registration number of the restricted-use pesticide product; and

(2) the quantity of the restricted-use pesticide product sold or otherwise conveyed. (Authorized by and implementing K.S.A. 2-2467a; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended May 1, 1987; amended Feb. 5, 2010.)

4-13-31. Certificates of registration. Each pesticide dealer shall display that dealer's current certificate of registration in a prominent location which can be seen by the general public. (Authorized by K.S.A. 2-2467a; implementing L. 1985, Ch. 12, section 2; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986.)

4-13-32. Report of address change by pesticide dealers. Each pesticide dealer shall notify the secretary of any change in its business address or business name by the tenth day of the month following the month in which the change occurred. (Authorized by K.S.A. 2-2467a; implementing L. 1985, Ch. 12, section 2; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986.)

4-13-33. Pest control technician registration and renewal fees. The application fee for a pest control technician registration or for the renewal of a pest control technician registration shall be \$40.00. Each fee paid by the applicant pursuant to K.A.R. 4-13-9 shall be applied toward payment of the fee required by this regulation. This regulation shall apply to all pest control technician registrations, or renewals of these registrations, that will be effective through June 30, 2015, regardless of when the department receives the application. The \$40.00 pest control technician registration fee shall revert to \$25.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13; effective, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-34. Verification of training of registered pest control technicians. (a) Each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of these pests shall maintain records to verify that each registered pest control technician employed by such business licensee has received the required training in each appropriate category of pest control. These training records shall contain the following information for each training session:

(a) The typed or printed name of the trainee;

(b) the subject matter covered;

(c) type of training, classroom or on-the-job;

(d) the date on which the training occurred;

(e) the duration of the training in hours;

(f) the signature of the trainee; and

(g) the signature of the authorized officer or representative of the pesticide business licensee who administered the training.

(b) This regulation shall be in force and effect from and after January 1, 1989. (Authorized by K.S.A. 1987 Supp. 2-2467a; implementing K.S.A. 1987 Supp. 2-2440c as amended by L. 1988, ch. 7, § 4; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989.)

4-13-35. Registered pest control technician identification cards. (a) The secretary shall issue an identification card to each registered pest control technician upon satisfactory completion of the requirements for registration. This identification card shall show the registered technician's typed name and signature, the category or subcategory for which the registration has been issued, the name of the business licensee employing the registered technician, the date on which the identification card was issued, and the expiration date of the registration. The registered pest control technician shall have this identification card in the technician's possession when applying any pesticide for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of these pests or when supervising the application of any general use pesticide. The technician shall produce this identification card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary. This regulation does not authorize any registered pest control technician to supervise the use of, or to apply, any restricted use pesticide unless the application is supervised by a commercial applicator who is certified to apply restricted use pesticides for the control of pests in the category or subcategory for which the pesticide application is made.

(b) This regulation shall be in force and effect from and after January 1, 1989. (Authorized by K.S.A. 1987 Supp. 2-2467a; implementing K.S.A. 1987 Supp. 2-2440b as amended by L. 1988, Ch. 7, § 3; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989.)

4-13-36. Training of registered pest control technicians in wood destroying pest

control and structural pest control. (a) All applicants for pest control technician registration in wood destroying pest control or structural pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides in and around structures, and 10 hours of which must be classroom instruction.

(b) Classroom instruction shall include the following:

(1) The proper use and maintenance of equipment, including calibration, "crack and crevice" and "spot" application, and other application techniques;

(2) the potential dangers involved in applying the pesticides, including:

(A) hazards to the applicator resulting from mixing, loading and applying pesticides, poisoning prevention, symptoms and first aid for pesticide poisoning;

(B) hazards to the occupants of the structures where pesticides are applied with particular emphasis on children, the aged and infirm;

(C) procedures for preventing pesticide contamination of food, groundwater, wells and cisterns, and the air within the structure being treated;

(D) label review and basic information about each pesticide used for control of wood destroying pests or structural pests, including common names of the pesticides, where and how each pesticide may be applied, and the kinds of pests controlled;

(E) basic information about prevention and cleanup of spills; and

(F) the use of non-chemical means to control wood destroying and structural pests;

(3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment;

(4) identification of common pests to be controlled and damages caused by such pests as subterranean termites, carpenter ants, wood decaying fungi, German, American and oriental cockroaches, silverfish, fleas, ticks, spiders, pantry pests, house mice, field mice, and Norway rats, the basic characteristics and habits of these pests and conditions that favor structural infestation by these pests;

(5) protective clothing and equipment, including the use and maintenance of rubber gloves and respirators;

(6) general precautions to be followed in the storage and disposal of pesticide containers and

rinsate, as well as the cleaning and decontamination of equipment;

(7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including but not limited to following label directions, direct supervision, information required on statements of services, and termite control application procedures; and

(8) basic information regarding elements of construction likely to be encountered including, heating and plumbing systems and such terms as footing, foundation wall, wall voids, sill plate, joists, subfloor, and slab-on-grade. (Authorized by K.S.A. 2-2467a, implementing K.S.A. 2-2440a; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Jan. 1, 1989; amended Jan. 25, 1993.)

4-13-37. Renewal of pest control technician registration. A pest control technician's registration may be renewed for a succeeding one-year period by paying the fees prescribed by law, completing the renewal application form provided by the secretary, and completing successfully six hours of classroom training in approved subjects during the effective period of the technician's registration. This training may be conducted by the pesticide business licensee, or in the alternative, the pest control technician may attend a training course approved by the secretary. The pesticide business licensee shall verify and maintain records to support the verification that each pest control technician it employs has satisfactorily completed the training required for renewal. (Authorized by K.S.A. 2-2467a, as amended by L. 1987, Ch. 12, § 5; implementing L. 1987, Ch. 12, § 4; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988.)

4-13-38. Training of registered pest control technicians in ornamental pest control, turf pest control and interior landscape pest control. (a) All applicants for pest control technician registration in ornamental pest control, turf pest control or interior landscape pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides for the control of ornamental pests, turf pests or interior landscape pests as appropriate, and 10 hours of which must be classroom instruction.

(b) Classroom instruction shall include the following:

(1) The proper use and maintenance of equipment, including calibration.

(2) the hazards that may be involved in applying the pesticides, including:

(A) The effect of drift of the pesticides on adjacent and nearby property and on nontarget organisms, and methods for preventing drift;

(B) the proper weather conditions for the application of pesticides and the precautions to be taken;

(C) procedures for preventing pesticide contamination of groundwater, wells and cisterns, surface water, soil, or the air within a structure;

(D) the effect of the pesticides on humans, plants or animals in the area, including the possibility of damage to plants or animals or the possibility of undesirable or illegal residues resulting on them;

(E) the effect of the application of pesticides on wildlife in the area, including aquatic life;

(F) the possibility of contamination of water or injury to persons, pets or desirable vegetation;

(G) hazards to the applicator resulting from mixing, loading and applying pesticides;

(H) poisoning prevention, symptoms and first aid for pesticide poisoning;

(I) label review and basic information about each pesticide used, including common names of the pesticides, where and how each pesticide may be applied, and the kinds of pests controlled;

(J) basic information about prevention and cleanup of spills; and

(K) basic information about beneficial insects and the use of non-chemical means to control ornamental pests, turf pests and interior landscape pests;

(3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment.

(4) identification of common pests to be controlled and damages caused by such pests, as listed below, and the basic characteristics and habits of these pests.

(A) For registered pest control technicians in the field of ornamental pest control, common pests shall include but not be limited to: bagworms, cankerworms, elm leaf beetles, aphids, spider mites, galls and gall-producing insects and diseases, flatheaded and roundheaded wood boring beetles, scale insects, cedar-apple rust, anthracnose and powdery mildew.

(B) For registered pest control technicians in the field of turf pest control, common pests shall include but not be limited to: sod webworms, chinch bugs, white grubs, sowbugs, broadleaf weeds such as dandelion, chickweed, and henbit, grasses such as crabgrass, foxtail and annual blue-

grass, *Helminthosporium* leaf spot, *Pythium* and *Fusarium* blights, moles and gophers.

(C) For registered pest control technicians in the field of interior landscape control, common pests shall include but not be limited to: whiteflies, mealybugs, scale insects, spider mites, aphids, fungus gnats, snails and slugs, ants, sowbugs, thrips, damping-off, botrytis blight and powdery mildew;

(5) protective clothing and equipment, including the use and maintenance of rubber gloves and boots, rainsuits and respirators.

(6) general precautions to be followed in the storage and disposal of pesticide containers and rinsate, as well as the cleaning and decontamination of equipment.

(7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including following label directions, direct supervision and information required on statements of services. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440a; effective Jan. 1, 1989; amended Jan. 25, 1993.)

4-13-40. Types of hearings. (a) A conference adjudicative hearing may be used for the following types of action:

(1) Suspension or revocation of a pesticide business license for the licensee's failure to maintain acceptable insurance or bond continuously during the licensing period as required by K.S.A. 2-2448, and amendments thereto;

(2) suspension or revocation of the pesticide business license or governmental registration for the licensee's failure to employ a certified commercial applicator for each category of business operations in which a license has been issued;

(3) suspension of a pesticide business license, governmental registration, or applicator's certificate, whether commercial or private, that has been issued when fees were paid by an insufficient fund check;

(4) suspension or revocation of a pesticide business license, governmental agency registration, or any certificate for multiple or repeated violations of the Kansas pesticide law or of the implementing regulations, if no material issue of fact is involved; and

(5) any other instances designated in K.S.A. 77-533, and amendments thereto.

Nothing in this subsection shall prohibit the conversion of another type of hearing to a conference adjudicative hearing. Conversion procedures

shall conform with K.S.A. 77-506, and amendments thereto.

(b) The summary adjudicative hearing may be used for the following types of action:

(1) A reprimand, warning, or disciplinary report pertaining to a violation of the Kansas pesticide law or any implementing regulation;

(2) any matter that can be resolved solely on the basis of inspections, examinations, or tests made by the agency or its personnel; and

(3) assessment of civil penalties pertaining to a violation of the Kansas pesticide law or any implementing regulation.

All other hearings, except emergency adjudicative hearings or hearings that have been initiated as or converted to conference adjudicative hearings or summary adjudicative hearings, shall be formal adjudicative hearings as defined in the Kansas administrative procedures act. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2449 and 2-2451; effective May 1, 1985; amended July 18, 2008.)

4-13-41. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2449, 2-2451, and K.S.A. 77-513, 77-537, 77-538, 77-539, 77-540, 77-541; effective May 1, 1985; amended Jan. 25, 1993; revoked July 18, 2008.)

4-13-42. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2449, 2-2451, and K.S.A. 77-513, 77-534, 77-535; effective May 1, 1985; amended Jan. 25, 1993; revoked July 18, 2008.)

4-13-60. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A statement reciting each subsection of the act authorizing the assessment of civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each violation alleged;

(d) the amount of the civil penalty to be assessed; and

(e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

4-13-61. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; revoked July 18, 2008.)

4-13-62. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of the pesticide law that results from each independent act or failure to act by any pesticide business licensee or pesticide dealer, or any agent or employee of a pesticide business licensee or pesticide dealer. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, the assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) The amount of each civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 2-2453(a) or (b) and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(2) For each violation of K.S.A. 2-2454(b), (m), (o), (r), (s), or (t) and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(3) For each violation of K.S.A. 2-2454, and amendments thereto, not covered in paragraph (b)(2), the civil penalty shall be not less than \$100 and not more than \$1,000.

(4) For each violation of K.S.A. 2-2453(c), and amendments thereto, not already covered in paragraph (b) (1), (2), or (3), the civil penalty shall be not less than \$100 and not more than \$1,000.

(c) For each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount for the category listed. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e, as amended by L. 2009, Ch. 128, §15; effective Jan. 1, 1989; amended Jan. 25, 1993; amended Feb. 5, 2010.)

4-13-63. Criteria to determine dollar amount of proposed civil penalty. In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include:

(a) The potential of the act to injure humans, pets, domestic animals, wildlife or the environment;

(b) the severity of potential injuries;

(c) the extent to which injury actually occurred;

(d) the respondent's history of compliance with state and federal pesticide laws and regulations promulgated thereunder;

(e) any action taken by respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects which were the result of the violation; and

(f) whether or not the violation involved any misrepresentation or fraud. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Jan. 25, 1993.)

4-13-64. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

4-13-65. Adjusting the amount of the civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the agency when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary when the order was issued and that relate to the gravity of the violation, the civil penalty may be reduced. If additional facts establish a respondent did not commit a violation, the order shall be amended or vacated.

(c) The burden shall be on the respondent to present evidence of any mitigating factors to support any requested reduction in the amount of the civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's designee.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by a respondent. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e; effective Jan. 1, 1989; amended Aug. 22, 1994; amended July 18, 2008.)

Article 14.—HONEYBEES

4-14-1. (Authorized by K.S.A. 2-413, 2-424; implementing K.S.A. 2-413; effective, T-83-37, Nov. 10, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

4-14-2. (Authorized by K.S.A. 2-415, 2-424; implementing K.S.A. 2-415; effective, T-83-37, Nov. 10, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

4-14-3. (Authorized by K.S.A. 2-422a, 2-424; implementing K.S.A. 2-422a; effective, T-83-37, Nov. 10, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

Article 15.—PLANTS AND PLANT PRODUCTS

4-15-1. (Authorized by K.S.A. 2-2118, 2-2126; implementing K.S.A. 2-2118; effective, T-83-25, Oct. 1, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

4-15-2. (Authorized by K.S.A. 2-2118, 2-2126; implementing K.S.A. 2-2118; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; amended July 1, 1992; revoked Oct. 18, 2002.)

4-15-3. (Authorized by K.S.A. 2-2120, 2-2126; implementing K.S.A. 2-2120; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

4-15-4. Live plant definition: exclusions. The following shall be excluded from the defini-

tion of live plant in K.S.A. 2-2113, and amendments thereto: (a) Field and forage crops;

(b) seeds of any kind;

(c) cut flowers and cut greenery not used for propagation; and

(d) fruits and vegetables used for food or feed. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2113, as amended by L. 2011, ch. 72, sec. 1; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-5. Live plant dealer license fee. The fee for a live plant dealer license shall be \$80. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2120, as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended June 5, 2009; amended, T-4-11-21-11, Nov. 21, 2011; amended March 23, 2012.)

4-15-6. Plant pest emergency response fund fee. In addition to the license fee specified in K.A.R. 4-15-5, each licensed live plant dealer shall pay a fee of \$5, which shall be deposited in the plant pest emergency response fund. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11, and K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; implementing K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; effective Oct. 18, 2002; amended March 23, 2012.)

4-15-7. Live plant dealer licensing exemptions. (a) Any live plant dealer who does not import live plants from outside the state of Kansas, does not export live plants from the state of Kansas, and has annual gross receipts from the distribution of live plants that are less than \$10,000 shall be exempt from the licensing requirements.

(b) Each live plant dealer seeking to claim the licensing exemption shall submit annually on a form furnished by the department an application specifying the applicant's basis for claiming exemption from licensing requirements. If the secretary finds that an applicant meets the criteria specified in subsection (a), the applicant shall be exempt from licensing requirements.

(c) Each live plant dealer exempt from licensing requirements shall be subject to all quarantines and the regulated nonquarantine pest freedom standards established in K.A.R. 4-15-10. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A.

2010 Supp. 2-2120, as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-8. Fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) Inspection services may be provided upon request to any person who owns or possesses live plants, plant products, bees, beekeeping equipment, or regulated articles. The person shall pay inspection fees of \$30 per hour plus mileage expenses. Inspection fees shall include hourly fees for travel time and time spent on-site.

(b) On-site hourly fees shall be calculated from the inspector's time of arrival until completion of the inspection, excluding breaks, meals, and any time not directly associated with conducting the inspection. A quarter-hour minimum shall be assessed, and the total on-site inspection time shall be rounded to the nearest quarter-hour.

(c) Hourly fees for travel time shall consist of actual driving time, excluding breaks, meals, and any time not directly associated with traveling to and from the inspection site. The total travel time shall be rounded to the nearest quarter-hour. If multiple inspections are completed at different locations, travel time shall be apportioned between inspections using the method for calculating and apportioning mileage fees specified in this regulation. If mileage fees are reduced to reflect a distance less than the distance actually travelled, travel time shall be reduced by a percentage equal to the percentage of reduction in the number of miles actually travelled.

(d) Mileage to the inspection site shall be calculated from one of the following locations as applicable on the date the inspection is conducted, whichever is less:

(1) The inspector's official station;

(2) the last location at which a requested inspection was conducted; or

(3) the last location at which the inspector incurred lodging expenses.

(e) The person for which the last requested inspection is conducted on any day shall pay mileage fees for the return trip to the inspector's official station or the location at which the inspector incurs lodging expenses, whichever is less.

(f) Mileage fees shall be calculated using the actual miles driven by the inspector or the adjusted miles if reduced pursuant to this regulation. The rate per mile shall be the private

vehicle mileage reimbursement rate fixed by the secretary of administration.

(g) Any inspection, certification, diagnostic, or identification fee may be waived if the fee would be assessed against a state or local government agency. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-9. Fees for the certification of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) If a state certificate is required for the entry of an inspected article into another state or a foreign country, the person needing certification shall pay one or more of the following, as applicable:

(1) \$20 for a certificate for a commodity or article certified for domestic shipment;

(2) \$50 for a certificate for a commodity or article certified for international shipment; or

(3) 20 cents for each bale tag provided to satisfy a weed-free forage requirement.

(b) If a federal certificate is also required for the entry of an inspected article into another state or a foreign country, the associated fee shall be added to the amount specified in subsection (a). (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended Feb. 2, 2007; amended May 18, 2012.)

4-15-9a. Live plant dealer; certificate of inspection. (a) Any live plant dealer may request a certificate of inspection to establish that the live plant dealer's live plants meet pest freedom standards.

(b) Each inspection pursuant to this regulation shall be conducted at a time chosen by the secretary to permit adequate inspection for the presence of plant pests giving consideration to the type of live plants inspected. If necessary due to the diversity of the live plants or for other reasons, multiple inspections may be conducted by the secretary.

(c) If the live plants inspected meet pest freedom standards, a certificate of inspection may be issued by the secretary.

(d) Each certificate of inspection shall be valid for one of the following:

(1) A period beginning on October 1 of the year the inspection was conducted through September 30 of the following calendar year; or

(2) a lesser period that the secretary may determine based upon the request of the live plant dealer due to the growing season and distribution schedule for the live plants.

(e) Any request for a certificate of inspection may be denied and any certificate of inspection may be revoked by the secretary upon finding any of the following:

(1) An adequate inspection cannot be conducted.

(2) The live plant dealer's live plants do not meet pest freedom standards.

(3) Denial of the request for a certificate of inspection or revocation of the certificate of inspection is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective May 18, 2012.)

4-15-10. Pest freedom standards. (a) The pest freedom standards specified in this regulation shall apply to all live plants grown, sold, distributed, planted, transported, moved, or given away by a live plant dealer or the live plant dealer's designated agent. As used in this regulation, "possessed" shall include being grown, sold, distributed, planted, transported, moved, or given away.

(b) Live plants on which quarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent.

(c) Live plants on which regulated nonquarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent unless the live plants are within the limits as specified in this regulation.

(d) Live plants on which plant pests that are neither quarantine pests nor regulated nonquarantine pests are present may enter the state and be possessed by live plant dealers. These live plants shall remain subject to regulatory action if the secretary finds that action is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm.

(e) Only live plants free of quarantine pests and within the limits for the presence of regulated nonquarantine pests may be certified as meeting pest freedom standards. When necessary for ex-

port, standards more stringent than those specified in this regulation may be utilized by the secretary to ensure compliance with all applicable quarantines and regulated nonquarantine pest freedom standards.

(f) The classes of regulated nonquarantine pests shall be the following, with the limits specified:

(1) For insects and arachnids that bore into live plants, scarab beetles, scale insects, and weevils, the number of infested plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(2) For diseases known as viruses, viroids, phytoplasmas, spiroplasmas, mycoplasmas, the genera or species of diseases caused by *Phytophthora* (a group of fungal diseases that infect various plants and plant parts), *Bursaphelenchus xylophilus* (pine wilt nematode), *Meloidogyne* (root knot nematodes), *Erwinia amylovora* (fire blight), *Agrobacterium tumefaciens* (crown gall), and bacterial species that can cause wilt disease, the number of infected plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(3) For diseases known to cause wilts, galls, cankers, root rot, and crown rot, the number of infected plants shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(4) For plant parasitic nematodes, the number of infected plants with foliage affected or root systems stunted or underdeveloped shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(5) For foliar diseases of plants other than evergreens, the number of infected plants with more than 10 percent of the foliage affected shall be less than 15 percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(6) For foliar diseases of evergreens, the number of infected plants with more than one percent of the foliage affected shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2117, as amended by L. 2011, ch. 72, sec. 4; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-11. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A statement reciting each subsection of the act authorizing the assessment of a civil penalty;

(b) a statement of the factual basis for each violation alleged and a reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) the amount of the civil penalty; and

(d) notice of the respondent's right to a hearing. (Authorized by K.S.A. 2007 Supp. 2-2126; implementing K.S.A. 2007 Supp. 2-2125; effective Oct. 18, 2002; amended July 18, 2008.)

4-15-12. (Authorized by K.S.A. 2-2126, as amended by 2002 SB 437, § 13; implementing K.S.A. 2-2125(b), as amended by 2002 SB 437, § 12; effective Oct. 18, 2002; revoked July 18, 2008.)

4-15-13. Criteria to determine dollar amount of civil penalty. (a) A civil penalty of at least \$100.00 but not more than \$2,000.00 may be assessed by the secretary for each violation of the plant pest and agriculture commodity certification act, K.S.A. 2-2112 et seq., and amendments thereto, and the implementing regulations.

(b) In determining the amount of any civil penalty, the gravity of the violation shall be considered by the secretary. Factors to be considered shall include the following:

(1) The potential of the act to injure, endanger, or harm the health of any consumer, the general public, cultivated or native plant resources, or the environment;

(2) the severity of actual or potential harm or injuries;

(3) the respondent's history of compliance with the plant pest and agriculture commodity certification act, and amendments thereto, and the implementing regulations;

(4) any action taken by respondent to remedy the specific violation or to mitigate any adverse effects of the violation on public health, cultivated or native plant resources, or the environment as a result of the violation; and

(5) any misrepresentation or fraud involved in the violation. (Authorized by K.S.A. 2011 Supp. 2-2126; implementing K.S.A. 2011 Supp. 2-2125; effective Oct. 18, 2002; amended July 18, 2008; amended May 18, 2012.)

4-15-14. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by and implementing K.S.A. 2007 Supp. 2-2126; effective Oct. 18, 2002; amended July 18, 2008.)

Article 16.—MEAT AND MEAT PRODUCTS INSPECTION

Part I.—DEFINITIONS

4-16-1. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a18, 65-6a30; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended, E-71-18, April 28, 1971; amended Jan. 1, 1972; amended, E-73-10, Feb. 16, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1986.)

4-16-1a. Definitions. (a) Each of the following terms, as used in the act and in the portions of the code of federal regulations adopted by reference in K.A.R. 4-16-1c, shall have the meaning specified in this subsection:

(1) “The act,” “act,” and “federal meat inspection act” shall mean K.S.A. 65-6a18 et seq. and amendments thereto.

(2) “Administrator,” except as used in 9 C.F.R. 303.1(d)(2)(iii)(b), shall mean the secretary of the department of agriculture or the secretary’s designee.

(3) “Beef” shall mean the skeletal muscle of any cattle. Beef shall not include any of the following:

(A) The muscles of the tongue, heart, or esophagus;

(B) the muscles found in the lips, muzzle, or ears;

(C) any portions of bone, including hard bone, bone marrow, and related components; or

(D) any amount of brain trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

(4) “Cheek meat” shall mean meat that is the trimmed cheeks of the carcass of cattle.

(5) “Commerce” shall mean intrastate commerce.

(6) “Egg products inspection act” shall mean the Kansas egg law, K.S.A. 2-2501 et seq. and amendments thereto.

(7) “Federal food, drug and cosmetic act” shall mean the Kansas food, drug and cosmetic act, K.S.A. 65-655 et seq. and amendments thereto.

(8) “Federal inspection” shall mean inspection by the Kansas department of agriculture.

(9) “Food locker plant” shall mean a “slaughter facility” or “processing facility,” as defined in K.S.A. 65-6a18 and amendments thereto.

(10) “Form,” either by number or by any other designation, shall mean a form supplied by the Kansas department of agriculture.

(11) “Inspected for wholesomeness by U.S. department of agriculture” shall mean inspected and passed by the Kansas department of agriculture.

(12) “Official establishment” and “establishment” shall mean any building or adjacent premises that are registered pursuant to this act, where livestock, as defined in K.S.A. 65-6a18 and amendments thereto, domestic rabbits, meat food products, poultry, or poultry products capable of use as human food are “prepared,” as defined by K.S.A. 65-6a18 and amendments thereto.

(13) “Program,” “food safety and inspection service,” “inspection service,” “service,” “department,” and “FSIS” shall mean the meat and poultry inspection program of the Kansas department of agriculture.

(14) “Secretary,” “national supervisor,” “area supervisor,” “inspection service supervisor,” “inspection program supervisor,” “circuit supervisor,” and “station supervisor” shall mean the secretary of the department of agriculture or the secretary’s designee.

(15) “U.S.” and “the United States” shall mean Kansas or the state of Kansas, as appropriate.

(16) “U.S. inspected” and “government inspected” shall mean inspected by the Kansas department of agriculture.

(17) “U.S.D.A.” and “USDA” shall mean Kansas department of agriculture or KDA, as appropriate.

(b) The phrase “official review and copying” in 9 C.F.R. 417.5(f), as adopted by reference in K.A.R. 4-16-1c, shall mean review and copying by the secretary of the department of agriculture or the secretary’s designee. (Authorized by K.S.A.

2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a25, K.S.A. 2011 Supp. 65-6a30, and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2011 Supp. 65-6a30; effective May 1, 1982; amended May 1, 1986; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec. 5, 2008; amended May 10, 2013.)

4-16-1b. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a20, 65-6a21, 65-6a22, 65-6a23, 65-6a25 and 65-6a30; effective May 1, 1982; amended May 1, 1985; revoked May 1, 1986.)

4-16-1c. Adoption by reference. (a) The following portions of title 9 of the code of federal regulations, as revised on January 1, 2012, except as otherwise specified, are hereby adopted by reference:

(1) Part 301, except the following terms and their definitions in section 301.2: “the act,” “adulterated,” “animal food manufacturer,” “label,” “labeling,” “livestock,” “meat broker,” “meat food product,” “misbranded,” “official import inspection established,” “person,” “pesticide chemical, food additive, color additive, raw agricultural commodity,” “prepared,” and “territory”;

(2) part 302, except section 302.2;

(3) part 303, except sections 303.1(d)(3) and 303.2;

(4)(A) Sections 304.1 and 304.2; and

(B) section 304.3, as amended by 77 fed. reg. 26936 (2012);

(5) parts 305 and 306, except sections 306.1, 306.2, and 306.3;

(6)(A) Sections 307.1 through 307.3;

(B) section 307.4, as amended by 77 fed. reg. 59294 (2012); and

(C) section 307.7;

(7) part 309;

(8) part 310;

(9) part 311;

(10) part 312, except section 312.8;

(11) parts 313 through 316;

(12) part 317, except sections 317.7 and 317.369;

(13) part 318, except section 318.8;

(14) part 319;

(15) part 320, except section 320.5(a);

(16) part 325, except section 325.3;

(17) part 329;

(18) part 352, except sections 352.1 (e), (f), (g), (j), (k), and (l), 352.4, 352.8, 352.10(a), 352.11(b), 352.17, and 352.18;

(19)(A) Section 354.1, except subparagraphs (a), (n), and (w);

(B) section 354.2;

(C) sections 354.10 through 354.14;

(D) sections 354.23 through 354.24;

(E) sections 354.26 through 354.30;

(F) sections 354.46 through 354.49;

(G) sections 354.53 through 354.92;

(H) sections 354.120 through 354.133; and

(I) sections 354.160 through 354.247;

(20)(A) Section 381.1, except the following terms and their definitions in subsection (b): “act,” “adulterated,” “animal food manufacturer,” “label,” “labeling,” “misbranded,” “pesticide chemical, food additive, color additive, raw agricultural commodity,” “poultry products broker,” “territory,” and “U.S. refused entry”;

(B) sections 381.3 through 381.7, except 381.5;

(C) sections 381.10 through 381.21;

(D) section 381.22, as amended by 77 fed. reg. 26936 (2012);

(E) sections 381.23 through 381.36;

(F) section 381.37, as amended by 77 fed. reg. 59294 (2012);

(G) sections 381.65 through 381.103, except 381.96;

(H) sections 381.108 through 381.182;

(I) sections 381.189 through 381.194;

(J) sections 381.210 through 381.217, except section 381.216; and

(K) sections 381.300 through 381.500, except section 381.469;

(21) part 416;

(22)(A) Sections 417.1 through 417.3;

(B) section 417.4, as amended by 77 fed. reg. 26936 (2012); and

(C) sections 417.5 through 417.8;

(23) part 418, as added in 77 fed. reg. 26936 (2012); and

(24) parts 424, 430, 439, 441, 442, and 500.

(b) The “food standards and labeling policy book,” as published by the office of policy, program and employee development of the USDA food safety and inspection service and revised for web publication in August 2005, is hereby adopted by reference. This document shall apply to meat and poultry products.

(c) Copies of the adopted material or the pertinent portions shall be available from the meat and poultry

inspection program of the department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a25, K.S.A. 2011 Supp. 65-6a30, and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2011 Supp. 65-6a30; effective May 1, 1986; amended May 1, 1988; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec. 5, 2008; amended May 10, 2013.)

Part II.—SCOPE OF INSPECTION

4-16-2. (Authorized by K.S.A. 65-6a30, 65-6a44; implementing K.S.A. 65-6a30; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1982; revoked May 1, 1986.)

4-16-3. (Authorized by K.S.A. 1972 Supp. 65-6a30; effective, E-70-4, Dec. 1, 1970; effective Jan. 1, 1971; amended, E-71-18, April 28, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; revoked May 1, 1986.)

4-16-3a. Exemptions. (a) Notwithstanding the requirements for the exemption as a “custom slaughterer” as set forth in 9 C.F.R. 303.1(a) and (b) adopted by reference in K.A.R. 4-16-1c, both the custom slaughtering of dead or dying animals by any person and the custom processing of the carcasses of dead or dying animals by any person shall be prohibited.

(b)(1) The custom slaughtering of diseased or disabled animals by any person and the custom processing of the carcasses of diseased or disabled animals by any person may be allowed if both of the following requirements are met:

(A) The animal shall be examined by a licensed veterinarian on the day of slaughter.

(B) The animal shall be accompanied by a health certificate that meets the following requirements:

(i) Is issued on the day of slaughter by that veterinarian. This health certificate shall be valid only on the date of issuance;

(ii) includes a record of the animal’s body temperature, taken at the time of the veterinary examination;

(iii) for cattle, states that the animal was ambulatory when examined;

(iv) includes a description of the condition of the animal; and

(v) states that the animal is free of any visible signs of infection or contagious disease.

(2) Notwithstanding the slaughter of an apparently healthy animal or an animal for which a health certificate has been issued, an establishment shall not custom process any carcass of an animal so infected that consumption of the resulting products of the animal could pose a health risk. This prohibition shall include all carcasses showing signs of any of the following:

(A) Acute inflammation of the lungs, pleura, pericardium, peritoneum, or meninges;

(B) septicemia or pyemia, whether puerperal, traumatic, or without any evident cause;

(C) gangrenous or severe hemorrhagic enteritis or gastritis;

(D) acute, diffuse metritis or mammitis;

(E) phlebitis of the umbilical veins;

(F) septic or purulent traumatic pericarditis;

(G) any of the following conditions or similar conditions, either singly or in combination:

(i) Any acute inflammation, abscess, or suppurating sore, if associated with acute nephritis;

(ii) fatty and degenerated liver;

(iii) swollen, soft spleen;

(iv) marked pulmonary hyperemia;

(v) general swelling of lymph nodes;

(vi) diffuse redness of the skin;

(vii) cachexia; or

(viii) icteric discoloration of the carcass; or

(H) salmonellosis.

(3) The department shall not be responsible for the costs associated with obtaining a health certificate.

(4)(A) An establishment may lose the privilege of custom slaughtering and custom processing diseased or disabled animals if any of the following occurs at the establishment:

(i) Custom slaughter, custom processing, or both, without the required health certificate;

(ii) custom slaughtering, custom processing, or both, with an inaccurate, incomplete, or falsified health certificate. Evidence of the falsification of any health certificate shall be forwarded to USDA-APHIS and to the Kansas board of veterinary medical examiners;

(iii) custom slaughtering, custom processing, or both, of an animal that is so infected that consumption of the resulting products from that animal could pose a health risk; or

(iv) any other violation of this act or any regulations adopted pursuant to this act.

(B) The slaughtering of diseased or disabled

animals on a custom basis without the required health certificate may result in the revocation of the custom exemption.

(c) Except as specified in this subsection, the following animals with any of these conditions shall not be eligible for slaughter or processing for human food on a custom basis at any establishment and shall not be issued a health certificate:

(1) Livestock that are known to have reacted to the tuberculin test;

(2) any swine having a temperature of 106°F or higher and any cattle, sheep, or goats having a temperature of 105°F or higher;

(3) any animal found in a comatose or semicomatose condition;

(4) nonambulatory disabled cattle, which shall mean cattle that cannot rise from a recumbent position and that cannot walk, including those cattle with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions;

(5) all livestock showing symptoms of anaplasmosis, ketosis, leptospirosis, listeriosis, parturient paresis, pseudorabies, rabies, scrapie, tetanus, grass tetany, transport tetany, strangles, purpura hemorrhagica, azoturia, infectious equine encephalomyelitis, toxic encephalomyelitis (forage poisoning), dourine, acute influenza, generalized osteoporosis, glanders (farcy), acute inflammatory lameness, or extensive fistula;

(6) all swine found to be affected with hog cholera;

(7) all swine that are of lots in which one or more animals have been found to be affected with hog cholera;

(8) any animal found to be affected with epithelioma of the eye;

(9) any animal found to be affected with anthrax;

(10) any animal of a lot in which anthrax is found, until it has been determined by a veterinary inspection that no anthrax-infected livestock remain in the lot;

(11) all cattle found, upon veterinary inspection, to be affected with anasarca in an advanced stage and characterized by an extensive and generalized edema;

(12) any hog showing that it is affected with acute swine erysipelas;

(13) any animal showing signs of the onset of parturition, until after parturition and passage of the placenta;

(14) any goat that has reacted to a test for brucellosis; or

(15) any animal suspected of having been treated with or exposed to any substance that could impart a biological residue that would make the edible tissues unfit for human food or otherwise adulterated.

(d) Only those requirements of the act relating to sanitation and adulteration shall apply to the slaughtering or processing, or both, of healthy rabbits by any person if either of the following conditions is met:

(1) The rabbits are raised by that person and are for the exclusion use or consumption by that person, members of that person's household, former members of that person's household, or that person's nonpaying guests and employees.

(2)(A) That person slaughters not more than 250 rabbits in a calendar year;

(B) the rabbits are for distribution directly to household consumers from that person's own premises; and

(C) that person does not engage in the business of buying or selling any rabbits or rabbit products capable of use as human food in a calendar year. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a31; effective Jan. 1, 1989; amended Sept. 1, 2006.)

Part III.—APPLICATION FOR REGISTRATION AND INSPECTION

4-16-4. (Authorized by K.S.A. 1970 Supp. 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part IV.—OFFICIAL NUMBERS AND INAUGURATION OF INSPECTION

4-16-5. (Authorized by K.S.A. 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

Part V.—ASSIGNMENTS OF DIVISION EMPLOYEES

4-16-6. (Authorized by K.S.A. 1970 Supp. 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part VI.—FACILITIES FOR INSPECTION AND HOURS OF OPERATION

4-16-7. (Authorized by K.S.A. 65-6a26, 65-6a30, 65-6a32, 65-6a44; effective Jan. 1, 1971; amended, E-80-25, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1986.)

4-16-7a. Inspection fees. (a) Each establishment that requires inspection services at any

time other than the establishment's regularly scheduled inspection periods or requests voluntary inspection services shall be subject to the charges specified in this regulation to defray the department's costs of providing these inspection services. Regularly scheduled inspection periods shall not include any legal holiday or any officially observed holiday as designated in K.A.R. 1-9-2.

(b) Each establishment that requests inspection services on a legal holiday or an officially observed holiday as designated in K.A.R. 1-9-2 shall give the secretary at least two weeks' notice before the holiday. Except for Martin Luther King, Jr. Day, the Fourth of July, and Veterans' Day, if the legal holiday occurs or is observed on a Monday or Friday, the fees shall also apply to inspection services requested during the adjacent weekend.

(c)(1) The hourly fee shall be \$28. The hourly fee shall be calculated in quarter-hour units. Unless otherwise specified, a required minimum charge of two hours shall be assessed.

(2) For slaughter with the mark of inspection, the hourly fee shall be assessed for the amount of time needed to conduct the inspection. The inspection shall include the inspector's drive time to and from the establishment. If the establishment processes with the mark of inspection that day, then the amount of time to inspect the processing operations shall be included in the total inspection time.

(3) For processing with the mark of inspection, a fee of \$40 shall be assessed per day if the establishment is processing with the mark of inspection and not slaughtering with the mark of inspection.

(d) Each establishment that requests inspection services over eight hours in one day shall be assessed fees as follows, if the secretary can accommodate the extra time:

(1) If the request is made before the inspector's arrival at the establishment or while the inspector is at the establishment, the hourly fee shall be assessed for the actual time of the additional inspection. The two-hour minimum charge shall be waived, and the inspector's drive time shall not be charged.

(2) If the request is made after the inspector has left the establishment, the hourly fee shall be assessed, including the two-hour minimum charge. The inspector's drive time shall not be charged.

(3) If the establishment requests to slaughter with the mark of inspection when the regularly inspected operation is processing, the request may be granted by the secretary without assessing overtime charges if the operations will not

exceed the establishment's regularly scheduled hours that day.

(4) Any requests specified in this subsection may be denied by the secretary if the requested additional time at the establishment causes inspections to be missed at other establishments.

(e) Payment of all applicable fees shall be due at or before the end of the month following the date of the requested inspection services. If the fees are not paid, requests for the following may be denied by the secretary:

(1) Inspection services on holidays;

(2) inspection services outside of the establishment's regularly scheduled inspection periods; and

(3) voluntary inspection services.

(f) Any applicable fees may be waived by the secretary under either of the following conditions:

(1) The establishment trades a regularly scheduled day of inspection in the week during which the additional inspection services are provided.

(2) Additional requested inspection services can be provided without causing undue hardship to the program.

(g) For fees associated with 4-H slaughter or processing, each establishment providing slaughter services associated with 4-H shall be assessed fees as follows for each seven-day calendar week, Sunday through Saturday:

(1) The facility shall be provided with not more than eight hours of inspection services without charge for 4-H slaughter operations in a 24-hour period.

(2) Inspection services for 4-H slaughter for more than eight hours in a calendar week shall be subject to the hourly fee specified in subsection (c) for slaughter.

(3) The fee may be waived if the facility cancels a day of inspection in the same seven-day calendar week in which 4-H slaughter is conducted.

(4) The fee shall be assessed for actual inspection time and shall not include the inspector's drive time to and from the facility. (Authorized by K.S.A. 2011 Supp. 65-6a26 and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a26; effective May 1, 1986; amended Jan. 1, 1989; amended July 1, 1993; amended Jan. 17, 2003; amended July 18, 2008; amended May 10, 2013.)

Part VII.—SANITATION

4-16-8. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1982.)

4-16-9. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-10 and 4-16-11. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-12. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a32, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-13. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a32, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-14. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a32, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-15. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-16 to 4-16-18. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a32, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-19. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-20. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

Part VIII.—ANTE MORTEM INSPECTION

4-16-21. (Authorized by K.S.A. 65-6a20, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-22. (Authorized by K.S.A. 65-6a20, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-23 to 4-16-35. (Authorized by K.S.A. 65-6a20, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-36. (Authorized by K.S.A. 65-6a20, 65-

6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended, E-72-7, Feb. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1982.)

4-16-37 and 4-16-38. (Authorized by K.S.A. 65-6a20, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

Part IX.—POST MORTEM INSPECTION

4-16-40 to 4-16-54. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-55. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked Jan. 1, 1973.)

4-16-55a. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective Jan. 1, 1974; revoked May 1, 1982.)

4-16-56 to 4-16-59. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-59a. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective May 1, 1975; revoked May 1, 1982.)

Part X.—DISPOSAL OF DISEASED OR OTHERWISE ADULTERATED CARCASSES AND PARTS

4-16-60. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-61. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1975; revoked May 1, 1982.)

4-16-62 to 4-16-69. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-70 and 4-16-71. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1982.)

4-16-72 to 4-16-77. (Authorized by K.S.A.

65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-78. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-79 to 4-16-81. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-82. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-83 to 4-16-89. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-90. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-91 to 4-16-98. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

**Part XI.—OFFICIAL MARKS,
DEVICES, AND CERTIFICATES**

4-16-99. (Authorized by K.S.A. 1970 Supp. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-100. (Authorized by K.S.A. 1972 Supp. 65-6a21, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; revoked May 1, 1986.)

4-16-101 and 4-16-102. (Authorized by K.S.A. 1970 Supp. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-103. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-104. (Authorized by K.S.A. 1972 Supp. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1986.)

**Part XII.—HANDLING AND DISPOSAL OF
CONDEMNED OR OTHER INEDIBLE
PRODUCTS AT ESTABLISHMENTS**

4-16-106 to 4-16-114. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-115. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-116. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1982.)

**Part XIII.—RENDERING OR OTHER
DISPOSAL OF CARCASSES AND PARTS
PASSED FOR COOKING**

4-16-117. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1973; revoked May 1, 1982.)

4-16-118. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

**Part XIV.—MARKING PRODUCTS
AND THEIR CONTAINERS**

4-16-119 to 4-16-122. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-123. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

4-16-124 to 4-16-126. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

4-16-127. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4,

Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

4-16-128. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended, E-73-10, Feb. 16, 1973; amended Jan. 1, 1974; revoked May 1, 1982.)

4-16-129. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

4-16-129a. Special marking for custom products. Each custom prepared carcass, parts thereof, and each package of custom prepared or processed product shall be plainly marked "CUSTOM—NOT FOR SALE" in letters not less than three-eighths inch in height immediately after being received or prepared. (Authorized by K.S.A. 65-6a22, 65-6a23, 65-6a24, 65-6a31, 65-6a44; effective May 1, 1975.)

4-16-130 to 4-16-132. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended May 1, 1975; revoked May 1, 1982.)

4-16-133. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1982.)

Part XV.—LABELING, MARKING DEVICES, AND CONTAINERS

4-16-134. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-135. (Authorized by K.S.A. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; implementing K.S.A. 65-6a24 and 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended, E-73-10, Feb. 16, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1986.)

4-16-136. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-138 to 4-16-140. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-141. (Authorized by K.S.A. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended, E-73-10, Feb. 16, 1973; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1986.)

4-16-142. (Authorized by K.S.A. 1970 Supp. 65-6a29; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-143 to 4-16-148. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part XVI.—ENTRY INTO ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

4-16-150 to 4-16-154. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a22, 65-6a23, 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-155. (Authorized by K.S.A. 65-6a18, 65-6a22, 65-6a23, 65-6a24, 65-6a44; implementing K.S.A. 65-6a24 and 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1975; amended May 1, 1982; revoked May 1, 1986.)

4-16-156. (Authorized by K.S.A. 65-6a18, 65-6a22, 65-6a23, 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1982.)

4-16-157 to 4-16-159. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a22, 65-6a23, 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-160 and 4-16-161. (Authorized by K.S.A. 65-6a18, 65-6a22, 65-6a23, 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-162 to 4-16-164. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a22, 65-6a23, 65-

6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part XVII.—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION OF STANDARDS OF FILL OF CONTAINERS

4-16-170. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-170a. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective May 1, 1982; revoked May 1, 1986.)

4-16-171. (Authorized by K.S.A. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-171a. (Authorized by K.S.A. 65-6a18, 65-6a44; effective Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-172. (Authorized by K.S.A. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1973; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-173 and 4-16-174. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-174a. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective May 1, 1982; revoked May 1, 1986.)

CURED MEATS, UNSMOKED AND SMOKED

4-16-175. (Authorized by K.S.A. 1971 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1986.)

4-16-176 to 4-16-179. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-180. (Authorized by K.S.A. 65-6a18, 65-6a44, and K.S.A. 1981 Supp. 65-6a44a; implementing K.S.A. 65-6a44 and K.S.A. 1981 Supp. 65-6a44a; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; amended, E-82-15, Aug. 12, 1981; amended May 1, 1982; revoked May 1, 1985; revoked May 1, 1986.)

4-16-181. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1985; revoked May 1, 1986.)

4-16-182. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended May 1, 1982; revoked May 1, 1986.)

4-16-183 to 4-16-185. (Authorized by K.S.A. 1971 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1986.)

4-16-186. (Authorized by K.S.A. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1986.)

4-16-187 and 4-16-188. (Authorized by K.S.A. 1971 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1986.)

4-16-191 to 4-16-193. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-193a. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective May 1, 1982; revoked May 1, 1986.)

4-16-194 to 4-16-208. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-209. (Authorized by K.S.A. 1971 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked May 1, 1986.)

4-16-209a. (Authorized by K.S.A. 65-6a18, 65-6a44; effective Jan. 1, 1974; revoked May 1, 1986.)

4-16-210 to 4-16-219. (Authorized by K.S.A. 1970 Supp. 65-6a18, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-220. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a24, 65-6a44; effective May 1, 1982; revoked May 1, 1986.)

Part XVIII.—RECORDS AND REPORTS

4-16-225 to 4-16-230. (Authorized by K.S.A. 1970 Supp. 65-6a28, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part XIX.—TRANSPORTATION

4-16-231 to 4-16-233. (Authorized by K.S.A. 1970 Supp. 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-233a. (Authorized by K.S.A. 65-6a18, 65-6a44; implementing K.S.A. 65-6a33, 65-6a44; effective May 1, 1982; revoked May 1, 1986.)

4-16-234. (Authorized by K.S.A. 1970 Supp. 65-6a28, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-235. (Authorized by K.S.A. 65-6a23, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1986.)

4-16-236 to 4-16-239. (Authorized by K.S.A. 1970 Supp. 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part XX.—DETENTION; SEIZURE AND CONDEMNATION; CRIMINAL OFFENSES

4-16-240 to 4-16-245. (Authorized by K.S.A. 1970 Supp. 65-6a37, 65-6a44; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

Part XXI.—MISCELLANEOUS

4-16-246. (Authorized by K.S.A. 1970 Supp. 65-6a29; effective, E-70-4, Dec. 1, 1969; effective Jan. 1, 1971; revoked May 1, 1986.)

4-16-250. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25, 65-6a30 and 65-6a35; effective May 1, 1987; revoked Sept. 1, 2006.)

4-16-251. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25, 65-6a30 and 65-6a35; effective May 1, 1987; revoked Sept. 1, 2006.)

4-16-252. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a25 and 65-6a30; effective Dec. 26, 1988; revoked Sept. 1, 2006.)

4-16-260. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a20; effective May 1, 1988; revoked Sept. 1, 2006.)

4-16-300. Civil penalty; order. Each order assessing a civil penalty shall include the following:

(a) A statement citing K.S.A. 65-6a56, and amendments thereto, authorizing the assessment of a civil penalty;

(b) a specific reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) a concise statement of the factual basis for each alleged violation;

(d) the amount of the civil penalty that is assessed; and

(e) the notice of the respondent's right to request a hearing. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

4-16-301. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; revoked July 18, 2008.)

4-16-302. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of any provision of the Kansas meat and poultry inspection act or any implementing regulation that results from each independent act or failure to act by any person or the person's agent or employee. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) For each violation, the amount of the civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 65-6a34 or K.S.A. 65-6a41, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$1,000.

(2) For each violation of K.S.A. 65-6a22, K.S.A. 65-6a24, K.S.A. 65-6a25, K.S.A. 65-6a27(a), K.S.A. 65-6a29, K.S.A. 65-6a31, or K.S.A. 65-

6a32, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$2,500.

(3) For each violation of K.S.A. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a23, K.S.A. 65-6a27(b), 65-6a28, or K.S.A. 65-6a33, and amendments thereto, or any regulations implementing these statutes, the civil penalty shall be not less than \$100 and not more than \$5,000.

(c) For the second or each subsequent occurrence of a violation within a three-year period for which a civil penalty has been assessed, the civil penalty assessed for the subsequent violation shall be not less than double the amount of the civil penalty assessed for the original violation but not more than the maximum amount for the category listed. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

4-16-303. Criteria to determine dollar amount of the civil penalty. In determining the amount of civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include the following: (a) The potential of the act to injure or endanger the health of any consumer, or the general public;

(b) the severity of actual or potential injuries;

(c) the respondent's history of compliance with the Kansas meat and poultry inspection act and the implementing regulations;

(d) any action taken by the respondent to remedy the specific violation or to mitigate any adverse effects that were the result of the violation; and

(e) specification of whether or not the violation involved any adulterated article, misrepresentation, or fraud. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008.)

4-16-304. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order. The respondent consents to the assessment of a stated civil penalty, if any is assessed.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

4-16-305. Adjusting the amount of the civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the civil penalty at the settlement conference. This evidence may include mitigating factors or new evidence not previously known to the secretary when the order was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary or to the secretary's duly authorized agent when the order was issued and that relate to the gravity of the violation, an adjusted civil penalty may be assessed. If these additional facts establish that a respondent did not commit a violation, the order shall be amended or vacated.

(c) The burden shall be on the respondent to present evidence of any mitigating factors to support any requested reduction in the amount of the civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) Whether or not a civil penalty is reduced shall be within the sole discretion of the secretary or the secretary's duly authorized representative.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by a respondent. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008.)

4-16-306. Retail exemption; establishments selling food other than meat and poultry. (a) Any person operating an establishment that is registered or required to be registered under the Kansas meat and poultry inspection act

may process meat and poultry products for retail sale without the mark of inspection as specified in 9 C.F.R. 303.1, as adopted in K.A.R. 4-16-1c, if both of the following conditions are met:

(1) The establishment is maintained and operated in a sanitary manner.

(2) The establishment meets the applicable requirements of the department's regulations to ensure that any carcasses or parts thereof, meat, meat food products, poultry, and poultry products handled on a retail basis, and any containers or packages containing these products, are separated at all times from both of the following:

(A) Carcasses or parts thereof, meat, meat food products, poultry, and poultry products that bear the mark of inspection; and

(B) carcasses or parts thereof, meat, meat food products, poultry, and poultry products custom prepared according to K.S.A. 65-6a31(b), and amendments thereto, and 9 C.F.R. 303.1, as adopted in K.A.R. 4-16-1c.

(b) If an establishment at which inspection under the Kansas meat and poultry inspection act is maintained processes or sells food other than meat, meat food products, poultry, or poultry products, the owner or operator of that establishment may be required to obtain a separate license, permit, or registration for those operations at the establishment under the Kansas food, drug, and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto. (Authorized by K.S.A. 2011 Supp. 65-6a30 and 65-6a44; implementing K.S.A. 2011 Supp. 65-6a30, K.S.A. 2011 Supp. 65-6a31, as amended by L. 2012, ch. 145, sec. 30, and K.S.A. 65-6a34, as amended by L. 2012, ch. 145, sec. 31; effective May 10, 2013.)

Article 17.—POULTRY AND POULTRY PRODUCTS INSPECTION

Part I.—DEFINITIONS

4-17-1. (Authorized by K.S.A. 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-1a. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Sept. 5, 1997; amended Sept. 1, 2006; revoked May 10, 2013.)

4-17-1c. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; revoked May 10, 2013.)

Part II.—ADMINISTRATION

4-17-2. (Authorized by K.S.A. 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part III.—SCOPE OF INSPECTION

4-17-3. (Authorized by K.S.A. 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-4. (Authorized by K.S.A. 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-5. (Authorized by K.S.A. 1970 Supp. 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked Dec. 26, 1988.)

4-17-5a. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a31; effective Jan. 1, 1989; amended Jan. 25, 1993; amended Dec. 12, 1994; revoked Sept. 1, 2006.)

Part IV.—OFFICIAL PLANT NUMBERS INAUGURATION, SUSPENSION AND WITHDRAWAL OF INSPECTION SERVICES

4-17-6 to 4-17-9. (Authorized by K.S.A. 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-10. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part V.—SANITARY REQUIREMENTS MINIMUM STANDARDS FOR SANITATION, FACILITIES AND OPERATING PROCEDURES IN ESTABLISHMENTS

4-17-11 to 4-17-13. (Authorized by K.S.A. 65-6a25, 65-6a30, 65-6a32, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part VI.—INSPECTION PROCEDURES

4-17-19. (Authorized by K.S.A. 65-6a20, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-20. (Authorized by K.S.A. 65-6a21, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-21 to 4-17-24. (Authorized by K.S.A. 65-6a21, 65-6a22, 65-6a23, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part VII.—CANNING OR COOKING REQUIREMENTS

4-17-25 and 4-17-26. (Authorized by K.S.A. 65-6a23, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part VIII.—FROZEN FOODS

4-17-27 and 4-17-28. (Authorized by K.S.A. 65-6a23, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part IX.—POULTRY PRODUCTS CONTAMINATED BY POLLUTED WATER

4-17-29. (Authorized by K.S.A. 65-6a23, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part X.—PREPARATION OF ARTICLES OTHER THAN FOR HUMAN FOOD

4-17-30. (Authorized by K.S.A. 65-6a23, 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part XI.—REPORTS

4-17-31 to 4-17-33. (Authorized by K.S.A. 65-6a30, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part XII.—LABELING

4-17-34 to 4-17-51. (Authorized by K.S.A. 65-6a18, 65-6a24, 65-6a25, 65-6a28, 65-6a29, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

Part XIII.—INSPECTION PERSONNEL AND ADMINISTRATION

4-17-52. (Authorized by K.S.A. 65-6a26, 65-6a30, 65-6a32, 65-6a44; effective, E-70-22, July 1, 1970; effective Jan. 1, 1971; revoked May 1, 1982.)

4-17-300. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008; revoked May 10, 2013.)

4-17-301. (Authorized by K.S.A. 65-6a44; implementing K.S.A. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; revoked July 18, 2008.)

4-17-302 and 4-17-303. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008; revoked May 10, 2013.)

4-17-304 and 4-17-305. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008; revoked May 10, 2013.)

Article 18.—LIVESTOCK REMEDIES

4-18-1. (Authorized by and implementing K.S.A. 1982 Supp. 47-504; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; revoked Oct. 18, 2002.)

Article 19.—SOIL AMENDMENTS

4-19-1. Registration fee. The registration fee for each soil amendment shall be \$100.00 for each product registered. (Authorized by K.S.A. 2005 Supp. 2-2805 and K.S.A. 2-2811; implementing K.S.A. 2005 Supp. 2-2805; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 23, 2007.)

Article 20.—CHEMIGATION

4-20-3. Records and reports. (a) Each person using a chemigation process shall keep records regarding each application of any chemical other than water or animal waste. The records shall contain the following information:

- (1) the type of chemical used;
- (2) the amount of active ingredient used;
- (3) the date of use;
- (4) the legal description of the location of the water supply or the point of diversion of the water supply;
- (5) the total number of acres treated by means of chemigation;
- (6) the type of crop to which the chemical was applied; and
- (7) the EPA registration number for each pesticide applied and the name of the target pest stated as the common name for the pest or pests. When pesticides are applied for the control of weeds, the target pests may at a minimum be identified

as grassy or broadleaf weeds. Records required under this section shall be retained by the holder of the chemigation user permit for a period of not less than two years from the date of application.

(b) Each person using a chemigation process to apply animal wastes through the person's chemigation system shall keep records regarding each application of animal waste. The records shall contain the following information:

(1) the date of application; and

(2) the location of the water supply used for chemigation or the legal description of the point of diversion.

(c) Each application for renewal of a chemigation user permit shall be accompanied by a copy of the records for chemigation use during the previous year as described in paragraphs (a) and (b) of this regulation.

(d) Each chemigation permit holder shall report immediately both to the secretary of the board of agriculture and to the secretary of health and environment all spills, accidents, system malfunctions, or other situations involving actual or potential contamination of either groundwater or surface water. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 1988 Supp. 2-3303; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended March 26, 1990.)

4-20-4. Permits. No individual shall supervise more than 10 operating chemigation units at one time.

Each individual possessing a chemigation user permit shall be responsible for insuring that those persons who work under his or her direct supervision and who handle pesticides:

(a) are knowledgeable in the use of the pesticide;

(b) are knowledgeable concerning the proper calibration methods for the pesticide;

(c) are knowledgeable regarding the injection devices and anti-pollution devices being used in the system;

(d) follow all applicable directions on the pesticide's label; and

(e) use all safety precautions pertaining to that pesticide. (Authorized by K.S.A. 1985 Supp. 2-3309; implementing K.S.A. 1985 Supp. 2-3306; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended May 1, 1987.)

4-20-5. Waterline check valves. (a) Each waterline check valve required by K.S.A. 2-3305,

and amendments thereto, shall be constructed and installed in accordance with the requirements specified in K.A.R. 5-6-13a.

(b) Each check valve and all required components shall be maintained in an operating condition that prevents backflow into the source of water supply whenever a foreign substance could reasonably be expected to be introduced into the water system.

(c) Each chemigation installation, unit, or system that can serve as a conduit for chemicals, effluent, or any substance while water is not being pumped shall also be equipped with a positive closing gate valve or its equivalent. This valve shall be located between the check valve and the point at which chemicals, effluents, or other substances enter the water distribution system and shall be closed whenever chemicals, effluents, or other substances enter the distribution system and water is not being pumped. (Authorized by K.S.A. 2-3309; implementing K.S.A. 2-3305; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended March 26, 1990; amended Oct. 24, 2003.)

4-20-6. Injection equipment. (a) The injection equipment used shall be constructed and maintained in a manner which prohibits application of any pesticide at a rate which exceeds the maximum rate of application recommended by the pesticide's label or labeling and which prohibits application of any fertilizer or animal wastes at any rate which exceeds the planned application rate. Injection equipment shall be calibrated before each chemigation application.

(b) Chemigation users who apply only animal wastes through their irrigation distribution systems are required to install only those anti-pollution devices required by K.S.A. 2-3305.

(c) For those chemigation users who apply fertilizers and other chemicals, injection equipment shall include:

(1) a manually operated valve on the supply tank;

(2) a strainer on the suction side of the injection pump; and

(3) a calibration device of sufficient volume to accurately calibrate the injection pump.

(d) For pesticides, the following additional pieces of equipment shall be used;

(1) an air bleeder valve on the injection line;

(2) a positive displacement injection pump; and

(3) any other equipment required by the pesticide's label or labeling. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 2-3305

as amended by L. 1989, Ch. 7, Sec. 3; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended March 26, 1990.)

4-20-7. Vacuum relief device and automatic low-pressure drain. The vacuum relief device and automatic low-pressure drain shall be properly installed and shall be fully operational whenever the chemigation process is being used. These devices shall not be blocked, capped or otherwise modified in any manner which prevents their proper operation in any manner to render them inoperable. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 2-3305 as amended by L. 1989, Ch. 7, Sec. 3; effective March 26, 1990.)

4-20-8. Chemical injection line and checkvalve. The point at which any chemical, fertilizer or animal waste is injected into the irrigation distribution system shall be located on the downstream side of any waterline checkvalve. The chemical injection line shall contain a checkvalve which shall be located between the chemical injection pump and the point at which any chemical or fertilizer enters the irrigation distribution system. (Authorized by K.S.A. 2-3309; implementing K.S.A. 1988 Supp. 2-3305 as amended by L. 1989, Ch. 7, Sec. 3; effective March 26, 1990.)

4-20-11. Civil penalties. (a) The process for issuing and processing civil penalties shall follow the procedure established in K.A.R. 4-13-60 and in K.A.R. 4-13-62 through 4-13-65, except for the following:

(1) The provision of K.A.R. 4-13-62(b) shall be replaced by the provisions of subsection (b) in this regulation.

(2) The terms "state and federal pesticide laws" and "pesticide law" contained in K.A.R. 4-13-60 and K.A.R. 4-13-62 through 4-13-65 shall be replaced by the term "the Kansas chemigation safety law," as the context requires.

(3) The term "pesticide business licensee" shall be replaced by the term "person" or "swine facility," as the context requires.

(b) The amount of civil penalty assessed for each violation shall be within the following ranges:

(1) For each violation of K.S.A. 2-3305, and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(2) For each violation of K.S.A. 2-3308(a)(2), (a)(3), or (a)(4), and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(3) For each violation of K.S.A. 2-3313(a) or (b) or of K.S.A. 2-3313(f) or (i), and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(4) For each violation of K.S.A. 2-3308, and amendments thereto, not covered in paragraph (b)(2) in this regulation, the civil penalty shall be not less than \$100 and not more than \$1,000.

(5) For each violation of K.S.A. 2-3313, and amendments thereto, not covered in paragraph (b)(3) in this regulation, the civil penalty shall be not less than \$100 and not more than \$1,000.

(6) For each application of waste in violation of K.S.A. 2-3318, and amendments thereto, the civil penalty shall be not less than \$100 and not more than \$5,000.

(c) For any subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for this violation shall be the maximum amount for the category listed. (Authorized by K.S.A. 2007 Supp. 2-3309; implementing K.S.A. 2-3308 and 2-3317; effective March 26, 1990; amended, T-4-12-29-98, Jan. 1, 1999; amended April 23, 1999; amended April 4, 2003; amended July 18, 2008.)

4-20-12. Certified chemigation equipment operator examination. (a) Examinations for certified chemigation equipment operators shall be provided by the Kansas state board of agriculture. A grade of 75% correct answers shall be required to pass the examination.

(b) Examinations for chemigation equipment operator certification shall test the applicant's knowledge in those subject areas set out in K.S.A. 2-3306 as amended and supplemented involving chemigation practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified chemigation equipment operator. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 1988 Supp. 2-3306 as amended by L. 1989, Ch. 7, Sec. 5; effective March 26, 1990.)

4-20-13. Certificates and pocket cards. A certificate and pocket card shall be issued to each certified person upon satisfactory completion of the requirements for certification. Such certificate and pocket card shall show the applicator's name, type of certificate issued, the expiration date of the certification and other pertinent information. The certified chemigation equipment operator shall produce such certificate or pocket card when re-

requested to do so by any law enforcement official, the secretary or any authorized representative of the secretary. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 1988 Supp. 2-3306 as amended by L. 1989, Ch. 7, Sec. 5; effective March 26, 1990.)

4-20-14. Report of address change by certified chemigation equipment operators.

Each certified chemigation equipment operator shall notify the secretary of any change in the operator's mailing address by the 10th day of the month following the month during which such change occurred. (Authorized by K.S.A. 1988 Supp. 2-3309; implementing K.S.A. 1988 Supp. 2-3306 as amended by L. 1989, Ch. 7, Sec. 5; effective March 26, 1990.)

4-20-15. Agronomic application rates.

The agronomic application rate for swine waste shall be the amount of waste required for plant nutrition and for the nutrient-holding capacity of the surfaces or soils to which swine waste is applied, as determined by sound agronomic methods. Sound agronomic application rates shall be determined in consultation with Kansas state university. Sound agronomic methods may include the rate derived from the calculations from the form prescribed by the secretary of agriculture in K.A.R. 4-21-1 and K.A.R. 4-21-7. (Authorized by K.S.A. 2-3305, K.S.A. 2-3309; implementing K.S.A. 2-3318, as amended by L. 2002, ch. 181, sec. 14 and K.S.A. 2001 Supp. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

Article 21.—NUTRIENT UTILIZATION PLANS

4-21-1. “Nutrient utilization plan” defined; amendments to the plan; exceptions. (a)

A confined feeding facility for swine under Kansas law that has an animal unit capacity of 1,000 or more and whose waste is applied to land shall prepare a nutrient utilization plan for review by the secretary of agriculture. The plan shall be on a form prescribed by the secretary and shall be a plan that forecasts nutrient management from the date of submission through the next five years. The plan shall be updated annually, maintained at the office of the swine facility, along with the three previous years' versions of the records, and made available to the secretary of agriculture upon request.

(b) Whenever the term “waste” is referred to in

article 21 of these regulations, it shall mean swine manure, swine wastewater, or swine manure and swine wastewater mixed together.

(c) Changes in conditions that warrant amendments requiring the secretary's approval to a facility's nutrient utilization plan shall include any of the following:

(1) A swine facility's permit is no longer valid, but the facility plans to seek a new permit.

(2) Additional land to which waste will be applied is not described in an approved plan.

(3) A procedure for waste application will be used that is not described in an approved plan.

(4) Land included in an approved nutrient utilization plan is no longer available for application as provided for in the approved nutrient utilization plan because legal authorization for land application no longer exists for that land.

(5) A phosphorus soil analysis result exceeds the phosphorus-holding capacity of the soil in a field as prescribed by K.A.R. 4-21-7.

(d) Swine facilities required by law to prepare nutrient utilization plans shall submit any other amendments necessary to facilitate approval as requested by the secretary of agriculture.

(e) Any amendment described in subsection (c) or subsection (d) of this regulation to the plan shall be submitted to the secretary of agriculture and approved by the secretary before the application of waste.

(f) “Swine facility” or “facility,” as used in article 21 of these regulations, shall mean a confined feeding facility for swine under Kansas law that has an animal unit capacity of 1,000 or more and that applies manure or wastewater to land. (Authorized by K.S.A. 2-3309; implementing K.S.A. 2-3302, K.S.A. 2002 Supp. 2-3318 and K.S.A. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

4-21-2. “Field” defined. A field is defined, for purposes of preparation of a nutrient utilization plan, as an expanse of land devoted to one particular crop or tillage condition at a time and managed uniformly. A field shall also be the area identified by section, township, and range and outlined on a site map contained in a filed nutrient utilization plan approved by the secretary of agriculture. (Authorized by K.S.A. 1998 Supp. 2-3305 and 2-3309; implementing K.S.A. 1998 Supp. 2-3318 and 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999.)

4-21-3. Soil samples. (a) (1) The soil nutrient values may be determined either by analysis of a single composite of representative samples from a field or from the mathematical average of all the results from grid samples. Grid soil sampling is defined as a systematic method of sampling that separates the field into identified subunits with each subunit sampled separately. Each composite sample shall be representative, at the time it is taken, of the soils and of the nutrient values in the field from which the sample is taken.

(2) Each field where waste is to be applied shall be sampled before the application unless the field has been sampled in the preceding 12 months, but sampling shall not be required more frequently than annually unless required by the department due to elevated nutrient levels. The sampling shall consist of a representative number of soil cores from each field and shall be collected by either of the following methods:

(A) Two composite samples shall be collected from each field by separating the top six inches of each core collected from the bottom of the core sample. If multiple cores are taken, all samples from the top six inches of soil shall be mixed together. This composite sample shall be tested for phosphorous, zinc, copper, nitrate-N, and chloride. The bottom segment of each soil core sample from six through 24 inches shall then be mixed together, and this composite sample shall be tested for nitrate-N and chloride.

(B) Two composite samples shall be collected by obtaining individual core samples. A composite sample to be tested for phosphorous, copper, and zinc shall be collected from the top six inches of the soil and mixed if multiple cores are collected. The second composite sample shall be tested for nitrate-N and chloride, and shall be collected by taking a core sample from the soil surface to a soil depth of 24 inches. If multiple cores are taken, the samples shall be mixed before testing.

(b) The owner or operator of each swine facility shall sample the soil within 60 days following any application of waste if the application is the result of an emergency waste disposal. Each individual who collects any soil sample to comply with these regulations shall certify the location and number of representative cores collected from the field.

(c) A copy of the certification of each field and the laboratory analysis of composite or grid soil sample shall be maintained in the office of the swine facility and made available to the secretary of agriculture or designee upon request. The cer-

tification required by this regulation shall be submitted on a form prescribed by the secretary.

(d) Samples shall be taken by the secretary of agriculture or designee if, at that individual's discretion, an inspection requires a sample. Each composite soil sample taken by the secretary of agriculture or designee shall be taken in the manner required by this regulation and by K.A.R. 4-21-4. A composite soil sample taken by the secretary of agriculture or designee shall be presumed to be representative of the field. Whether a sample is representative shall be within the sole discretion of the secretary of agriculture, and the secretary's determination of whether a sample is representative shall be final. (Authorized by K.S.A. 2-3305 and K.S.A. 2-3309; implementing K.S.A. 2-3318, as amended by L. 2002, ch. 181, sec. 14 and K.S.A. 2001 Supp. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

4-21-4. Soil tests. The composite soil samples from each field shall be analyzed for the nutrients specified in subsection (a) in the manner prescribed by this regulation.

(a) The analyses listed in this subsection shall follow the directions on the specified pages that are hereby adopted by reference from the north central regional research publication no. 221, "recommended chemical soil test procedures for the north central region," revised January 1998, as follows:

(1) The analysis for nitrate-N shall follow the directions on pages 17 through 19.

(2) The analysis for phosphorus shall follow the directions on pages 21 through 26. Calcareous soils shall follow the directions for the Olsen phosphorus test on pages 25 through 26. For non-calcareous soils, the analysis shall follow the directions for either the Bray and Kurtz P-1 analysis, on pages 21 through 22, or the Mehlich 3 analysis, on pages 23-24. Calcareous soil is defined as soil having a pH above 7.0 that effervesces when a solution of 3N (three normal) hydrochloric acid is added drop-wise to the sample.

(3) The analysis for copper shall follow the directions for diethylenetriaminepentaacetic acid (DTPA) extraction on pages 41 through 42.

(4) The analysis for chlorides shall follow the directions for the mercury (II) thiocyanate method on pages 49 through 50.

(5) The analysis for zinc shall follow the directions for DTPA extraction on pages 41 through 42.

(b) An analysis different from any analysis specified in this regulation may be used if the analysis

is based on generally recognized sound agronomic interpretations and laboratory methods and is approved by the secretary of agriculture.

(c) The authorized representative for the laboratory at which the sample was analyzed shall certify that the sample was analyzed according to the applicable procedure set forth in this regulation and that the results of the analysis are an accurate analysis of the sample. The laboratory's certification shall show the date the sample was received, the date the sample was analyzed, the signature of the laboratory's authorized representative, and the results of the analysis for each chemical in each sample analyzed. (Authorized by K.S.A. 2-3305 and K.S.A. 2-3309; implementing K.S.A. 2-3318, as amended by L. 2002, ch. 181, sec. 14 and K.S.A. 2001 Supp. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

4-21-5. Agreements to apply waste. Each agreement for the application of waste on land owned by a person or persons other than the swine facility that is required to prepare a nutrient utilization plan shall be in writing. (Authorized by K.S.A. 2-3305 and K.S.A. 2-3309; implementing K.S.A. 2-3318, as amended by L. 2002, ch. 181, sec. 14 and K.S.A. 2001 Supp. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

4-21-6. Recordkeeping. (a) Each swine facility that is required to prepare a nutrient utilization plan shall keep records required by the law for the five years immediately preceding the date of the then-current inspection or for the years the swine facility operates after January 1, 1999. The swine facility shall not be required to keep records required by these regulations for more than five years from the date of approval.

(b) Actual nutrient values of waste may be used if the analysis used to determine the values is based on generally recognized sound agronomic interpretations and laboratory methods. Book values that are generally recognized as based on sound agronomic calculations may be substituted for actual values in preparing a nutrient utilization plan except for soil nutrient contents that require assay.

(c) Only actual soil analysis values shall be used in the preparation of nutrient utilization plans.

(d) Each facility shall maintain the records required for that facility by K.A.R. 4-21-1 through

K.A.R. 4-21-7, and K.A.R. 4-20-15 at the facility's site office. All records required to be kept by K.A.R. 4-21-1 through K.A.R. 4-21-7, and K.A.R. 4-20-15 shall be made available to the secretary of agriculture upon request. (Authorized by K.S.A. 2-3305 and K.S.A. 2-3309; implementing K.S.A. 2-3318, as amended by L. 2002, ch. 181, sec. 14 and K.S.A. 2001 Supp. 65-1,182; effective, T-4-12-29-98, Jan. 1, 1999; effective April 23, 1999; amended April 4, 2003.)

4-21-7. Exceeding the agronomic rate for phosphorus-holding capacity. A phosphorus soil analysis, as required by the secretary, shall be deemed to exceed the agronomic rate for phosphorus-holding capacity of the soil in a field if any of the following conditions is met: (a) The average annual rainfall is less than or equal to 22 inches, all of the field has a slope of five percent or less, and the soil analysis result using the Bray and Kurtz P-1 or the Mehlich 3 analysis method for phosphorus ("P") for the field exceeds 200 ppm or exceeds 76 ppm of "P" using the Olsen analysis method, as adopted by reference in K.A.R. 4-21-4.

(b) The average annual rainfall is less than or equal to 22 inches, any part of the field has a slope of greater than five percent, and the soil analysis result using the Bray and Kurtz P-1 or the Mehlich 3 analysis method for "P" exceeds 150 ppm or exceeds 57 ppm of "P" using the Olsen analysis method.

(c) The average annual rainfall is greater than 22 inches but less than 30 inches, the slope for all of the field is less than five percent, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 150 ppm or exceeds 57 ppm of "P" using the Olsen analysis method.

(d) The average annual rainfall is greater than 22 inches but less than or equal to 30 inches, the slope of any part of the field is greater than five percent, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 100 ppm or exceeds 38 ppm of "P" using the Olsen analysis method.

(e) The average annual rainfall is greater than 30 inches, and the soil analysis result using the Bray and Kurtz P-1 or Mehlich 3 analysis method for "P" for the field exceeds 100 ppm or exceeds 38 ppm of "P" using the Olsen analysis method. (Authorized by K.S.A. 2-3309; implementing K.S.A. 2002 Supp. 2-3318 and K.S.A. 65-1,182; effective April 4, 2003.)

Article 25.—GRAIN WAREHOUSE

4-25-1. (Authorized by and implementing L. 1986, Ch. 24, section 2; effective, T-87-39, Nov. 19, 1986; effective May 1, 1987; revoked Dec. 26, 1988.)

4-25-2. Record retention. (a) Each public warehouseman shall retain the following documents for at least six years after the public warehouseman is no longer liable for the grain specified in the document:

- (1) Scale tickets;
- (2) evidence of cancelled checks;
- (3) customer ledgers;
- (4) records of daily grain position;
- (5) insurance records;
- (6) warehouse receipts; and
- (7) any other document stored electronically or by any other means that identifies, in any way, grain stored in the warehouse.

(b) Upon request of the secretary or the secretary's designee, a public warehouseman shall produce for inspection or review any of the documents required to be maintained in subsection (a) of this regulation. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102, 34-228, 34-236, 34-246, 34-249a, 34-295a, 34-295b, and 34-2,104; effective March 8, 2002.)

4-25-3. Return of documents. Each public warehouseman shall return to the secretary all unused warehouse receipts and all Kansas public warehouseman licenses when either of the following occurs:

(a) The public warehouseman is no longer engaged in business as a public warehouseman.

(b) The name of the public warehouseman changes. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-299; effective March 8, 2002.)

4-25-4. Storage space; exception. No portion of the total bulk grain capacity shall be deleted from the licensed capacity of a public warehouse if this portion is an integral part of any one unit under license and is equipped for grain handling and warehousing. However, any part of the licensed capacity may be reserved and designated "not for public use," if the public warehouseman submits an application to the secretary and receives the secretary's approval. A seal, a lock, or other method of segregating an area designated "not for public use" from the public warehouse

may be required by the secretary. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102, 34-228 and 34-237; effective March 8, 2002.)

4-25-5. Storage liability reports. (a) The "examiner's copy" of all executed warehouse receipts for the previous month shall be post-marked by the fifth of each month and mailed to the secretary.

(b) Each local public warehouseman shall maintain current and complete records at all times with respect to all grain, including grain owned by the public warehouseman, that is stored in or handled through the warehouse. These records shall include a daily summarized position record showing the following:

(1) The total quantity of each kind of grain received and shipped, and the quantity of each kind of grain remaining in the warehouse at the close of each business day; and

(2) the public warehouseman's total storage obligation for each kind of grain at the close of each business day.

(c) The public warehouseman shall forward to the secretary, not later than the fifth day of each month, a monthly statement of stocks of grain in each elevator through the last day of the preceding month, for each licensed warehouse location. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-295a; effective March 8, 2002.)

4-25-6. Secretary's right to seal bins and weigh grain. Any grain on hand for which there are outstanding warehouse receipts may be weighed and required to be stored in sealed bins or tanks by the secretary. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-239; effective March 8, 2002.)

4-25-7. Public warehouse receipts; form. The form used for warehouse receipts shall conform to the provisions of K.S.A. 34-239 and all other applicable sections of chapter 34 of the Kansas statutes annotated, and amendments thereto, and shall include, as a part of the form, the following statement:

"The undersigned warehouseman is not the owner of the grain covered by this receipt, either solely, jointly, or in common with others, unless otherwise stated hereon. It is hereby agreed that the grain herein described has been graded as provided by law and may be stored with other grain of the same grade; that this grain is stored under all the rights, powers, privileges, and duties provided

by chapter 34 of the Kansas Statutes Annotated. This grain is fully covered by fire, lightning, tornado, and internal explosion insurance. The storage, insurance, elevation, and other charges on said grain shall be governed by the published schedule of charges, which includes any legal change, in effect during the period from date of receipt of the grain until sold or delivered to the above named depositor or the depositor's order." (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102, 34-238, and 34-239; effective March 8, 2002.)

4-25-8. Scale tickets; inbound form. (a) When a depositor leaves grain in any warehouse licensed under the provisions of chapter 34 of the Kansas statutes annotated, and amendments thereto, the grain shall be weighed and graded as provided by the laws and regulations of the state of Kansas.

(b) Each scale ticket shall be plainly marked "inbound," shall be serially numbered, and shall contain at some convenient, conspicuous point the phrase "approved by the Kansas Department of Agriculture." Each ticket shall also include lines designated for the following:

- (1) The name of the licensee;
- (2) the date;
- (3) the name of the depositor;
- (4) the gross weight;
- (5) the tare weight;
- (6) the net weight, and a designation of whether the driver is on or off the truck;
- (7) the test weight;
- (8) the price;
- (9) the kind of grain; and
- (10) the signature of the licensee or duly authorized agent.

Each scale ticket may contain additional information if the additional information has received the prior approval of the secretary, but scale tickets shall be used only for grain received by the public warehouseman.

(c) Each public warehouseman shall keep a copy of the scale tickets, including voided tickets, in numerical order. The public warehouseman shall furnish a copy of these tickets to an authorized examiner of the Kansas department of agriculture upon demand. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-233; effective March 8, 2002.)

4-25-9. Scale tickets; outbound form. (a) When, by any means of transportation except by rail or water, a public warehouseman licensed un-

der the provisions of chapter 34 of the Kansas statutes annotated, and amendments thereto, ships or transfers grain, grain shall be weighed as provided by the laws and regulations of the state of Kansas.

(b) Each scale ticket shall be plainly marked "outbound," shall be serially numbered, and shall contain at some convenient, conspicuous point the phrase "approved by the Kansas Department of Agriculture." Each ticket shall include lines designated for the following:

- (1) The name of the licensee;
- (2) the date;
- (3) the name of the customer;
- (4) the gross weight;
- (5) the tare weight;
- (6) the net weight, and a designation of whether the driver is on or off the truck;
- (7) the test weight;
- (8) the price;
- (9) the kind of grain; and
- (10) the signature of the licensee or duly authorized agent.

Scale tickets may contain additional information if the additional information has received the prior approval of the secretary.

(c) The approved scale tickets shall not be used for custom weighing or for any other purpose or use that is not pursuant to chapter 34 of the Kansas statutes annotated, and amendments thereto, and the regulations of the Kansas department of agriculture, but shall be used only for grain shipped or transferred by the warehouseman.

(d) Each public warehouseman shall keep a copy of the scale tickets, including voided tickets, in numerical order. The public warehouseman shall furnish a copy of these tickets to an authorized examiner of the Kansas department of agriculture upon demand. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-233; effective March 8, 2002.)

4-25-10. Grain bank grain. (a) Grain bank grain shall be considered to be the same as storage grain and shall be subject to the same regulations as those for storage grain. For grain that is processed by each public warehouseman in whose warehouse the grain was originally deposited for processing, the minimum load out and receiving charges may be zero.

(b) Grain bank grain shall be entered into the records of the public warehouseman as a liability in the same manner as that for other storage grain for which the public warehouseman is lia-

ble. Grain bank grain shall be accounted for on an individual depositor basis and shall not be shown as a part of the total grain bank grain obligation. The records for grain bank grain shall be kept on a pound, bushel, or hundredweight basis for the grain deposited. (Authorized by K.S.A. 34-102 and 34-227b; implementing K.S.A. 34-227b; effective March 8, 2002.)

4-25-11. Allowance to licensed warehouses for the purpose of handling and storage of dry edible beans. For the purpose of allowing public licensed warehouses to handle and store dry edible beans, the definition of the word “grain” in K.S.A. 34-223, and amendments thereto, shall include dry edible beans. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-223; effective March 8, 2002.)

4-25-12. Financial statements. (a) The financial statement of an applicant for a license or the financial statement of an existing grain warehouse shall show that current liquid assets equal or exceed current liabilities. If liabilities exceed liquid assets, the bond required by K.S.A. 34-229, and amendments thereto, may be amended to cover the deficiency, or an unused line of credit available to pay the depositor may offset the deficiency.

(b) If current liabilities exceed current liquid assets, the public warehouseman shall comply with subsection (a) of this regulation within 60 days from the date the secretary receives the financial statement that shows any deficiency.

(c) For the purposes of this regulation, liquid assets shall not include deferred income taxes or residential property. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102, 34-228, and 34-229; effective March 8, 2002.)

4-25-13. Appraisals. (a) If the financial statement of a public warehouseman does not reflect assets sufficient to comply with the net worth requirements of K.S.A. 34-228, and amendments thereto, the public warehouseman may acquire an appraisal. Each appraisal prepared pursuant to this regulation shall be performed by an independent appraiser certified by a generally recognized appraisal society. Each public warehouseman shall submit credentials for the appraiser upon request of the secretary.

(b) Surplus designated under an appraisal shall be discounted by 30 percent to account for estimated unrealized capital gains at the time of the

disposition of any grain for which the public warehouseman is liable.

(c) An appraisal prepared according to this regulation may be relied upon by the secretary for up to four years from the date of completion of the appraisal. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-228; effective March 8, 2002.)

4-25-14. Successor agreement. (a) In each successor’s agreement, grain in open storage, grain bank grain, or warehouse receipts shall be identified separately. The public warehouseman whose liability is being assumed shall report within five days of closing, or within a reasonable time approved by the secretary, the amount of each commodity stored in the warehouse and shall identify the grain as grain in open storage, grain bank grain, or grain subject to a warehouse receipt. The report shall be submitted in writing on a form prescribed by the secretary.

(b) The report specified in subsection (a) of this regulation shall not be required if the change in the ownership is a change only in the name of the grain warehouse. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-228; effective March 8, 2002.)

4-25-15. Definition of 12-month period. The inspection required by K.S.A. 34-228, and amendments thereto, shall be conducted at least once in the 12-month period commencing July 1 of each year. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-228; effective March 8, 2002.)

4-25-16. Fees and charges. (a) The annual fee for a public warehouse license shall be computed as follows, based on the capacity of the public warehouse:

Capacity in Bushels	Annual Fee
1 to 100,000	\$400.00
100,001 to 150,000	430.00
150,001 to 250,000	460.00
250,001 to 300,000	490.00
300,001 to 350,000	520.00
350,001 to 400,000	550.00
400,001 to 450,000	575.00
450,001 to 500,000	605.00
500,001 to 600,000	630.00
600,001 to 700,000	660.00
700,001 to 800,000	850.00
800,001 to 900,000	875.00
900,001 to 1,000,000	900.00
1,000,001 to 1,750,000	1,225.00
1,750,001 to 2,500,000	1,400.00
2,500,001 to 5,000,000	1,750.00
5,000,001 to 7,500,000	2,100.00

Capacity in Bushels	Annual Fee
7,500,001 to 10,000,000	2,375.00
10,000,001 to 12,500,000	2,600.00
12,500,001 to 15,000,000	2,800.00
15,000,001 to 17,500,000	3,000.00
17,500,001 to 20,000,000	3,225.00
Over 20,000,000 bushels.....	add 350.00
for each 2,500,000 bushels or fraction thereof.	

(b) The charge for amending a warehouse license shall be \$300.00.

(c) The charges for each special or requested examination of a warehouse shall consist of the following:

- (1) \$50.00 per hour for each examiner, with a required minimum charge of four hours;
- (2) subsistence expenses for each examiner; and
- (3) mileage expenses for each examiner, which shall be charged, per mile driven, at the rate per mile determined by the secretary of administration pursuant to K.S.A. 75-4607, and amendments thereto.

(d) The license fee shall be the applicable amount specified in the fee schedule in subsection (a) plus \$500 for each functional unit. Each public warehouseman shall pay the hourly rate, subsistence, and mileage expenses identified in subsection (c) of this regulation for examinations necessitated by changes in storage capacity, including conditional storage space of a licensed warehouse, or by the need to confirm that a warehouse is empty. Any other charge or requirement identified in statute or regulation shall apply to the conditional or empty storage space of a public warehouse.

(e) Each public warehouseman shall pay the hourly rate, subsistence, and mileage expenses identified in subsection (c) of this regulation for examinations necessitated by changes in storage capacity, including the addition of conditional storage space in a licensed warehouse, or by the need to confirm that a warehouse is empty. Any other charge or requirement identified in statute or regulation shall apply to the conditional or empty storage space of a public warehouse. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-228; effective March 8, 2002; amended, T-4-12-16-03, Jan. 1, 2004; amended Feb. 6, 2004.)

4-25-17. Transfer of grain between public warehouses. (a) A public warehouseman, as defined by K.S.A. 34-223, and amendments thereto, who lacks sufficient space and desires to transfer grain for which valid receipts have been issued may transfer this grain either by physical move-

ment of the grain or by other methods approved by the secretary as standard industry practice, subject to the following requirements:

(1) The shipping public warehouseman shall immediately notify the secretary before the transfer of receipted grain. This notice to the secretary shall include the location where the grain will be transferred for storage. The shipping public warehouseman shall also provide written notice to all depositors who hold receipts for grain that the shipping public warehouseman may forward grain deposited on a commingled basis.

(2) For purposes of this regulation, a licensed public warehouse shall mean a warehouse operated by a public warehouseman who holds a valid license under the U.S. warehouse act for grain, or a public warehouse operated by a public warehouseman who holds a valid warehouse license for the public storage of grain or rice, issued by a state that has financial, bonding, and examination requirements for the benefit of all depositors.

(3) The shipping public warehouseman shall promptly obtain nonnegotiable warehouse receipts from the receiving public warehouseman for all transferred grain. The receipts shall be kept on forms furnished by the secretary pursuant to K.S.A. 34-238 and amendments thereto. Receipts shall not be used in any other manner except as provided by Kansas statute. The receipts shall be retained by the shipping public warehouseman to be presented to and used by department examiners in lieu of an on-site inventory. The grain covered by these receipts shall not be the property of either the receiving or shipping public warehouseman but shall be held in trust by both parties solely for the benefit of the depositors whose bailed grain was transferred individually or collectively, and the depositor or the depositor's transferee shall retain title to it.

(4) The shipping public warehouseman's bond shall be increased to consider the addition of the transferred grain to the licensed capacity of the public warehouse with the net worth requirements based on the total of the licensed capacity and the forwarded grain. The bond amount shall not be required to be more than \$500,000 unless necessary to cover a deficiency in net worth to meet the requirements of K.S.A. 34-228, and amendments thereto.

(5) The shipping public warehouseman shall continue to retain that individual's obligations to the owners for all grain deposited in the public warehouse for storage, whether forwarded or re-

tained, and shall redeliver the grain upon demand to the depositor or the depositor's transferee at the public warehouse where the grain was first deposited for storage.

(6) Nothing in this regulation shall diminish either the right of the owner of the grain to receive on delivery or the obligation of the public warehouseman of a licensed public warehouse from which the product is transferred to deliver, to the owner, grain in the amount and of the kind, quality, and grade specified by the warehouse receipts or other evidence of storage.

(7) If it is the shipping public warehouseman's obligation by terms of the warehouse receipt or by any other agreement to insure the grain subject to the transfer, that individual shall in accordance with K.S.A. 34-236, and amendments thereto, keep this grain insured in that individual's own name or transfer the grain only to a public warehouse where the grain is fully insured.

(b) A shipping public warehouseman may transfer stored grain, as defined by K.S.A. 34-223, and amendments thereto, by complying with the provisions of paragraphs (a)(2), (a)(5), (a)(6), and (a)(7) of this regulation. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-241; effective March 8, 2002.)

4-25-18. Credit for unexpired portion of license on new or amended license. A successor to a current license holder may prorate the unused portion of the license fee to reduce the amount of a new license fee if the change in the successor is solely a change in the name of the license holder. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-102 and 34-228; effective March 8, 2002.)

Article 27.—LODGING ESTABLISHMENTS

4-27-1. Lodging establishment application fees. The application fee for each lodging establishment doing business in Kansas shall be based on the number of rooms as follows: (a) 1 room through 29 rooms: \$100; and

(b) 30 rooms or more: \$200. (Authorized by K.S.A. 2010 Supp. 36-506; implementing K.S.A. 2010 Supp. 36-502, as amended by 2011 HB 2282, sec. 2; effective June 4, 2010; amended, T-4-6-30-11, July 1, 2011; amended Oct. 28, 2011.)

4-27-2. Definitions. (a) "Bathroom" shall mean a room provided to guests, including a

locker room, shower room, or other similar room, where guests can shower, store personal items, or change into appropriate clothing for use in the spa.

(b) "Bed and breakfast home" shall mean a boarding house that is a private residence where the owner or manager resides and provides lodging and meals for guests. Any licensee operating a bed and breakfast home may serve food only to the licensee's overnight guests, unless the licensee obtains a food service license.

(c) "Egress" shall mean an exit or route leading out of a lodging establishment.

(d) "Extended-stay establishment" shall mean a lodging establishment in which a room is rented or leased to transient guests. Housekeeping functions are not provided on a daily basis.

(e) "Hot tub" shall mean a pool or container of water designated for recreational use in which one or more people can soak. A hot tub can use hydrojet circulation or an air induction system, or a combination of these, to provide water circulation. A hot tub can use various water temperatures and additives, including minerals and oils, to provide therapy or relaxation.

(f) "Imminent health hazard" shall mean fire, flood, sewage backup, rodent infestation, bed bug or other insect infestation, misuse of poisonous or toxic materials, gross unsanitary occurrence or condition, or any other condition that could endanger the health or safety of guests, employees, or the general public.

(g) "Kitchenette" shall mean a compact kitchen with cooking utensils, tableware, refrigerator, microwave, stove, or sink or any combination of these.

(h) "Licensee" shall mean a person who is responsible for the operation of the lodging establishment and possesses a valid license to operate a lodging establishment.

(i) "Linens" shall mean the cloth items used in the lodging establishment, including sheets, bedspreads, blankets, pillowcases, mattress pads, towels, and washcloths.

(j) "Lodge" shall mean a boarding house or a rooming house that provides seasonal lodging for recreational purposes. If meals are provided for overnight guests, the lodge is operating as a boarding house. If meals are not provided for overnight guests, the lodge is operating as a rooming house.

(k) "Major renovation" shall mean a physical change to a lodging establishment or portion of a lodging establishment, including the following:

(1) Replacing or upgrading any of the following types of major systems:

- (A) Electrical;
- (B) plumbing;
- (C) heating, ventilation, and air-conditioning;
- (2) demolition of the interior or exterior of a building or portion of the building; and
- (3) replacement, demolition, or installation of interior walls and partitions, whether fixed or moveable.

Major renovation shall not include replacement of broken, dated, or worn equipment and other items, including individual air-conditioning units, bathroom tiles, shower stalls, and any other items that do not require additional or new plumbing or electrical repairs.

(l) “Person in charge” shall mean the individual or employee who is present in the lodging establishment at the time of the inspection and who is responsible for the operation. If no designated individual or employee is the person in charge, then any employee present is the person in charge.

(m) “Recreational water facility” and “RWF” shall mean a water environment with design and operational features that provides guests with recreational activity and that involves immersion of the body partially or totally in the water. This term shall include water slides, watercourse rides, water activity pools, jetted pools, and wave pools. This term shall not include swimming pools and hot tubs.

(n) “Sanitize” shall mean to apply cumulative heat or chemicals on any clean surface so that, when evaluated for efficacy, the surface yields a reduction of 99.999% of disease-causing microorganisms.

(o) “Single-service articles” shall mean items that are designed, constructed, and intended for one-time use and for one person’s use, after which the items are discarded. This term shall include plastic, paper, or foam tableware and utensils, lightweight metal foil, stirrers, straws, toothpicks, and other items including single-use gloves, bags, liners, containers, placemats, and wrappers.

(p) “Spa” shall mean any area of a lodging establishment where a hot tub, swimming pool, fitness equipment, tanning bed, or similar guest amenities are located. (Authorized by K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; implementing K.S.A. 2011 Supp. 36-501, as amended by L. 2012, ch. 145, sec. 3, and K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-3. Licensure; plans and specifications; variances. (a) Each person applying for a license to operate a lodging establishment shall submit the following to the secretary:

(1) A completed application and the required application and license fees; and

(2) if required by subsection (b), the plans and specifications of the lodging establishment.

(b) The plans and specifications shall be submitted before any of the following:

(1) The construction of a lodging establishment;

(2) the conversion of an existing structure for use as a lodging establishment;

(3) the major renovation of a lodging establishment;

(4) the addition or major renovation of a swimming pool, hot tub, recreational water facility, or spa; or

(5) the addition or change of a food service operation within a lodging establishment.

(c) Each plan and specification for a lodging establishment shall demonstrate conformance with the applicable requirements of these regulations and shall include the following:

(1) The proposed layout, mechanical schematics, construction materials, and completion schedules;

(2) the equipment layout, construction materials, and completion schedules for any food preparation and service area; and

(3) the equipment layout and completion schedules for each swimming pool, hot tub, RWF, and spa.

(d) A variance may be granted by the secretary to modify or waive one or more requirements of a regulation if the secretary determines that a health hazard, safety hazard, or nuisance will not result from the variance.

(1) Each person requesting a variance shall submit the following to the department:

(A) A written statement of the proposed variance of the regulatory requirement;

(B) documentation of how the proposed variance addresses public health hazards and guest safety at the same level of protection as that of the original requirement; and

(C) any other relevant information if required by the secretary.

(2) For each variance granted, the licensee shall meet the following requirements:

(A) Follow the plans and procedures approved by the secretary;

(B) maintain a permanent record of the variance at the lodging establishment; and

(C) maintain and provide to the secretary, upon request, records that demonstrate that the variance is being followed. (Authorized by K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; implementing K.S.A. 2011 Supp. 36-502, as amended by L. 2012, ch. 145, sec. 4; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-4. Food service and food safety.

Each person operating a guest house that serves food to the general public, in addition to overnight guests, shall obtain a food establishment license in accordance with K.S.A. 65-688 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-5. Imminent health hazard. (a) Each licensee shall discontinue operations of the affected portions of the lodging establishment on discovery that an imminent health hazard exists.

(b) Each licensee shall notify the secretary within 12 hours of the discovery of an imminent health hazard. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-6. General requirements. (a) Each licensee shall meet all of the following requirements:

(1) Post the license in a location in the lodging establishment that is conspicuous to guests;

(2) comply with the provisions of these regulations, including the conditions of any granted variance;

(3) ensure that no room or any portion of the lodging establishment is rented unless the room or portion of the lodging establishment is safe and sanitary; and

(4) replace any existing items, including equipment, furnishings, fixtures, or items of décor, with items that meet the requirements of these regulations, under any of the following conditions:

(A) The items constitute a public health hazard;

(B) the items affect guest safety; or

(C) the items do not meet the requirements of these regulations.

(b) Each licensee shall ensure that the hot water capacity is sufficient to meet the hot water demands of the lodging establishment.

(c) Each licensee shall ensure that all handwashing sinks meet all of the following requirements:

(1) Hot and cold potable water shall be supplied under pressure to each sink in enough capacity to meet handwashing needs.

(2) A mixing valve or combination faucet shall be used, unless the lodging establishment is listed on the state historical register or a variance that alters this requirement has been granted.

(3) The temperature of the hot water shall be at least 100 degrees Fahrenheit. If a mixing valve or combination faucet is not used, the temperature of the hot water shall not exceed 130 degrees Fahrenheit.

(4) A supply of hand soap and either paper towels or an electric drying device shall be available at all times at the handwashing sink.

(d) In public areas, cloth towels may be provided for one-time use by an individual. A receptacle for the soiled cloth towels shall be provided.

(e) The use of a common cloth towel shall be prohibited, except in guest rooms.

(f) A handwashing reminder sign shall be posted in each handwashing area, except in guest rooms.

(g)(1) A toilet room that is accessible at all times to employees shall be provided. A public toilet room may be used by employees in lieu of a separate employee toilet room.

(2) A public toilet room or rooms shall be provided and accessible to the public if the lodging establishment provides space for guest or public gatherings or functions, including conferences, meetings, seminars, receptions, teas, dances, recitals, weddings, parties, wakes, and other events.

(3) There shall be at least one handwashing sink in or immediately adjacent to each toilet room. Each sink shall meet the requirements specified in subsection (c).

(4) Each toilet and urinal shall be sanitary, maintained in good repair, and operational at all times.

(5) Each toilet and urinal shall be cleaned and sanitized daily or more often if visibly soiled.

(6) The floor in each toilet room shall be constructed of smooth, nonabsorbent, easily cleanable materials and maintained in good repair. Carpeting shall be prohibited as a floor covering in toilet rooms.

(7) Except as specified in this paragraph, the storage of items in any toilet room shall be prohibited. A small amount of commonly used toilet room supplies may be stored, including toilet paper, hand soap, and paper towels. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502 and 36-506; effective June 4, 2010.)

4-27-7. Personnel; health, cleanliness, and clothing. Each licensee shall ensure that all of the following requirements are met: (a) Health of employees. Each employee with any of the following health problems shall be excluded from a lodging establishment:

(1) The employee is infected with a communicable disease, and the disease can be transmitted to other employees or guests in the normal course of employment.

(2) The employee is a carrier of organisms that cause a communicable disease.

(3) The employee has a boil, an infected wound, or an acute respiratory infection.

(b) Cleanliness of employees.

(1) Each employee shall wash that employee's hands in accordance with paragraph (b)(2) before handling clean utensils or dishware, ice, beverages, food, or clean laundry.

(2) Each employee shall wash that employee's hands and any exposed portions of that employee's arms with soap and water in a designated sink by vigorously rubbing together the surfaces of the lathered hands and arms for 15 seconds to 20 seconds and thoroughly rinsing with clean water.

(c) Clothing. Each employee providing services directly to guests or performing housekeeping functions shall wear clean outer clothing that is in good repair. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-8. Guest and public safety. (a) If the secretary has reason to believe that defects could be present with regard to the integrity of the structure or electrical system of the lodging establishment, the licensee may be required by the secretary to retain the services of a professional engineer or local building code officer to certify the lodging establishment for building safety. Disasters after which the structural integrity may need to be evaluated shall include a heavy snow or ice storm, flood, tornado, straight-line winds, fire, hurricane, and earthquake.

(b) Each licensee shall ensure that all repairs, construction, renovations, and maintenance are conducted in a manner that provides safe conditions for the guests and the public.

(c) The licensee of each lodging establishment using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including lodging establishments with attached parking garages or wood-burning fireplaces, shall install one

or more carbon monoxide detectors according to the manufacturer's specifications.

(1) A carbon monoxide detector shall be required in each non-guest room adjoining or sharing a common ventilation system with an attached parking garage.

(2) Each carbon monoxide detector shall be in working condition.

(A) Each carbon monoxide detector shall be tested at least every six months to ensure that the detector is operating properly. The batteries shall be changed, as needed.

(B) A 12-month history of all test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(C) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(3) A carbon monoxide detector shall not be required to be installed in an attached parking garage area.

(d) The operation and maintenance requirements for each lodging establishment shall include all of the following:

(1) Each lodging establishment shall meet the requirements of all applicable building codes, fire codes, and ordinances.

(2) No freshly cut Christmas trees or boughs shall be used unless the freshly cut trees or boughs are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for at least one year.

(3) Textile materials having a napped, tufted, looped, woven, nonwoven, or similar surface shall not be applied to walls or ceilings, unless the textile materials are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for as long as the materials are used on the walls or ceilings. This documentation shall be made available to the secretary upon request. Carpeting used as coving that covers the junction between the floor and walls shall be exempt from this requirement.

(4) Foam or plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling, or floor finish unless approved by the secretary.

(5) The doors in any public areas that lead outside the lodging establishment shall not be locked

or blocked, preventing egress when the building is occupied. No exit doors shall be concealed or obscured by hangings, draperies, or any other objects.

(6)(A) Portable fire extinguishers shall be required and located in the hallways, mechanical rooms, laundry areas, and all other hazardous areas and within 75 feet of each guest room door. All portable fire extinguishers shall be easily accessible to the guests and employees.

(B) Each fire extinguisher shall meet the following requirements:

(i) Be maintained in a fully charged and operable condition;

(ii) be rated at least 2A-10BC;

(iii) contain at least five pounds of fire suppressant; and

(iv) be inspected annually by a fire extinguisher company, a fire department representative, or another entity approved by the secretary. The licensee shall retain a record of these inspections at the lodging establishment for at least one year.

(7) Emergency lighting shall be provided where guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at ground level.

(8) A smoke detector shall be installed in each guest sleeping room, cooking area and kitchen, interior stairwell, hallway, laundry area, mechanical room, and any other fire hazard area. Any heat-sensing device designed to detect fire may be installed in a cooking area in lieu of a smoke detector.

(A) All smoke detectors and heat-sensing devices shall be maintained in operating condition.

(B) Each smoke detector and each heat-sensing device shall be tested at least every six months to ensure that the detector or device is operating properly. The batteries shall be replaced as needed.

(C) A 12-month history of test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(D) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(E) Smoke detectors for hearing-impaired individuals shall be available as specified in K.S.A. 36-517, and amendments thereto.

(9) If hardwired, interconnected smoke detectors are used, these detectors shall be tested and approved annually by a fire sprinkler company, fire alarm company, fire department representa-

tive, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(10) If fire alarm systems and fire sprinkler systems are used, the systems shall be tested and approved annually by a fire alarm company, fire sprinkler company, fire department representative, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(11)(A) All exit signs shall be clean and legible. At least one exit sign shall be visible from each of the following locations:

(i) The doorway of each guest room that opens to an interior corridor; and

(ii) the doorway of each guest room that opens to the outdoors but not directly at ground level.

(B) Each newly constructed lodging establishment shall have supplemental directional signs indicating the direction and path of egress.

(C) Boarding houses and rooming houses shall not be required to have exit signs if the requirements in paragraphs (d)(5) and (12) are met.

(12) An evacuation route diagram shall be posted in a conspicuous location in each guest room. The diagram shall include the location of the guest room, the layout of the floor, and the location of the nearest available exits. If the door of a guest room opens directly to the outdoors at ground level, the diagram shall not be required to be posted.

(13) A copy of an emergency management plan and employee instructions shall be kept on file in the lodging establishment, made accessible to all employees, and made available to the secretary upon request. A record that each employee has received training on the emergency management plan shall be maintained at the lodging establishment in each employee's file. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-9. Guest rooms. Each licensee shall ensure that each guest room is kept clean, is in good repair, and is maintained with regard to the health and safety of each guest, in accordance with all of the following requirements: (a) The walls, floors, ceilings, doors, and windows shall be constructed of materials intended for that purpose, maintained in good repair, and cleaned, painted, or replaced as necessary.

(1) All junctures between floors and walls shall be constructed, covered, or finished with a baseboard and readily cleanable.

(2) All floors and floor coverings shall be cleaned as needed. The methods for cleaning shall be suitable to the finish and material.

(3) All floor maintenance, repair, or replacement shall be done in a manner that prevents slipping or tripping hazards to any guest.

(4) A guest room that has visible mold on the floors, walls, ceiling, or windows shall not be rented until mold cleanup is completed.

(b) All furnishings, including draperies, beds, appliances, furniture, lamps, and decorative items, shall be kept clean and in good repair. The methods for cleaning shall be suitable to the material and finish.

(c) Each guest room shall have a connecting toilet room and bathing facilities, including a bathtub or shower, except for the following:

(1) If the lodging establishment is listed on the state historical register and documentation is provided to the secretary, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms, unless otherwise specified by the secretary.

(2) If the lodging establishment is a boarding house, including a bed and breakfast home, or a rooming house, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms.

(3) If the lodging establishment is a lodge with dormitory sleeping areas, at least one toilet and at least one bathtub or one shower shall be provided for every six guests and shall be located within the same building as the dormitory sleeping area or adjacent to the dormitory sleeping area.

(d) Each handwashing sink shall meet the requirements specified in K.A.R. 4-27-6.

(e) Each rented guest room shall be serviced daily in the following manner except as otherwise specified in this subsection:

(1) Clean bathroom linens, including towels and washcloths, shall be provided. If bathmats are provided, the bathmats shall be clean.

(2) Clean bed linens shall be provided, and the bed shall be made.

(3) All floors shall be swept or vacuumed, if visibly soiled. All hard-surface floors shall be wet-cleaned if visibly soiled.

(4) Each toilet, sink, bathtub, and shower area shall be cleaned if visibly soiled.

(5) Each trash container shall be emptied and

shall be cleaned if visibly soiled. A trash container liner may be reused during the same guest's stay if the liner is not visibly soiled.

(6) All soap and prepackaged guest toiletry items shall be replenished, as necessary.

(7) All toilet paper shall be replenished, as necessary.

(8) Clean ice bucket liners shall be provided and replaced, as necessary and upon request of the guest.

(9) All glassware and cups, if provided, shall be replaced with clean and sanitized dishware. Single-service cups, if provided, shall be replenished.

(10) If a coffeemaker is present in the guest room, the coffeepot shall be rinsed. If the coffeepot is visibly soiled or contaminated, it shall be washed, rinsed, and sanitized. A fresh supply of coffee, condiments, and any single-service articles shall be replenished, if provided.

(f) Each guest room shall be serviced daily during the guest's stay if the stay is less than five days, unless the guest requests that all or part of the room not be serviced.

(g) If the same guest continuously occupies the same room for five or more days, the room shall be serviced and cleaned at least every five days. For each extended-stay establishment, the guest room shall be serviced and cleaned at least every five days.

(h) Each guest room that is available for rent shall be serviced and cleaned before each new guest. In addition to the required service activities in subsection (e), each guest room cleaning shall include the following:

(1) All floors shall be swept or vacuumed, and all hard-surface floors shall be wet-cleaned.

(2) All furniture, fixtures, and any items of decoration shall be cleaned in a manner that is appropriate to the finish.

(3) The interior of all drawers shall be cleaned.

(4) All toilets, sinks, bathtubs, and shower areas shall be cleaned and sanitized in a manner that is appropriate to the finish.

(5) All sinks, bathtubs, and shower areas shall be kept free of hair, mold, and mildew.

(6) Bed linens and bath linens shall not be used for cleaning or dusting.

(7) All trash containers shall be emptied and cleaned, and new liners shall be provided.

(8) All ice bucket liners shall be replaced with new liners.

(9) All used guest toiletries and soap shall be replenished.

(10) The guest room shall be visually inspected for any evidence of insects, rodents, and other pests.

(i)(1) All bedspreads, top-covering linens, blankets, mattress pads, mattresses, and box springs shall be cleaned and maintained in good repair according to all of the following requirements:

(A) All linens with tears or holes shall be repaired or replaced, and all soiled and stained linen shall be cleaned.

(B) All bedspreads and top-covering linens shall be cleaned at least monthly.

(C) All blankets and mattress pads shall be cleaned at least monthly. All blankets and mattress pads that are visibly soiled or stained shall be removed and replaced with clean linen.

(D) All mattresses and box springs shall be kept clean. Each damaged or soiled mattress and box spring shall be repaired or cleaned.

(E) Each mattress that is not kept in sanitary condition shall be replaced.

(2) The interior and surface of each enclosed mattress platform shall be cleaned if visibly soiled and either maintained in good repair or replaced.

(j) If a coffeepot is not located within a toilet room, the coffeepot shall be rinsed before each new guest. If a coffeepot is located within a toilet room, the coffeepot shall be washed, rinsed, and sanitized before each new guest as specified in K.A.R. 4-27-10.

(k) All single-service drinking glasses and utensils shall be prepackaged.

(l) All food and condiments provided in each guest room shall be individually prepackaged.

(m) If a refrigerator unit is provided in a guest room, the unit shall be cleaned before each new guest.

(n) Each appliance provided for guest use, including microwaves, stoves, dishwashing machines, coffeemakers, hair dryers, clothing irons, radios, televisions, remote controls, and video equipment, shall be operational and in good repair. All cooking appliances, including microwaves and stoves, shall be cleaned before each new guest. All appliances shall be listed with or certified by underwriters' laboratories (UL) and shall bear the UL designation.

(o) Except as specified in this subsection, the use of portable electrical or open-flame cooking devices shall be prohibited in a guest room. These devices shall include hot plates, electric skillets and grills, propane and charcoal grills, camping stoves, and any similar cooking devices. These de-

vices shall not include slow cookers. Microwaves and toasters that are provided in a guest room by the licensee shall be permitted.

(p) Each guest room shall be free of any evidence of insects, rodents, and other pests.

(1) If a guest room has been vacant for at least 30 days, the licensee shall visually inspect that room for any evidence of insects, rodents, and other pests within 24 hours of occupancy by the next guest.

(2) No guest room that is infested by insects, rodents, or other pests shall be rented until the infestation is eliminated.

(3) The presence of bed bugs, which is indicated by observation of a living or dead bed bug, bed bug carapace, eggs or egg casings, or the typical brownish or blood spotting on linens, mattresses, or furniture, shall be considered an infestation.

(4) The presence of bed bugs shall be reported to the secretary within one business day upon discovery or upon receipt of a guest complaint.

(5) All infestations shall be treated by a licensed pest control operator.

(6) All pest control measures, both mechanical and chemical, shall be used in accordance with the manufacturer's recommendations.

(7) No rodenticides, pesticides, or insecticides shall be stored in a guest room or in any area that could contaminate guest supplies, food, condiments, dishware, or utensils.

(q)(1) The licensee of each lodging establishment that allows pets into any guest room shall advise consumers that the establishment is "pet-friendly" by posting a sign in a conspicuous place at the front desk to alert guests that pets are allowed.

(2) The licensee of each lodging establishment where pets or service animals have been in a guest room shall meet one of the following requirements:

(A) The guest room shall be deep cleaned before the next guest. Deep cleaning shall include servicing and cleaning the guest room as specified in subsections (e) and (h), as well as vacuuming and shampooing the carpet and upholstered furnishings and vacuuming the mattress. All bed linens, including sheets, mattress pads, blankets, bedspreads or top coverings, and pillows, shall be replaced with clean bed linens.

(B) If the room is not deep cleaned, the licensee shall not offer that room to any guest without giving notification to that guest that a pet or service animal was in the room previous to the new guest.

(3) If the previous guest has smoked in a room, the licensee of any lodging establishment shall not offer that room as a non-smoking room until one of the following requirements is met:

(A) The guest room is deep cleaned as specified in paragraph (q)(2)(A).

(B) If the room is not deep cleaned, the licensee shall give notification to the new guest that the previous guest smoked in the room.

(r) Each guest room shall be provided with a means for locking each entrance both from the inside and from the outside, according to all of the following requirements:

(1) The key furnished to each guest shall not unlock the door to any other guest room.

(2) At least one secondary lock, including a dead bolt lock, thumb bolt, chain lock, or a similar device, shall be provided in addition to the primary key lock and shall be installed in accordance with the manufacturer's specifications.

(3) All locks shall be in good repair and fully operational.

(s) Each pair of connecting guest rooms shall have two doors in the connecting doorway. Each connecting door shall be equipped with a lock on only the guest room side of that door.

(t) If cribs are provided upon request, the cribs shall be easily cleanable, safe, and in good repair. Each crib rail, pad, and mattress shall be cleaned and sanitized after each guest. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-10. Dishware and utensils. Each licensee shall ensure that all of the following requirements are met: (a) General.

(1) All dishware and utensils that are designed for repeat use shall be made of safe, durable, and nonabsorbent material and shall be kept in good repair. No cracked or chipped dishware or utensils shall be provided for use by guests or employees.

(2) All single-service articles shall be constructed of safe, durable, and nonabsorbent materials.

(3) All single-service drinking glasses and utensils shall be prepackaged or protected in a dispenser.

(4) No single-service articles may be reused.

(b) Storage.

(1) All clean dishware and utensils and all single-service articles shall be protected from dirt, dust, liquids, insects, vermin, and any other sources of contamination at all times.

(2) Each licensee shall provide storage facilities for dishware and utensils in a clean, dry location at least six inches above the floor.

(3) No dishware and utensils shall be stored under an exposed sewer line or a dripping water line.

(4) No dishware, utensils, single-service articles, ice buckets, and food containers shall be stored within a toilet room.

(c) Cleaning and sanitization. Each licensee shall use either manual cleaning and sanitizing equipment or mechanical cleaning and sanitizing equipment.

(1) All dirty or used glasses, dishware, and utensils that are in areas other than a guest room kitchenette shall be removed from each guest room during the servicing or cleaning of the room and upon vacancy of that room. All items shall be washed, rinsed, and sanitized using one of the approved methods in this regulation.

(2) If the licensee provides repeat service dishware or utensils to the lodging establishment's guests or to the public, the licensee shall install in the lodging establishment, or in a food service area operated in conjunction with the lodging establishment, manual or mechanical cleaning equipment for dishware and utensils that meets the requirement of this regulation.

(3) The manual cleaning and sanitizing of dishware, utensils, and food equipment shall meet all of the following requirements:

(A)(i) A sink with at least three compartments or three adjacent sinks shall be used and shall be large enough to permit the immersion of the largest item of dishware, utensil, or food equipment articles to be cleaned.

(ii) All sinks and dishware drying surfaces shall be cleaned before use.

(B) Each compartment of the sink shall be supplied with hot and cold potable running water.

(C) The wash, rinse, and sanitizing water shall be kept clean.

(D) The steps for manual cleaning and sanitizing shall consist of all of the following:

(i) All dishware, utensils, and food equipment shall be thoroughly washed in the first compartment with a hot detergent solution.

(ii) All dishware, utensils, and food equipment shall be rinsed free of detergent and abrasives with clean hot water in the second compartment.

(iii) All dishware, utensils, and food equipment shall be sanitized in the third compartment according to one of the methods in paragraph (c)(3)(E).

(E) The food contact surfaces of all dishware, utensils, and food equipment shall be sanitized during manual ware washing by one of the following methods:

(i) Immersion for at least 10 seconds in a clean solution containing 50 to 200 parts per million of available chlorine, with a water temperature of at least 75 degrees Fahrenheit;

(ii) immersion for at least 30 seconds in clean hot water with a temperature of at least 171 degrees Fahrenheit;

(iii) immersion in a clean solution containing a quaternary ammonium compound with a minimum water temperature of 75 degrees Fahrenheit and with the concentration indicated by the manufacturer's directions on the label; or

(iv) immersion in a clean solution containing a sanitization chemical other than those specified in this subsection that meets the applicable requirements specified in K.A.R. 4-28-11.

(F) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(4) The mechanical cleaning and sanitizing of dishware, utensils, and food equipment may be done by spray-type or immersion commercial dishwashing machines. Another type of dishwashing machine or device may be used if the machine or device meets the requirements of this regulation.

(A) Each dishwashing machine and device shall be properly installed and maintained in good repair and shall be operated in accordance with the manufacturer's instructions.

(B) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be properly installed and maintained.

(C) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve a minimum dishware and utensil surface temperature of 160 degrees Fahrenheit as measured by a dishwasher-safe thermometer. For each dishwashing machine using hot water to sanitize that does not cause the surface temperature of the dishware and utensils to reach a temperature of 160 degrees Fahrenheit, one of the following requirements shall be met:

(i) The licensee shall install a heat booster.

(ii) The licensee shall provide the secretary with documentation of a time and temperature rela-

tionship that results in the sanitization of the dishware and utensils.

(D) The final rinse temperature of each dishwashing machine using hot water to sanitize shall be monitored by a dishwasher-safe thermometer.

(E) All dishware, utensils, and food equipment shall be exposed to all dishwashing and drying cycles.

(F) Each dishwashing machine using chemicals for sanitization shall be used as follows:

(i) The temperature of the wash water shall be at least 120 degrees Fahrenheit, and the chemical sanitizing rinse water shall be at least 75 degrees Fahrenheit unless specified differently by the machine's manufacturer.

(ii) The wash water shall be kept clean.

(iii) The chemicals added for sanitization purposes shall be automatically dispensed.

(iv) All dishware, utensils, and food equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturer's specifications for time and concentration.

(v) All chemical sanitizers shall meet the applicable requirements of K.A.R. 4-28-11.

(G) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(H) Each dishwashing machine or device shall be cleaned as often as necessary to be maintained in operating condition according to the manufacturer's specifications.

(d) All dishware, utensils, and food equipment shall be air-dried.

(e) Each licensee that provides dishware, utensils, and food equipment in the guest room shall clean and sanitize the dishware, utensils, and food equipment provided by one of the following methods:

(1) Provide manual dishwashing and sanitizing as specified in paragraph (c)(3);

(2) provide a mechanical dishwashing machine as specified in paragraph (c)(4); or

(3) provide a complete set of clean and sanitized dishware, utensils, and food equipment before each new guest arrives. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-11. Housekeeping and laundry facilities; maintenance supplies and equipment. Each licensee shall ensure that all house-

keeping and laundry facilities and equipment are clean and maintained in good repair. Each licensee shall ensure that all of the following requirements are met:

(a)(1) Each housekeeping cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens.

(2) Each housekeeping cart shall be designed, maintained, and operated to protect clean glasses, utensils, dishware, single-service articles, food, coffee, and condiments from dirty linens and other sources of contamination, including dirty glasses and dishware, cleaning and sanitizing agents, and poisonous or toxic materials.

(3) Each service or utility cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens or other sources of contamination, according to one of the following methods:

(A) Cleaning and sanitizing the service cart before transporting clean linens;

(B) lining the service cart with a clean liner before transporting clean linens;

(C) placing the clean linens in a clean container before transporting the linens in the service cart; or

(D) using another method as approved by the secretary.

(4) All laundry bags used for dirty linen shall be laundered before being used for clean linen.

(5) Each housekeeping cart and each service cart shall be kept clean and in good repair.

(b)(1) Each licensee shall provide laundry facilities, unless a commercial laundry service is used.

(2) All clean laundry shall be handled in a manner that prevents contact with dirty linen.

(3) Each laundry area shall be designed and arranged in a manner that provides for the functional separation of clean and dirty laundry. A space large enough for sorting and storing soiled linens and for sorting and storing clean linens shall be provided.

(4) The laundry facilities shall be located in areas that are not used by guests or the public and are not used as corridors or passageways.

(5) The laundry area shall be kept clean and free from accumulated lint and dust.

(6) The laundry facilities and areas shall be used for their intended purpose and shall not be used for storage of equipment or supplies not related to the laundering process.

(7) All laundry equipment shall be functional and in good repair. Any laundry equipment that is no longer in use shall be removed from the laundry area.

(8) Each lodging establishment that is newly constructed, undergoes a major renovation, or is licensed under a new ownership shall be required to have a hand sink in the laundry area. Each hand sink shall meet the requirements specified in K.A.R. 4-27-6.

(9) All housekeeping and cleaning supplies and equipment shall be stored in a designated area. The storage area may be in the laundry area if the supplies and equipment are physically separated from the laundry, laundry equipment, and laundry supplies.

(c) All laundry that is cleaned commercially off the premises shall have a segregated storage space for clean and dirty laundry and shall be located and equipped for convenient pick-up and delivery.

(d) Separate laundry facilities may be provided for use by guests if these facilities are located in a room or area of the lodging establishment designated only for guest laundry. The area and equipment shall be kept clean and in good repair.

(e) Single-use gloves shall be available for housekeeping and laundry staff and made available in the laundry and housekeeping areas.

(f) A specific location or area shall be provided for the storage of maintenance supplies and equipment. No other items shall be stored in this location or area. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-12. Poisonous or toxic materials.

Each licensee shall ensure that all of the following requirements are met: (a) Only those poisonous or toxic materials that are required for the operation and maintenance of the lodging establishment shall be allowed on the premises, including the following:

(1) Detergents, sanitizers, cleaning or drying agents, caustics, acids, polishes, and similar chemicals;

(2) insecticides and rodenticides;

(3) building maintenance materials, including paint, varnish, stain, glue, and caulking; and

(4) landscaping materials, including herbicides, lubricants, and fuel for equipment.

(b) The storage of poisonous or toxic materials shall meet all of the following requirements:

(1) The substances listed in each of the four categories specified in subsection (a) shall be stored on separate shelves or in separate cabinets. These shelves and cabinets shall be used for no other purpose.

(2) To prevent the possibility of contamination, poisonous or toxic materials shall not be stored above food, ice or ice-making equipment, linens, towels, utensils, single-service articles, or guest toiletry items. This requirement shall not prohibit the availability of cleaning or sanitizing agents in dishwashing or laundry work areas.

(c) Each bulk or original container of a poisonous or toxic material shall bear a legible manufacturer's label. All poisonous or toxic materials taken from a bulk container or an original container and put into another container shall be clearly identified with the common name of the material.

(d) Each poisonous or toxic material shall be used according to the manufacturer's directions. Additional safety requirements regarding the safe use of poisonous or toxic materials may be established by the secretary upon discovery of the unsafe use of these materials.

(e) Each restricted-use pesticide shall be applied only by a certified applicator or a person under the direct supervision of a certified applicator and in accordance with all applicable statutes and regulations. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-13. Public indoor areas. Each licensee shall ensure that all of the following requirements are met: (a) All indoor public areas shall be kept clean and free of debris.

(b)(1) All equipment, appliances, and fixtures shall be maintained in good repair. All equipment, appliances, and fixtures that require repair or maintenance either shall be removed for repair or under repair by using signs, placards, cones, hazard tape, or other visual means to alert guests of any possible hazard.

(2) All unused or damaged equipment, appliances, and fixtures shall be removed.

(c)(1) All floors and floor coverings in public areas, service areas, hallways, walkways, and stairs shall be kept clean by effective means suitable to the finish.

(2) All floor coverings shall be maintained in good repair. All floor maintenance, repair, and replacement shall be done in a manner that prevents slipping or tripping hazards to guests.

(d) All furniture and items of décor shall be in good repair and kept clean by effective means suitable to the material and finish.

(e) All stairs, landings, hallways, and other walkways shall be kept free of debris and in good repair and shall meet the following requirements:

(1) The storage of items shall be prohibited.

(2) A minimum illumination of 10 foot-candles shall be required.

(f) Each fitness room, bathhouse, and spa shall meet the following requirements:

(1) Each area shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(2) All floors shall be maintained in good repair and have a slip-resistant finish or covering that prevents slipping when wet.

(3) All equipment and fixtures that come into contact with guests, including benches, tables, stools, chairs, tanning beds, and fitness equipment, shall be constructed with a covering of a nonabsorbent material suitable for the use of the equipment or fixture. The following requirements shall be met:

(A) All surfaces that come into contact with guests shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(B) Cleaning or sanitizing solutions shall be made available for guest use and shall be kept in clearly labeled bottles.

(C) All showers shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(4)(A) Towels, including bath towels, hand towels, and paper towels, shall be provided in the area and made available upon guest request.

(B) Each cloth towel shall be laundered before being provided to a guest.

(C) A receptacle for wet or soiled towels shall be provided for guest use in the area. The receptacle shall be emptied at least once daily.

(5) All equipment, fixtures, and recreational items provided for guest use shall be maintained in good repair.

(6) Protective eye equipment shall be provided if tanning equipment is provided for guest use. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-14. Ice and ice dispensing. Each licensee shall ensure that all of the following requirements are met: (a)(1) If ice is provided in a public area to guests or the general public, the ice shall be provided only through automatic, self-service dispensing machines that are constructed to prevent the direct access to bulk ice storage compartments by guests or the general public.

(2) Ice machines other than the type specified in paragraph (a)(1), including bin-type ice machines that allow direct access to the bulk ice storage compartments, shall not be accessible to guests or the general public. Any lodging employee may provide containers of ice to guests or the general public from this type of ice machine, from an icemaker, or from prepackaged ice.

(b)(1) Only ice that has been made from potable water and handled in a sanitary manner shall be provided by a lodging establishment. All ice shall be free of visible contaminants.

(2) All ice that is not made on the premises of the lodging establishment shall be obtained from a commercial source and shall be protected from contamination during transportation and storage.

(c) Each ice machine shall meet the following requirements:

(1) Be constructed of sanitary, durable, corrosion-resistant material and be easily cleanable;

(2) be constructed, located, installed, and operated to prevent contamination of the ice;

(3) be kept clean, free of any mold, rust, debris, or other contaminants, and maintained in good repair; and

(4) be drained through an air gap.

(d)(1) Each ice container or ice bucket shall meet the following requirements:

(A) Be made of smooth, nonabsorbent, impervious, food-grade materials and be easily cleaned;

(B) be kept clean and stored in a sanitary manner;

(C) be cleaned and sanitized before each new guest; and

(D) be provided with a sanitary, single-service use, food-grade liner that is changed daily.

(2) All canvas or wax-coated buckets or containers shall be prohibited.

(3) No ice container or ice bucket shall be located within the room housing the toilet.

(e) Each icemaker located in a guest room shall be kept clean and sanitary.

(1) No individual ice cube trays shall be used.

(2) All ice shall be removed from the icemaker's storage bin before each new guest. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-15. Exterior premises. Each licensee shall ensure that all of the following requirements are met: (a) Exterior areas and surfaces.

(1) All exterior areas and surfaces, including alleys and driveways, shall be kept clean, free of debris, and in good repair.

(2) Each walking, driving, and parking surface shall be graded or maintained to prevent the pooling of water.

(3) All lawns and landscaping shall be mowed or pruned as needed to promote guest safety.

(4) All parking areas and walkways shall be illuminated for guest safety and shall be kept free of debris.

(5) All unused or discarded equipment and materials shall be removed from the premises, except when placed in a designated storage area.

(6)(A) All exterior balconies, landings, porches, decks, stairways, and ramps shall be kept in good repair and free of debris and shall be illuminated for guest safety.

(B) Storage on stairs, landings, and ramps shall be prohibited.

(C) All guards and railings shall be attached securely and shall be kept in good repair.

(D) All ramps shall have a slip-resistant surface.

(E) All exterior stairways, ramps, landings, and walkways shall be kept free of ice and snow.

(b) Outside playgrounds and recreational areas.

(1) All equipment shall be kept clean and in good repair at all times. All protruding bolts, screws, and nails and all sharp edges shall be removed or covered.

(2) The ground cover under children's play equipment shall be a soft surface, including turf, rubber chips, bark mulch, clean sand, or any other surface approved by the secretary.

(3) Unused equipment shall be stored in a designated area.

(4) If the area is open for nighttime use, lighting shall be provided for guest safety.

(5) The area shall be kept clean and free of debris.

(6) If fencing is provided, the fencing shall be kept in good repair.

(c) Refuse containers.

(1) The area where refuse containers are located shall be kept free of debris and cleaned as necessary to prevent the attraction and harborage of insects, rodents, and other pests and to minimize odors.

(2) Containers of adequate capacity or number shall be available to store all refuse that accumulates between refuse pickups. All refuse containers shall be emptied at least once each week or more frequently, if necessary to meet the requirements of these regulations. All rotten waste shall be removed daily.

(3) All refuse container lids shall be closed. All refuse containers shall be kept on a solid surface.

Solid surfaces shall include concrete, asphalt, and any other hard surface approved by the secretary.

(d) Outdoor vector control.

(1) The premises shall be free of any harborage conditions that can lead to or encourage infestations of rodents, insects, and any other pests.

(2) Control measures shall be taken to protect against the entrance of rodents, insects, and any other pests into the lodging establishment. All buildings shall be verminproofed and kept in a verminproof condition.

All doors leading outside shall be tightfitting to eliminate entrance points for rodents, insects, and any other pests. All windows and doors that can be opened for ventilation shall have screening material that is at least 16 mesh to the inch and shall be tightfitting and kept in good repair.

(3) Identified infestation problems shall be treated by a licensed pest control operator.

(4) All control measures, both mechanical and chemical, shall be used in accordance with each manufacturer's recommendations.

(e) Exterior storage.

(1) A storage area shall be provided for maintenance and recreational equipment, machinery, and any other maintenance items.

(2) Only those items necessary for the operation and maintenance of the lodging establishment shall be kept in a storage area.

(3) All poisonous and toxic materials shall be stored as specified in K.A.R. 4-27-12.

(4) Each storage area shall be kept free of debris, filth, and any harborage conditions.

(5) All articles in need of repair may be stored on a short-term basis, which shall not exceed six months. All articles that are not repaired within six months shall be discarded or moved to an off-site storage facility.

(f) Outdoor space for pets. All pets shall be kept on a leash or controlled in a manner that prevents the pets from running freely about the premises. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-16. Swimming pools, recreational water facilities, and hot tubs. (a) General requirements. Each licensee shall ensure that all swimming pools, recreational water facilities, and hot tubs are kept sanitary and in good repair.

(1) Each swimming pool, RWF, and hot tub shall meet the requirements in these regulations,

unless local ordinances pertaining to planning and design, lifesaving and safety equipment, water quality, and sanitation exist and these ordinances are as restrictive or more restrictive than these regulations.

(2) Each licensee shall maintain records of each inspection conducted by a local regulatory agency for at least one year. The inspection records shall be made available for review by the secretary, upon request.

(b) Design and safeguards.

(1) Each plan for a new swimming pool or RWF and for a swimming pool or RWF undergoing major renovation, including installation of a diving board, slide, or other similar recreational devices, shall be designed by a licensed engineer, architect, or other qualified professional and shall be submitted to the secretary before the start of construction. Submission of documentation of plan approval by the local regulatory agency shall meet the requirements of this paragraph.

(2) Each grate over a main drain in each swimming pool or RWF shall be intact, firmly affixed at all times, and designed to prevent swimmer entanglement, entrapment, or injury. Other methods to prevent swimmer entanglement, entrapment, or injury may include multiple main drains, antivortex drain covers, or any similar device approved by the secretary.

(3) The depth of water in each swimming pool or RWF shall be plainly marked with at least four-inch high numbers of a color that contrasts with the color of the pool decking or vertical pool wall.

(A) Water depth markings for an in ground swimming pool shall be clearly marked on the edge of the deck and visible at all times. In addition, water depth markings may be placed above the water surface on the vertical pool walls and shall be visible at all times.

(B) Water depth markings for each aboveground swimming pool or RWF shall be on the edge of the deck and shall be visible to persons entering the swimming pool. If water depth markings cannot be placed on the edge of the deck, another means shall be used so that the water depth is visible to persons entering the swimming pool.

(C) The water depth markings in each swimming pool or RWF shall be located in the following areas:

(i) At the maximum and minimum depths. Intermediate increments of depth may be used in addition to the required maximum and minimum depths; and

(ii) the transition point between the shallow end, which shall be five feet or less, and the deep end, which shall be more than five feet. This transition point shall be marked by a line on the floor and the walls of the swimming pool or RWF or by a safety rope equipped with buoys.

(4) Each lighting and electrical system for a swimming pool, RWF, or hot tub shall be kept in good repair at all times. The following requirements shall be met:

(A) Artificial lighting shall be provided at each swimming pool, RWF, or hot tub if used at night and for each indoor swimming pool, RWF, or hot tub. The lighting shall illuminate all portions of each swimming pool, RWF, or hot tub.

(B) All artificial lighting located in the water shall be designed and maintained to prevent electrical shock hazards to guests.

(5) Each outdoor swimming pool and RWF shall be protected by a fence, wall, building, or other enclosure that is at least four feet in height.

(A) Each enclosure shall be made of durable material and kept in good repair.

(B) Each gate shall have self-closing and self-latching mechanisms. The self-latching mechanism shall be installed at least four feet from the bottom of the gate.

(C) A hedge shall not be an acceptable protective enclosure.

(6) Each door leading into an indoor or enclosed swimming pool or RWF area shall have self-closing and self-latching mechanisms. The self-closing mechanism shall be at least four feet from the bottom of the door.

(c) Lifesaving and safety equipment.

(1) Each swimming pool or RWF shall have lifesaving equipment, consisting of at least one U.S. coast guard-approved flotation device that can be thrown into the water and at least one reaching device.

(A) The flotation device shall be attached to a rope that is at least as long as one and one-half times the maximum width of the swimming pool or RWF. If a lifeguard is on duty, life-saving rescue equipment, including rescue tubes, may also be used.

(B) The reaching device shall be a life pole or a shepherd's crook-type of pole, with a minimum length of 12 feet.

(C) Each lifesaving device shall be located in a conspicuous place and shall be accessible. The lifeguard personnel shall keep their rescue equipment close for immediate use.

(D) Each lifesaving device shall be kept in good repair.

(2) A first-aid kit shall be accessible to the lodging employees.

(3) No glass containers shall be permitted in the swimming pool, RWF, or hot tub area.

(4) Each swimming pool, RWF, and hot tub and each deck shall be kept clean of sediment, floating debris, visible dirt, mold and algae and shall be maintained free of cracks, peeling paint, and tripping hazards.

(5) Each swimming pool, RWF, and hot tub shall be refinished or relined if the bottom or wall surfaces cannot be maintained in a safe and sanitary condition.

(6) If handrails are not present, all steps leading into the swimming pool or RWF shall be marked in a color contrasting with the color of the interior of the swimming pool and RWF so that the steps are visible from the swimming pool or RWF deck.

(7) All steps, ladders, and stairs shall be easily cleanable, in good repair, and equipped with nonslip treads. Handrails and ladders, if present, shall be provided with a handhold and securely attached.

(8) The rules of operation and safety signs for each swimming pool, RWF, and hot tub shall be posted in a conspicuous place at the swimming pool, RWF, or hot tub. Each swimming pool and RWF without a lifeguard shall have posted the following sign: "Warning — No Lifeguard On Duty." The sign shall be legible, with letters at least four inches in height.

(9) If chlorinating equipment is located indoors, the chlorinating equipment shall be housed in a separate room, which shall be vented to the outside or to another room that is vented to the outside. If chlorinating equipment is located outdoors and within an enclosed structure, the structure shall be vented to the outside.

(d) Water quality and sanitation. Each licensee shall ensure that all of the following requirements are met:

(1) Each swimming pool, RWF, and hot tub shall be maintained to provide for continuous disinfection of the water with a chemical process. This process shall use a disinfectant that leaves a measurable residual in the water.

(A) If chlorine or bromine is used to disinfect the water of any swimming pool or RWF, the water shall have a disinfectant residual level of at least 1.0 part per million (ppm) and not more than 5.0 ppm.

(B) If chlorine or bromine is used to disinfect the water of any hot tub, the water shall have a disinfectant residual level of at least 2.0 ppm and not more than 5.0 ppm.

(C) Each means of disinfection other than those specified in paragraphs (d)(1)(A) and (B) shall be used only if the licensee has demonstrated that the alternate means provides a level of disinfection equivalent to that resulting from the residual level specified in paragraph (d)(1)(A) or (B).

(2) The pH of the water in each swimming pool, RWF, and hot tub shall be maintained at not less than 7.0 and not more than 8.0.

(3) Each licensee shall use a chemical test kit or a testing device approved by the secretary. Each testing kit or device shall be appropriate for the disinfecting chemical used and capable of accurately measuring disinfectant residual levels of 0.5 ppm to 20.0 ppm. In addition, a chemical test kit or testing device for measuring the pH of the water shall be used and capable of accurately measuring the pH of water in 0.2 increments.

(4) The water in each swimming pool, RWF, and hot tub shall have sufficient clarity at all times so that one of the following conditions is met:

(A) A black disc with a diameter of six inches is clearly visible in the deepest portion of the swimming pool or RWF.

(B) The bottom drain at the deepest point of the swimming pool or RWF is clearly visible, and the bottom of the hot tub is clearly visible.

(5) The water in each swimming pool, RWF, and hot tub shall be free of scum and floating debris. The bottom and walls shall be free of dirt, algae, and any other foreign material.

(6) No chemical shall be added manually and directly to the water of any swimming pool, RWF, or hot tub while any individual is present in the water.

(7) The temperature of the water in each hot tub shall not exceed 104 degrees Fahrenheit.

(A) Each hot tub shall be operated in accordance with the manufacturer's specifications.

(B) Each hot tub shall have a thermometer or other device to accurately record the water temperature within plus or minus two degrees.

(e) Fecal accident in a swimming pool and RWF. If a fecal accident occurs in a swimming pool or RWF, the following requirements shall be met:

(1) In response to any accident involving formed feces, the following requirements shall be met:

(A) Direct the guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process

has been completed. The closure times can vary since the decontamination process takes from 30 to 60 minutes;

(B) remove as much fecal material as possible using a net or scoop, and dispose of the material in a sanitary manner. Sanitize the net or scoop;

(C) raise the disinfectant level to 2.0 ppm and ensure that the water pH is between 7.2 and 7.8; and

(D) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(2) In response to any accident involving diarrhea, the following requirements shall be met:

(A) Direct guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed;

(B) remove as much fecal material as possible using a scoop, and dispose of the material in a sanitary manner. Sanitize the scoop. Vacuuming the fecal material shall be prohibited;

(C) raise the disinfectant level to 20.0 ppm and maintain a water pH of at least 7.2 but not more than 7.8. This level of concentration shall be maintained at least eight hours to ensure inactivation of *Cryptosporidium*. A lower disinfectant level and a longer inactivation time may be used according to the following table:

Cryptosporidium inactivation for diarrheal accident

Disinfectant levels (ppm)	Disinfection time
1.0	6.5 days
10.0	16 hours
20.0	8 hours

(D) ensure that the filtration system is operating and maintaining the required disinfectant levels during the disinfection process. Backwash the filter. Do not return the backwashed water through the filter. Replace the filter medium, if necessary; and

(E) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(f) Vomiting accident in a swimming pool or RWF. If a vomiting accident occurs in a swimming pool or RWF, the procedures in paragraph (e)(1) shall be followed.

(g) Body fluid spills at a swimming pool or RWF. All body fluid spills that occur on swimming pool or RWF equipment or hard surfaces,

including decking, shall be cleaned and chemically sanitized. Disposable gloves shall be available for employees' use during cleanup. The following cleanup method shall be used:

(1) Wipe up the spill using absorbent, disposable material. Paper towels may be used;

(2) use a bleach solution by combining one part bleach and 10 parts water. Pour the bleach solution onto the contaminated surface, leave the solution on the surface for at least 10 minutes, and rinse the surface with clean water;

(3) disinfect all nondisposable cleaning materials, including mops and scrub brushes, and allow to air-dry; and

(4) require each employee assisting with the cleanup to wash that employee's hands with warm water and soap after the cleanup is completed.

(h) Fecal or vomiting accident in a hot tub. If a fecal accident or vomiting occurs in a hot tub, all of the following requirements shall be met:

(1) All guests shall be required to leave the hot tub, and the water shall be completely drained.

(2) The hot tub shall be disinfected according to the manufacturer's specifications.

(3) The filtering system shall be disinfected or the filter medium shall be replaced with a clean filter medium before refilling the hot tub with clean water.

(i) Operation and maintenance of a swimming pool, RWF, or hot tub. Each licensee shall ensure that all of the following requirements for each swimming pool, RWF, and hot tub are met:

(1) Daily operational logs shall be maintained for at least one year at the lodging establishment and made available to the secretary, upon request. These logs shall include the date and time the information was collected and the name or initials of the person who collected the information. These logs shall also record the following information:

(A) The disinfectant residuals shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(B) The pH test shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(C) The temperature reading of each hot tub shall be recorded at least once daily when the hot tub is available for guest use.

(2) Each fecal and vomiting accident log shall include the time and date of the accident and the disinfection measures taken.

(3) Each indoor swimming pool area and chemical storage room shall be either vented directly to the exterior or vented to a room that is vented directly to the exterior.

(4) All chemicals applied to a swimming pool, RWF, or hot tub shall be used, handled, stored, and labeled in accordance with the manufacturer's specifications.

(5) All recreational equipment shall be kept sanitary. Recreational equipment shall include slides, diving boards, play equipment, water sports equipment, and accessory items available to guests, including floats, tubes, air mattresses, and pads for water slides.

(6) A cleaning system shall be used to remove dirt, algae, and any other foreign material from the bottom of the swimming pool or RWF.

(7) All surface skimmers, strainer baskets, and perimeter overflow systems shall be kept clean and in good repair.

(8) The water in each swimming pool and each RWF shall be maintained at the manufacturer's recommended level so that the water will flow into each skimmer and strainer.

(9) The recirculation system serving each swimming pool, RWF, and hot tub shall operate continuously or in accordance with the manufacturer's specifications. The filtration and recirculation systems shall be maintained in accordance with the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-17. Water supply systems. Each licensee shall ensure that all of the following requirements are met: (a) Sufficient potable water to meet the needs of the lodging establishment shall be provided from a source constructed and operated pursuant to K.S.A. 65-161 et seq., and amendments thereto.

(b) No water supply system deemed unsafe by the secretary shall be used as a potable water supply.

(c)(1) Each nonpublic water supply system shall be constructed, maintained, and operated as specified in K.S.A. 65-161 et seq., and amendments thereto.

(2) All water from a nonpublic water supply system shall meet the state drinking water qual-

ity standards specified in K.S.A. 65-161 et seq., and amendments thereto. The most recent sample report for the nonpublic water supply system used by the lodging establishment shall be retained for at least 12 months at the lodging establishment and shall be made available to the secretary upon request.

(d) During any period when a boil-water order is in effect, including a precautionary boil-water notice or advisory issued by the secretary of the Kansas department of health and environment on a public or nonpublic water supply, the licensee shall meet the following requirements until the problem has been corrected:

(1) Notify each guest, verbally upon check-in and by written notice placed in each rented guest room, that the plumbed water is not potable and only potable water should be used for drinking and for brushing teeth;

(2) discard any ice that could have been made from or exposed to contaminated water; and

(3) obtain a temporary, alternate supply of potable water by using one of the following:

(A) A supply of commercially bottled drinking water;

(B) one or more closed, portable, bulk water containers;

(C) an enclosed vehicular water tank;

(D) an on-premises water storage tank; or

(E) any other alternative water source if approved by the secretary. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-18. Sewage systems. Each licensee shall ensure that all of the following requirements are met: (a) All sewage shall be disposed of through an approved facility, including one of the following:

(1) A public sewage treatment plant; or

(2) an individual sewage disposal system that is constructed, maintained, and operated according to K.S.A. 65-161 et seq., and amendments thereto, and meets all applicable sanitation requirements.

(b) A temporary sewage disposal facility shall be allowed only as approved by the secretary in response to a disaster.

(c) All condensate drainage, rainwater, and other nonsewage liquids shall be drained from the point of discharge to disposal pursuant to K.S.A. 65-161 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp.

36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-19. Electrical systems. (a) Each licensee shall ensure that the electrical wiring is installed and maintained in accordance with all applicable local electrical codes. In the absence of local electrical codes, the electrical wiring shall be installed and maintained by a licensed electrician. Each licensee shall ensure that all of the following requirements are met:

(1)(A) Each newly constructed lodging establishment shall have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(B) Each existing lodging establishment in which major renovation or rewiring has occurred shall be required to have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(C) Each licensee shall ensure that the lodging establishment has a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(2) Each electrical switch and each outlet shall be covered by a faceplate. Each junction box shall have a junction box cover.

(3) All circuit breaker boxes, fuse boxes, and electrical panels shall be protected from physical damage and kept in good condition. All fuses and circuits shall be labeled to identify the circuit location.

The storage of any item that obstructs access to any circuit box shall be prohibited.

(4) All wire splices shall be located in covered junction boxes.

(5) Bare or frayed wiring shall be prohibited.

(6) All three-prong outlets shall be grounded. Each appliance shall be grounded in accordance with the manufacturer's specifications.

(b) All emergency lighting shall be kept in working condition.

(c) The permanent use of extension cords in guest rooms shall be prohibited.

Individual branch circuits, including multiple-plug outlet strips that contain fuse breakers and multiple-plug outlet adapters that do not exceed the amperage for which the outlets are rated, shall be permitted.

(d) The temporary use of extension cords shall be allowed for housekeeping and maintenance

purposes if the extension cords are rated for industrial use.

(e) The wattage of light bulbs shall not exceed the wattage rating of the corresponding light fixtures.

Empty light sockets shall be prohibited. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-20. Plumbing systems. (a) Each licensee shall ensure that all plumbing is installed and maintained in accordance with all applicable local plumbing codes. In the absence of local plumbing codes, all plumbing shall be installed and maintained by a licensed plumber.

(b) Each licensee shall ensure that all of the following requirements are met:

(1) Potable water under pressure shall be available at all times at each fixture designed to provide water. Hot water shall be provided to each fixture designed to use hot water.

(2) Each toilet room, bathing facility, and laundry area shall be provided with ventilation to minimize condensation and to prevent mold, algae, and odors.

Each newly constructed lodging establishment and each lodging establishment undergoing major renovation shall be required to have mechanical ventilation in each toilet room, bathing facility, and laundry area.

(3) Each fixture drain shall be plumbed with a P-trap.

(4) All openings for the passage of plumbing shall be verminproof.

(5) No fitting, connection, device, or method of installation of plumbing shall obstruct or retard the flow of water, wastes, sewage, or air in the drainage or venting system.

(c) All backflow devices shall meet the design specifications for their intended use. All potable water supplies shall be protected from sources of potential contamination. Each licensee shall ensure that all of the following requirements are met:

(1) If provided, each boiler unit, fire sprinkler system with chemical additives, lawn sprinkler system with a means for injection of pesticides, herbicides, or other chemicals, and pumped or re-pressurized cooling or heating system shall be protected by a reduced-pressure-principle backflow prevention assembly.

(A) The backflow prevention assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one

year and shall be made available to the secretary upon request.

(2) If provided, each fire sprinkler system not using chemical additives and lawn sprinkler system without a means for injection of pesticides, herbicides, or other chemicals shall be protected by a double-check valve assembly.

(A) The double-check valve assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the secretary upon request.

(3) If provided, each threaded faucet to which a hose is connected, flush valve, and any similar device shall be protected by a vacuum breaker. Each commercial dishwasher and each commercial laundry machine shall be protected by either a vacuum breaker or an air gap.

(4) If provided, each relief valve discharge line from a water heater, water-holding tank, cooling tower, or water softener, each discharge line from a commercial laundry machine, and each condensation line shall be protected by an air gap.

(5) Each swimming pool water supply line shall be protected by either an air gap or a double-check valve assembly.

(6) Fire sprinklers plumbed into a waterline over gas water heaters or furnaces, or both, shall not be required to have a backflow device unless required by local ordinance. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-21. Heating, ventilation, and air conditioning (HVAC) systems. (a) Each licensee shall ensure that each guest room has heating, ventilation, and related heating and ventilation equipment.

(1) All equipment shall be installed according to the manufacturer's directions and shall be kept in operating condition.

(2) A means to control the temperature in the guest room shall be provided in each guest room that is furnished with a separate heating or air conditioning unit.

(3) If the guest room has air-conditioning, the air-conditioning system shall meet the requirements specified in paragraphs (a)(1) and (2).

(b) Unvented fuel-fired heaters, unvented fireplaces, and similar devices and portable electrical space heaters shall be prohibited from use in all

areas of the lodging establishment, unless designed by the manufacturer for commercial use and approved by the secretary. The following conditions shall be met:

(1) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electrical space heater is not the primary source of heat.

(2) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electric space heater is not used in a guest room.

(c) All gas and electric heating equipment shall be equipped with thermostatic controls.

(d) All gas water heaters, gas furnaces, and other gas heating appliances shall be vented to the outside.

(e) A gas shutoff valve shall be located next to each gas appliance, gas furnace, and gas water heater.

(f) Each furnace and each air-conditioning unit shall be equipped with an electrical fuse breaker to protect the unit from electrical overload.

(g) Each furnace room or room containing a gas water heater or any other fuel-fired appliance shall be provided with adequate air for circulation.

(h) Each filter shall be changed according to the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-22. Lodging establishment inspections by qualified individuals, private entities, or public entities. (a) "Supplemental inspection" shall mean an inspection of a lodging establishment conducted by a qualified person employed by a lodging business, lodging trade organization, or local governmental entity and not employed by the Kansas department of agriculture.

(b) Each person who wishes to conduct a supplemental inspection of a lodging establishment shall complete the following requirements:

(1) Submit to the secretary, or the secretary's designee, a written letter of application and statement describing the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto, acquired by education, training, and experience; and

(2) answer at least 80% of the questions correctly to pass a written examination administered by the secretary, or secretary's designee. The written examination shall test the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(c) A supplemental inspection report on a lodging establishment shall be accepted by the secretary if all of the following conditions are met:

(1) The person conducting the supplemental inspection meets the requirements in subsection (b).

(2) The supplemental inspection is conducted to determine if the lodging establishment meets lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(3) The supplemental inspection report is submitted to the secretary no later than 10 calendar days from the date the inspection occurred. If an "imminent health hazard," as defined in K.A.R. 4-27-5, is discovered during the inspection, the person shall notify the secretary, or the secretary's designee, within 12 hours of the discovery, as required in K.A.R. 4-27-5.

(4) The supplemental inspection report thoroughly describes conditions in the lodging establishment at the time of the inspection. Each violation of a lodging establishment standard shall be described in detail and photographed. The supplemental inspection report shall describe any actions taken by the licensee to correct each violation.

(d) An inspection of the lodging establishment may be conducted by department lodging inspectors to determine the accuracy of a supplemental report. The inspection shall be conducted within five days after receipt of a supplemental inspection report.

(e) The secretary's acceptance of a supplemental inspection report shall not preclude the department from conducting an inspection to assess the lodging establishment's compliance with lodging establishment standards or determine the accuracy of the supplemental inspection report. The supplemental inspection report, if accepted, may be considered by the secretary when determining the inspection frequency of a lodging establishment. (Authorized by K.S.A. 2009 Supp. 36-506; implementing K.S.A. 2009 Supp. 36-519; effective June 4, 2010.)

Article 28.—FOOD SAFETY

4-28-1. Definition; specialized processing. "Specialized processing" shall mean any food preparation method having an increased risk of foodborne illness associated with improper implementation, including the following:

(a) Smoking food as a method of food preservation rather than as a method of flavor enhancement;

(b) curing food;

(c) canning food, except for fruit jams, jellies, and preserves;

(d) using food additives or adding components, which may include vinegar, for either of the following;

(1) A method of food preservation rather than flavor enhancement; or

(2) a method to render a food so that the food does not require time and temperature control for food safety;

(e) packaging food using a reduced-oxygen packaging method;

(f) sprouting seeds or beans;

(g) drying food, other than herbs, whole fruits, or whole vegetables;

(h) keeping molluscan shellfish in a life-support tank;

(i) custom-processing animals in a facility for personal use;

(j) processing and packaging juice;

(k) fermenting foods;

(l) producing cultured dairy products, including cheese, yogurt, and buttermilk; and

(m) using a noncontinuous cooking process.

(Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-689, as amended by L. 2012, ch. 145, sec. 24; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010; amended Feb. 8, 2013.)

4-28-2. Adoption by reference. (a) The following federal regulations are hereby adopted by reference, except as otherwise indicated in this subsection:

(1) 9 C.F.R. Parts 317, excluding 9 C.F.R. 317.2(a), 319, 381, and 424, as revised on January 1, 2011;

(2) 21 C.F.R. Parts 100 through 186, excluding 21 C.F.R. 100.1 and 100.2, as revised on April 1, 2011;

(3) 21 C.F.R. 1030.10, as revised on April 1, 2011; and

(4) 40 C.F.R. Part 180, as revised on July 1, 2011.

(b) Copies of the adopted material shall be available from the division of food safety and lodging of the Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective, T-4-11-5-04, Nov. 5,

2004; effective Feb. 18, 2005; amended June 4, 2010; amended April 26, 2013.)

4-28-3. (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

4-28-4. (Authorized by K.S.A. 36-504; implementing K.S.A. 36-504 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

4-28-5. Fees; food processing plant. Each food processing plant shall be licensed by the secretary.

(a) Each person operating or intending to operate a food processing plant shall submit an application on a form supplied by the department with one of the following pairs of application fees and license fees based on the size and type of the plant, as applicable:

(1) For each food processing plant that only stores food, one of the following fees:

(A) Less than 1,000 square feet: \$150 application fee and \$160 license fee;

(B) 1,000 square feet through 5,000 square feet: \$200 application fee and \$175 license fee;

(C) 5,001 square feet through 10,000 square feet: \$250 application fee and \$250 license fee;

(D) 10,001 square feet through 50,000 square feet: \$300 application fee and \$300 license fee; or

(E) more than 50,000 square feet: \$350 application fee and \$350 license fee; and

(2) for each food processing plant not specified in paragraph (a)(1), one of the following fees:

(A) Less than 1,000 square feet: \$150 application fee and \$175 license fee;

(B) 1,000 square feet through 5,000 square feet: \$200 application fee and \$200 license fee;

(C) 5,001 square feet through 10,000 square feet: \$250 application fee and \$275 license fee;

(D) 10,001 square feet through 50,000 square feet: \$300 application fee and \$325 license fee; or

(E) more than 50,000 square feet: \$350 application fee and \$400 license fee.

(b) For the purpose of this regulation, a facility that only stores food shall include any premises, establishment, building, room, area, facility, or place where food is stored, kept, or held for distribution, whether or not the food is temperature-controlled.

(c) For the purpose of this regulation, "food processing plant" shall not include either of the following:

(1) A facility in which fresh fruits and vegetables are harvested and washed, if the fruits and vegetables are not otherwise processed at the facility; or

(2) a storage facility used solely for the storage of grain or other raw agricultural commodities.

(d) Each license issued shall expire on March 31 each year.

(e) Each license shall require annual renewal by the licensee's submission of an online application for renewal available on the department's web site and the payment of the applicable license fee specified in subsection (a). (Authorized by and implementing K.S.A. 2017 Supp. 65-688; effective Feb. 18, 2005; amended Dec. 5, 2008; amended Feb. 8, 2013; amended June 15, 2018.)

4-28-6. Fees; risk levels; food establishment. (a) Each food establishment required to be licensed shall be assessed by the secretary for classification by risk level according to this regulation. The following classifications shall be used to determine licensing fees and inspection frequency at food establishments:

(1) A "category I facility" shall mean a food establishment that presents a high relative risk of causing food-borne illness based upon the usage of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category I facility shall include whether the food establishment meets any of the following conditions:

(A) Cooks, cools, or reheats food that requires time and temperature control for safety;

(B) uses freezing as a means to achieve parasite destruction;

(C) handles raw, in-shell molluscan shellfish ingredients;

(D) uses specialized processing;

(E) has a required hazard analysis critical control point plan; or

(F) offers for consumption without further preparation any food containing raw or undercooked eggs, meat, poultry, fish, or shellfish.

(2) A "category II facility" shall mean a food establishment that presents a moderate relative risk of causing food-borne illness based upon the usage of a limited number of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category II facility shall include whether the food establishment meets any of the following conditions:

(A) Prepares baked products;

(B) repackages foods from a licensed food processor in smaller quantities for distribution;

(C) heats only foods from a licensed food processor; or

(D) handles, cuts, grinds, or slices only raw animal foods or ready-to-eat meats and cheeses.

(3) A "category III facility" shall mean a food establishment that presents a low relative risk of causing food-borne illness based upon the usage of few or no food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category III facility shall include whether the food establishment meets any of the following conditions:

(A) Offers self-service beverages;

(B) offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety; or

(C) offers unpackaged food that does not require time and temperature control for safety, including mixed drinks.

(4) A "category IV facility" shall mean a food establishment that presents a very low relative risk of causing food-borne illness based upon the usage of few or no food-handling processes associated with food-borne illness outbreaks. The food establishment shall have systematic controls in place to further reduce the risk of a food-borne illness outbreak. Factors considered in classifying a food establishment as a category IV facility shall include whether the food establishment meets the following conditions:

(A)(i) Offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety;

(ii) offers unpackaged food that does not require time and temperature control for safety; or

(iii) offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety, and unpackaged food that does not require time and temperature control for safety; and

(B) has the following controls in place in a structure that has limited or controlled access, including an office building with keyed entrances or security guards:

(i) Continuous electronic monitoring of all food items that require temperature control for safety;

(ii) a means to prevent lawful purchase of a food that has been held outside of the time and

temperature combinations specified in the Kansas food code by physical lockout, transaction lockout, or other equivalent method; and

(iii) remote monitoring and recording of video surveillance covering all areas of the food establishment.

(b) Each food establishment with operations in multiple categories shall be placed in the highest risk-level category. A history of a food establishment's noncompliance with applicable statutes and regulations may be considered and may warrant placement of the food establishment in a higher risk-level category. The risk level assigned to a food establishment may be changed if the secretary determines that the change is warranted based upon the degree of risk of a health hazard and protection of the public health and safety.

(c) Each person operating or intending to operate a food establishment shall submit an application on a form prescribed by the secretary with the following fees, as applicable:

(1) Category I facilities.

(A) Application fee. Each person shall submit a onetime application fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: \$300;

(ii) 5,000 through 10,000 square feet: \$325;

(iii) 10,001 through 50,000 square feet: \$350; and

(iv) more than 50,000 square feet: \$350.

(B) License fee. Each person shall submit a license fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: \$250;

(ii) 5,000 through 10,000 square feet: \$300;

(iii) 10,001 through 50,000 square feet: \$500; and

(iv) more than 50,000 square feet: \$750.

(2) Category II facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$325.

(B) License fee. Each person shall submit a license fee of \$220.

(3) Category III facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$275.

(B) License fee. Each person shall submit a license fee of \$190.

(4) Category IV facilities.

(A) Application fee. Each person shall submit a onetime application fee of \$100.

(B) License fee. Each person shall submit a license fee of \$75.

(d)(1) Each category I facility shall be inspected at least once every 12 months.

(2) Each category II facility shall be inspected at least once every 15 months.

(3) Each category III facility shall be inspected at least once every 18 months.

(4) Each category IV facility shall be inspected at least once every 36 months.

(e) Each license shall expire on the first March 31 following the date of issuance.

(f) Each license shall require annual renewal by the licensee's submission of an online application for renewal available on the department's web site and payment of the applicable license fee specified in subsection (c).

(g) For the purpose of this regulation, "mixed drink" shall mean any beverage combining two or more liquids, including any combination of alcoholic or nonalcoholic liquids. (Authorized by and implementing K.S.A. 2017 Supp. 65-688; effective Feb. 18, 2005; amended, T-4-6-28-12, July 1, 2012; amended Oct. 26, 2012; amended May 31, 2013; amended June 15, 2018.)

4-28-7. (Authorized by K.S.A. 2010 Supp. 36-503; implementing K.S.A. 2010 Supp. 36-503 and K.S.A. 2010 Supp. 74-582; effective Feb. 18, 2005; amended, T-4-6-30-11, July 1, 2011; amended Oct. 28, 2011; revoked Oct. 26, 2012.)

4-28-8. Adoption of Kansas food code. The document titled "Kansas food code," dated July 1, 2012 and published by the division of food safety and lodging of the Kansas department of agriculture, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; amended April 26, 2013.)

4-28-9 and 4-28-10. (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-11 and 4-28-12. (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; revoked April 26, 2013.)

4-28-13 and 4-28-14. (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626,

and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-15. (Authorized by K.S.A. 36-507 and 65-626 and K.S.A. 2007 Supp. 65-673 and 74-582; implementing K.S.A. 36-503, 36-507, 65-626, and 65-662 and K.S.A. 2007 Supp. 65-673; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-16. (Authorized by K.S.A. 36-507 and 65-626; implementing K.S.A. 36-507 and 65-626 and K.S.A. 2006 Supp. 74-581; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-18. (Authorized by K.S.A. 65-673 and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-659; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-19 through 4-28-22. (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-23. Sidewalk or street display of food products; prohibitions. (a) The sidewalk or street display or sale of fresh meat and meat products, fresh seafood and fish, fresh poultry, and any other foods that require time and temperature control for safety shall be prohibited.

(b) Any food product, other than those products listed in subsection (a), that ordinarily is washed, peeled, pared, or cooked in the course of preparation for consumption may be displayed in street and sidewalk displays if the product is in containers that are at least six inches above the surface of the sidewalk or street.

(c) The street or sidewalk display of all food products not specified in this regulation shall be prohibited unless the products are enclosed to protect the products from flying insects, dust, and other contamination. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; effective June 4, 2010; amended Feb. 8, 2013.)

4-28-24 through 4-28-30. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-31. Fees; education facility with a school lunch program or satellite school lunch program. Each education facility with a

school lunch program or satellite school lunch program subject to the national school lunch act, 42 U.S.C. §1751 et seq., shall be licensed by the secretary.

(a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Education facility with a school lunch program" means any school, institution, or other organization providing meals to children through the national school lunch program of the division of food and nutrition services, United States department of agriculture.

(2) "Satellite school lunch program" means any program offered through an education facility with a school lunch program that is operated at a different location as designated by the education facility. A satellite school lunch program does not have on-site food preparation, except portioning food for service.

(b) Each person operating or wanting to operate an education facility with a school lunch program or satellite school lunch program shall submit an application on forms provided by the department with the following fees, as applicable:

(1) Application fee: \$200; and

(2)(A) License fee for an education facility with a school lunch program: \$415; or

(B) license fee for an education facility with a satellite school lunch program: \$340.

(c) Each license shall expire on the first March 31 following the date of issuance.

(d) Any licensee may renew a license before the expiration date of the license by submitting an application for renewal on a form supplied by the department and the applicable license fee specified in paragraph (b)(2).

(e)(1) Each license renewal application received within 30 days after the license expiration date shall require annual renewal by the licensee's submission of an application for renewal on a form supplied by the department, the applicable license fee specified in paragraph (b)(2), and a late fee of \$25, pursuant to 2012 Sen. Sub. for HB 2730, sec. 1 and amendments thereto.

(2) License renewal applications received by the department on or after May 1 shall not be approved before the licensee submits the fees prescribed in paragraphs (b)(1) and (b)(2) and the licensee's food establishment is inspected pursuant to K.S.A. 65-689, and amendments thereto.

(f) For an education facility with a school lunch program or satellite school lunch program licensed

before July 1, 2012, the difference between the original license fee paid and the current license fee shall be paid for the license year ending March 31, 2013. In subsequent years, the full license fee shall be paid. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by 2012 Sen. Sub. for HB 2730, sec. 23; effective, T-4-6-28-12, July 1, 2012; effective Oct. 26, 2012.)

4-28-32. Vehicles used in transportation.

Each vehicle used in the transportation of food shall be kept in a condition by which food cannot become adulterated. During transport, the food shall be protected from physical, chemical, and microbial contamination and degradation by the use of the following:

- (a) Clean and sanitary transportation vehicles and containers; and
- (b) temperature-control measures meeting the department's requirements. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 8, 2013.)

4-28-33. Sanitation and hygiene requirements for exempt food establishments.

Each food establishment exempted from licensure in K.S.A. 65-689, and amendments thereto, shall meet the following requirements: (a) Food preparation areas shall be protected from environmental contamination, including rain, dust, and pests.

(b) Food contact surfaces, including cutting boards, utensils, and dishes, shall be cleaned, rinsed, and sanitized before food-handling activities begin and also as necessary. Hot, potable water and a dishwashing detergent shall be used for cleaning operations. Clean, hot, potable water shall be used for rinsing. Sanitizing shall be accomplished by immersing each item in a chlorine bleach solution of 50 to 100 parts per million for 10 seconds and allowing the item to air-dry. A sanitizer labeled for use on food contact surfaces may be used instead of chlorine bleach. Warewashing activities shall be conducted in easily cleanable sinks or food-grade tubs large enough to accommodate immersion of the largest items.

(c) Animals shall not be permitted in food preparation areas.

(d) Food and utensils shall be protected from contamination.

(e) A potable water supply shall be provided. Commercially bottled water or water from a private system may be used.

(1) If water is supplied from a private system, including a well or spring, the private system shall meet the local water system test requirements. If local requirements do not exist, the water shall meet the following standards, with testing obtained by the operator of the food establishment at least annually:

(A) Nitrates shall be less than 20 milligrams per kilogram.

(B) Total coliforms shall be zero colony-forming units.

(C) Fecal coliforms shall be zero colony-forming units.

The current copy of the testing shall be made available upon request.

(2) Each mobile or portable establishment shall ensure that the water is maintained in a potable state by use of appropriate containers, hoses, or other water-handling systems.

(f) Adequate sewage disposal shall be provided. Each septic system shall be approved by the Kansas department of health and environment or the county sanitarian. The current copy of the approval shall be made available upon request. Each mobile or portable establishment shall have adequate on-site sewage storage and shall dispose of sewage in a sanitary sewer or septic system.

(g) Bare-hand contact shall not be permitted with ready-to-eat foods.

(h) Each person working with food shall wash that person's hands before working with food or food contact surfaces and after the hands are contaminated, or could have become contaminated, including after handling raw eggs, raw meat, or raw poultry or after touching the face or hair. The following procedure shall be used:

(1) Wet hands using warm, running potable water;

(2) apply soap and rub hands together vigorously for at least 10 seconds;

(3) rinse hands; and

(4) dry hands with a clean paper towel.

(i) No person with any of the following symptoms or conditions shall work with food:

(1) Vomiting;

(2) diarrhea;

(3) jaundice;

(4) sore throat with fever;

(5) any lesion, boil, or infected wound that contains pus, is open or draining, and is located on any of the following:

(A) The hands or wrists, unless an impermeable cover that may include a finger cot or stall protects the affected site and a single-use glove is worn over the impermeable cover;

(B) exposed portions of the arms, unless the affected site is protected by an impermeable cover; or

(C) other parts of the body, unless the affected site is covered by a dry, durable, tight-fitting bandage; or

(6) an illness due to any of the following:

(A) Norovirus;

(B) hepatitis A virus;

(C) shigella;

(D) enterohemorrhagic or shiga toxin-producing *Escherichia coli*; or

(E) salmonella typhi. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)

4-28-34. Exemption from licensure; definitions. (a) Each person who is exempt under K.S.A. 65-689(d)(7), and amendments thereto, from licensure for operating a food establishment shall post at the point of sale a placard or sign that states, in letters at least one-quarter inch high and in contrasting color to the background, that the food establishment is not subject to routine inspection by the Kansas department of agriculture.

(b) As used in K.S.A. 65-689(d)(7) and amendments thereto, each of the following terms shall have the meaning specified in this subsection:

(1) “Community or humanitarian purposes” shall mean purposes for the common good, including building or refurbishing playgrounds or parks, preserving historic public buildings, religious organization fundraising, promoting human welfare including disaster relief, providing food to the food-insecure, providing shelter for humans, and similar activities.

(2) “Educational or youth activities” shall mean activities associated with an early childhood, elementary, secondary, or postsecondary school or activities for persons less than 21 years of age that engage these persons in recreational, educational, or social activities, including sports teams, summer camps, music programs, arts programs, and similar activities.

(c) Funds raised in food establishments exempt from licensure under K.S.A. 65-689(d)(7), and amendments thereto, shall not be used for wages or other compensation of volunteers or employ-

ees, except for providing complimentary food to volunteer staff.

(d) Nothing in this regulation shall prohibit a person who is exempt from licensure for operating a food establishment from applying for a food establishment license from the secretary. Upon the secretary’s review of the application, a license may be issued by the secretary pursuant to K.S.A. 65-689(b), and amendments thereto. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)

Article 33.—MILL LEVY ASSESSMENT

4-33-1. Mill levy assessment. (a) Except as provided in paragraph (b) of this regulation, soybeans marketed through commercial channels in the state of Kansas shall be assessed at 20 mills per bushel. The assessment shall be levied and assessed to the grower at the time of sale.

(b) Whenever a federal marketing order issued pursuant to the soybean promotion, research, and consumer information act, section 1965 of public law 101-624 (7 U.S.C.A. 6301 et seq.) establishing a national checkoff program for soybeans becomes effective, all soybean assessments shall be assessed as provided in K.A.R. 4-33-2. As long as the federal marketing order remains in effect, no assessments shall be collected pursuant to paragraph (a) of this regulation.

(c) This regulation shall be in force and effect from and after September 1, 1991. (Authorized by K.S.A. 2-3006; implementing 1990 Supp. K.S.A. 2-3007 as amended by 1991 SB 323, Sec. 4 and 1991 SB 323, Sec. 6, 7; effective July 1, 1989; amended, T-4-8-23-91, Sept. 1, 1991; amended Oct. 21, 1991.)

4-33-2. Assessment under federal marketing order. (a) While any federal marketing order issued pursuant to the soybean promotion, research, and consumer information act, section 1965 of public law 101-624 (7 U.S.C.A. 6301 et seq.) is in effect, soybeans-marketed through commercial channels in the state of Kansas shall be assessed at the rate of one-half of 1 percent of the net market price of soybeans sold by the producer or grower to the first purchaser. The assessment shall be levied and assessed to the producer or grower at the time of sale.

(b) This regulation shall be in force and effect from and after September 1, 1991. (Authorized by K.S.A. 2-3006 as amended by SB 323, Sec. 3; implementing 1990 Supp. K.S.A. 2-3007 as amend-

ed by 1991 SB 323, Sec. 4 and 1991 SB 323, Sec. 6, 7; effective, T-4-8-23-91, Sept. 1, 1991; effective Oct. 21, 1991.)

Article 34.—INDUSTRIAL HEMP

4-34-1. Definitions. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Act" means the commercial industrial hemp act, K.S.A. 2019 Supp. 2-3901 et seq. and amendments thereto.

(b) "Administrative license" means a license issued to any of the following:

(1) An individual appointed as a member of the state advisory board;

(2) an individual employed by the designated certifying agency who requires licensure as a result of the individual's assigned employment duties and is involved in the administration of the designated certifying agency's responsibilities pursuant to the pilot program;

(3) an individual employed by the department who is involved in the administration, regulation, or oversight of the pilot program or an individual employed by the department who requires licensure as a result of the individual's assigned employment duties; or

(4) an individual who is an employee or agent of a bank, financial institution, or other creditor that has a legal right to take possession of industrial hemp for the purposes of settling a debt.

(c) "Approved variety of industrial hemp" means a variety or strain of industrial hemp authorized for use in the pilot program.

(d) "Certifying agency" has the meaning specified in K.S.A. 2-1415, and amendments thereto.

(e) "Condition," as used in this article of the department's regulations, means to clean or to clean and blend seed within a licensed research section, in order to meet the requirements of agricultural seed for the purpose of being planted or seeded. Seed that has undergone this process is known as "conditioned."

(f) "Department" means Kansas department of agriculture.

(g) "Destroy" means to make incapable of being harvested or processed by means of being incinerated, tilled under the soil, or made into compost or by using another manner approved by the secretary. This process is known as "destruction," which is a type of "effective disposal" as defined

in K.S.A. 2019 Supp. 2-3901 and amendments thereto.

(h) "Devitalize" means to render incapable of germinating.

(i) "Grain," as used in this article of the department's regulations, means an industrial hemp plant's unit of sexual reproduction intended to be consumed or processed into hemp products.

(j) "Ground cover" means any species of grass, legume, or forb that is planted to provide seasonal soil cover and is not intended to be harvested.

(k) "Handle" means to cause any movement of industrial hemp on or within a licensed research section.

(l) "Harvest" means to remove industrial hemp plants, plant parts, grain, or seeds from the research area where the industrial hemp plants, plant parts, grain, or seeds were cultivated, planted, or grown.

(m) "Harvest certificate" means a document issued by the department to the primary licensee, after the industrial hemp plants, plant parts, grain, or seeds are harvested, that includes information to assist in identifying the industrial hemp plants, plant parts, grain, or seeds that were harvested.

(n) "Individual" means a natural person.

(o) "Licensed growing area" means an area that is identified on an application or license for cultivating or producing industrial hemp for commercial purposes, can consist of a single primary section legally designated by the public land survey system, and may include an additional half mile in any direction beyond the primary section.

(p) "Licensed research distributor" means an individual licensed by the department to handle, condition, store, distribute, or transport raw, harvested industrial hemp plants, plant parts, grain, or seeds in Kansas.

(q) "Licensed research grower" means an individual licensed by the department to cultivate, plant, grow, handle, harvest, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds in Kansas.

(r) "Licensed research processor" means an individual licensed by the department to handle, store, or process industrial hemp plants, plant parts, or grain and take part in any aspect of turning raw, harvested industrial hemp into a hemp product in Kansas.

(s) "Licensed research section" means a section legally designated by the public land survey system that is identified in the license issued by the department establishing where a licensee may

cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds. A licensed research section may include land, structures, and buildings that are not used to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds.

(t) “Licensee” means any individual who possesses a valid license issued by the department pursuant to the act.

(u) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(v) “Pilot program” means the industrial hemp research program administered by the department pursuant to the act.

(w) “Plant part” means any portion of an industrial hemp plant, including any of the following:

(1) Whole or partial unprocessed plants, including stalk, leaf, seed, floral, and root materials;

(2) raw roots;

(3) fresh, unprocessed, dried, or ground leaves or floral material; or

(4) rooted plants, cuttings, propagules, or clones.

(x) “Primary licensee” means an individual at least 18 years of age who was issued a research license by the department and who shall be responsible for ensuring that all licensees listed on the research license application submitted by that individual comply with the requirements of the act and any implementing regulations.

(y) “Research area” means a location within a licensed research section used for the cultivation, planting, growth, handling, harvesting, conditioning, storage, distribution, transporting, or processing of industrial hemp plants, plant parts, grain, or seeds.

(z) “Secretary” means secretary of the Kansas department of agriculture or the secretary’s designated representative.

(aa) “Seed,” as used in this article of the department’s regulations, means an industrial hemp plant’s unit of sexual reproduction intended to be planted for germination.

(bb) “Variety” means a subdivision of a species that meets the following conditions:

(1) Is uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(2) is stable, in the sense that the variety will remain unchanged in its essential and distinctive

characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(3) is distinct, in that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties.

(cc) “Volunteer plant” means any plant of the genus *cannabis* that grows of its own accord from seeds or roots and is not intentionally planted. (Authorized by and implementing K.S.A. 2019 Supp. 2-3902; effective Feb. 8, 2019; amended Feb. 26, 2021.)

4-34-2. Certified seed. (a) All certified seed shall be considered “agricultural seed” subject to the Kansas agricultural seed act, K.S.A. 2-1415 et seq. and amendments thereto, and the implementing regulations.

(b) No certification of seed shall be made unless by or on the authority of the designated certifying agency. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-3. License approval process. (a) Each individual wanting to conduct research pursuant to the pilot program shall submit or be listed on a completed, accurate, and legible research license application. Each research license application shall be submitted on a form provided by the department and shall designate the individual wanting to be the primary licensee and all proposed licensees. Each research license application shall include a research proposal and all required state and national criminal history record check and application fees, except that an individual wanting to be a primary licensee on a state educational institution license shall not be required to submit an application fee.

(b) Each individual issued an administrative license, each individual wanting to be a primary licensee, and each individual listed on a research license application shall meet the following requirements:

(1) Be fingerprinted and submit to a state and national criminal history record check, which shall be performed by the Kansas bureau of investigation;

(2) submit payment for the fingerprint-based criminal history record check to the Kansas bureau of investigation; and

(3) submit payment for the costs of fingerprinting to the law enforcement agency that provided the fingerprinting services.

(c) Each individual wanting to be a primary licensee and each individual listed on a research license application shall submit that individual's fingerprints and a state and national criminal history record check no more than 30 days before submitting the research license application to the department.

(d) Following the department's receipt of the completed research license application, verification that all individuals passed the state and national criminal history record check, and the application fees, the research license application shall be reviewed by the state advisory board and either rejected or recommended for approval and forwarded to the secretary.

(e) Following the secretary's review, each research license application shall be denied or conditionally approved. The individual wanting to be the primary licensee shall be notified by the department of the denial or conditional approval in writing. Each research license application for a state educational institution license shall be reviewed solely by the secretary and shall be denied or approved. If approved, each state educational institution license shall be issued by the department and the licensee may begin the approved research.

(f) Upon conditional approval of a research license application, the individual wanting to be the primary licensee shall remit the applicable license fees for each approved license category within 15 days of receipt of the department's written notice of conditional approval. Once the department receives the applicable license fees, the research license application shall be officially approved and each appropriate license shall be issued by the department. Upon receipt of the research license, the licensee may begin the approved research. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-4. Research license applications. (a) Each individual wanting to be a primary licensee shall identify the following on the research license application:

(1) Each owner of all land, structures, and buildings where any proposed research will be conducted;

(2) each owner of all motor vehicles that will be used to distribute or transport industrial hemp plants, plant parts, grain, or seeds;

(3) each individual that will own 10 percent or more of the industrial hemp plants, plant parts,

grain, or seeds being cultivated, planted, or grown; and

(4) each individual that will otherwise be involved in the research proposal, including those individuals that will be engaged in the purchasing, researching, cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, studying, analyzing, or selling of industrial hemp plants, plant parts, grain, or seeds.

(b) Each research license application shall include the following:

(1) A research proposal submitted on a form provided by the department that includes the following, at a minimum:

(A) A statement of the type of research to be conducted;

(B) the purpose of the research;

(C) the data that will be collected;

(D) the location where the research will occur;

(E) the number of acres or square feet that will be used to conduct the research;

(F) the methods to be used in conducting the research;

(G) the intended duration of the research;

(H) the anticipated results of the research; and

(I) any other relevant information that the secretary requests;

(2) legal descriptions and maps depicting each location where industrial hemp plants, plant parts, grain, or seeds will be cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed, including appropriate designations for field identifications and boundaries and the global positioning system coordinates;

(3) a description of each vehicle that will be used for transporting or distributing industrial hemp plants, plant parts, grain, or seeds, including the make, model, license plate number, and color; and

(4) a list of each individual who will transport any industrial hemp plants, plant parts, grain, or seeds, along with a copy of the individual's current driver's license.

(c) Each research license application shall be submitted to the department on an annual basis, on a form provided by the department. Each research license application shall be submitted to the department no later than March 1 for the 2019 growing season and no later than November 30 for each subsequent growing season.

(d) Incomplete or illegible research license ap-

plications shall not be accepted, and the application fees shall not be refunded.

(1) Any individual wanting to be a primary licensee may complete or resubmit a previously incomplete or illegible research license application no later than November 30.

(2) For the 2019 growing season, any individual wanting to be a primary licensee may complete or resubmit a previously incomplete or illegible research license application no later than March 1.

(e) Any individual may apply for multiple licenses in a single license category or multiple license categories. Each individual shall provide the department with all required information for each license being sought along with payment of separate application fees and license fees.

(f) A research license application may be denied and the application fees shall not be refunded if at least one of the following conditions is met:

(1) The research license application is not submitted by the established deadline.

(2) The research license application does not include the application fees.

(3) Any individual identified on the research license application fails to submit to the state and national criminal history record check as required.

(4) Any criminal history records check reveals that an individual identified on the license application has been convicted of any crime specified in K.S.A. 2018 Supp. 2-3902, and amendments thereto, or a violation of any law of another jurisdiction that is in substantial conformity with the offenses listed in that statute.

(5) The research license application does not include a research proposal.

(6) The research license application includes a home or residence as a location to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-5. Licenses issued by the department; general requirements for licensees.

(a) Each license issued by the department shall establish the requirements governing each licensee's participation in the pilot program. Any violation of the terms and conditions specified in a license may result in the revocation of any license held by the licensee and denial of future applications. Each licensee shall comply with all instructions from representatives of the department and

local, state, and federal law enforcement agencies pertaining to the licensee's involvement in the pilot program.

(b) Before cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, researching, overseeing, studying, or analyzing industrial hemp plants, plant parts, grain, or seeds for research purposes at any location in Kansas, each individual shall obtain a license issued by the department.

(c) Before a license is issued by the department, license fees shall be paid as required by K.A.R. 4-34-12. Failure by the individual wanting to be the primary licensee to pay the license fees within 15 days of receipt of notice of conditional approval shall terminate the approval process of the research license application, and the requested licenses shall not be issued by the department.

(d) Except in the case of the death of the primary licensee, a license issued by the department shall not be sold or transferred. If the primary licensee dies, any individual listed on the research license application that has also been issued a license may request that the department modify the license as required by K.A.R. 4-34-13.

(e)(1) Each licensee shall use or allow to be used as part of the pilot program only industrial hemp plants, plant parts, grain, or seeds from varieties currently designated by the department as approved varieties of industrial hemp. The department's document titled "approved varieties of industrial hemp for planting," dated October 15, 2018, is hereby adopted by reference.

(2) Upon request of the individual wanting to be the primary licensee, any licensees listed on that individual's research license application may be authorized by the secretary to cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process varieties of industrial hemp other than those varieties identified under paragraph (e)(1), if doing so is appropriate and consistent with the individual's research proposal.

(f) At all times while a licensee is engaged in cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, researching, overseeing, studying, or analyzing industrial hemp plants, plant parts, grain or seeds pursuant to the pilot program, the licensee shall have that individual's current license authorizing the activity in possession.

(g) Each license issued by the department shall be valid from the date of issuance until the expiration date unless the license is revoked by the de-

partment. Each license shall expire on January 31, following the date of issuance. An individual may apply for a license in successive years by completing a research license application, state and national criminal history records check, fingerprinting, and paying the application and license fees. Issuance of a license in one year shall not guarantee issuance of a license in any subsequent year.

(h) A license shall not be issued by the department to an individual if the individual's research license application includes a location approved by the department as a research area in a license previously issued by the department in the same license year. Any individual may request that the department approve multiple licensed research sections. However, each request shall require a separate research license application, application fees, and license fees.

(i) Any primary licensee may be approved by the department to cultivate, plant, or grow industrial hemp plants, plant parts, grain, or seeds on an acreage or square footage that is equal to or less than the acreage or square footage stated in the research license application. Industrial hemp plants, plant parts, grain, or seeds may be cultivated, planted, or grown on an acreage or square footage that is equal to or less than the approved acreage or square footage. Completion of a modification request form shall not be required if a primary licensee elects to cultivate, plant, or grow industrial hemp plants, plant parts, grain, or seeds on an acreage or square footage that is less than the acreage or square footage authorized in the license.

(j) Licensees shall use only approved varieties of industrial hemp when engaged in cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, or processing industrial hemp plants, plant parts, grain, or seeds, except that any primary licensee may request that the secretary approve varieties of industrial hemp pursuant to paragraph (e)(2).

(k) Each licensee growing seed for seed certification shall meet the requirements specified in the Kansas agricultural seed act, K.S.A. 2-1415 et seq. amendments thereto, and the implementing regulations.

(l)(1) Each licensee shall consent to the department's providing information to law enforcement, fire, and rescue agencies and the public regarding each research area. Additionally, each licensee shall consent to the department's providing information about any licensed research section or research area, including global positioning system

coordinates, to representatives of the Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies if representatives of any of these agencies request the information.

(2) Each licensee shall consent to the department's providing appropriate law enforcement agencies in each county with copies of the licensee's license.

(m) Each research area shall be subject to inspection by the department. Each representative of the department shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures listed on the license issued by the department. Access shall be granted whether the licensee is present or not, at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice. The right of access shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds present at the location being accessed, as well as the right to inspect any reports or records pertaining to the licensee's research.

(n) Each licensee shall permit the department to perform any inspections and to collect any samples of any industrial hemp plants, plant parts, grain, or seeds at any time.

(o) Each licensee shall submit all reports required by the department on or before the specified deadlines.

(p) Each primary licensee shall retain, for at least five years, all records created as a result of the primary licensee's participation in the pilot program unless otherwise ordered by the secretary. The records shall be made available for inspection by the department, the Kansas bureau of investigation, and any other law enforcement agencies upon request.

(q) Each licensee shall ensure that any individual applying pesticides to industrial hemp plants or plant parts complies with the Kansas pesticide act, K.S.A. 2-2438a et seq. amendments thereto, and the implementing regulations.

(r) Each licensee shall be solely responsible for that licensee's risk of financial or other loss as a result of participating in the pilot program.

(s) A licensee shall not allow industrial hemp plants, plant parts, grain, or seeds to be cultivated, planted, grown, handled, harvested, conditioned,

stored, distributed, transported, or processed at any location other than the locations included on the license issued by the department.

(t)(1) Each licensee shall immediately notify the department of any interaction with law enforcement related to the licensee's participation in the pilot program, as well as any contact with law enforcement related to criminal charges or a criminal investigation involving any crime specified in K.S.A. 2018 Supp. 2-3902, and amendments thereto, or a violation of any law of another jurisdiction that is in substantial conformity with the offenses listed in that statute. The licensee shall provide a written follow-up summarizing the interaction and its outcome to the department within three calendar days of the interaction.

(2) Each primary licensee shall notify the department and appropriate law enforcement agencies of the theft of any industrial hemp plants, plant parts, grain, or seeds within three calendar days of the theft.

(u) A primary licensee shall not permit any individual to participate in the pilot program pursuant to the primary licensee's research license application if that individual's license was revoked by the department or that individual was denied admission to participate in the pilot program. Except when conducting educational activities, a licensee shall not allow access to any research area listed on the license, industrial hemp plants, plant parts, grain, or seeds by an individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(v) A primary licensee shall not rent or lease land, buildings, facilities, motor vehicles, or other structures that will be used to conduct research as part of the pilot program from any individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(w) Any licensee may host or engage in educational activities as authorized by the license issued by the department. Any licensee hosting or engaging in educational activities may allow members of the public access to each research area for the sole purpose of participating in educational activities. Any licensee may set up a public display booth showcasing the individual's research relating to industrial hemp plants, plant parts, grain, or seeds at trade shows, county fairs, or other similar events. Licensees shall not allow any members of the public to have physical contact with or possess any industrial hemp plants, plant parts, grain, or

seeds and shall not transfer, distribute, trade, sell, give away, barter, or exchange for value any industrial hemp plants, plant parts, grain, or seeds to any member of the public.

(x) A licensee shall not conduct activities that involve industrial hemp plants, plant parts, grain, or seeds that are unrelated to the licensee's approved research proposal, license, or educational activities at any location listed on the license, including industrial hemp-related activities involving an industrial hemp maze.

(y) A licensee shall not distribute industrial hemp plants, plant parts, grain, or seeds at any location that is not identified on the license, including trade shows, county fairs, educational or other events, and any other address not listed on the license. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-6. Research grower license. (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research grower license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants or certified seeds from a licensed research distributor or from legally imported sources of industrial hemp;

(2) obtain and retain a copy of each seed label for all certified seed planted, cultivated, or grown;

(3) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants or seeds being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants or seeds being received; and

(C) the harvest certificate pertaining to the industrial hemp plants or seeds being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants or seeds being received;

(4) ensure that industrial hemp plants, plant parts, grain, or seeds are not interplanted with any other crop in any research area;

(5) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds that were harvested or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain,

or seeds accompanies the industrial hemp plants, plant parts, grain, or seeds being transported;

(6) ensure that industrial hemp plants, plant parts, grain, or seeds are not commingled with any other commodity or other items being transported; and

(7) survey and monitor any unlicensed growing areas, whether inactive or previously licensed as part of any research area, or never been licensed, including any ditches, fence lines, and other unmanaged land areas adjacent to the research areas, for volunteer plants and destroy any volunteer plants during the current license year and for at least three years after the last date of planting reported to the department.

(b) The primary licensee on each research grower license shall have a primary residence in Kansas.

(c) Any licensed research grower may cultivate, plant, grow, handle, harvest, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds pursuant to the license issued by the department.

(d) A licensed research grower shall not handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds cultivated, planted, or grown by another licensee without first obtaining any required license issued by the department.

(e) A licensed research grower shall not cultivate, plant, grow, handle, or harvest more than 80 acres in a licensed research section under one license in calendar year 2019 and shall not cultivate, plant, grow, handle, or harvest more than 320 acres in a licensed research section under one license in calendar year 2020. Each primary licensee on a research grower license who wants to cultivate, plant, grow, handle, or harvest more than the authorized acres in a licensed research section in any calendar year shall obtain an additional research grower license and pay all required application fees and license fees for the additional acreage.

(f) Each licensed research grower that cultivates, plants, grows, handles, harvests, conditions, stores, or transports industrial hemp plants or seeds that were obtained from outside Kansas shall maintain a bill of lading or other documentation that identifies the source of the industrial hemp plants or seeds to demonstrate that the industrial hemp plants or seeds were legally imported into Kansas. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-7. Research distributor license. (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research distributor license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants, plant parts, grain, or seeds from a licensed research grower, licensed research distributor, or licensed research processor or from legally imported sources of industrial hemp;

(2) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, grain, or seeds being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, grain, or seeds being received;

(C) the research processor license of the primary licensee that handled or stored the industrial hemp plants, plant parts, or grain being received; and

(D) the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain, or seed being received by the licensee;

(3) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, grain, or seeds that were harvested or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, grain, or seeds accompanies the industrial hemp plants, plant parts, grain, or seeds being distributed or transported; and

(4) ensure that industrial hemp plants, plant parts, grain, or seeds are not commingled with any other commodity or other items being distributed or transported.

(b) The primary licensee on a research distributor license shall have a primary residence in Kansas.

(c) Any licensed research distributor may handle, condition, store, distribute, or transport industrial hemp plants, plant parts, grain, or seeds pursuant to the license issued by the department.

(d) A licensed research distributor shall not harvest or process industrial hemp plants, plant parts, grain, or seeds cultivated or grown by an-

other licensee without first obtaining any required license issued by the department.

(e) Each individual exchanging, distributing, selling, or reselling certified seed in Kansas shall be licensed pursuant to the Kansas agricultural seed act, K.S.A. 2-1415 et seq. amendments thereto, and the implementing regulations.

(f) A licensed research distributor that handles, conditions, stores, distributes, or transports industrial hemp plants, plant parts, grain, or seeds that were obtained from outside Kansas shall maintain a bill of lading or other documentation that identifies the source of the industrial hemp plants, plant parts, grain, or seeds to demonstrate that the industrial hemp plants, plant parts, grain, or seeds were legally imported into Kansas. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-8. Research processor license. (a) In addition to the requirements of K.A.R. 4-34-5, each individual who is issued a research processor license by the department shall meet the following requirements:

(1) Obtain industrial hemp plants, plant parts, or grain from a licensed research grower or licensed research distributor or from legally imported sources of industrial hemp;

(2) devalize any industrial hemp grain within 10 days of receipt and take appropriate security measures to ensure that the industrial hemp grain cannot be stolen before it is devalized;

(3) obtain and retain a copy of the following documents, if applicable:

(A) The research grower license of the primary licensee that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, or grain being received;

(B) the research distributor license of the primary licensee that handled, conditioned, stored, distributed, or transported the industrial hemp plants, plant parts, or grain being received; and

(C) the harvest certificate pertaining to the industrial hemp plants, plant parts, or grain being received by the licensee or a bill of lading or other documentation identifying the source of the industrial hemp plants, plant parts, or grain being received; and

(4) ensure that a copy of the harvest certificate pertaining to the industrial hemp plants, plant parts, or grain that was harvested or a bill of lading or other documentation identifying the source

of the industrial hemp plants, plant parts, or grain accompanies the industrial hemp plants, plant parts, or grain being processed.

(b) Any licensed research processor may handle, store, or process industrial hemp plants, plant parts, or grain pursuant to the license issued by the department. A licensed research processor shall not handle, store, or process seeds.

(c)(1) The primary licensee on a research processor license who processes industrial hemp plants, plant parts, or grain into hemp products in a mobile processing facility shall meet the following requirements:

(A) Notify the department of the mobile processing facility's planned processing locations no more than five days in advance of the first day of processing in each location. The primary licensee shall immediately notify the department of any changes to a submitted schedule; and

(B) at all times, operate in compliance with all state, county, and local laws, regulations, and ordinances.

(2) The primary licensee shall be present at each mobile processing facility's planned processing locations at all times while each mobile processing facility is operating.

(d) A licensed research processor shall not cultivate, plant, grow, harvest, condition, distribute, or transport industrial hemp plants, plant parts, grain, or seeds cultivated, planted, or grown by another licensee without first obtaining any required license issued by the department.

(e) A licensed research processor that processes industrial hemp plants, plant parts, or grain that were obtained from outside Kansas shall maintain a bill of lading or other documentation demonstrating that the industrial hemp plants, plant parts, or grain was legally imported into Kansas.

(f) Possession of a current research processor license shall not guarantee a licensee access to the premises of any private landowner. Permission for a licensee to enter the premises of any landowner shall be established contractually or otherwise by agreement of the licensee and the landowner. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-9. State educational institution research license. (a) Each state educational institution wanting to allow individuals to conduct research pursuant to the pilot program shall authorize this participation and shall be directly responsible for any volunteer, student, employee, or

research and extension employee conducting the research.

(b) Each volunteer, student, employee, or research and extension employee of a state educational institution that wants to conduct research pursuant to the pilot program shall submit a completed, accurate, and legible research license application for a state educational institution research license. Each research license application shall designate the individual wanting to be a primary licensee and list all proposed licensees. Each research license application shall include a research proposal and the required state and national criminal history record check.

No application fees or license fees shall be assessed to any individuals wanting a state educational institution research license. However, the costs associated with fingerprinting and the state and national criminal history record check shall be the responsibility of any individual wanting a state educational institution research license.

(c) Volunteers, students, employees, and research and extension employees of a state educational institution shall not apply for a license or conduct research without first obtaining written approval from the head of any applicable department stating that the individual wanting to be a primary licensee and the proposed licensees are part of a sanctioned state educational institution research proposal, which shall be submitted with the research license application. Each individual wanting to be the primary licensee on a state educational institution research license shall apply for and obtain that license before conducting research or having industrial hemp plants, plant parts, grain, or seeds at any location in Kansas.

(d) Each individual wanting to be the primary licensee on a state educational institution research license shall identify the following on the research license application:

(1) Each owner of all land, structures, and buildings where any proposed research will be conducted;

(2) each owner of any motor vehicle that will be used to distribute or transport industrial hemp plants, plant parts, grain, or seeds;

(3) each individual that will own 10 percent or more of the industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, or grown;

(4) each individual that will otherwise be involved in the research proposal, including volunteers, students, employees, research and extension employees, and any other individuals

that will be engaged in the purchasing, researching, cultivating, planting, growing, handling, harvesting, conditioning, storing, distributing, transporting, processing, studying, analyzing, or selling of industrial hemp plants, plant parts, grain, or seeds; and

(5) all individuals that will have access to any proposed research area.

(e) Any state educational institution licensee may cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds pursuant to the license.

(f)(1) The requirements for research license applications specified in K.A.R. 4-34-4 (b) through (f) and the requirements for the state and national criminal history record check specified in K.A.R. 4-34-3 shall apply to state educational institution licensees. Each state educational institution licensee shall comply with the requirements of K.A.R. 4-34-5, the requirements for a research grower license pursuant to K.A.R. 4-34-6, the requirements for a research distributor license pursuant to K.A.R. 4-34-7, and the requirements for a research processor license pursuant to K.A.R. 4-34-8, except that a state educational institution licensee shall not be required to pay any application fees, license fees, modification fees, sampling fees, or testing fees.

(2) Any individual wanting to be primary licensee on a state educational institution license may include a location on the individual's research license application that has previously been approved by the department as a research area in the same license year.

(3) A state educational institutional licensee shall be prohibited from the following:

(A) Storing or distributing industrial hemp plants, plant parts, grain, or seeds cultivated or grown under another's license, except with the secretary's written permission; and

(B) operating a mobile processing facility.

(g) A state educational institution licensee shall not conduct research as part of the pilot program on any research area not owned by the state educational institution. A state educational institution licensee shall not enter into any agreement or otherwise subcontract with an individual or business entity to permit the licensee to conduct research on any land, structures, or buildings not owned by the state educational institution.

(h) A primary licensee on a state educational institution license shall not permit any individual to

participate in the pilot program pursuant to the primary licensee's research license application or otherwise have access to the licensee's research area, industrial hemp plants, plant parts, grain, or seeds if that individual's license was revoked by the department or that individual was denied admission to participate in the pilot program.

(i) Any individual wanting to be a primary licensee on a state educational institution license may request that the department authorize the licensee to interplant industrial hemp plants, plant parts, grain, or seeds with other crops in a research area.

(j) Each state educational institution licensee that is no longer affiliated with the state educational institution shall notify the department and withdraw from the pilot program pursuant to K.A.R. 4-34-16. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

4-34-10. Administrative license. (a) An administrative license may be issued to any individual specified in K.A.R. 4-34-1(b).

(b) Before being issued an administrative license, each individual shall be required to undergo and pass the state and national criminal history record check as specified in K.A.R. 4-34-3.

(c) Each administrative license shall identify the activities that the licensee is authorized to undertake, including handling, inspecting, sampling, testing, and transporting industrial hemp plants, plant parts, grain, or seeds.

(d) No application fee or license fee shall be assessed for any administrative license issued pursuant to this regulation. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

4-34-11. State advisory board. (a) The board established by the secretary pursuant to K.S.A. 2018 Supp. 2-3902, and amendments thereto, shall be recognized as the state advisory board. Members shall be appointed by the secretary. The state advisory board shall consist of at least five and no more than nine members. Membership shall reflect the different geographic areas of the state equally, to the greatest extent possible. Members of the state advisory board shall receive no compensation for serving on the board, but may be paid subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223, and amendments thereto. Each member appointed to

the state advisory board shall be recognized for knowledge and leadership in at least one of the following sectors: crop research, industrial hemp production or processing, law enforcement, seed certification, or any other sector deemed relevant by the secretary. The secretary shall appoint one member from the Kansas legislature to the state advisory board.

(b) Of the members first appointed to the state advisory board, four members whose terms shall expire on June 30, 2021 shall be designated by the secretary. The remaining members' terms shall expire on June 30, 2023. After the expiration of the initial terms, each member shall be appointed by the secretary to serve for a term of four years until a successor is appointed. Each member shall be limited to serving a total of two full terms and shall hold office until the expiration of the term for which the member is appointed or until a successor has been qualified and appointed. A member may be appointed by the secretary to fill an unexpired term of any member due to a vacancy on the state advisory board.

(c) Before being qualified and appointed as a member of the state advisory board, each individual shall undergo and be required to pass the state and national criminal history record check as specified in K.A.R. 4-34-3. Upon determination that an individual is qualified, that individual may be appointed by the secretary as a member of the state advisory board and shall be issued an administrative license by the department. No application or license fees shall be assessed for an administrative license issued to a member of the state advisory board pursuant to this regulation.

(d) A quorum of the state advisory board shall be a majority of the members appointed to the state advisory board. A quorum of the state advisory board shall organize by election of a chairperson, vice-chairperson, and other officers as the state advisory board deems appropriate.

(e) In addition to the duties specified in K.S.A. 2018 Supp. 2-3902 and amendments thereto, the state advisory board shall perform other duties, which may include the review of regulations and recommendation of potential changes. The state advisory board shall make recommendations to the secretary only if the recommendations are approved by a majority vote of the state advisory board members.

(f) Any member of the state advisory board may be removed by the secretary for misconduct, incompetence, or neglect of duty. (Authorized by

K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

4-34-12. Fees. (a) The application fee shall be \$200 for each license sought, with the exception of state educational institution licenses and administrative licenses, for which no application fee shall be charged.

(b) Upon conditional approval of a research grower license, each individual wanting to be the primary licensee shall pay a license fee of \$1,000.

(c) Upon conditional approval of a research distributor license, each individual wanting to be the primary licensee shall pay a license fee of \$2,000 for each licensed research section approved by the department.

(d)(1) Upon conditional approval of a research processor license for processing fiber or grain, each individual wanting to be the primary licensee shall pay a license fee of \$3,000 for each processing facility in a licensed research section and for each mobile processing facility.

(2) Upon conditional approval of a research processor license for processing floral material, each individual wanting to be the primary licensee shall pay a license fee of \$6,000 for each processing facility in a licensed research section and for each mobile processing facility.

(e) Each license fee shall include the cost for the department's initial sample collection and initial laboratory test. Each primary licensee shall pay a subsequent sampling fee of \$45 per hour, plus transportation time and mileage for representatives of the department, for each of the following:

(1) The department collects a subsequent sample.

(2) The primary licensee requests that the department collect a subsequent pre-harvest sample.

(3) The primary licensee requests that the department collect a subsequent post-harvest sample.

(4) More than one harvest occurs in the same research area in a license year.

(f) Each primary licensee shall pay a testing fee of \$250 for every laboratory test determining the delta-9 tetrahydrocannabinol concentration for each of the following:

(1) The department collects a subsequent sample.

(2) The primary licensee requests that the department collect a subsequent pre-harvest sample.

(3) The primary licensee requests that the department collect a subsequent post-harvest sample.

(4) The department collects more than one sample because more than one harvest occurs in the same research area in a license year.

(g) Each primary licensee shall pay a modification fee of \$750 for each requested change to a license that was previously issued by the department. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

4-34-13. Modification of license. (a) Each primary licensee who wants to modify that individual's license or the license of any individual listed on the research license application shall submit a modification request form and the required fee, except as specified in paragraph (d) (2), to the department.

(b) Each licensee shall comply with the requirements of the original license, unless the department modifies the license in writing.

(c) Any primary licensee may request multiple license modifications by submitting one modification request form, but separate fees shall be required for each requested change.

(d)(1) If a primary licensee dies, any licensee who was listed on the research license application and was issued a license may request that the department modify the license to name the requesting individual as the primary licensee. This request may be granted by the department if the requesting individual performs the following:

(A) Notifies the department of the primary licensee's death within 15 business days;

(B) submits a license modification request form to the department within 45 days of the primary licensee's death;

(C) submits a copy of the primary licensee's death certificate to the department within 45 days of that individual's death; and

(D) meets the requirements in K.A.R. 4-34-5 and, if applicable, the requirements of K.A.R. 4-34-6, K.A.R. 4-34-7, K.A.R. 4-34-8, and K.A.R. 4-34-9.

(2) A modification fee to name the requesting individual as the new primary licensee shall not be charged by the department, except for modification requests received more than 45 days after the death of the primary licensee, which shall require a modification request form and modification fee unless the department extends the 45-day time period in writing.

If any other modification request is included, that modification request shall be subject to the modification fee specified in K.A.R. 4-34-12.

(e) A license modification shall be approved by the secretary if the request is appropriate and consistent with the licensee's approved research proposal and meets the requirements of this regulation. If the secretary denies the requested modification, no refund of the modification fee shall be provided, and the licensee shall comply with the terms and conditions of the existing license. (Authorized by K.S.A. 2018 Supp. 2-3902; implementing K.S.A. 2018 Supp. 2-3902 and 2-3903; effective Feb. 8, 2019.)

4-34-14. Land-use restrictions. (a) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process any plants, plant parts, grain, or seeds of the genus *cannabis* that are not industrial hemp.

(b) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, or process industrial hemp plants, plant parts, grain, or seeds at any location not included on the licensee's license.

(c)(1) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, or process industrial hemp plants, plant parts, grain, or seeds as follows, except with the secretary's written permission:

(A) In or within 50 feet of a residential structure; or

(B) within one-quarter mile of any public or private K-12 school or public recreational area.

(2) For licensed research sections consisting of any outdoor locations, one-quarter mile shall be calculated from any field boundary of any research area, and for licensed research sections consisting of any indoor locations or a greenhouse, one-quarter mile shall be calculated from any exterior wall.

(d) A licensee shall not interplant, cultivate, plant, or grow any crop other than industrial hemp plants, plant parts, grain, or seeds in any research area, except that any state educational institution licensee may do so upon authorization by the secretary. A licensee shall not cultivate, plant, grow, harvest, or condition more than one approved variety of industrial hemp in a research area without the secretary's written approval.

(e) A licensee shall not cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp plants, plant parts, grain, or seeds on property owned by any individual whose license was revoked by the department or who was denied admission to participate in the pilot program.

(f) Each primary licensee shall post and maintain at least one sign at each research area listed on the license. A sign shall be posted along each research area boundary adjacent to a public road, except that if the research area is adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a research area is not adjacent to any public road, a sign shall be posted at the point of access to the research area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Research Program";

(2) the primary licensee's name;

(3) the primary licensee's license number; and

(4) the department's telephone number.

(g) Each licensee shall allow the department to inspect unlicensed growing areas for volunteer plants. The primary licensee or a licensee listed on the primary licensee's research license application shall destroy any volunteer plants for at least three years after the last reported date of planting. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-15. Movement of industrial hemp; restrictions on sale or transfer of industrial hemp; compliance with applicable law. (a)

The movement of all industrial hemp plants, plant parts, grain, or seeds into, out of, or within Kansas shall be at the licensee's expense and risk.

(b) A licensee shall not sell or transfer industrial hemp plants, plant parts, grain, or seeds to any individual or business entity outside Kansas who is not authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of that state. A licensee shall not purchase or receive industrial hemp plants, plant parts, grain, or seeds from an individual or business entity or permit any transfer of industrial hemp plants, plant parts, grain, or seeds to or from any individual or business entity outside Kansas who is not authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of that state. Each licensee shall ensure that any sale or transfer of industrial hemp plants, plant parts, grain, or seeds is lawful in the state in which the transaction is undertaken.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to industrial hemp and with the act and the implementing regulations.

(d) Each licensee shall be responsible for any loss or obligation that the licensee incurs as a result of the licensee's involvement in the pilot program. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-16. Voluntary withdrawal; voluntary partial destruction. (a) Any licensee may voluntarily withdraw from the pilot program after providing the department with written notice of the intent to do so. Notice shall be provided at least 30 days before the intended withdrawal date, except with prior written approval from the department. If a licensee listed on a primary licensee's research license application withdraws from the pilot program, the primary licensee shall modify each license as specified in K.A.R. 4-34-13.

(b) If a primary licensee voluntarily withdraws from the pilot program, all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to the licensee's license shall be destroyed and all licenses issued pursuant to the research license application shall be surrendered. Each primary licensee who voluntarily withdraws from the pilot program shall provide the department at least 15 days' notice of the date and time the primary licensee intends to destroy the industrial hemp plants, plant parts, grain, or seeds pursuant to that individual's license and shall notify the department of any change in the destruction date or time.

(c) If a primary licensee notifies the department of the intent to withdraw from the pilot program but fails to destroy all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to that individual's license within 15 days of the intended destruction date, the license of the primary licensee and each license issued pursuant to the research license application may be revoked and all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed as part of the primary licensee's research shall be destroyed at the primary licensee's expense.

(d) Any primary licensee conducting research pursuant to a research grower license may voluntarily destroy any industrial hemp plants being cultivated, planted, or grown in a portion of any research area without withdrawing from the pilot program. Each primary licensee conducting research pursuant to a research grower license who intends to destroy the industrial hemp plants being cultivated, planted, or grown in any research area listed on that individual's license shall provide the department at least 15 days' notice of the date and time of destruction and shall notify the department of any change in the destruction date or time.

(e) Each primary licensee that has been issued a failing report of analysis shall comply with the destruction requirements in K.A.R. 4-34-18 and K.A.R. 4-34-19, as applicable.

(f) Representatives of the department or law enforcement may be present during any destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of the destruction may be required by the department.

(g) Each primary licensee who destroys any industrial hemp plants being cultivated, planted, grown, handled, harvested, conditioned, stored, distributed, transported, or processed pursuant to that individual's license shall, within 15 days after the destruction, notify the department in writing of the number of acres of industrial hemp plants, plant parts, grain, or seeds that were planted in each research area and the number of acres destroyed in each research area.

(h) Upon destruction of any industrial hemp plants, plant parts, grain, or seeds, all volunteer plants shall also be destroyed during the current license year and for at least three years after the last date of planting reported to the department.

(i) Voluntary destruction of industrial hemp plants, plant parts, grain, or seeds shall be performed by a licensee listed on the research license application of the primary licensee and shall be at the primary licensee's expense. If the destruction of industrial hemp plants, plant parts, grain, or seeds occurs, the licensee shall not be eligible for a refund of any fees paid by a primary licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-17. Pre-harvest and harvest requirements; harvest certificates. (a) Each primary licensee shall notify the department of

every intended harvest date in a pre-harvest report at least 30 days before each intended harvest date. Each primary licensee shall immediately notify the department regarding a change to any date previously reported to the department if the change to the harvest date is five or more days. Additional sampling and testing may be required by the department as a result of any change to the harvest date of five or more days.

(b) If two or more harvests will be conducted from the same research area within a license year, the primary licensee shall notify the department of each intended harvest date at least 30 days before each intended harvest date. The primary licensee shall pay a subsequent sampling fee and testing fee for each harvest conducted after the initial harvest of a research area.

(c) No more than 15 days before any industrial hemp plants, plant parts, grain, or seeds are cut, picked, collected, or otherwise harvested, each licensee shall allow a sample to be collected by the department for testing as specified in K.A.R. 4-34-18. The initial pre-harvest sample shall not require an additional sampling fee or testing fee.

(d) Before harvesting any industrial hemp plants, plant parts, grain, or seeds, the licensee shall be required to receive a passing report of analysis from the department. After issuance of a passing report of analysis from the department, the licensee shall have 10 days to fully harvest the industrial hemp plants, plant parts, grain, or seeds, unless otherwise authorized in writing by the secretary.

(e) If a licensee fails to fully harvest the industrial hemp plants, plant parts, grain, or seeds within 10 days after issuance of the passing report of analysis, the primary licensee shall perform one of the following:

(1) Notify the department within seven days after the expiration of the 10-day harvest period of the intended second harvest date, request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department within seven days after the expiration of the 10-day harvest period of the intended date by which the licensee shall destroy the industrial hemp plants, plant parts, grain, or seeds. The primary licensee shall notify the department of any change in the destruction date.

Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by an individual listed on the primary licensee's research license

application and at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. If destruction of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a primary licensee.

(f) No more than five days after the harvest of industrial hemp plants, plant parts, grain, or seeds is completed, the primary licensee shall notify the department that the harvest has been completed and request issuance of a harvest certificate. A harvest certificate shall not be issued by the department until the following information is provided for inclusion in the harvest certificate:

(1) The official name of the industrial hemp variety that was cultivated, planted, or grown;

(2) each date on which the licensee harvested the industrial hemp plants, plant parts, grain, or seeds;

(3) the global positioning system coordinates for each research area where the industrial hemp plants, plant parts, grain, or seeds were harvested; and

(4) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds that were harvested. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-18. Pre-harvest inspection; sample collection; testing and post-testing actions.

(a) A licensee, whether present or not, shall permit representatives of the department complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds and all locations, buildings, and motor vehicles listed on the license. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice.

(b) Any primary licensee may request collection of a sample from each research area listed on the license. Each sample collected shall be subject to the sampling and testing fees required by K.A.R. 4-34-12.

(c) Based on the results of the testing, one of the following shall apply:

(1) A sample containing a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis shall result in the issuance of a passing report of analysis and shall list each research area from which the sample was taken.

(2) A sample containing a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis and shall list each research area from which the sample was taken.

(A) Within seven days of issuance of a failing report of analysis, the primary licensee may request that the department either collect a subsequent pre-harvest sample or destroy all plants, plant parts, grain, or seeds located in each research area sampled and identified on the failing report of analysis.

(B) A subsequent pre-harvest sample requested by the primary licensee and found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis. Within seven days of issuance of the failing report of analysis, a licensee listed on the primary licensee's research license application shall destroy all plants, plant parts, grain, or seeds that are located in each research area that was sampled and identified in the failing report of analysis.

(C) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis, the testing results and the location of each sampled research area may be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(D) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of 2.0 percent or higher on a dry-weight basis, the testing results and the location of each sampled research area shall be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(d) Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by a licensee listed on the primary licensee's research license application and at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the department or law enforcement to be present during the destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of destruction may be required by the department. If the destruction of industrial hemp plants, plant parts, grain, or seeds is required, the primary licensee shall not be eligible for a refund of any fees paid.

(e) All samples collected by the department shall become the property of the department, and no compensation shall be owed to the licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-19. Post-harvest inspection; sample collection; testing and post-testing actions.

(a) Each licensee shall allow the department to inspect and sample industrial hemp plants, plant parts, grain, or seeds any time after the industrial hemp plants, plant parts, grain, or seeds have been harvested. The initial post-harvest sample shall not require an additional sampling fee or testing fee.

(b) A licensee, whether present or not, shall permit representatives of the department complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds and all locations, buildings, and motor vehicles listed on the license. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice.

(c) Any primary licensee may request collection of a sample from each research area listed on the license. Each sample collected shall be subject to the sampling and testing fees required by K.A.R. 4-34-12.

(d) Based on the results of the testing, one of the following shall apply:

(1) A sample containing a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis shall result in the issuance of a passing report of analysis and shall list each research area from which the sample was taken. Each passing report of analysis shall identify the harvest certificate or bill of lading that accompanied the industrial hemp plants, plant parts, grain, or seeds sampled.

(2) A sample containing a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis and shall list each research area from which the sample was taken.

(A) Within seven days of issuance of a failing report of analysis, the primary licensee may request that the department either collect a subsequent post-harvest sample or destroy all plants, plant parts, grain, or seeds located in each research area that was sampled and identified on the failing report of analysis.

(B) A subsequent post-harvest sample requested by the primary licensee and found to contain

a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis shall result in the issuance of a failing report of analysis. Within seven days of issuance of the failing report of analysis, a licensee listed on the primary licensee's research license application shall destroy all plants, plant parts, grain, or seeds that are located in each research area that was sampled and identified in the failing report of analysis.

(C) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of higher than 0.3 percent on a dry-weight basis, the testing results and the location of each sampled research area may be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(D) If any sample is found to contain a delta-9 tetrahydrocannabinol concentration of 2.0 percent or higher on a dry-weight basis, the testing results and the location of each sampled research area shall be referred to the Kansas bureau of investigation and other appropriate law enforcement agencies for further investigation.

(e) After the collection of a sample, no licensee shall handle, condition, distribute, transport, or process the sampled industrial hemp plants, plant parts, grain, or seeds until the primary licensee is issued a passing report of analysis. The sampled industrial hemp plants, plant parts, grain, or seeds shall not be processed, exchanged for value, or otherwise allowed to come into the possession of anyone other than a licensee listed on the primary licensee's research license application until a passing report of analysis is issued.

(f) Destruction of industrial hemp plants, plant parts, grain, or seeds shall occur by a licensee listed on the primary licensee's research license application at the primary licensee's expense. All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the department or law enforcement to be present during the destruction of industrial hemp plants, plant parts, grain, or seeds, or proof of the destruction may be required by the department. If the destruction of industrial hemp plants, plant parts, grain, or seeds occurs, the primary licensee shall not be eligible for a refund of any fees paid.

(g) All samples collected by the department shall become the property of the department, and no compensation shall be owed to the licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-20. Reports. (a) Each report required by the department shall be submitted on a form provided by the department. Each licensee shall submit the complete, accurate, and legible reports on or before the date required.

(b) A primary licensee on a research grower license shall submit a field planting report to the department within 15 days after every planting, including replanting seeds or propagules or establishing plants. Each field planting report shall identify the following for each research area:

(1) The official name of the industrial hemp variety that was cultivated, planted, or grown;

(2) the global positioning system coordinates for each research area where industrial hemp plants, plant parts, grain, or seeds are being cultivated, planted, or grown; and

(3) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds being cultivated, planted, or grown in each research area.

(c) Each primary licensee on a research grower license shall submit a voluntary withdrawal report if either of the following conditions is met:

(1) Industrial hemp plants, plant parts, grain, or seeds are not cultivated, planted, or grown in a research area. The report shall be due no later than June 1.

(2) Industrial hemp plants being grown in a portion of any research area are voluntarily destroyed as specified in K.A.R. 4-34-16. The report shall be due no later than 15 days after the industrial hemp plants are destroyed.

(d) Each primary licensee on a research grower license shall submit a pre-harvest report to the department at least 30 days before every intended harvest date, for each licensed research section. The pre-harvest report shall include the following:

(1) The number of acres planted in each research area;

(2) the intended harvest date for each research area; and

(3) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each research area.

(e) Each primary licensee on a research grower license shall submit a production report to the department within 30 days after the last harvest date for every harvest. Each production report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, grain, or seeds harvested from each research area, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research distributor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that transported any industrial hemp plants, plant parts, grain, or seeds that were harvested; and

(3) the name, address, and, if applicable, the license number of the primary licensee on the research processor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that received the industrial hemp plants, plant parts, or grain for processing.

(f) Each primary licensee on a research distributor license shall annually submit a completed distribution report to the department no later than November 30. Each distribution report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, grain, or seeds distributed in each load, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber and was distributed, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed and was distributed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material and was distributed, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use and was distributed, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research grower license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that cultivated, planted, grew, handled, harvested, conditioned, stored, distributed, or transported any industrial hemp plants, plant parts, grain, or seeds that the licensee distributed or transported;

(3) the name, address, and, if applicable, the license number of the primary licensee on the research processor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that processed each load of industrial hemp plants, plant parts, or grain that the licensee distributed or transported; and

(4) the amount of industrial hemp plants, plant parts, grain, or seeds that was sold during the current license year.

(g) Each primary licensee on a research processor license shall annually submit a completed processing report no later than November 30. Each processing report shall include the following, at a minimum:

(1) The amount of industrial hemp plants, plant parts, or grain processed by the licensee, which shall be provided as follows:

(A) If the industrial hemp crop was cultivated, planted, or grown for the production of fiber and was processed, the number of bales and the size and shape of the bales;

(B) if the industrial hemp crop was cultivated, planted, or grown for the production of grain or seed and was processed, the quantity by weight;

(C) if the industrial hemp crop was cultivated, planted, or grown for the production of floral material and was processed, the quantity by weight; and

(D) if the industrial hemp crop was cultivated, planted, or grown for the production of more than one end-use and was processed, the information for each end-use as required by this regulation;

(2) the name, address, and, if applicable, the license number of the primary licensee on the research grower license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that cultivated, planted, grew, handled, harvested, conditioned, stored, distribut-

ed, or transported any industrial hemp plants, plant parts, or grain that the licensee processed; and

(3) the name, address, and, if applicable, the license number of the primary licensee on the research distributor license or an out-of-state individual or business entity that is authorized by an institution of higher education or a state department of agriculture under 7 U.S.C. 5940, as amended, and the laws of the state that distributed or transported any of industrial hemp plants, plant parts, or grain that the licensee processed.

(h) On and after January 1, 2019, each primary licensee shall prepare and submit a research report to the department no later than November 30 each year. Each research report shall include the following, at a minimum:

- (1) A summary of the research conducted;
- (2) a description of the methods and materials used in conducting the research;
- (3) the results of the research; and
- (4) an analysis of the results.

(i) All research conducted and all reports submitted to the department as part of the pilot program shall become the property of the department, and no compensation shall be due from the department to any licensee. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-21. Violations; disciplinary sanctions. (a) Each of the following acts and omissions shall constitute a violation for which disciplinary sanctions, including revocation of any license and denial of future applications, may be imposed by the department:

(1) Failure to cooperate with the department and law enforcement agencies in administration and enforcement of the act, and amendments thereto, and the implementing regulations;

(2) failure to provide any information relating to the administration of the pilot program that the department requests;

(3) providing false, misleading, or incorrect information relating to the licensee's participation in the pilot program to the department;

(4) failure to submit any forms or reports as required;

(5) cultivating, planting, growing, or otherwise possessing plants of the genus *cannabis* with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis;

(6) failure to pay any fees assessed by the department;

(7) submitting a pre-harvest report or destruction report and harvesting or destroying industrial hemp plants, plant parts, grain, or seeds before sampling by the department;

(8) harvesting any industrial hemp plants, plant parts, grain, seeds without being issued a passing report of analysis;

(9) failure to destroy any industrial hemp plants, plant parts, grain, seeds, volunteer plants, or plants of the genus *cannabis* with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis as required by this article of the department's regulations;

(10) harvesting any industrial hemp plants, plant parts, grain, or seeds after being issued a failing report of analysis; and

(11) any other violation of the act, and amendments thereto, or the implementing regulations.

(b) If a licensee cultivates, plants, grows, handles, harvests, conditions, stores, distributes, transports, or processes any industrial hemp plants, plant parts, grain, or seeds as part of the pilot program at any location not listed on the license, the industrial hemp plants, plant parts, grain, or seeds at that location shall be destroyed by any licensee that received a license issued pursuant to the primary licensee's research license application. The destruction shall be at the primary licensee's expense, and any license may be revoked.

(c)(1) Each licensee whose license is revoked shall destroy any industrial hemp plants, plant parts, grain, or seeds in that individual's possession at that individual's own expense, no more than 15 business days after the department directs the individual to do so. The licensee shall not be eligible to reapply or otherwise participate in the pilot program for at least five years from the date of revocation. If a primary licensee's research license is revoked, all industrial hemp plants, plant parts, grain, or seeds that are subject to the primary licensee's license shall be destroyed by a licensee listed on the research license application and at the primary licensee's expense.

(2) Each licensee that will destroy industrial hemp plants, plant parts, grain, or seeds pursuant to paragraph (c)(1) shall notify the department of the date and time of destruction within five days of issuance of the notification that destruction is required. Each licensee shall notify the department of any change in the destruction date or time. Additional sampling and testing may be required by the department for a change of five or more days. Representatives of the department or

law enforcement may be present during the destruction, or proof of the destruction may be required by the department.

(3) All volunteer plants shall be destroyed during the current license year and for at least three years after the last reported date of planting.

(4) No refund shall be issued for any fees paid by the primary licensee.

(d) If a licensee violates any provision of the act, and amendments thereto, or the implementing regulations, any license may be revoked, in whole or in part, by the secretary, as deemed appropriate.

(e) Any prior violations of the act, and amendments thereto, the implementing regulations or previous revocations of a license may be considered when reviewing new research license applications. (Authorized by and implementing K.S.A. 2018 Supp. 2-3902; effective Feb. 8, 2019.)

4-34-22. License required to cultivate or produce industrial hemp for commercial purposes. (a) K.A.R. 4-34-22 through 4-34-30 shall apply only to the commercial production of industrial hemp pursuant to K.S.A. 2-3901 et seq., and amendments thereto, and, unless otherwise stated, shall not apply to research conducted as part of the pilot program pursuant to K.S.A. 2-3902, and amendments thereto, and regulated by K.A.R. 4-34-2 through 4-34-21.

(b) No individual may cultivate or produce industrial hemp for commercial purposes without a license issued by the secretary. A license shall not be required for employees, agents, contractors, or volunteers of a licensee.

(c) Only individuals shall be eligible to apply for licenses to cultivate or produce industrial hemp.

(d) Each individual who applies for a license to cultivate or produce industrial hemp shall be required to submit to a fingerprint-based state and national criminal history record check to verify that the individual has not been convicted of a felony violation of K.S.A. 2019 Supp. 21-5701 et seq., and amendments thereto, or a substantially similar offense in another jurisdiction, within the 10 years immediately preceding submission of that individual's application.

(e)(1) Each individual submitting a license application shall submit the application on a form provided by the secretary, which shall include the following:

(A) The individual's full legal name and date of birth;

(B) the individual's current mailing address, telephone number, and electronic-mail address;

(C) the legal description and global positioning system coordinates of the entrance to the proposed licensed growing area and the entrance to each lot that will be used to cultivate or produce industrial hemp and a map of the proposed licensed growing area and each lot;

(D) the total number of acres or square feet that will be used to cultivate or produce industrial hemp;

(E) the number of acres or square feet that will be used to cultivate or produce industrial hemp in each lot;

(F) the variety of industrial hemp to be cultivated or produced in each lot;

(G) a completed fingerprint card for submission to the Kansas bureau of investigation; and

(H) any other relevant information requested by the secretary.

(2) Each individual submitting a license application shall include with the application a \$100 application fee and the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check. A single criminal history record check conducted in accordance with the act may be used to satisfy the act's criminal history record check requirement for multiple licenses in a single license year.

(f) All license applications shall be submitted no later than March 15 of each year in which an applicant intends to grow industrial hemp. Any individual who submits a license application after March 15, 2020 may be granted a license if good cause is shown and the secretary determines that granting the license is necessary to assist with the transition from the pilot program to the commercial industrial hemp program during 2020.

(g) Each license shall allow the cultivation and production of industrial hemp within one licensed growing area.

(h) Upon approval of a license application by the secretary, the applicant shall submit a license fee of \$1,200 to the secretary within 15 days of notice of the approval.

(i) All licenses shall expire annually on December 31.

(j) In addition to providing the department with the information required by this regulation, each individual who is issued a license shall report the following directly to the United States department of agriculture farm service agency for each license:

(1) The street address and, to the extent practicable, the global positioning system coordinates for each growing area and for each lot or greenhouse where industrial hemp will be produced;

(2) the number of acres that will be used to cultivate or produce industrial hemp;

(3) the assigned license number; and

(4) any other information required by the United States department of agriculture.

(k) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to supply information to the United States department of agriculture and post information on the department's web site, including the industrial hemp producer license number, the full legal name of the licensee, the licensee's contact information, descriptions of all locations identified for cultivating or producing industrial hemp, and any information related to modifications to ensure that the information remains accurate.

(l) Each licensee shall be held responsible for any plant cultivated or produced in violation of the act and for the actions of all employees, agents, contractors, and volunteers engaged in the cultivation or production of industrial hemp under the supervision or direction of, or otherwise in conjunction with, the licensee. Each licensee shall be subject to the same disciplinary actions for a violation of the act committed by any employee, agent, contractor, or volunteer of that licensee as if the licensee had committed the violation.

(m) Each licensee requesting a license modification after issuance of a license shall submit the modification request to the secretary on a form provided by the secretary. Each modification request form shall be accompanied by a \$50 fee. Upon the secretary's review and approval of the modification request, a modified license shall be issued and may include any additional terms and conditions that the secretary deems necessary to implement the requested modification and to protect the public health, safety, and welfare. If the secretary denies the modification request, the licensee shall remain subject to the terms of the original license.

(n) Each license shall be nontransferable, unless the secretary determines that a transfer is necessary because the licensee dies or becomes disabled or because an individual who is an employee or agent of a bank, financial institution, or other creditor that has a legal right to take possession of industrial hemp for the purposes of settling a debt is required to obtain a license to do so. A

license that is transferable may be transferred to the individual requesting the transfer upon that individual's submission of a modification request, a \$50 modification fee, the fee established by the Kansas bureau of investigation for performing a state and national criminal history record check, and satisfactory completion of a fingerprint-based state and national criminal history record check. A modification request shall be submitted within 60 days of the licensee's death or within 60 days of the date that the right of the bank, financial institution, or other creditor to take possession of the industrial hemp arises. If a modification request is not submitted within the time frame required by this regulation, all industrial hemp being cultivated or produced pursuant to the license shall be subject to an order to be destroyed. The individual applying for the transfer shall assume the full liability for all of the previous licensee's actions related to the cultivation or production of hemp.

(o) Each individual who materially falsifies any information in a license application or modification request shall be ineligible to receive a license to cultivate or produce industrial hemp pursuant to the act. (Authorized by K.S.A. 2019 Supp. 2-3906; implementing K.S.A. 2019 Supp. 2-3903 and 2-3906; effective Jan. 8, 2021.)

4-34-23. Planting and pre-harvest requirements. (a) All industrial hemp cultivated or produced shall have originated from authorized seed or clone plants.

(b) Each licensee shall maintain written certification for all authorized seed or clone plants cultivated or produced, which shall consist of either of the following:

(1) A certificate of analysis, or a similar document, stating that the source of the authorized seed or clone plants was cultivated or produced with a delta-9 tetrahydrocannabinol concentration less than 0.3 percent on a dry-weight basis during the most recent growing season; or

(2) documentation that the authorized seed or clone plants are certified pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(c) All industrial hemp seed shall be considered agricultural seed. Before selling agricultural seed in Kansas, each individual shall obtain a license pursuant to K.S.A. 2-1415 et seq., and amendments thereto.

(d) Each licensee shall submit a planting report to the department within 15 days after each planting, including replanting seeds or propagules

or establishing plants. Each planting report shall identify the following:

(1) The official name of the industrial hemp variety that was cultivated or produced in each lot;

(2) the global positioning system coordinates for the licensed growing area and each lot where industrial hemp plants, plant parts, grain, or seeds are being cultivated or produced;

(3) the total number of acres planted in the licensed growing area;

(4) the number of acres planted in each lot; and

(5) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds being cultivated or produced.

(e) Before harvesting industrial hemp, each licensee shall provide the secretary at least 30 days' notice of the intended harvest date on a form provided by the secretary and, if the harvest does not begin on that date, shall provide an updated notice of the anticipated harvest date before harvesting any industrial hemp. Failure to provide notice of the harvest may result in the revocation of an existing hemp producer license and the denial of future hemp producer licenses. Each pre-harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants are intended for harvest;

(2) the total number of acres planted in the licensed growing area subject to harvest;

(3) the number of acres planted in each lot subject to harvest;

(4) the planting date for each lot;

(5) the total number of acres intended for harvest in the licensed growing area, if different from the number of acres intended for harvest in the lot;

(6) the number of acres intended for harvest in each lot;

(7) the intended harvest date for each lot;

(8) the official name of the industrial hemp variety that is intended for harvest from each lot; and

(9) a statement of the intended end-use for all industrial hemp plants, plant parts, grain, or seeds that will be harvested from each lot.

(f) If two or more harvests will be conducted within a licensed growing area or lot within a license year, the licensee shall notify the department of each intended harvest date at least 30 days before the intended harvest date. The primary licensee shall pay the subsequent sampling fees and testing fees for each harvest conducted after the initial harvest of a lot.

(g) Each licensee shall maintain records regarding the source of all industrial hemp cultivated or produced and records regarding the disposition of all industrial hemp cultivated or produced for three years and shall present those records to the secretary upon request. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

4-34-24. Sampling, testing, and harvest requirements.

(a) No more than 30 days before any industrial hemp cultivated or produced pursuant to the act is harvested, each licensee shall allow a sample to be collected by the secretary for testing, using post-decarboxylation or any other similarly reliable method, to determine the delta-9 tetrahydrocannabinol concentration of industrial hemp cultivated or produced. A licensee shall not harvest any industrial hemp before receiving notice that testing of the samples has shown a delta-9 tetrahydrocannabinol concentration of less than 0.3 percent on a dry-weight basis and that the licensee may harvest the industrial hemp.

(b) Each licensee shall complete each harvest of industrial hemp plants, plant parts, grain, or seeds within 30 days of sampling.

(c) If a licensee fails to harvest all of the industrial hemp plants, plant parts, grain, or seeds within the time frame specified in subsection (b), the licensee shall perform one of the following:

(1) Notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b), request that the department collect a subsequent pre-harvest sample, and pay the required sampling and testing fees; or

(2) notify the department that harvest has not occurred within seven days after the expiration of the time frame specified in subsection (b) and inform the department of the date by which the licensee intends to effectively dispose of the industrial hemp plants, plant parts, grain, or seeds. The licensee shall conduct effective disposal no more than seven days after the licensee informs the department that harvest has not occurred and shall notify the department of any change in the effective disposal date. Effective disposal of industrial hemp plants, plant parts, grain, or seeds shall occur by the licensee and at the licensee's expense. All volunteer plants within and adjacent to the licensed growing area shall be effectively disposed of during the current license year and for at least three years after the

last reported date of planting. If effective disposal of industrial hemp plants, plant parts, grain, or seeds occurs, no refund shall be issued for any fees paid by a licensee, the cost of effective disposal, or the value of the crop.

(d) Each licensee shall submit a harvest report to the department no more than 15 days after each harvest of industrial hemp plants, plant parts, grain, or seeds is completed for each lot. Each harvest report shall identify the following:

(1) The global positioning system coordinates of the entrance to the licensed growing area and each lot where industrial hemp plants were harvested;

(2) the total number of acres planted in the licensed growing area;

(3) the number of acres planted in each lot;

(4) the planting date for each lot;

(5) the total number of acres harvested from the licensed growing area;

(6) the number of acres harvested from each lot;

(7) the harvest date for each lot;

(8) the official name of the industrial hemp variety harvested from each lot; and

(9) a statement of intended end-use for all industrial hemp plants, plant parts, grain, or seeds harvested from each lot.

(e) Industrial hemp shall be subject to post-harvest sampling and testing by the secretary. Each licensee shall agree to provide the secretary access to any harvested industrial hemp or to provide the secretary with a copy of the bill of lading and, if available, a certificate of analysis or similar document provided for any industrial hemp already sold or transferred to another person. All samples collected by the secretary shall be subject to testing, using post-decarboxylation or any other similarly reliable method, of delta-9 tetrahydrocannabinol concentration of industrial hemp produced. A licensee whose industrial hemp is sampled after it is harvested shall not sell, transfer, or transport any industrial hemp harvested from the licensed growing area where samples were collected until that licensee has received notice from the department that testing of the samples has shown a delta-9 tetrahydrocannabinol content of less than 0.3 percent on a dry-weight basis.

(f) Each licensee shall be assessed a \$225 fee for the required pre-harvest sample collected and tested by the secretary.

(g) At any time other than at the time of the required pre-harvest sample collected and tested by the secretary, a licensee may request that

the secretary collect a sample and test the delta-9 tetrahydrocannabinol concentration, subject to a testing fee of \$225 for each test and additional costs assessed for the secretary's travel time and mileage.

(h) All samples collected by the secretary shall become the property of the secretary, and no compensation shall be owed to any licensee.

(i) Any licensee may request a test from a private laboratory at any time. However, test results from private laboratories shall not be considered official and shall not be substituted for a sample collected and tested by the secretary, and each licensee shall be responsible for the costs of testing by a private laboratory.

(j) Each sample collected and tested by the secretary and found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall result in the hemp being classified as cultivated or produced in violation of the act and shall result in the issuance of a failing report of analysis. Hemp that receives a failing report of analysis may be eligible to be remediated pursuant to K.A.R. 4-34-25.

(k) Within seven days of notice of the failing report of analysis, any licensee may request, on a form provided by the secretary, an additional test by the secretary. The request shall include payment of a retesting fee of \$225 and any additional costs assessed for the secretary's travel time and mileage. If a licensee requests an additional test and the sample collected and tested pursuant to this subsection is found to contain a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis, then all plants in the licensed growing area shall be effectively disposed of as required by K.A.R. 4-34-25 or, if eligible, remediated pursuant to K.A.R. 4-34-25.

(l) For each licensee who is issued an order to effectively dispose of plants, one of the following requirements shall apply:

(1) The licensee shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency if the violation is deemed negligent.

(2) The licensee shall be reported to the United States department of agriculture, the office of the Kansas attorney general, the office of the United States attorney for the district of Kansas, and the appropriate state or local law enforcement agency if the violation is the result of a culpable mental state greater than negligence. If any plants are tested by the secretary and found to contain a delta-9

tetrahydrocannabinol concentration of greater than 2.0 percent, the licensee responsible for those plants shall be presumed to have acted with a culpable mental state greater than negligence.

(m) Except as provided in K.A.R. 4-34-28, each licensee or an authorized representative of each licensee shall be present whenever the secretary collects a sample of industrial hemp cultivated or produced pursuant to the act and whenever a compliance inspection is conducted pursuant to this regulation. (Authorized by K.S.A. 2020 Supp. 2-3906; implementing K.S.A. 2020 Supp. 2-3903, as amended by L. 2021, ch. 76, sec. 4, and 2-3906; effective Jan. 8, 2021; amended, T-4-8-25-21, Aug. 25, 2021; amended Dec. 17, 2021.)

4-34-25. Remediation; effective disposal; violations. (a) All hemp that is deemed to be in violation of the act for any reason or that contains a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis shall, by order of the secretary, be subject to effective disposal or remediation.

(b) Remediation shall not be allowed for any hemp for which the secretary has not approved a remediation plan. Hemp for which remediation is not allowed shall be effectively disposed of as specified in this regulation.

(c) Remediation shall include any method approved by the United States department of agriculture and may include either of the following:

(1) Separating and removing all flowers and floral materials from the stalks, leaves, and seeds of all plants or plant parts, which may include removal by hand or mechanical removal; or

(2) shredding the entirety of all plants or plant parts into hemp biomass, which may be accomplished with shredders, composters, specialty mechanical equipment, or similar means.

(d) Seeds removed from hemp plants or contained in hemp biomass as a result of remediation shall not be used for propagation purposes.

(e) Each remediation plan or request to submit a remediation plan shall be submitted to the secretary before the expiration of the 10-day period following the licensee's receipt of notice that effective disposal is required as specified in subsection (q).

(f) Each remediation plan submitted to the secretary pursuant to this regulation shall include the following, at a minimum:

- (1) The date that remediation will begin;
- (2) the approximate date that remediation will be completed;

(3) the total number of acres that will be remediated;

(4) the intended end-use of all plants or plant parts to be remediated;

(5) the location where each plant or plant part will be stored before and after remediation and the location where remediated material will be stored following remediation;

(6) the method or methods of remediation intended to be used; and

(7) any other information that is relevant to the circumstances surrounding the cultivation or production of the hemp proposed to be remediated or the intended remediation plan and that the secretary requests.

(g) Any remediation plan that does not contain all required information may be denied or returned to the licensee. Any remediation plan may be denied at the discretion of the secretary, based on the circumstances surrounding the cultivation or production of the hemp proposed to be remediated.

(h) Hemp for which a failing report of analysis is issued may be remediated by the licensee upon the secretary's approval of the remediation plan submitted by the licensee, if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration of 1.0 percent or less on a dry-weight basis.

(i) Any licensee may request permission from the secretary to submit a remediation plan for any hemp for which a failing report of analysis is issued if the most recent sampling and testing conducted showed the hemp to have a delta-9 tetrahydrocannabinol concentration greater than 1.0 percent but not greater than 2.0 percent on a dry-weight basis. If the secretary agrees to review a remediation plan based upon the circumstances surrounding the production or cultivation of the hemp, then the industrial hemp may be remediated upon approval of the plan submitted by the licensee.

(j) Each licensee who conducts remediation of any hemp shall allow representatives of the secretary to be present during the remediation. Proof of remediation may be required to be provided to the secretary.

(k) All plant material that is undergoing remediation shall be clearly labeled to indicate that the plant material is remediated hemp biomass and to verify the source of all of the hemp that comprises the remediated material. Remediated hemp biomass shall require a bill of lading pursuant to K.A.R. 4-34-26, which shall identify the materi-

al as remediated hemp biomass and identify the source of all material used in the remediation.

(l) All plant material resulting from remediation shall be subject to postremediation sampling and testing and shall be required to be effectively disposed of as specified in this regulation and prohibited from entering commerce if the final postremediation testing performed shows the plant material to have a delta-9 tetrahydrocannabinol concentration of greater than 0.3 percent on a dry-weight basis.

(m) Remediation may be conducted as many times as is necessary to achieve a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis. However, all hemp biomass that is not successfully remediated so as to have a delta-9 tetrahydrocannabinol concentration of 0.3 percent or less on a dry-weight basis within 60 days of the issuance of the final failing report of analysis for any hemp that comprises the remediated hemp biomass shall be effectively disposed of as specified in this regulation.

(n) Hemp for which a failing report of analysis is issued and for which the most recent testing conducted shows a delta-9 tetrahydrocannabinol concentration greater than 2.0 percent on a dry-weight basis shall not be eligible for remediation and shall be required to be effectively disposed of as provided in this regulation.

(o) Acceptable methods of effective disposal shall include plowing under, mulching or composting, disking, mowing or chopping, deep burial, burning, or any other method allowed under federal law and approved by the secretary.

(p) If required pursuant to federal law, all hemp that requires effective disposal shall be destroyed or disposed of as required by the controlled substances act, 21 U.S.C. 801 et seq., and in compliance with requirements of the United States drug enforcement agency.

(q) If allowed pursuant to federal law, each licensee shall conduct effective disposal at the licensee's expense within 10 days of receiving notice that effective disposal is required. Each licensee shall effectively dispose of all volunteer plants within and adjacent to the licensed growing area during the current license year and for at least three years after the last reported date of planting. Each licensee shall allow representatives of the secretary to be present during the effective disposal of plants or plant parts, or proof of the effective disposal may be required by the secretary. Each licensee who conducts effective dispos-

al shall, within 14 days of conducting the effective disposal, report the number of acres effectively disposed of to the department. A licensee who conducts effective disposal shall not be eligible for a refund of any fees paid, the cost of effective disposal, or the value of the crop.

(r) Each licensee whose plants are effectively disposed of shall be responsible for reimbursing any law enforcement agency whose officers or agents are required to participate in or be present during the effective disposal for all of the law enforcement agency's costs associated with the effective disposal.

(s) Failure of a licensee to conduct effective disposal as required by the secretary within 10 days of receiving notice that effective disposal is required shall result in the secretary's conducting effective disposal at the expense of the licensee, unless an extension is granted by the secretary.

(t) A licensee's failure to conduct effective disposal as required by the secretary, failure to reimburse the secretary for any costs incurred as a result of the secretary's conducting effective disposal, or failure to reimburse any law enforcement agency for any costs associated with effective disposal shall be grounds for denial of any future hemp producer license application.

(u) Each licensee who violates the act with a culpable mental state of negligence shall be subject to a corrective action plan as specified in K.A.R. 4-34-29 and reported to the appropriate state or local law enforcement agency. Each licensee who violates the act with a culpable mental state greater than negligence shall be reported to the United States attorney's office and the Kansas attorney general's office, in addition to the appropriate state or local law enforcement agency. (Authorized by and implementing K.S.A. 2020 Supp. 2-3906; effective Jan. 8, 2021; amended, T-4-8-25-21, Aug. 25, 2021; amended Dec. 17, 2021.)

4-34-26. Transportation of industrial hemp.

(a) Each licensee who sells, trades, barter, gives away, or otherwise transfers any unprocessed industrial hemp to any other person shall ensure that the unprocessed industrial hemp is accompanied by a signed bill of lading that includes the licensee's license number, the total quantity of industrial hemp transferred, the date the transfer occurred, and the name of the person acquiring the industrial hemp. A certificate of analysis or other similar document shall be attached to the bill of lading.

(b) Each person who sells, trades, barter, gives away, or otherwise transfers unprocessed industrial hemp subsequent to an initial transfer involving unprocessed industrial hemp as specified in subsection (a) shall record the transfer and shall amend the bill of lading or attach the information regarding the subsequent transfer to the original bill of lading and shall include the name of the person acquiring possession of the industrial hemp, the amount of industrial hemp transferred, and the date of the transfer. Any individual in possession of unprocessed industrial hemp plants, plant parts, grain, or seeds without a valid hemp producer's license or a bill of lading may be presumed to have unlawfully cultivated or produced hemp in violation of the act or gained possession of industrial hemp plants, plant parts, grain, or seeds that were cultivated or produced in violation of the act.

(c) Each licensee shall comply with all local, state, and federal laws and regulations related to the transportation of industrial hemp and with the act. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

4-34-27. Planting restrictions; signage requirements; volunteer plants. (a) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds at any location not included on the license.

(b) A licensee shall not cultivate, plant, grow, or harvest industrial hemp plants, plant parts, grain, or seeds in a residential structure, within 50 feet of a residential structure, or within one-quarter mile of any public or private K-12 school or public recreational area, except with the secretary's written permission.

(c) A licensee shall not interplant any other crop with industrial hemp, except that any state educational institution licensee may do so upon authorization by the secretary. This subsection shall not prohibit the use of ground cover, but ground cover shall not be harvested.

(d) A licensee shall not interplant different varieties of industrial hemp within a lot.

(e) Harvested lots of industrial hemp plants shall not be commingled with other harvested lots or other material.

(f) Each licensee shall post and maintain at least one sign at each licensed growing area listed on the license. A sign shall be posted along each licensed growing area boundary adjacent to a public road, except that if the licensed growing area is

adjacent to an intersection of two or more public roads, a sign shall be posted at the intersection. If a licensed growing area is not adjacent to any public road, a sign shall be posted at the point of access to the licensed growing area. Each sign shall measure at least 36 inches per side, shall be clearly visible and legible from the adjacent public road, intersection of public roads, or access point, and shall include the following information:

(1) The following text: "Kansas Department of Agriculture Industrial Hemp Program";

(2) the licensee's name;

(3) the licensee's license number; and

(4) the department's telephone number.

(g) Each licensee shall allow the secretary to inspect, for volunteer plants, ditches, fence lines, or other unmanaged land areas adjacent to any licensed growing area. Each licensee shall destroy any volunteer plants for at least three years after the last date of planting. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

4-34-28. Access to records and property.

(a) Acceptance of a license shall constitute a grant of authority by each licensee allowing the secretary to inspect all records related to the cultivation or production of industrial hemp.

(b) Each licensee shall grant the secretary access to all land identified for the cultivation or production of industrial hemp for purposes of inspection to determine compliance with the act and the implementing regulations. In addition to pre-harvest sampling and testing of all industrial hemp plants being cultivated or produced pursuant to the act as specified in K.A.R. 4-34-24, in accordance with federal law, each licensee's premises and records related to the cultivation or production of industrial hemp shall be subject to annual inspection to ensure compliance with the act and the implementing regulations.

(c) Each licensee shall consent to the secretary's providing information to the United States department of agriculture, law enforcement, fire and rescue agencies, and the public regarding each licensed growing area. Additionally, each licensee shall consent to the secretary's providing information about any licensed growing area, including global positioning system coordinates, to representatives of the United States department of agriculture, Kansas bureau of investigation, United States drug enforcement agency, and other law enforcement agencies.

(d) Each licensed growing area and all adjacent areas shall be subject to inspection by the secretary. The secretary shall have complete, unrestricted, and immediate access to all industrial hemp plants, plant parts, grain, and seeds, whether growing or not, including access to all land, buildings, facilities, motor vehicles, and other structures used for industrial hemp-related activities. Access shall be granted at reasonable times, without interference or obstruction, with or without cause, and with or without advance notice. The secretary's right of access specified in this regulation shall include the unrestricted right to inspect or take samples of any industrial hemp plants, plant parts, grain, or seeds, whether growing or not, present at the location being accessed, as well as the right to inspect any reports or records pertaining to industrial hemp plants, plant parts, grain, or seeds. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

4-34-29. Negligent violations; corrective action plans. (a) Negligent violations of the act may include failure to provide a legal description of land on which a licensee produces industrial hemp, producing plants with a delta-9 tetrahydrocannabinol concentration greater than 1.0 percent on a dry-weight basis, or producing plants with a delta-9 tetrahydrocannabinol concentration greater than 0.3 percent on a dry-weight basis if the licensee did not make reasonable efforts to cultivate or produce industrial hemp. It shall not be a negligent violation of the act if a licensee produces plants with a delta-9 tetrahydrocannabinol concentration of 1.0 percent or less on a dry-weight basis and the licensee has made reasonable efforts to cultivate or produce industrial hemp. Each licensee who negligently violates the act or the implementing regulations shall be required to follow a corrective action plan developed by the secretary.

(b) Upon the first negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including conducting effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary as often as is required by the secretary regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(c) Upon a second negligent violation within five years of a previous negligent violation, each licensee shall meet the following requirements:

(1) Correct the violation within 10 days of notification of the violation by the secretary, including the effective disposal of the industrial hemp crop if so ordered;

(2) for the duration of the time period specified in the corrective action plan, which shall be at least two years, provide a report to the secretary at least every 30 days, or as often as is required by the secretary, regarding the status of the violation; and

(3) complete any other actions required by the secretary.

(d) Upon a third negligent violation within five years of the first negligent violation, each licensee shall be ineligible to cultivate or produce industrial hemp for a period of five years beginning on the date of the third violation. Each license or registration held by the licensee shall be subject to immediate revocation, and all of the licensee's industrial hemp shall be subject to destruction, if so ordered. (Authorized by and implementing K.S.A. 2020 Supp. 2-3906; effective Jan. 8, 2021; amended, T-4-8-25-21, Aug. 25, 2021; amended Dec. 17, 2021.)

4-34-30. State educational institutions.

(a) Each state educational institution shall obtain a license before cultivating or producing industrial hemp for research purposes.

(b) Each state educational institution shall be exempt from all application and licensing fees if the state educational institution's license application is accompanied by a written summary of the research to be performed, except as provided in subsection (f).

(c) Each state educational institution shall be subject to all other requirements applicable to a hemp producer, except that a state educational institution may request the waiver of any requirement in K.A.R. 4-34-1 through K.A.R. 4-34-30 by submitting a written request to the secretary that explains why the waiver of an existing regulation is necessary for the proposed research.

(d) In spite of subsection (c), a state educational institution shall not request a waiver of the fingerprint-based state and national criminal history record check or corrective action plan requirements.

(e) Each state educational institution seeking licensure shall designate an individual as the primary licensee for any license. The primary licensee shall be responsible for all employees, agents, students, and volunteers of the institution, and any activities that the institution undertakes, related to industrial hemp at the locations identified in each application. The costs associated with fingerprinting and the required state and national criminal history record check shall be the responsibility of the individual designated as the primary licensee.

The head of a department of the state educational institution, or a similar person with supervisory authority, shall submit a written letter designating the responsible individual as the primary licensee along with the application.

(f) Upon written request, a state educational institution may be granted a multiyear license that is valid for up to five years for completion of a multiyear research project. (Authorized by and implementing K.S.A. 2019 Supp. 2-3906; effective Jan. 8, 2021.)

Agency 5
Kansas Department of Agriculture—
Division of Water Resources

Articles

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Article 1.—DEFINITIONS

5-1-1. Definitions. As used in these regulations and the Kansas water appropriation act and by the division of water resources in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) “Above-baseflow stage” means streamflow that is in response to a significant runoff event during which period the water level elevation of the stream is greater than the elevation of the adjacent water table.

(b) “Acceptable quality surface water” means surface water that will not degrade the quality of the groundwater source into which the surface water is discharged.

(c) “Application” means the formal document submitted on the form prescribed by the chief engineer for a permit to appropriate water for beneficial use and filed in the office of the chief engineer pursuant to K.S.A. 82a-708a and 82a-709, and amendments thereto.

(d) “Approval of application” means a permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions specified in the permit. Approval of application shall not constitute any permit that may be required by other state laws.

(e) “Aquifer storage” means the act of storing water in an aquifer by artificial recharge for subsequent diversion and beneficial use.

(f) “Aquifer storage and recovery system” means the physical infrastructure that meets the following conditions:

(1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and
(2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.

(g) “Artificial recharge” means the use of source water to artificially replenish the water supply in an aquifer.

(h) “Authorized representative” means any staff employee designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(i) “Bank storage” means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.

(j) “Bank storage well” means a well used to divert or withdraw water from bank storage.

(k) “Basin storage area” means the portion of the aquifer used for aquifer storage that has defined horizontal boundaries and is delimited by a maximum index level and a minimum index level.

(l) “Basin storage loss” means that portion of artificial recharge naturally flowing or discharging from the basin storage area.

(m) “Basin term permit” means a term permit to appropriate surface water from a stream within a specific drainage basin, or a portion of it, for a reasonable quantity of water, not to exceed a maximum of 100 acre-feet per calendar year, for use in either of the following:

(1) Drilling oil and gas wells; or

(2) construction projects within the specified basin.

(n) “Battery of wells” means two or more wells connected to a common pump by a manifold, or not more than four wells in the same local source of supply within a 300-foot-radius circle that are being operated by pumps not to exceed a total maximum rate of diversion of 800 gallons per minute and that supply water to a common distribution system.

(o) “Beneficial uses of water” are the following:

(1) Domestic uses;

(2) stockwatering;

(3) municipal uses;

(4) irrigation;

(5) industrial uses;

(6) recreational uses;

(7) waterpower;

(8) artificial recharge;

(9) hydraulic dredging;

(10) contamination remediation;

(11) dewatering;

(12) fire protection;

(13) thermal exchange; and

(14) sediment control in a reservoir.

(p) “Complete and accurate water use report” means a water use report that the water right owner has filed pursuant to K.S.A. 82a-732, and amendments thereto, that provided all of the information required on the form prescribed by the chief engineer, including the following:

(1) The quantity of water diverted during the calendar year;

(2) if the diversion of water was required to be metered during the calendar year for which the report is being filed, the information required by K.A.R. 5-3-5e;

(3) if the water was used for irrigation purposes, the number of acres that were irrigated; and

(4) if the water was diverted from a sand and gravel pit operation, the size of the surface area of the pit in acres at the end of the calendar year for which the report was filed.

(q) "Completed substantially as shown on aerial photograph, topographic map, or plat," as used to define the authorized point of diversion, means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.

(r) "Confined Dakota aquifer system" means that portion of the Dakota aquifer system overlain by a confining layer resulting in the aquifer normally being under greater than atmospheric pressure.

(s) "Conjunctive use" means the safe-yield management and operation of an aquifer in coordination with a surface water system to enhance the use of the total water supply availability in accordance with the provisions of the water appropriation act.

(t) "Contamination remediation" means the diversion of water by a state agency, or under a written agreement or order of an appropriate state agency, for the purpose of improving the water quality.

(u) "Dakota aquifer system" shall include the Dakota formation, the Kiowa formation, the Cheyenne sandstone, and, where hydraulically connected, the Morrison formation.

(v) "Dakota aquifer system well" means a well or proposed well screened in whole or in part in the Dakota aquifer system.

(w) "Dam" means any artificial barrier, together with all appurtenant works, that does or could impound water.

(x) "Dewatering" means the removal of surface water or groundwater to achieve either of the following:

(1) Facilitate the construction of a building, pipeline, or other facility; or

(2) protect a building, levee, mining activity, or other facility.

(y) "Direct diversion of surface water" means the diversion of surface water directly from a stream by means of a pump, headgate, siphon, or similar installation, for application to beneficial use without storing it behind a dam, levee, or similar type of structure.

(z) "Diversion" means the act of bringing water under control by means of a well, pump, dam, or other device for delivery and distribution for the proposed use.

(aa) "Diversion works" means any well, pump, power unit, power source, dam, and any other devices necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required as a condition of the permit, including a check valve, water level measurement tube, meter, or other measuring device.

(bb) "Division" means the division of water resources of the Kansas department of agriculture.

(cc) "Dry hydrant" means a permanent, unpressurized intake pipe used to remove water from a pond, stream, reservoir, or other surface water supply by means of suction or vacuum supplied by a fire truck or other portable pumping device.

(dd) "Field inspection" means that for the purpose of issuing a certificate of appropriation pursuant to K.S.A. 82a-714 and amendments thereto, the chief engineer conducts a test of the rate of diversion of the diversion works under the normal and maximum conditions that the diversion works actually applied water to beneficial use during the perfection period. The chief engineer also collects all other information necessary to prepare a certificate, including the following:

(1) A description of the location and size of the place where water was actually applied to beneficial use during the perfection period in accordance with the terms, conditions, and limitations of the approval of application;

(2) information on the quantity and rate of water that was applied to the authorized use during the perfection period; and

(3) the actual location of the point or points of diversion from which water was diverted in accordance with the terms, conditions, and limitations of the approval of application.

(ee) "Fire protection" means the use of water for fire protection by a fire department for public protection in general.

(ff) "Fish farming" means the controlled cultivation and harvest of aquatic animals.

(gg) "Flow-straightening vanes" means vanes, or any other devices installed at the upstream throat of a measuring chamber for the purpose of aligning all velocity components of flow parallel with the flow in the measuring chamber at the water flowmeter sensor location.

(hh) "Full irrigation" means the application of water to crops during the growing season. Full irrigation shall include water for preirrigation.

(ii) "Groundwater" means water below the surface of the earth.

(jj) “Growing season” means the average frost-free period of the year.

(kk) “Household purposes” means the use of water by a person for cooking, cleaning, washing, bathing, human consumption, rest room facilities, fire protection, and other uses normally associated with the operation of a household.

(1) “Fire protection” shall be considered to be use of water for “household purposes” if either of the following conditions is met:

(A) Water is available from a “dry hydrant” that has been installed on a pond located within 1,000 feet of the residence.

(B) Water can be pumped from a well located within 1,000 feet of the residence for fire protection.

(2) Household purposes shall also include the replacement of the potential net evaporation from a domestic pond of up to ½ acre in surface area if both of the following conditions are met:

(A) The pond is utilized for aesthetic purposes as an integral part of the landscaping of a house.

(B) Any portion of the pond is located within 300 feet of the closest edge of the house.

(3) The maximum reasonable annual quantity of groundwater that may be pumped into a pond to be withdrawn later for domestic fire protection shall not exceed 0.06 acre-feet plus the average annual potential net evaporation for a pond at that location in the state having a surface area of 0.2 of an acre.

(4) Household purposes shall also include the use of 1½ acre-feet of water or less per calendar year by an industrial user, restaurant, hotel, motel, church, camp, correctional facility, educational institution, or similar entity for household purposes.

(ll) “Hydraulic dredging” means the removal of saturated aggregate from a stream channel, pit, or quarry by means of hydraulic suction and the pumping of the aggregate and water mixture as a slurry to a location where at least 95 percent of the water returns directly to the source of supply.

(mm) “Immediate vicinity,” as used in specifying the place of use for a water right in which the water is authorized to be used for municipal purposes, means within 2,640 feet of the corporate limits of the municipality, rural water district, or other entity.

(nn) “In compliance” means that a water flowmeter does not meet any of the criteria of K.A.R. 5-1-9 for being out of compliance.

(oo) “Index level” means elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a ba-

sin storage area, and storage available for recovery based upon accounting methodology, and conditions of the permit.

(pp) “Indirect use” means the total of the seepage loss and the average annual potential net evaporation loss from the surface of water originally impounded in a reservoir for beneficial use.

(qq) “Industrial use” means the use of water in connection with the manufacture, production, transport, or storage of products, or the use of water in connection with providing commercial services, including water used in connection with steam electric power plants, greenhouses, fish farms, poultry operations that are not incidental to the operation of a traditional farmstead pursuant to K.S.A. 82a-701(c) and amendments thereto, secondary and tertiary oil recovery, air conditioning, heat pumps, equipment cooling, and all uses of water associated with the removal of aggregate for commercial purposes except the following:

(1) The evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit, or quarry by excavation or dredging, unless the evaporation has a substantially adverse impact on the area groundwater supply; and

(2) hydraulic dredging.

(rr) “Irrigation use” means the use of water for the following:

(1) The growing of crops;

(2) the watering of gardens, orchards, and lawns exceeding two acres in area; and

(3) the watering of golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(ss) “Maximum index level” means the maximum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(tt) “Measuring chamber” means a cylindrical chamber in which a water flowmeter is installed that is calibrated to match the measuring element of the water flowmeter and the nominal size of the pipe in which it is installed.

(uu) “Minimum index level” means 20 feet above the bedrock elevation or an alternatively proposed minimum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(vv) “Municipal use” means the various uses made of water delivered through a common distribution system operated by any of the following:

(1) A municipality;

- (2) a rural water district;
- (3) a water district;
- (4) a public wholesale water supply district;
- (5) any person or entity serving 10 or more hookups for residences or mobile homes; or
- (6) any other similar entity distributing water to other water users for various purposes.

Municipal use shall also include the use of water by restaurants, hotels, motels, churches, camps, correctional facilities, educational institutions, and similar entities using water that does not qualify as a domestic use.

(ww) "Nonvolatile memory" means the ability of a water flowmeter to retain the values stored in the mechanical or electronic memory if all power, including backup battery power, is removed.

(xx) "Normal operating range" means the range of flow rates for which the water flowmeter will meet the accuracy requirements of K.A.R. 5-1-4 (a), as certified by the water flowmeter manufacturer.

(yy) "Off-season irrigation" means the application of water to land for the purpose of storing moisture in the soil for future use by a crop that will not be irrigated during the growing season.

(zz) "Operator," as used in the regulation of sand and gravel pits, means any person who engages in mining sand or gravel, or both.

(aaa) "Perennial stream" means a stream, or part of a stream, that normally flows during all of the calendar year, except during a drought.

(bbb) "Perfect" means the actions taken by a water user to develop an approval of application into a water right. These actions shall consist of the completion of the diversion works and the actual application of water to the authorized beneficial use in accordance with the terms, conditions, and limitations of the approval of application.

(ccc) "Point of diversion" means the point at which water is diverted or withdrawn from a source of water supply.

(ddd) "Point of diversion of a dewatering site" means the geographic center of the area from which water is temporarily removed to lower the static water level or streamflow to allow one construction project or one excavation to take place. Each one-quarter linear mile of construction trench, or part thereof, shall have at least one point of diversion.

(eee) "Point of diversion of a remediation site" means the geographic center of the area from which water is being removed to be treated or injected into a single disposal well.

(fff) "Point of diversion for storage of surface water in a reservoir created by a dam" means the point at which the longitudinal axis of the dam crosses the centerline of the stream impounded by the reservoir.

(ggg) "Potential annual runoff" means the mean annual runoff for the watershed of the reservoir.

(hhh) "Preirrigation" means the application of water to the land for a crop before planting to ensure adequate moisture for early plant growth.

(iii) "Primary well" means a well for which a standby well is available.

(jjj) "Prior right" means a vested right, an appropriation right with earlier priority, or a permit with earlier priority than that of a subsequent appropriation right or permit.

(kkk) "Proven reserves" means extractable sand and gravel deposits for which good estimates of the quantity and quality have been made by various means, including core drilling.

(lll) "Recharge" means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(mmm) "Recharge credit" means the quantity of water that is stored in the basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

(nnn) "Recreation storage" means the storage and use of water within the reservoir for recreational use as defined in this regulation. Water stored for recreational use in a reservoir shall be considered to be an indirect use of water.

(ooo) "Recreational use" means a use of water in accordance with a water right that provides entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(ppp) "Rediversion of water" means releasing or withdrawing water that had been previously impounded behind a dam, levee, or similar type of structure, by use of a pump, outlet tube, headgate, or similar type of device, and the application of the water directly to beneficial use.

(qqq) "Register" means an integral or remote device that displays the quantity of water passing the water flowmeter sensor and is part of the water flowmeter.

(rrr) "Remediation site" means the geographic area where contamination is being removed from groundwater.

(sss) "Reservoir" means the area upstream from a dam that contains, or will contain, impounded water.

(ttt) “Reservoir capacity” means the volume of water that can be stored below the lower of either of the following:

(1) The elevation of the principal spillway tube; or

(2) the lowest uncontrolled spillway in the reservoir.

(uuu) “Reservoir having a total water volume of less than 15 acre-feet,” as used in K.S.A. 82a-728 and amendments thereto, means a reservoir having a capacity of 15 acre-feet or less as measured at the principal spillway tube or the lowest uncontrolled spillway, whichever is lower.

(vvv) “Safe yield” means the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.

(www) “Sand and gravel pit operation” means a project that meets the following conditions:

(1) Excavates overburden for mining sand or gravel, or both, exposing the underlying groundwater table to evaporation; and

(2) has a perimeter equal to or greater than its depth.

(xxx) “Sediment control in a reservoir” means a beneficial use of water that meets both of the following criteria:

(1) The water is stored in a reservoir that has no other authorized type of beneficial use, except domestic use.

(2) The water is stored only in the part of the reservoir designed and constructed for the storage of sediment.

(yyy) “Source water” means water used for artificial recharge that meets the following conditions:

(1) Is available for appropriation for beneficial use;

(2) is above base-flow stage in the stream;

(3) is not needed to satisfy minimum desirable streamflow requirements; and

(4) will not degrade the ambient groundwater quality in the basin storage area.

(zzz) “Specialty crop” means a crop other than a normal Kansas field crop. This term shall include turf grass, trees, vegetables, ornamentals, and other similar crops.

(aaaa) “Standby well” means a well that can withdraw water from the same source of supply as the primary well and that is used only when water is temporarily unavailable from the primary well or wells authorized to be used on the same place of use because of mechanical failure, maintenance, or power failure. A standby well may

also be used for fire protection or a similar type of emergency.

(bbbb) “Static water level” means the depth below land surface at which the top of the groundwater is found when not affected by recent pumping.

(ccc)(1) “Stockwatering” means the watering of livestock and other uses of water directly related to either of the following:

(A) The operation of a feedlot with the capacity to confine 1,000 or more head of cattle; or

(B) any other confined livestock operation or dairy that would divert 15 or more acre-feet of water per calendar year.

(2) Stockwatering shall not include the irrigation of feed grains or other crops.

(3) For the purposes of this subsection, a group of feedlots or other confined feeding operations shall be considered to be one feedlot or confined feeding operation if both of these conditions are met:

(A) There are common feeding or other physical facilities.

(B) The group of facilities is under common management.

(dddd) “Straight pipe” means a straight length of pipe free of all internal obstructions, including size changes, valves, cooling coils, injection ports, sand or foreign material, and any other condition that would cause a disturbance of the internal velocity profile in the pipe. Internal obstructions shall not include properly designed, constructed, and installed straightening vanes and inspection ports.

(eeee) “Stream channel aquifer” means unconsolidated water-bearing deposits in river valleys, flood plains, and terraces that are separate and distinct from any other aquifer and capable of yielding water in sufficient quantities for beneficial use.

(ffff) “Surface water” means water in creeks, rivers, or other watercourses and in reservoirs, lakes, and ponds.

(gggg) “Term permit” means a permit to appropriate water that is issued for a specified period of time and exceeds the criteria for a temporary permit specified in K.S.A. 82a-727, and amendments thereto, and K.A.R. 5-9-3 through K.A.R. 5-9-5. At the end of the specified time, or any authorized extension approved by the chief engineer, the term permit shall be automatically dismissed, and any priority it may have had shall be forfeited.

(hhhh) “The production and return of saltwater in connection with the operation of oil and gas wells in accordance with the written approval

granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto” means only that saltwater actually produced during the primary production of oil and gas wells and shall not include the following:

(1) Saltwater used in the drilling of an oil and gas well; and

(2) saltwater injected into an enhanced recovery injection well, unless that saltwater was produced in the primary production of the oil and gas well, separated from the oil and gas, and then subsequently reinjected.

(iiii) “Thermal exchange” means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(jjjj) “Totalizer” means the mechanical or electronic portion of the register that displays the total quantity of water that has passed the water flowmeter sensor.

(kkkk) “Unconfined Dakota aquifer system” means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure.

(llll) “Unconsolidated regional aquifer” means a body of mostly unconsolidated and heterogeneous water-bearing deposits that are hydraulically and geologically contiguous and are capable of yielding water in sufficient quantities for beneficial use.

(mmmm) “Waste of water” means any act or omission that causes any of the following:

(1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person’s right to the use of water;

(3) the escaping and draining of water intended for irrigation use from the authorized place of use; or

(4) the application of water to an authorized beneficial use in excess of the needs for this use.

(nnnn) “Waterpower use” means the use of falling water for hydroelectric or hydromechanical power.

(oooo) “Water balance” means the method of determining the amount of water in storage in a basin storage area by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(pppp) “Water flowmeter” means the combination of a flow-sensing device, measuring chamber, integral or remote display device or register, and any connecting parts required to make a working assemblage to measure, record, and allow determination of flow rate and total quantity of water flowing past the water flowmeter sensor.

(qqqq) “Water storage device” means a reservoir, elevated water tank, pressurized water tank, including a bladder tank, or other container into which water is pumped and stored before beneficial use.

(rrrr) “Water use correspondent” means a person designated in writing, on a form prescribed by the chief engineer, by one of the owners of a water right to file the water use reports required by K.S.A. 82a-732 and amendments thereto, on behalf of the owner or owners of that water right. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Dec. 3, 1990; amended May 31, 1994; amended Sept. 22, 2000; amended Oct. 24, 2003; amended Oct. 31, 2008; amended April 29, 2016.)

5-1-2. Standby well. In order for a well to qualify as a standby well, all of the following requirements shall be met: (a) The well shall be maintained in operable condition and be capable of being hooked to a power source within a reasonable amount of time to allow the well to function effectively as a standby well.

(b) Both the primary well or wells and the standby well or wells shall be required to be metered by order of the chief engineer or as a condition of the water right or permit.

(c) The standby well shall be located close enough to the primary well so that both wells withdraw water from the same local source of supply. However, a standby well shall not be required to meet the well spacing requirements from the standby well to the primary well.

(d) The standby well shall be authorized to divert the same rate and quantity as the primary well or wells. A limitation clause shall be placed on any water right or permit authorizing a standby well or wells limiting the standby well to no more than the rate and quantity authorized for the primary well or wells. With the limitation clause or clauses in effect, the standby well or wells shall not be counted in any safe yield, allowable appropriation, depletion or similar type of analysis.

(e) A primary well and a standby well shall not be operated at the same time, unless one of the wells is being operated for maintenance, testing, fire protection, or a similar reason. (Authorized by and implementing K.S.A. 82a-706a; effective May 31, 1994; amended Oct. 31, 2008.)

5-1-3. Permitting requirements of the Kansas water appropriation act. An individual engaged in the drilling of water well test holes, seismic test holes, stratigraphic test holes, observation wells, and water quality sampling wells, shall not be required to have an approval of application pursuant to the Kansas water appropriation act if water will not be diverted for beneficial use. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-701(f), 82a-703, 82a-705, and K.S.A. 1999 Supp. 82a-711; effective Sept. 22, 2000.)

5-1-4. Water flowmeter specifications. (a) Each water flowmeter required by the chief engineer, or required pursuant to a regulation adopted by the chief engineer, on or after the effective date of this regulation shall meet the following minimum requirements:

(1)(A) The water flowmeter has been certified by the manufacturer to register neither less than 98 percent nor more than 102 percent of the actual volume of water passing the water flowmeter when installed according to the manufacturer's instructions. This requirement shall be met throughout the water flowmeter's normal operating range without further adjustment or calibration.

(B) The manufacturer has certified to the chief engineer that it has an effective quality assurance program, including wet testing a random sample of production line water flowmeters with water flowmeter test equipment. The minimum number of samples to be tested shall be determined using a confidence interval of 90 percent, an expected compliance of 95 percent, and an acceptable error of two percent. The minimum number of samples of each model that shall be tested shall be calculated by multiplying 1,300 times the annual production of that model of water flowmeter divided by Q. Q equals four times the annual production of that water flowmeter plus 1,300.

(C) The manufacturer has certified that the water flowmeter test equipment described in paragraph (a)(1)(B) has been tested annually and found accurate by standards traceable to the national institute of standards and technology (NIST). Documentation of the testing required in

paragraphs (a)(1)(A) and (B) shall be maintained by the manufacturer for a period of at least five years and shall be made available to the chief engineer upon request during normal business hours.

(2) The water flowmeter shall be designed and constructed so that it will meet the following criteria:

(A) Maintain the accuracy required by the chief engineer in paragraph (a)(1)(A) through (C) and K.A.R. 5-1-9(a)(1);

(B) be protected by the following:

(i) A seal installed by the manufacturer or an authorized representative of the manufacturer; or

(ii) a way that makes it impossible to alter the totalizer reading without breaking the seal or obtaining the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer;

(C) clearly indicate the direction of water flow;

(D) clearly indicate the serial number of the water flowmeter;

(E) have a weatherproof register that is sealed from all water sources;

(F) have a register that is readable at all times, whether the system is operating or not;

(G) be able to be sealed by an authorized representative of the chief engineer to prevent unauthorized manipulation of, tampering with, or removal of the water flowmeter;

(H) be equipped with a manufacturer-approved measuring chamber through which all water flows. Except for positive displacement water flowmeters, full-bore electromagnetic water flowmeters, and multijet water flowmeters, flow-straightening vanes shall be installed at the upstream throat of the water flowmeter chamber. The flow-straightening vanes shall meet either of the following criteria:

(i) Be designed and installed by the manufacturer, or an authorized representative of the manufacturer; or

(ii) consist of at least three vanes that are longer, when placed parallel to the length of the pipe, than the inside diameter of the pipe, are equally spaced radially on the inner periphery of the pipe, and are wider in diametrical distance than one-fourth of the inside diameter of the pipe;

(I) be equipped with an inspection port if the straightening vanes are not designed, constructed, and installed by the manufacturer or an authorized representative of the manufacturer. The port shall be of sufficient size and placement to allow determination of the following:

(i) The proper installation of the flow-straightening vanes; and

(ii) the inside diameter of the pipe in which the water flowmeter sensor is installed;

(J) remain operable without need for recalibration to maintain accuracy throughout the operating life of the water flowmeter; and

(K) have a totalizer that meets the following criteria:

(i) Is continuously updated to read directly only in acre-feet, acre-inches, or gallons;

(ii) has sufficient capacity, without cycling past zero more than once each year, to record the quantity of water diverted in any one calendar year;

(iii) reads in units small enough to discriminate the annual water use to within the nearest 0.1 percent of the total annual permitted quantity of water;

(iv) has a dial or counter that can be timed with a stopwatch over not more than a 10-minute period to accurately determine the rate of flow under normal operating conditions; and

(v) has a nonvolatile memory.

(3) Each water flowmeter that is required to be installed by the chief engineer, or that was required to be installed as a condition of either an approval of application or an order of the chief engineer, or pursuant to a regulation adopted by the chief engineer before the effective date of this regulation, shall meet the following minimum specifications:

(A) Each water flowmeter shall be of the proper size, pressure rating, and style, and shall have a normal operating range sufficient to accurately measure the water flow passing the water flowmeter under normal operating conditions.

(B) Each water flowmeter shall meet the accuracy requirements of K.A.R. 5-1-9(a)(1). If the water flowmeter does not meet the accuracy requirements of K.A.R. 5-1-9(a)(1), then the water flowmeter shall meet either of the following criteria:

(i) Be repaired so that it meets the accuracy requirements of K.A.R. 5-1-9(a)(1); or

(ii) be replaced with a water flowmeter meeting all of the requirements of K.A.R. 5-1-4 and installed in a manner that meets the requirements of K.A.R. 5-1-6.

(b) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements of paragraph (a)(2)(B) if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c;

effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010.)

5-1-5. Variances from water flowmeter specifications. (a) A variance from the chief engineer's water flowmeter specifications may be granted by the chief engineer if the water right owner furnishes detailed specifications of a proposed water flowmeter and demonstrates to the chief engineer all the following:

(1) A water flowmeter meeting the specifications of K.A.R. 5-1-4 will not satisfactorily serve the water user's needs.

(2) The proposed water flowmeter will meet the accuracy requirements of K.A.R. 5-1-4(a) and (b).

(3) The proposed water flowmeter will provide a reliable and accurate water use record for that point of diversion.

(b) Variances shall be granted only on a site-by-site, case-by-case basis. No general variances shall be granted for any brand or model of water flowmeter, except as set forth in subsection (c).

(c) A limited variance shall be granted by the chief engineer for a period of up to three years to allow that specific brand and model of a water flowmeter to be tested in the field and to serve as a water flowmeter required by the chief engineer if all of the following conditions are met:

(1) The manufacturer demonstrates to the chief engineer that a particular model and brand of water flowmeter utilizes new technology, does not meet one or more of the requirements of K.A.R. 5-1-4, and is likely to be as reliable, or more reliable, than water flowmeters currently meeting all of the requirements of K.A.R. 5-1-4.

(2) The manufacturer agrees to install not more than 50, nor less than 10, water flowmeters to test the new technology.

(3) The manufacturer agrees to collect data for at least one year that is sufficient to allow the chief engineer to determine whether that brand and model of water flowmeter meets the reliability and accuracy specifications of K.A.R. 5-1-4. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000.)

5-1-6. Water flowmeter installation specifications. (a) Each water flowmeter required by the chief engineer to be installed or required pursuant to a regulation adopted by the chief engineer, on or after the effective date of these regulations shall meet the following minimum water flowmeter installation specifications:

(1) Each water flowmeter shall be installed in a manner that meets the following criteria:

(A) Meets or exceeds the instructions of the manufacturer; and

(B) except for a multijet and a positive displacement water flowmeter, is installed so that there are at least five pipe diameters of straight pipe upstream and at least two pipe diameters of straight pipe downstream of the sensor portion of the water flowmeter, regardless of the manufacturer's installation specifications.

(2) Each water flowmeter shall be sized and installed so that full pipe flow will be maintained through the water flowmeter and so that water velocity in the measuring chamber will be within the normal operating range of the water flowmeter at all times while water is being diverted.

(3) If a water flowmeter is located downstream of a water storage device, there shall be at least seven diameters of straight pipe upstream of the water storage device where a water flowmeter may be installed for a field test by the chief engineer.

(4) Each water flowmeter shall be installed at a location at which the flowmeter measures all water diverted from the source of supply and does not measure water or other discharge, including tailwater and sewage effluent.

(b) Each water flowmeter that is required by the chief engineer to be installed, or that was required to be installed as a condition of either an approval of application or an order of the chief engineer, or pursuant to a regulation adopted by the chief engineer, before the effective date of these regulations, shall meet the following minimum installation specifications:

(1) Each water flowmeter shall be installed in a manner that meets or exceeds the instructions of the manufacturer and, except for a multijet and a positive displacement water flowmeter, shall be installed so that there are at least five pipe diameters of straight pipe upstream and at least two pipe diameters of straight pipe downstream of the sensor portion of the water flowmeter, regardless of the manufacturer's installation specifications.

(2) Each water flowmeter shall be sized and installed so that full pipe flow will be maintained through the water flowmeter and so that water velocity in the measuring chamber will be within the normal operating range of the water flowmeter at all times while the water is being diverted.

(3) Each water flowmeter shall be installed at a location at which the flowmeter measures all water diverted from the source of supply and does

not measure water or other discharge, including tailwater and sewage effluent. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003.)

5-1-7. Requirement to install a water flowmeter or other suitable water-measuring device. (a) All nondomestic, nontemporary wells and pump sites operated under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a water flowmeter that meets or exceeds the specifications of the chief engineer effective at the time the application is approved by the chief engineer.

(b)(1) All nondomestic, nontemporary gravity diversions of water, including irrigation ditches, operating under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a continuous recording gauge, or other suitable water-measuring device located at or near the headgate. Before installation, the water right owner shall submit plans and specifications for the proposed gauge, or other suitable water-measuring device, to the chief engineer and shall receive approval in writing from the chief engineer before installing the gauge or other suitable water-measuring device.

(2) The gauge or other suitable water-measuring device shall meet the following criteria:

(A) Register not less than 94% and not more than 106% of the actual volume of water passing the device under normal operating conditions when compared to a field test made by, or approved by, the chief engineer;

(B) be installed in accordance with the installation requirements of the chief engineer; and

(C) be maintained in a satisfactory operating condition any time water can reasonably be expected to be diverted.

(c) An approval of a nondomestic application for change in place of use, the point of diversion, or the use made of the water, or any combination of these, shall require the owner of the water right to install a water flowmeter on all points of diversion authorized by the water right or approval of application, unless any of the following conditions is met:

(1) The applicant demonstrates to the chief engineer that the application to change the place of use meets the requirements of K.A.R. 5-5-11(e).

(2) The applicant demonstrates to the chief engineer both of the following:

(A) Installation of a water flowmeter meeting these specifications is not physically feasible.

(B) The applicant agrees to implement a reasonable, objective alternative of measuring the quantity of water diverted that is acceptable to the chief engineer.

(3) The water is being diverted from multiple points of diversion authorized by one water right that does not limit the maximum annual quantity and maximum rate of diversion by point of diversion, and all of the water flows to a common point where a water flowmeter meeting the requirements of K.A.R. 5-1-4 and K.A.R. 5-1-6 measures all of the water pumped from all of the points of diversion authorized by that water right.

(4) An application for change in point of diversion only is filed to change the point of diversion of only one well, when more than one well is authorized by the approval of application or water right that authorizes the well for which a change in point of diversion is sought. In this case, only the well that is being relocated shall be required to have a water flowmeter.

(5) The water is being diverted from multiple points of diversion, and all of the following conditions are met:

(A) All points of diversion deliver water to only one distribution system.

(B) Each point of diversion can reasonably be expected to operate simultaneously and for the same total amount of time each calendar year.

(C) Each individual point of diversion has a tested diversion rate of less than 400 gallons per minute.

(D) A water flowmeter is installed that will measure 100 percent of the water pumped from all points of diversion.

(E) If the flow rate has not been tested within the last five years by the chief engineer or a person approved by the chief engineer, the owner shall have each point of diversion tested by a person approved by the chief engineer pursuant to K.A.R. 5-1-11. If the chief engineer becomes aware of information that the tested rates could no longer be correct, the chief engineer, or someone approved by the chief engineer pursuant to K.A.R. 5-1-11, may retest the rate of diversion produced by each point of diversion and those flow rates shall subsequently be used to determine the quantity diverted by each point of diversion.

(F) The owner has signed a consent agreement with the chief engineer that includes the following:

(i) A determination of the percentage of flow that will be attributed to each point of diversion if future administration becomes necessary; and

(ii) an agreement that the chief engineer may require a water flowmeter for each point of diversion if the chief engineer determines there are issues concerning impairment, violations of the conditions of the permit or water right, or a violation of the Kansas water appropriation act and its regulations.

(G) All uses of water are authorized by either a vested water right or a water right that has been certified pursuant to K.S.A. 82a-714, and amendments thereto.

(d) Except as set forth in subsection (c), if an approval of an application for change requires the installation of a water flowmeter, the requirement to install a water flowmeter shall also be placed on all other water rights and approvals authorizing diversion of water from the same point of diversion.

(e) If any water right or approval of application has a condition requiring development, adoption, and implementation of a water conservation plan pursuant to K.S.A. 82a-733 and amendments thereto, a water flowmeter or suitable water-measuring device shall be installed on each authorized point of diversion in compliance with these regulations.

(f) The owner of a water right, including a domestic water right, or an approval of application shall also be required by the chief engineer to install a water flowmeter or other suitable water-measurement device that meets the requirements of these regulations on each authorized point of diversion if it is necessary for the chief engineer to effectively administer water rights to prevent impairment, to protect minimum desirable stream flows, to conserve water, or to otherwise carry out the duties of the chief engineer as set forth in the Kansas water appropriation act, K.S.A. 82a-701 et seq. and amendments thereto.

(g) Except as set forth in subsection (c), if a water flowmeter is required by the chief engineer, each point of diversion authorized by the approval of application or water right shall be required to have a separate meter. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 31, 2008.)

5-1-8. Water flowmeter maintenance. If a water right owner is required by the chief engineer to install a water flowmeter, the water right owner shall maintain the water flowmeter in compliance, as defined by K.A.R. 5-1-1, whenever

diversion of water can reasonably be expected to occur. If at any time the required water flowmeter fails to function properly, the owner shall promptly initiate action to repair or replace the meter, or to correct any problems with the installation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000.)

5-1-9. Criteria to determine when a water flowmeter is out of compliance. (a) A water flowmeter shall be considered to be out of compliance if any of the following criteria is met:

(1) The water flowmeter registers less than 94 percent or more than 106 percent of the actual volume of water passing the water flowmeter. If necessary, this determination may be made by a field test conducted by, or approved by, the chief engineer.

(2) The seal placed on the totalizer by the manufacturer or the manufacturer's authorized representative has been broken, or the totalizer value has been reset or altered without the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer.

(3) A seal placed on the water flowmeter or totalizer by the chief engineer has been broken.

(4) The water flowmeter register is not visible or is unreadable for any reason.

(5) There is not full pipe flow through the water flowmeter.

(6) Flow-straightening vanes have not been properly designed, manufactured, and installed.

(7) The water flowmeter is not calibrated for the nominal size of the pipe in which the flowmeter is installed.

(8) The water flowmeter is not installed in accordance with the manufacturer's installation specifications. However, five diameters of straight pipe above the water flowmeter sensor and two diameters below the water flowmeter sensor shall be the minimum spacing, regardless of the manufacturer's installation specifications.

(9) A water flowmeter is installed at a location at which the flowmeter does not measure all of the water diverted from the source of supply.

(b) A water flowmeter installed in the diversion works or a distribution system for a water right authorized for municipal use shall not be subject to the requirements of paragraphs (a)(2) and (3) if an accurate record of water use can be determined by readings from at least one alternate water flowmeter in the same diversion works or distribution system. (Authorized by K.S.A. 82a-706a; imple-

menting K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010.)

5-1-10. Duties of water right owner when a water flowmeter is out of compliance. (a) A water right owner, or the water right owner's authorized designee, shall promptly notify the chief engineer if any water flowmeter required by the chief engineer is out of compliance.

(b) Within 30 days after the date on which the out-of-compliance water flowmeter has been repaired or replaced, the water right owner or the water right owner's authorized designee shall notify the chief engineer in writing of the following information:

(1) The date the water flowmeter became out of compliance;

(2) the water flowmeter reading at the time the water flowmeter became out of compliance;

(3) if the water flowmeter was replaced, the following information:

(A) The brand, model, size, and serial number of the new water flowmeter;

(B) the units in which the new water flowmeter reads;

(C) the reading of the new water flowmeter at the time of installation; and

(D) the location of the new water flowmeter on the diversion works or delivery system;

(4) if the water flowmeter was repaired, the water flowmeter reading immediately before the repair and the reading of the water flowmeter at the time it was reinstalled or the repair was completed on site;

(5) the date the repair or replacement was completed; and

(6) the amount of water diverted while the water flowmeter was out of compliance.

(c) If the water right owner does not maintain a record of diversions of water that is sufficient to reasonably estimate the quantity of water diverted while the water flowmeter was out of compliance, it shall be assumed, for the sole purposes of enforcement of the terms, conditions, and limitations of the approval of application or water right, and priority administration of water rights among water users, that the diversion works were operated continuously at the tested rate of diversion during the entire period the water flowmeter was out of compliance. If the rate of diversion has not been tested by the chief engineer, then it shall be assumed that the diversion works were operated

continuously at the authorized rate of diversion during the entire time the water flowmeter was out of compliance. The assumption set forth in this subsection shall not apply to the determination of the annual quantity of water diverted for the purpose of perfecting a water right.

(d) If the water right owner is required by the chief engineer to repair or replace an inoperable water flowmeter, it shall be the duty of the water right owner to ensure that the repaired or replaced water flowmeter is in compliance with K.A.R. 5-1-4 and K.A.R. 5-1-6. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000.)

5-1-11. Water flowmeter testing by a non-agency person. If a water right owner desires to have a water flowmeter flow rate test done by a nonagency person for any reason, a person may be approved by the chief engineer to perform a water flowmeter flow rate test if the person demonstrates to the chief engineer both of the following:

(a) The person has the training, skills, and experience necessary to properly conduct the test.

(b) The person has the appropriate water flowmeter to do the test, and the water flowmeter has been tested for accuracy with water flowmeter test equipment that has been found to be accurate using standards traceable to the national institute of standards and technology (NIST). The equipment shall have been tested and found to be accurate within 12 months of performing the water flowmeter test. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000.)

5-1-12. List of water flowmeters certified by the manufacturer to meet the specifications of the chief engineer. (a) A list of all makes and models of water flowmeters that have been certified by the water flowmeter manufacturer to meet the specifications of the chief engineer shall be maintained by the chief engineer. This list shall be made available by the chief engineer to the public upon request.

(b) A water flowmeter shall be placed on the list only if the manufacturer has submitted to the chief engineer all of the following information for each water flowmeter model:

(1) The water flowmeter manufacturer's name, address, contact person's name, and telephone number;

(2) the water flowmeter model name or number;

(3) proof that a random sample of water flowmeters of each model has been tested in accordance with the requirements of K.A.R. 5-1-4(a);

(4) the last date that the water flowmeter test equipment was tested and found to be accurate by standards traceable to the national institute of standards and technology (NIST);

(5) verification that the water flowmeter is designed and constructed so that accuracy will be maintained over the life of the water flowmeter;

(6) verification that the water flowmeter serial number and direction of flow are clearly indicated on the water flowmeter;

(7) verification that the register is weatherproof and sealed from all water sources;

(8) verification that the totalizer will read only in acre-feet, acre-inches, or gallons;

(9) the number of active digits in the totalizer;

(10) verification that the memory is nonvolatile;

(11) verification that the totalizer cannot be reset without breaking the manufacturer's seal or obtaining the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer;

(12) verification that the water flowmeter and register are constructed in such a manner that they can be sealed by the chief engineer;

(13) a description of the measuring chamber provided for each water flowmeter model;

(14) specifications of the flow-straightening vanes installed in the measuring chamber;

(15) the spacing recommendations for each water flowmeter model in terms of pipe diameters of straight pipe required upstream and downstream of the water flowmeter sensor; and

(16) the normal operating range of the water flowmeter.

(c) A brand or model of a water flowmeter shall be removed from the list of water flowmeters specified in subsection (a) of this regulation if it has been demonstrated to the chief engineer that the brand or model of water flowmeter does not reliably and consistently meet the accuracy standards of K.A.R. 5-1-9(a). (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003.)

Article 2.—VESTED RIGHTS

5-2-1 and 5-2-2. (Authorized by K.S.A. 82a-706a; effective May 1, 1978; rejected, L. 1978, ch. 460, May 1, 1978.)

5-2-3. Battery of wells. Except as set forth in subsection (c), if a permit to appropriate water did not authorize a battery of wells, as defined in K.A.R. 5-1-1, before the effective date of this regulation, an application for change filed pursuant to K.S.A. 82a-708b, and amendments thereto, to add one or more wells to the authorized well to create a battery of wells shall not be approved unless all of the following criteria in either subsection (a) or (b) are met at the time that the application for change is filed:

(a) (1) The time to construct the diversion works has not expired.

(2) The proposed battery will meet the definition of a battery of wells as defined in K.A.R. 5-1-1.

(b) (1) The time to construct the diversion works has expired.

(2) A new application to appropriate water filed to appropriate water at the geocenter of the proposed battery of wells would meet the safe yield, allowable appropriation, or similar type of regulation, for a well filed at that location.

(3) The proposed battery of wells meets the definition of a battery of wells as defined in K.A.R. 5-1-1.

(c) Subsections (a) and (b) shall not apply to an application to change the point of diversion filed to add one or more wells to the authorized well to create a battery of wells if the proposed battery of wells is located within the boundary of a ground-water management district for which the chief engineer has adopted a specific regulation applicable to batteries of wells within that district. (Authorized by and implementing K.S.A. 82a-706a; effective Sept. 22, 2000.)

5-2-4. Determination or certification of a domestic water right. Each application filed after the effective date of this regulation to determine or certify a domestic water right based on water use in a confined feeding facility that had a capacity of 1,000 head or more and was privately owned and operated before May 1, 1986 shall be determined or certified for an annual quantity of water of 15 acre-feet or the annual quantity of water actually used, whichever is less. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-701, K.S.A. 82a-706a, and K.S.A. 2007 Supp. 82a-708b; effective Oct. 31, 2008.)

Article 3.—APPROPRIATION RIGHTS

5-3-1. Application acceptable for filing.

(a) To be acceptable for filing, an application for an approval of application shall be accompanied

by the statutorily required filing fee, except for an application for domestic use, and shall contain all of the following:

(1) The name and mailing address of each applicant;

(2) the signature of each applicant or each authorized representative;

(3) the proposed source of water supply;

(4) the proposed authorized place of use; and

(5) either a description of the location of the proposed point of diversion or a request for a 60-day period of time in which to establish the proposed point of diversion within a specifically described, nominal legal quarter section of land.

(b) When an application is received in the office of the chief engineer and assigned a number, the maximum quantity of water per calendar year and the maximum rate of diversion shall not be increased. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-709; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended Oct. 24, 2003.)

5-3-1a. Application for a basin term permit. An application for a basin term permit shall be filed on a form prescribed by the chief engineer. The term requested shall not exceed one year. A basin term permit may be extended in one-year increments if all of the following conditions are met:

(a) The request for extension is filed before the end of the current term in a manner acceptable to the chief engineer.

(b) The applicant has complied with the terms, conditions, and limitations of the basin term permit during the previous calendar year.

(c) Granting the requested extension will not cause impairment of each approval of application and water right with an earlier priority.

(d) The applicant shows good cause why the extension should be granted.

The total time authorized by a basin term permit shall not exceed five calendar years. Basin term permits shall not be transferable. At the end of the specified term, the permit shall be dismissed, and any priority it may have had shall be forfeited. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712; effective Sept. 22, 2000.)

5-3-1b. Complete new application. (a) A new application to appropriate water for beneficial use shall be considered to be a “complete application” for the purposes of K.S.A. 82a-708a, and

amendments thereto, if the application completely and accurately meets all the requirements specified in this regulation and the following criteria:

(1) The requirements specified in K.S.A. 82a-708a, and amendments thereto;

(2) the requirements specified in K.S.A. 82a-709, and amendments thereto;

(3) the requirements specified in K.S.A. 82a-710, and amendments thereto;

(4) any water conservation plans required by the chief engineer pursuant to K.S.A. 82a-733, and amendments thereto;

(5) the requirements of K.S.A. 82a-301 through K.S.A. 82a-305a, and amendments thereto, if the proposed point of diversion, or redirection, is a dam or stream obstruction;

(6) the requirements specified in K.A.R. 5-3-1;

(7) the requirements specified in K.A.R. 5-3-4; and

(8) the requirements specified in K.A.R. 5-3-4d.

(b) If minimum desirable streamflow (MDS) requirements have been set for the proposed source of water supply, the application shall contain a statement signed by the applicant acknowledging that the MDS requirements apply to the proposed source of water supply and that the diversions of water authorized by this approval of application could be regulated at times to protect MDS.

(c) If the applicant is requesting a waiver or exemption of a regulation pursuant to K.S.A. 82a-1904, and amendments thereto, the applicant shall submit a written request for the waiver or exemption, and documentation to support the waiver or exemption.

(d) If the proposed point of diversion is located within the boundaries of a groundwater management district, a final recommendation or analysis of the availability of water has been received from the groundwater management district within the time limit set by the chief engineer concerning the approval, denial, or modification of the application.

(e) If a substantive question has been raised concerning whether approval of the application could cause impairment of senior water rights or prejudicially and unreasonably affect the public interest, the applicant shall submit sufficient information to resolve that question.

(f) If any actions are required to be taken by the applicant on other approvals of applications or water rights owned by the applicant in order to make the new application approvable, including dismissals, reductions in water rights in accordance

with K.A.R. 5-7-5, and applications for change, all necessary forms shall be completed and filed with the chief engineer.

(g) The applicant shall submit all information and data necessary to demonstrate that the application complies with the applicable regulations adopted by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-708a, K.S.A. 82a-709, K.S.A. 82a-710, K.S.A. 2002 Supp. 82a-711, K.S.A. 82a-733, and K.S.A. 2002 Supp. 82a-1904; effective Oct. 24, 2003.)

5-3-2. Priorities. (a) Upon receipt in the office of the chief engineer of an acceptable application for permit to appropriate water for beneficial use, accompanied by the statutory application fee, a stamp showing the date and time of receipt shall be placed on the application form. The date and time of receipt of the application for any use, other than domestic, shall establish the priority of whatever appropriation right that may be subsequently perfected pursuant to the application; (b) The date and time of the receipt of an application for permit to appropriate water for domestic use or the date of the first use of water for such purpose, whichever is earlier, shall establish the priority of the appropriation right for domestic use. When the first use of water is earlier in time than the filing date of an application, the applicant shall furnish affidavits from disinterested parties to substantiate the date that water was first used from the appropriate water supply for domestic purposes. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-3-3. Storage of surface water for domestic use. (a) Any person entitled to use surface water for beneficial purposes may collect and store surface water if the collection, storage, use, and times of use are consistent with reasonable storage and conservation practices. A reasonable quantity of water stored for domestic use shall be considered to be any quantity of water that meets the following requirements:

(1) Is sufficient to satisfy the domestic use for the current year and two succeeding years; and

(2) is necessary for the initial filling of the reservoir and refilling the reservoir after being drawn down for maintenance or other essential reasons. Collection and storage of all natural flows for domestic use shall be subject to vested rights and prior appropriation rights.

(b) The maximum average annual potential net evaporation from the surface of a pond, reservoir, or other similar surface water impoundment used exclusively for domestic purposes shall not exceed 15 acre-feet. The Kansas department of agriculture's map titled "maximum water surface for domestic reservoirs and ponds," dated December 7, 2007, is hereby adopted by reference. This map shall be used to determine the maximum surface area of a pond, reservoir, or similar surface water impoundment that may be used exclusively for domestic purposes. The maximum water surface shall be measured at either of the following, whichever is lower:

(1) The elevation of the principal spillway tube; or

(2) the elevation of the lowest uncontrolled spillway.

(c) An average annual potential net evaporation volume in excess of 15 acre-feet may be allowed if a person entitled to use surface water for domestic use demonstrates to the chief engineer that the quantity of water necessary to satisfy the domestic use, and to offset evaporation and seepage, makes it necessary to store surface water in a pond, reservoir, or similar surface water impoundment with a surface area that produces an average annual potential net evaporation volume greater than that provided in subsection (b).

(d) Groundwater shall not be pumped from a well into a pond, reservoir, or similar surface water impoundment for storage unless the owner of the groundwater right demonstrates to the chief engineer that the storage would be reasonable. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; implementing K.S.A. 82a-701(c), K.S.A. 82a-705a, and K.S.A. 82a-706a; amended Oct. 31, 2008.)

5-3-3a. Legal access. If the chief engineer is aware, or becomes aware, that the applicant does not have legal access to either the point of diversion or the place of use, before an application for any of the following can be approved by the chief engineer, the applicant shall demonstrate that the applicant has legal access to the proposed point of diversion and the proposed place of use before the approval of the application: (a) An approval of application;

(b) a change in place of use;

(c) a change in point of diversion; or

(d) any combination of subsections (a), (b), and (c). (Authorized by K.S.A. 82a-706a; imple-

menting K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-708a; effective Oct. 24, 2003.)

5-3-4. Application. (a) Each application for a permit to appropriate water for beneficial use shall contain all the information requested for the proposed uses as specified in the prescribed application form and any other information that may be required for a complete understanding of the proposed appropriation.

(b) Each application shall be accompanied by an aerial photograph or a detailed plat with a scale of at least one inch equals 1,320 feet, or a U. S. geological survey topographic map, with a scale of at least 1:24,000. The following information shall be plotted on the plat, photograph, or topographic map using appropriate symbols:

(1) The section corners;

(2) the center of the section, identified by the section number, township, and range;

(3) the location of each point of diversion, including each proposed well location, stream bank pump site, dam location or location of other works for diversion of water;

(4) the location of the place of use, including any remediation site or dewatering site, identified by crosshatching or by some other appropriate method;

(5) the location of all other water wells of every kind within one-half mile of each well covered by the proposed appropriation, each of which shall be identified by its use and the name and mailing address of the owner, if the proposed appropriation is for use of groundwater;

(6) the name and mailing address of the owner or owners of each tract of land adjacent to the stream for a distance of one-half mile upstream and one-half mile downstream from the property lines of the land owned or controlled by the applicant, if the proposed appropriation is for the use of surface water;

(7) the locations of proposed or existing dams, dikes, reservoirs, canals, pipelines, power houses, and any other structures for the purpose of storing, conveying, or using water; and

(8) a north arrow and scale.

The information shown on the photograph, plat, or map shall be legible. Black line prints may be submitted in lieu of the original drawing if a plat is submitted.

(c) Separate applications shall be filed for surface water and groundwater.

(d) If the source of supply is groundwater, a separate application shall be filed for each proposed well

or battery of wells, except that any of the following categories may be included in a single application:

(1) Not more than four wells within a circle with a quarter-mile radius in the same local source of supply that do not exceed a maximum diversion rate of 20 gallons per minute per well;

(2) all wells for a remediation site; or

(3) all wells for a dewatering site. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-709; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended Oct. 31, 2008.)

5-3-4a. Hearing before issuance of an order. (a) A hearing may be held pursuant to K.A.R. 5-14-3a by the chief engineer, or a person designated by the chief engineer, before the chief engineer issues an order if one of the following conditions is met:

(1) The chief engineer finds it to be in the public interest to hold a hearing.

(2) A hearing has been requested by a person who shows to the satisfaction of the chief engineer that approval of the application could cause impairment of senior water rights or permits.

(3) The chief engineer desires public input on the matter.

(b) The hearing shall be electronically recorded by the chief engineer.

(c) If all of the parties agree, an informal conference instead of a hearing may be held by the chief engineer pursuant to K.A.R. 5-14-3a. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2008 Supp. 82a-708b, 82a-711, and 82a-737; effective May 1, 1980; amended May 31, 1994; amended March 20, 2009.)

5-3-4b. Deadlines for return of documents. (a) If the chief engineer allows a person a specific number of days to return or submit a document or other information, the time period shall be computed as prescribed in K.S.A. 60-206(a) and (e), and amendments thereto.

(b) If a person is given until a specific date to return or submit a document or other information, the document or information shall be deemed to be timely filed if it is received in the office of the chief engineer no later than the third working day following the specified date. Working days shall be all days except Saturdays, Sundays, and legal holidays designated by the United States congress, the Kansas legislature, or the governor of Kansas. Half holidays shall be counted as working days.

(c) Any document that is postmarked by the United States postal service with a legible date on or before the deadline set by the division for returning the document shall be accepted by the division as being timely filed, regardless of when it is received. In the case of United States registered mail, the date of registration shall be deemed to be the postmark date. The term "United States postal service," as used in this subsection, shall include a private delivery service available to the general public that routinely records, in the regular course of business, the date the item is given to the service for delivery. The date the item is given to the service for delivery shall be deemed to be the postmark date. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-710; effective May 1, 1980; amended Sept. 22, 2000.)

5-3-4c. Retaining new applications. (a) A new application to appropriate water for beneficial use shall be held by the chief engineer in accordance with the terms of subsection (b) if the application meets both of the following conditions:

(1) The application is in proper form and has been completely processed, but cannot be approved because it does not currently comply with one or more statutory or regulatory requirements, including spacing, safe yield, and allowable appropriation regulations.

(2) There is good cause to believe that, if the application were held for a reasonable period of time, it may be approvable in the future because of actions currently pending on other permits and water rights in the area, including issuance of certificates, dismissals of applications, and declarations of abandonment.

(b) Upon demonstration by the applicant to the chief engineer that the application apparently could be approved within a reasonable time, not to exceed 365 days from the date the request to retain the application was received by the chief engineer, if the pending actions take place, the applicant's pending new application may be held by the chief engineer for a period not to exceed 365 days.

(c) If the application still cannot be approved at the end of the time set forth in section (b), the application shall be dismissed by the chief engineer and the priority of the application forfeited.

(d) If any prior applications to appropriate water or prior applications to change the point of diversion from the same source of supply are not

complete and if the approval or denial of these applications could affect the approval of the proposed new application or application to change a water right, then the 150-day period specified in K.S.A. 82a-708a, and amendments thereto, shall begin to run only after all these prior applications have been processed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-705, K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-708a, and K.S.A. 82a-710; effective Sept. 22, 2000; amended Oct. 24, 2003.)

5-3-4d. Stratigraphic log requirements.

(a) Except as set forth in subsection (b), each applicant who files either of the following applications shall submit to the chief engineer a stratigraphic log for a test hole located within 300 feet of the proposed new or replacement well:

(1) A new application to appropriate groundwater, except for domestic use, a temporary permit, or a term permit for fewer than five years; or

(2) an application to change the point of diversion to relocate a well.

This stratigraphic log shall contain geologic and any other information sufficient to allow the chief engineer to understand the lithology and to classify the groundwater source formation or formations from which the proposed well will be withdrawing water.

(b) (1) If an application is filed for a new well, the stratigraphic log shall not be required if the chief engineer has sufficient information to understand the lithology and determine the groundwater source formation or formations from which the proposed well will be withdrawing water.

(2) If an application is filed for a change in point of diversion, the stratigraphic log shall not be required if the chief engineer has sufficient information to understand the lithology and determine the groundwater source formation or formations from which the original well withdrew water and the replacement well will withdraw water.

(c) Each applicant to construct a new well or to change the point of diversion to a newly constructed well who submitted a stratigraphic log to the chief engineer pursuant to subsection (a) above shall not be required to submit to the chief engineer a copy of the stratigraphic log of the completed well as required by the Kansas department of health and environment under the authority of K.S.A. 82a-1212 and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 82a-709, and K.S.A. 82a-710; effective Sept. 22, 2000; amended Oct. 24, 2003.)

5-3-4e. Groundwater source formation codes. The Kansas department of agriculture, division of water resources' document titled "groundwater source formation codes," dated June 24, 2004, is hereby adopted by reference. The groundwater source formation codes used by the chief engineer in administering the Kansas water appropriation act shall be the codes specified in this document. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-709; effective Sept. 22, 2000; amended, T-5-8-23-04, Aug. 23, 2004; amended Nov. 29, 2004.)

5-3-5. Approval of application. The approval of an application on the prescribed form shall constitute a permit to proceed with the construction of authorized diversion works and the diversion and use of water.

The applicant shall be notified of the approval of the application by transmitting to him or her the original document setting forth the terms, conditions, and limitations of the permit which has been duly dated and signed by the chief engineer or his or her authorized representative. A copy of the approval of application and permit to proceed shall be maintained in the office of the chief engineer or the appropriate field office. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-3-5a. Authorization for the use of water for emergency purposes. The chief engineer, or a person designated by the chief engineer, may authorize the use of water for emergency purposes. The emergency approval shall be subject to the terms, conditions and limitations specified by the chief engineer and may be granted when determined to be in the public interest or when needed to protect the quality of a water supply, to provide fire protection, or to provide an alternate point of diversion or source of supply when the principal source of supply or point of diversion is unavailable due to conditions beyond the control of the applicant. (Authorized by K.S.A. 82a-706a and 82a-711; effective May 1, 1980.)

5-3-5b. Approval of application for water for the development of underground storage in mineralized formations. In any case where it is not technologically and economically feasible to utilize poorer quality water for the development of underground storage in mineralized formations and fresh water must be used, the chief engineer shall require the construction of surface

brine storage facilities to the extent economically and technologically feasible in an amount not to exceed forty percent (40%) of underground storage capacity of the applicant. This regulation does not exempt a person from complying with the requirements of other state and federal agencies relative to the construction of surface brine storage facilities. (Authorized by K.S.A. 82a-706a and 82a-707(d); effective May 1, 1980.)

5-3-5c. Check valves. (a) All diversion works not subject to regulation under the Kansas chemigation safety law, K.S.A. 2-3301 et seq. and amendments thereto, into which any type of chemical or other foreign substances will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic, quick-closing check valve capable of preventing pollution of the source of the water supply.

(b) Each check valve required by the chief engineer shall be constructed and installed in accordance with the requirements specified in K.A.R. 5-6-13a.

(c) Each check valve and all required components shall be maintained in an operating condition that prevents backflow into the source of water supply whenever a foreign substance could reasonably be expected to be introduced into the water system. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 82a-712; effective May 1, 1980; amended May 1, 1981; amended Oct. 24, 2003.)

5-3-5d. Requirement to install a water level measurement tube. Each well with an authorized maximum rate of diversion of 100 or more gallons per minute drilled after the effective date of this regulation, except those wells authorized under a temporary permit or a domestic right, shall have a tube installed in accordance with specifications adopted by the chief engineer. This tube shall be suitable for making water level measurements and shall be maintained in working condition. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective May 1, 1980; amended Sept. 22, 2000; amended Oct. 31, 2008.)

5-3-5e. Meters and other water-measuring devices; reporting readings; maintenance, and replacement. (a) For the purpose of this regulation, "meter" shall mean a water flowmeter or other water-measuring device.

(b) Whenever the installation of a meter is required by the chief engineer as a condition of

a water right or permit, by written order of the chief engineer, or by requirement of a groundwater management district, the water right owner shall report all information required on the form prescribed by the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto, including the following:

(1) The beginning and ending readings of the meter each calendar year;

(2) the units in which the meter registers; and

(3) the quantity of water diverted during the calendar year in the same units in which the meter registers.

(c) Whenever a totalizing hour meter has been required by the chief engineer or a groundwater management district, the water right owner shall report all information required on the form prescribed by the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto, including the following:

(1) The beginning and ending readings of the meter each calendar year;

(2) the units in which the meter registers; and

(3) the rate of diversion at which water is pumped in gallons per minute. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-732; effective May 31, 1994; amended Sept. 22, 2000.)

5-3-5g. Designation of a water use correspondent. If the owner or owners of an approval of application or a water right desire to delegate the authority to receive and submit the annual water use reports as prescribed by K.S.A. 82a-732, and amendments thereto, to another person, an owner of the approval of application or the water right shall sign and submit a form prescribed by the chief engineer designating the person responsible to receive and submit the required annual water use report. However, the water right owner or owners shall remain, in all cases, the person or persons legally responsible for filing the water use reports required by K.S.A. 82a-732, and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-732; effective Sept. 22, 2000.)

5-3-5h. Water conservation plans. Each water conservation plan shall be submitted on a form prescribed by the chief engineer. The plan shall also contain the name, address, and telephone number of the designer of the water conservation plan. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-733; effective Sept. 22, 2000.)

5-3-5i. Time limit to implement a water conservation plan. (a) The time to fully implement the water conservation plan shall be limited by the chief engineer to a reasonable specific date, which may be extended for good cause shown by the applicant.

(b) A municipal or industrial water user shall be given at least one full calendar year after the conservation plan is approved by the chief engineer to fully implement the water conservation plan.

(c) A user of water for irrigation shall be given at least one full growing season after the conservation plan is approved by the chief engineer to fully implement the approved water conservation plan. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-733; effective Sept. 22, 2000.)

5-3-5j. Maintenance of a water conservation plan. Once implemented, the applicant shall continue to satisfactorily maintain each component of the water conservation plan. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-733; effective Sept. 22, 2000.)

5-3-5k. Review of a water conservation plan. The right to review the water conservation plan to determine if it is consistent with current guidelines adopted and maintained pursuant to K.S.A. 74-2608, and amendments thereto, shall be reserved by the chief engineer. If the review determines that the water conservation plan is materially different from those guidelines, then the owner of the water right or approval of application may be ordered by the chief engineer to amend the water conservation plan to make it consistent with the current guidelines for conservation plans and practices adopted and maintained pursuant to K.S.A. 74-2608, and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-733; effective Sept. 22, 2000.)

5-3-5l. Changes in a water conservation plan. If a person required to implement a water conservation plan desires to make a material change in the plan, that person shall submit a request to make the change to the chief engineer on a form prescribed by the chief engineer. Any material change in an approved water conservation plan shall require the prior written approval of the chief engineer. Any proposed change in a water conservation plan shall be subject to the same type of review as that required for the original water conservation plan. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-733; effective Sept. 22, 2000.)

5-3-5m. Limited power of attorney. If all of the owners of an approval of application or water right desire to authorize any other person to take any type, or types, of official action on behalf of the approval of application or water right, all of the owners of the approval of application or water right shall meet the following requirements:

(a) A limited power of attorney shall be submitted to the chief engineer.

(b) The limited power of attorney shall be signed and acknowledged by all of the owners of the approval of application or water right and filed pursuant to the provisions of K.S.A. 58-601, and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-701 et seq.; effective Sept. 22, 2000.)

5-3-5n. Authorized place of use. (a) Except as set forth in subsection (b), each approval of application, or an approval of an application for change filed in accordance with K.S.A. 82a-708b, and amendments thereto, shall describe the authorized place of use as either of the following:

(1) Land not authorized for beneficial use of water by any other water right or approval of application; or

(2) exactly the same land authorized for beneficial use of water by one or more prior approvals of applications or water rights.

(b) The requirement in subsection (a) shall not apply to applications that propose to partially overlap the authorized place of use with any of the following:

(1) A municipality;

(2) an irrigation district;

(3) an irrigation ditch company;

(4) a rural water district;

(5) another authorized place of use that cannot all be physically served by all of the water rights and approvals of applications;

(6) an authorized place of use that is owned by different landowners who do not operate together; or

(7) the owner or owners of the water rights and approvals of applications demonstrate both of the following to the chief engineer:

(A) It is not practical or desirable to have a complete overlap.

(B) Allowing an incomplete overlap of authorized places of use will not prejudicially and unreasonably affect the public interest. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-709; effective Sept. 22, 2000.)

5-3-50. Amending water use reports. (a) Except as specified in this subsection, each annual water use report submitted to the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto, shall be considered the official report of water use information filed in the office of the chief engineer. Each person who files a request to correct a water use report shall ensure that the water use report is corrected in accordance with all of the following procedures, in order for the corrected report to be considered the official report:

(1) A written request to correct the report is submitted to the chief engineer on a form prescribed by the chief engineer.

(2) Each requested change in the water use report is documented by independent, verifiable supporting information, including fuel records, power records, crop production records, county appraiser records, natural resource conservation service records, crop insurance records, other similar types of records, and any combination of these records. The independent, verifiable supporting information may be supported by an affidavit from one or more competent, disinterested persons who have actual personal knowledge of the facts.

(3) The written request, including the supporting documentation, is verified upon oath or affirmation to be accurate and complete to the best knowledge of the person filing the request.

(4) The person filing the request to change a water use report sustains the burden to show the following:

(A) How the water use report on file in the office of the chief engineer is erroneous or incomplete; and

(B) that the proposed changes are the most complete and accurate water use information available.

(b) The right to perform the following shall be reserved by the chief engineer:

(1) Contest the accuracy and completeness of any water use report filed with the chief engineer, or corrected in accordance with this regulation, to show that the water use report is inaccurate, incomplete, false, or fraudulent; and

(2) make a determination of the actual water use based on the best available information. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-732; effective Aug. 13, 2004.)

5-3-6. Forfeiture, revocation and dismissal. Failure of the applicant or his or her successors

to comply with the provisions of the approval of application and permit to proceed and its terms, conditions and limitations without good cause shall result in the forfeiture of the priority date, revocation of the permit and dismissal of the application. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-3-6a. Sealing diversion works. (a) If the chief engineer or any authorized representative has reasonable cause to believe that any person has failed to obey an order or a notice and directive of the chief engineer to cease and desist from operating a diversion works, the chief engineer or authorized representative may place a seal, or a chain and padlock, on the diversion works or any part of the diversion works in a manner that renders the diversion works inoperable without breaking the seal, chain, or padlock.

(b) The chief engineer or any authorized representative may place a seal on any water flowmeter or measuring chamber in a manner that prevents removal of the water flowmeter from the measuring chamber and prevents access to the internal working parts of the water flowmeter without breaking the seal. The seal may include a bolt, chain, lock, or any combination of these, or any other mechanism.

(c) For purposes of this regulation, "authorized representative" shall include any employee of the division or a groundwater management district that has been delegated this authority by the chief engineer in writing. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-706b and K.S.A. 82a-706c; effective May 1, 1980; amended March 17, 2017.)

5-3-7. Request for extension of time. (a) For applications filed after May 1, 1978, any request for extension of time either for completion of diversion works or for perfecting the appropriation shall be submitted to the chief engineer before the expiration of the time allowed for completing the diversion works or perfecting the appropriation. The request shall be signed by the holder of the approval of application and permit to proceed, by the owner of the land to be irrigated, by an authorized official of a municipality, corporation or partnership, or by any other person that has a recognized interest in the appropriation. Failure to request an extension of time to perfect the appropriation within the time allowed shall limit the water appropriation right to the extent perfected in accordance

with the terms, conditions, and limitations set forth in the approval of application.

(b) The request for an extension of time either for completion of diversion works or for perfecting the appropriation shall be accompanied by the statutorily required filing fee and shall include the following information:

- (1) The application number;
- (2) the date by which the diversion works will be completed or the appropriation will be perfected;
- (3) the progress that has been made toward completing the diversion works or perfecting the appropriation;
- (4) if for irrigation, the number of acres of land to which water has been applied during one calendar year;
- (5) the reason why the diversion works have not been completed or the appropriation has not been perfected; and
- (6) the plans for completing the diversion works or perfecting the appropriation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-714(e); modified, L. 1978, ch. 460, May 1, 1978; amended Oct. 24, 2003.)

5-3-8. Certificate of appropriation. Upon determination that the appropriation diversion works have been completed and an appropriation right perfected in conformity with an approved application and plans, the chief engineer shall issue a certificate of appropriation setting forth the extent to which the appropriation right was perfected. No appropriation shall be determined for a quantity of water or a diversion rate in excess of that set forth in the approval of application and permit to proceed or in excess of that found to have been actually applied to the approved beneficial use or for any quantity of water found to have been wasted during the calendar year of record used as the basis for perfecting the appropriation right. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-3-9. Public interest. (a) In accordance with K.S.A. 82a-711(b)(5), as amended, in ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall also take into consideration the quantity, rate and availability of water necessary to:

(1) satisfy senior domestic water rights from the stream;

(2) protect senior water rights from being impaired by the unreasonable concentration of naturally occurring contaminants; and

(3) over the long term reasonably recharge the alluvium or other aquifers hydraulically connected to the stream.

(b) Unless otherwise provided by regulation, it shall be considered to be in the public interest that only the safe yield of any source of water supply, including hydraulically connected sources of water supply, shall be appropriated. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-10. Availability of water for appropriation—safe yield. (a) Except as set forth in subsection (b) and K.A.R. 5-3-16 and K.A.R. 5-3-17, the approval of any new application to appropriate groundwater or surface water for beneficial use, except for domestic use, temporary use and term permits for five years or less, shall not cause the safe yield of the source of water supply to be exceeded, neither shall it otherwise prejudicially and unreasonably affect the public interest. The approval of term permits shall not allow impairment nor prejudicially and unreasonably affect the public interest.

(b) This regulation shall not apply to an application which proposes:

(1) to divert water from a source of water supply subject to a different safe yield, allowable appropriation, depletion or other similar type of criteria adopted by rule and regulation of the chief engineer or intensive groundwater use control area order of the chief engineer issued pursuant to K.S.A. 82a-1036 et seq., or

(2) to use water in a manner so that there is no significant net consumptive use of the local source of supply either in quantity or availability of water for use by other appropriators.

(c) If a total quantity of water that is available for appropriation in any basin, subbasin, stream reach or other hydrologic unit has been determined by the chief engineer prior to the date the application is filed, the total quantity of water authorized by vested rights, prior appropriations, requests by prior unapproved applications and the proposed appropriation shall be determined by the chief engineer.

(1) If the total quantity of water authorized and requested by applications with earlier filing dates is less than or equal to the total annual quantity of water determined to be available for appropri-

tion, or if no total quantity of water available was determined by the chief engineer prior to the date the application was filed, the following procedures shall be used by the chief engineer to further evaluate the applications:

(A) K.A.R. 5-3-11 shall be used to evaluate an application to appropriate groundwater from an unconfined aquifer;

(B) K.A.R. 5-3-14 shall be used to evaluate an application to appropriate groundwater from a confined aquifer; or

(C) K.A.R. 5-3-15 shall be used to evaluate an application to appropriate surface water.

(2) If the total quantity of water authorized and requested exceeds the limit determined by the chief engineer pursuant to this subsection, the application shall be denied or considered only for the quantity available. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-11. Availability of water for appropriation—safe yield; unconfined groundwater aquifers. (a) Each application to appropriate groundwater from an unconfined aquifer shall be processed in accordance with this regulation.

(b) To determine the safe yield available for appropriation from an unconfined aquifer at a specific location, the following procedure shall be used by the chief engineer:

(1) The amount of calculated recharge occurring within the area of consideration shall be determined by the chief engineer.

(2) That amount shall be multiplied by the percent of calculated recharge determined by the chief engineer to be available nondomestic groundwater and surface water for appropriation.

(3) The total quantity of water authorized and requested in the same area of consideration shall be subtracted from the number derived from paragraph (b)(2) above. If a water right or permit authorizes more than one point of diversion and not all of them are within the area of consideration, the authorized quantity shall be divided equally between or among all the points of diversion, unless information is available to more accurately distribute the authorized quantity between or among the multiple points of diversion.

(c) (1) If the quantity of water remaining is sufficient to satisfy the proposed application, then the safe yield criteria shall be deemed to have been met, unless there are other relevant factors that need to be taken into account in order to protect

the public interest. The application shall then be processed according to other criteria in effect in that area.

(2) If there is sufficient water available to reasonably satisfy part of the request, then the application shall be approved for the quantity available if the remaining quantity is reasonable for the proposed use and the application meets the other applicable criteria in that area.

(3) If no water is available to satisfy the proposed application, then the application shall be denied by the chief engineer.

(d)(1) In making a safe yield calculation, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them:

(A) "Circle" means a circle with a two-mile radius, with the proposed point of diversion as the center.

(B) "Area of consideration" means the portion of the two-mile circle located within the limits of the unconfined aquifer expressed in acres, including any area of the circle located within the boundaries of a groundwater management district. The area of consideration shall not include any portion of the circle located outside the state of Kansas.

(C) "Total quantity of water" means the total combined authorized annual quantities under all groundwater rights and approvals of applications, and requested by pending applications with a senior priority in that unconfined aquifer except for domestic use, temporary permits, and term permits for five or fewer years with priority dates senior to the proposed application and with points of diversion located within the area of consideration.

(D) "Calculated recharge" means that portion of the average annual precipitation that becomes recharge to the unconfined aquifer, calculated using the data shown on water resources investigations report 87-4230, plate no. 4, dated 1987, prepared by the United States geological survey, hereby adopted by reference, interpolated to the nearest tenth of an inch, unless better or more specific recharge data for the area of consideration, basin, or aquifer is supplied by the applicant or is already available to the chief engineer.

(2) The calculated recharge in the Kansas river alluvium shall be determined by taking 25% of the average annual rainfall in the area of consideration as taken from figure 2, United States geological survey water resources investigation report 92-4137, dated 1993, hereby adopted by reference, interpolated to the nearest 0.1 of an inch.

(3) For each application to appropriate groundwater from an unconfined aquifer filed on or after the effective date of this regulation, the percentages of calculated recharge that shall be considered to be available for appropriation shall be determined using the following table:

Percent of Calculated Recharge Available for Appropriation	River Basin	Percent of Calculated Recharge Available for Appropriation	River Basin
(A) 100% plus the recharge from the Missouri River available to the well, as calculated by a Jenkins or similar stream-depletion technique	Missouri		Elk River [°] Fall River [°] Kansas River ^{°°} Little Arkansas River above GMD No. 2 [°] Lower Republican River Basin outside the effective alluvium and the Belleville formation that contributes significant baseflow to a stream. ^{°°}
(B) 100%	Arkansas River below Hutchinson [°] Big Blue River ^{°°} Black Vermillion River ^{°°} Delaware River ^{°°} Little Arkansas River below GMD No. 2 [°] Little Blue River ^{°°} Little Osage River ^{°°} Lower Republican River Basin outside the effective alluvium and the Belleville formation that does not contribute significant baseflow to a stream ^{°°} Marais des Cygnes River ^{°°} Mill Creek ^{°°} Marmaton River ^{°°} Nemaha River ^{°°} Pottawatomie Creek ^{°°} Smoky Hill River below its confluence with the Saline River ^{°°} Spring River ^{°°} Stranger Creek ^{°°} Sugar Creek ^{°°} Vermillion Creek ^{°°} Wakarusa River ^{°°} Walnut River [°] Any hydrologic unit that does not contribute significant baseflow to a stream.	(D) 50%	Neosho River [°] Ninnescah River [°] Saline River ^{°°} Salt Creek ^{°°} Smoky Hill above its confluence with the Saline River ^{°°} Solomon River ^{°°} South Fork Ninnescah River (except Smoots Creek) [°] Upper Republican Basin outside areas closed to new appropriations as set forth in paragraph (d)(5) of this regulation. ^{°°} Verdigris River [°] Any other basin in Kansas not specifically identified Any hydrologic units in the following river basins that contribute significant baseflow to a stream: Bluff Creek-Chikaskia River [°] Bluff Creek-Cimarron River [°] Chikaskia River [°] Cimarron River outside GMD No. 3 [°] Medicine Lodge River [°] North Fork Ninnescah River [°] Rattlesnake Creek [°] Salt Fork Arkansas River [°] Sandy Creek [°] South Fork Ninnescah River (Smoots Creek only) [°]
(C) 75%	Any hydrologic units in the following river basins that contribute significant baseflow to a stream: Arkansas River above Hutchinson [°] Caney River [°] Cottonwood River [°] Cow Creek outside the boundaries of GMD No. 2 and GMD No. 5 [°]		

[°] Located in Arkansas River Basin

^{°°} Located in Kansas River Basin

(4) The total quantity of water and the percent of calculated recharge originally available to be appropriated for nondomestic groundwater and surface water use in all or part of the following basins, subbasins, stream reaches, and other hydrologic

units identified in electronic data file unitbsn.e00, dated July 30, 1997, prepared by the division of water resources, Kansas department of agriculture

and hereby adopted by reference for the purpose of defining the boundaries of the hydrologic units, shall be determined using the following table:

South-Central Kansas Designated Unit Areas

Map Label	Effective Date	Area (acres)	Recharge Rate (in/yr)	Recharge Quantity (Ac-ft/yr)	Percentage of Recharge to Appropriate	Original Quantities Available (Ac-ft/yr)	General Location (Twp.-Range)	Abbreviation for Portion of Basin or Basins
1	November 28, 1994	32204	1.8	4831	100%	4831	29-12w	Chikaskia
2	November 28, 1994	41426	1.8	6214	100%	6214	30-11w	Chikaskia
3	November 28, 1994	55524	1.8	8329	50%	4164	29-10w	Chikaskia
4	November 28, 1994	43603	1.8	6540	50%	3270	30-10w	Chikaskia
5	November 28, 1994	46828	2.0	7805	50%	3902	31-05w	Chikaskia
6	November 28, 1994	46895	2.5	9770	50%	4885	33-03w	Chikaskia
7	November 28, 1994	37378	3.0	9344	50%	4672	34-02w	Chikaskia
8	November 28, 1994	42210	3.0	10553	50%	5276	33-01w	Chikaskia
9	November 28, 1994	15145	2.0	2524	100%	2524	30-08w	Chikaskia
10	November 28, 1994	6855	2.0	1143	100%	1143	31-06w	Chikaskia
11	November 28, 1994	2824	2.0	471	100%	471	31-06w	Chikaskia
12	November 28, 1994	8548	2.0	1425	100%	1425	31-05w	Chikaskia
13	November 28, 1994	12165	2.0	2027	50%	1014	31-07w	Chikaskia
14	November 28, 1994	27213	2.0	4535	50%	2268	32-05w	Chikaskia
15	November 28, 1994	21101	1.5	2638	50%	1319	31-15w	Medicine Lodge
16	November 28, 1994	7489	1.5	936	50%	468	32-11w	Medicine Lodge
17	November 28, 1994	20516	1.5	2564	50%	1282	33-11w	Medicine Lodge
18	November 28, 1994	34426	1.5	4303	50%	2152	29-19w	Rattlesnake
19	November 28, 1994	25566	1.5	3196	50%	1598	29-18w	Medicine Lodge
20	November 28, 1994	56730	1.8	8509	100%	8509	29-14w	Medicine Lodge
21	November 28, 1994	41800	1.8	6270	50%	3135	30-12w	Medicine Lodge
22	November 28, 1994	15825	1.2	1582	50%	791	30-17w	Medicine Lodge
23	November 28, 1994	59864	1.5	7483	50%	3742	29-16w	Medicine Lodge
24	November 28, 1994	37658	1.5	4707	100%	4707	29-15w	Medicine Lodge
25	November 28, 1994	102144	1.9	16173	75%	12130	28-09w	SF Ninnescah
26	November 28, 1994	10638	2.0	1773	75%	1330	28-07w	SF Ninnescah
27°	Revision	84047	2.0	14008	50%	7004	26-07w	SF Ninnescah
28	November 28, 1994	5196	2.2	953	75%	714	28-04w	SF Ninnescah
29	November 28, 1994	73816	1.9	11688	100%	11688	28-07w	Chik/SFNin/Nin
30	November 28, 1994	38651	2.0	6442	100%	6442	30-05w	Chik/SFNin/Nin/Ark
31	November 28, 1994	5572	2.3	1068	100%	1068	31-04w	Chik/Ark
32	November 28, 1994	21937	2.0	3656	100%	3656	27-07w	SF Ninnescah
33	November 28, 1994	40646	2.5	8468	75%	6351	23-08w	Arkansas
34	November 28, 1994	41974	2.3	8045	75%	6034	24-08w	NF Ninnescah
35	November 28, 1994	3917	2.0	653	75%	490	26-08w	NF Ninnescah
36	November 28, 1994	12106	2.0	2018	75%	1513	27-10w	NF Ninnescah
37	November 28, 1994	8135	2.0	1356	75%	1017	26-08w	NF Ninnescah
38°	Revision	34550	1.2	3455	50%	1728	32-20w	Bluff Creek (Cim)
39	November 28, 1994	21875	1.2	2188	50%	1094	33-20w	Bluff Creek (Cim)
40	November 28, 1994	11466	1.2	1147	50%	573	33-20w	Bluff Creek (Cim)
41	November 28, 1994	8565	1.6	1142	50%	571	34-17w	Salt Fork Arkansas
42	November 28, 1994	3746	1.6	499	50%	250	33-15w	Salt Fork Arkansas
43	November 28, 1994	9763	1.6	1302	50%	651	34-15w	Salt Fork Arkansas
44	November 28, 1994	33060	1.8	4959	100%	4959	31-10w	Sandy Cr
45	November 28, 1994	3922	1.8	588	100%	588	33-09w	Sandy Cr
46	November 28, 1994	26959	1.8	4044	50%	2022	32-10w	Sandy Cr
47	November 28, 1994	41296	1.8	6194	50%	3097	34-09w	Sandy Cr
48	November 28, 1994	36364	1.9	5758	50%	2879	31-08w	Bluff Creek (Chik)
49	November 28, 1994	45511	2.0	7585	50%	3793	32-07w	Bluff Creek (Chik)

Map Label	Effective Date	Area (acres)	Recharge Rate (in/yr)	Recharge Quantity (Ac-ft/yr)	Percentage of Recharge to Appropriate	Original Quantities Available (Ac-ft/yr)	General Location (Twp.-Range)	Abbreviation for Portion of Basin or Basins
50	November 28, 1994	23546	2.3	4513	50%	2257	34-06w	Bluff Creek (Chik)
51	November 28, 1994	25608	2.7	5762	50%	2881	35-03w	Bluff Creek (Chik)
52	November 28, 1994	4460	1.9	706	100%	706	32-09w	Sandy Cr
53	November 28, 1994	17083	2.0	2847	100%	2847	33-08w	Sandy Cr/Bluf (Chik)
54	November 28, 1994	3845	2.0	641	50%	320	32-08w	Sandy Cr/Bluf (Chik)
55	July 5, 1996	3582	1.2	358	50%	179	35-18w	Cimarron
56	July 5, 1996	10967	1.2	1097	50%	548	35-19w	Cimarron
57	July 5, 1996	37387	1.2	3739	50%	1869	34-20w	Cimarron
58	July 5, 1996	3379	1.3	366	50%	183	33-21w	Cimarron
59	July 5, 1996	5885	1.3	638	50%	319	35-22w	Cimarron
60	July 5, 1996	14854	1.3	1609	50%	805	33-22w	Cimarron
61	July 5, 1996	34080	1.3	3692	50%	1846	34-22w	Cimarron
62	July 5, 1996	25419	1.3	2754	50%	1377	31-17w	Salt Fork
63	July 5, 1996	29813	1.3	3230	15%	484	32-17w	Salt Fork
64	July 5, 1996	90035	1.3	9754	50%	4877	31-18w	Salt Fork
65	July 5, 1996	35931	1.3	3893	50%	1946	31-19w	Bluff Creek
66	July 5, 1996	100983	1.3	10940	50%	5470	30-20w	Bluff-Rattlesnake
67	July 5, 1996	111132	1.2	11113	50%	5557	30-24w	Bluff-Crooked
68	July 5, 1996	12188	1.2	1219	50%	609	31-23w	Cimarron
69	July 5, 1996	5518	1.2	552	50%	276	31-24w	Cimarron
70	July 5, 1996	32689	1.2	3269	50%	1634	32-25w	Cimarron
71	July 5, 1996	94734	1.3	10263	50%	5131	32-26w	Cim-Crooked
72	July 5, 1996	44833	1.3	4857	50%	2428	33-27w	Cim-Crooked
73	July 5, 1996	50088	1.3	5426	50%	2713	34-27w	Cim-Crooked
74	July 5, 1996	25210	1.3	2731	50%	1366	35-27w	Cim-Crooked
75	July 5, 1996	103816	1.3	11247	50%	5623	34-24w	Cim-Crooked
76	July 5, 1996	23296	1.2	2330	50%	1165	30-22w	Bluff-Rattlesnake
77	July 5, 1996	27666	1.2	2767	50%	1383	32-15w	Salt-Medicine
78	July 5, 1996	5261	1.2	526	100%	526	35-13w	Salt Fork
79	July 5, 1996	8249	1.8	1237	50%	619	31-12w	Medicine

* Revision is effective the date of this regulation.

(5) The following hydrologic units, which have been determined by the chief engineer to be fully appropriated based on the safe yield criteria, shall be closed to further new surface water and groundwater appropriations except for domestic use, temporary permits, and term permits for five years or less:

(A) Big Creek, its tributaries and their valley alluviums, and any other aquifer that has a substantial hydraulic connection to an alluvium;

(B) Beaver Creek and Little Beaver Creek, their tributaries and their alluviums, and any other aquifer that has a substantial hydraulic connection to an alluvium;

(C) North Fork Solomon River, its tributaries and their alluviums, and any other aquifer that has a substantial hydraulic connection to an alluvium;

(D) Prairie Dog Creek, its tributaries and their alluviums, and any other aquifer that has a substantial hydraulic connection to an alluvium;

(E) Sappa Creek, its tributaries and their alluviums, and any other aquifer that has a substantial hydraulic connection to an alluvium;

(F) South Fork of the Solomon River, its tributaries and their alluviums above Glen Elder Dam, and any other aquifer that has a substantial hydraulic connection to an alluvium; and

(G) Walnut Creek, its tributaries and their alluviums, and other hydraulically connected aquifers outside the boundaries of the intensive groundwater use control area created by order of the chief engineer shall be those set forth below:

Section	Township	Range	County
28 through 33	18S	23W	Barton
4 through 10 and 14 through 36	18S	14W	Barton
1 through 36	18S	25W	Barton
3 through 11 and 14 through 23	29S	13W	Barton

Section	Township	Range	County
1 through 6, 9 through 15, and 22 through 24	29S	14W	Barton
1	19S	15W	Barton
31 through 35	17S	16W	Rush
19 through 36	17S	17W	Rush
19 through 36	17S	18W	Rush
23 through 26 and 31 through 36	17S	19W	Rush
35 and 36	17S	20W	Rush
1 through 36	18S	16W	Rush
1 through 36	18S	17W	Rush
1 through 36	18S	18W	Rush
1 through 36	18S	19W	Rush
1 through 36	18S	20W	Rush
3 through 6	19S	16W	Rush
1 through 6	19S	17W	Rush
1, 2, 11, and 12	19S	20W	Rush
32 through 34	17S	25W	Ness
1 through 36	18S	21W	Ness
1 through 4 and 7 through 36	18S	22W	Ness
19, 25 through 36	18S	23W	Ness
23 through 27, 35, and 36	18S	24W	Ness
1 through 5, 10 through 13, 24, 33, and 34	28S	25W	Ness
4 through 9	19S	21W	Ness
1 through 12, 17 and 18	19S	22W	Ness
1 through 23	19S	23W	Ness
1, 2, and 7 through 29	19S	24W	Ness
1 through 3 and 11 through 13	19S	25W	Ness

(6) “Technical guidelines for determining the availability of groundwater for appropriation in the Lower Republican River Basin and Belleville Formation and the availability of surface water for appropriation in the Lower Republican River Basin,” adopted by the chief engineer, division of water resources, Kansas department of agriculture, on October 1, 1999, is hereby adopted by reference as determining the availability of groundwater for appropriation in the lower Republican River basin and Belleville formation and the availability of surface water for appropriation in the lower Republican River basin.

(7) (A) All applications for a permit to appropriate groundwater from the area described in paragraph (7) (B) for any beneficial use, except for domestic use, temporary permits, and short-term permits for five or fewer years, shall be accepted for filing and given a file number, if acceptable for filing. The application shall be returned by the chief engineer, and the reason that the application

will be denied shall be specified by the chief engineer. The applicant shall be given 30 days to show cause why the application should not be denied. If the applicant does not show good cause, the application shall be dismissed.

(B) The area is described as sections 17, 18, 19, 20, township 7 south, range 6 west, and sections 13, 14, township 7 south, range 7 west, all in Mitchell County, Kansas.

(C) All applications for permits to appropriate groundwater from sections 29 and 30 in township 7 south, range 6 west, and sections 12, 15, 16, 21, 22, 23, 24, 25, 26, and 27 in township 7 south, range 7 west, all in Mitchell County, Kansas, for any beneficial use, except for domestic use, temporary permits, and term permits for five or fewer years, shall be processed based on the criteria set forth below in paragraph (7) (D).

(D) No new wells shall be allowed in the area described in paragraph (7) (C) above if the proposed well would produce one foot or more of additional drawdown at any existing well in that area and if the proposed well was pumped continuously for 45 days (1,080 hours) at the rate requested on the application. This analysis shall be done by using the Theis equation, with a coefficient of transmissivity of 71,000 gallons per day per foot (gpd/ft) and a coefficient of storage of 0.02.

(E) Any application for a change in the point of diversion filed for a well located in the areas described in paragraphs (7) (B) and (C) above shall be limited to a move of no more than 100 feet, unless the applicant can show the chief engineer that the proposed move will not prejudicially and unreasonably affect the public interest, will not impair existing water rights, and otherwise complies with the provisions of K.S.A. 82a-708b, and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711; effective Nov. 28, 1994; amended Sept. 22, 2000.)

5-3-12. (Authorized by K.S.A. 82a-701(g), 82a-706a; effective May 1, 1980; revoked May 1, 1987.)

5-3-13. Dewatering of construction sites.

The chief engineer shall limit the time in which water may be withdrawn for dewatering purposes. Any water right that may be perfected by the dewatering project shall be deemed abandoned and terminated upon the completion of the dewatering project. Any extension of time in which to complete the project must be requested in writing

by the applicant prior to the expiration date on the permit. (Authorized by K.S.A. 82a-706a and 82a-712; effective May 1, 1980.)

5-3-14. Availability of water for appropriation—safe yield; confined groundwater aquifers. (a) Each application to appropriate water from a confined aquifer shall be processed on a case by case basis so that the safe yield of the source of water supply is not exceeded.

(b) Until a specific regulation is adopted by the chief engineer for the confined source of water supply, the analysis shall be made using the best information reasonably available to the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-15. Availability of water for appropriation—safe yield; surface water. (a) Each application filed to directly divert the natural flow of the Kansas river, the Missouri river, the Big Blue river, the Spring river, or their tributaries, shall:

(1) be processed in accordance with K.A.R. 5-3-9; and

(2) meet all other requirements for the approval of a new application.

(b) The water right owner shall be required by the chief engineer to meet minimum desirable streamflows (MDS), assurance district target flows (assurance target flows) and division of water resources (DWR) target flows where applicable.

(c) Each application filed to directly divert the natural flow from any stream or tributary in the state of Kansas, except those streams listed in paragraph (a) of this regulation, shall have the following conditions of approval.

(1) If MDS or assurance target flows or DWR target flows have been set for that stream, and MDS administration has been requested by the Kansas water office, diversion of natural flow shall only be permitted if MDS, assurance target flows or DWR target flows, if applicable, are being met at the gage or gages immediately below the proposed point of diversion.

(2) Diversion of natural flow shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

(3) The streamflow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of that water right or permit.

(4) During the period October 1 through June 30, the verbal or written permission of the chief

engineer, or an authorized representative of the chief engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

(5) The applicant shall be required to demonstrate that the direct diversion of streamflow is not necessary during the period July 1 through September 30 each calendar year because of lack of need; the availability of adequate water storage or alternative water supplies; or other similar reasons.

(6) During the period July 1 through September 30 each calendar year, no direct diversions of water shall be permitted unless written permission is obtained from the chief engineer or the chief engineer's authorized representative.

(d) Each application filed by a member of an operational assurance district for that stream shall be processed taking into consideration the provisions of the assurance district contract.

(e) Each application filed for a point of diversion which might divert water released from storage pursuant to an agreement between the state of Kansas and the federal government shall be processed taking into consideration the provisions of that agreement.

(f) Each application filed to divert the natural flow of any stream subject to a more specific regulation adopted by the chief engineer or an intensive groundwater use control area order issued by the chief engineer, for a basin or portion thereof, shall be processed in accordance with the provisions of that regulation or order. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-16. Safe yield; exemptions for up to 15 acre-feet of groundwater. (a) Each application to appropriate groundwater in any area of the state shall be exempt from meeting the safe yield criteria if all of the conditions in subsection (b) are met.

(b)(1) The proposed point of diversion will be located in an area that is outside a groundwater management district that is subject to safe yield criteria and meets either of the following conditions:

(A) Is not closed by regulation or intensive groundwater use control area order by the chief engineer to new nondomestic, nontemporary permits, and term permits for more than five years; or

(B) has not exceeded the quantity of water available to be appropriated in the hydrologic unit as set forth in K.A.R. 5-3-11.

(2) The sum of the annual quantity requested by the proposed appropriation and the total annual quantities authorized by prior permits and water rights allowed because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.

(3) The approval of the application does not authorize an additional quantity of water to be diverted from an existing authorized well with a nondomestic permit or water right, which would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(4) The approval of the application does not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use in excess of 15 acre-feet.

(5) The maximum authorized rate of diversion does not exceed 50 gallons per minute.

(6) All other criteria for processing a new application to appropriate water at that location have been met.

(c) After an application has been approved pursuant to this regulation, no application to change that water right shall be approved if that approval would authorize the water use approved under that application to be diverted from any other point of diversion authorized at the time the application is filed or to be used on any other place of use authorized at the time the application for change is filed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2007 Supp. 82a-711; effective Nov. 28, 1994; amended Sept. 22, 2000; amended Oct. 31, 2008.)

5-3-16a. Closed areas; exemptions for up to five acre-feet of groundwater. In any area of the state that is outside a groundwater management district and an intensive groundwater use control area (IGUCA) and that is closed to new appropriations of groundwater by regulation except for domestic use, temporary permits, and term permits for five or fewer years, applications to appropriate groundwater shall be exempt from meeting the safe yield criteria and the regulation closing the area to new appropriations if the chief engineer finds that all of the following criteria are met: (a) The sum of the annual quantity of water requested by the proposed appropriation and the total annual quantities of water authorized by prior approvals of applications allowed because of an exemption pursuant to this regulation does not

exceed five acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.

(b) The annual quantity of water requested is reasonable for the proposed beneficial use of water.

(c) All other criteria for processing a new application to appropriate water at that location, including well spacing criteria, have been met.

(d) The approval of the application does not authorize an additional quantity of water out of an existing well that would result in a total combined annual quantity of water authorized from that well in excess of five acre-feet per calendar year.

(e) The proposed beneficial use of water will significantly benefit the public interest and help maximize economic development. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-711, and K.S.A. 2002 Supp. 82a-1904; effective Oct. 24, 2003.)

5-3-17. Safe yield; miscellaneous exemptions. In any area of the state which is subject to safe yield criteria, and outside a groundwater management district or an intensive groundwater use control area closed to new non-domestic, non-temporary uses, each application to appropriate groundwater for a beneficial use shall be exempt from meeting the safe yield criteria if the chief engineer finds that:

(a) the proposed use has occurred continuously since prior to the effective date of this regulation;

(b) the proposed use could have reasonably been classified by the division of water resources as a domestic use at the time the use began; and

(c) all other requirements in effect for the approval of a new application to appropriate water at that location have been met. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-18. Applicant's opportunity to submit additional information. (a) If at any stage of processing an application, it is determined by the chief engineer that an application does not meet the safe yield criteria, the applicant shall be notified by the chief engineer in writing prior to denial of the application that the safe yield requirements have not been met and the reason for the proposed denial. In this written notice, the chief engineer shall allow the applicant 15 days to request time in which to submit additional information to show why the application should be approved.

(b) Within 15 days the applicant shall either submit the additional information or file a written

request for a reasonable amount of time to submit an engineering report or similar type of hydrologic analysis to show that approval of the application will not cause the safe yield of the source of water supply to be exceeded.

(c) If the applicant fails to timely show to the satisfaction of the chief engineer that the application can be approved, then the application shall be denied by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective Nov. 28, 1994.)

5-3-19. Maximum reasonable annual quantity of water for irrigation use. (a) For applications filed before the effective date of this regulation, the maximum annual quantity of water reasonably necessary to irrigate crops shall be determined as follows:

(1) In that area of Kansas located between the eastern border of Kansas and the western border of range 6 east, the maximum reasonable annual quantity of water shall not exceed one acre-foot of water per acre irrigated.

(2) In that area of Kansas located between the eastern border of range 5 east and the western border of range 20 west, the maximum reasonable annual quantity of water shall not exceed 1½ acre-feet of water per acre irrigated.

(3) In that area of Kansas located between the eastern border of range 21 west and the western border of Kansas, the maximum reasonable annual quantity of water shall not exceed two acre-feet of water per acre irrigated.

(b) On and after the effective date of this regulation, the maximum annual quantity of water reasonably necessary to irrigate crops shall be determined by multiplying the number of irrigated acres by the county value found on the map adopted by reference in K.A.R. 5-3-24. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 82a-707(e), and K.S.A. 2002 Supp. 82a-711; effective Sept. 22, 2000; amended Oct. 24, 2003.)

5-3-20. Maximum reasonable annual quantity of water approvable for a new appropriation of water for irrigation use. (a) The maximum reasonable annual quantity of water that may be approved for use on irrigated land for applications filed before the effective date of this regulation shall be limited to the following:

(1) The quantity of water available for appropriation as determined by the safe yield, allowable ap-

propriation or similar type of limitation adopted by regulation of the chief engineer for the area in which the proposed point of diversion will be located;

(2) the quantity of water reasonably physically available from the source of water supply based on the physical characteristics of the source of water supply and the proposed diversion works; and

(3) the quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as set forth in K.A.R. 5-3-19(a). The authorized quantity shall be determined by multiplying the number of acres approved to be irrigated by the quantity per acre set forth in K.A.R. 5-3-19(a).

(b) The maximum reasonable annual quantity of water that may be approved for use on irrigated land for applications filed on or after the effective date of this regulation shall be limited to the following:

(1) The quantity of water available for appropriation as determined by the safe yield, allowable appropriation or similar type of limitation adopted by regulation of the chief engineer for the area in which the proposed point of diversion will be located;

(2) the quantity of water reasonably physically available from the source of water supply based on the physical characteristics of the source of water supply and the proposed diversion works; and

(3) the quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as set forth in K.A.R. 5-3-19(b).

(c) The quantity specified in subsection (a) or (b) may be exceeded only if the applicant demonstrates both of the following to the chief engineer:

(1) Because of specialty crops or other unusual conditions, the quantity specified in K.A.R. 5-3-19 is insufficient.

(2) The requested quantity is reasonable for the intended irrigation use, is not wasteful, and will not otherwise prejudicially and unreasonably affect the public interest. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-3-21. Perfection of a water right for irrigation use. (a) For applications with a priority date before the effective date of this regulation, the maximum reasonable annual quantity of water that may be perfected for irrigation use shall not exceed the following:

(1) The maximum annual quantity of water actually applied to beneficial use in any one calendar

year in accordance with the terms, conditions, and limitations of the approval of application during the perfection period; and

(2) the quantity of water reasonably necessary to irrigate crops in the region of the state where the place of use is located as set forth in K.A.R. 5-3-19(a). The reasonable quantity shall be determined by multiplying the number of acres actually irrigated during the year of record by the quantity per acre as set forth in K.A.R. 5-3-19(a).

(b) For applications with a priority date on or after the effective date of this regulation, the maximum reasonable annual quantity of water that may be perfected for irrigation use shall not exceed the following:

(1) The maximum annual quantity of water actually applied to beneficial use in any one calendar year in accordance with the terms, conditions, and limitations of the approval of application during the perfection period; and

(2) the quantity of water reasonably necessary to irrigate crops in the region of the state where the place of use is located as set forth in K.A.R. 5-3-19(b). The reasonable quantity shall be determined by multiplying the number of acres actually irrigated during the year of record by the quantity per acre set as forth in K.A.R. 5-3-19(b).

(c) The quantity specified in subsection (a) or (b) may be exceeded only if the water right owner demonstrates both of the following to the chief engineer:

(1) Because of specialty crops or other unusual conditions, the quantity specified in K.A.R. 5-3-19 was insufficient.

(2) A greater quantity was reasonable for the intended irrigation use, was not wasteful, and did not otherwise prejudicially and unreasonably affect the public interest. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e) and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-3-22. Maximum reasonable quantity of water for livestock and poultry. (a) The following quantities shall be deemed the maximum quantity of water reasonable for nondomestic livestock and poultry water use:

Livestock/ poultry	Drinking water (gallons per head per day)	Additional quantities for servicing/flushing (gallons per head per day)
Cattle, beef	15	0 (open lot) 100 [confined building capacity (cbc)]
Cattle, dairy	35	100 (cbc)

Livestock/ poultry	Drinking water (gallons per head per day)	Additional quantities for servicing/flushing (gallons per head per day)
Swine		
finishing	5	15 (cbc)
nursery	1	4 (cbc)
sow and litter	8	35 (cbc)
gestating sow	6	25 (cbc)
Sheep	2	0 (open lot) 15 (cbc)
Horses	12	0 (open lot) 100 (cbc)
Poultry		
chickens (100 layers)	9	200 (cbc)
turkeys (100)	30	400 (cbc)

(b) The maximum reasonable quantity of water that may be approved for nondomestic livestock and poultry use for applications approved on or after the effective date of this regulation shall be limited as set forth in subsection (a) above. The quantities set forth in subsection (a) may be exceeded only if the applicant demonstrates both of the following to the chief engineer:

(1) The requested quantity is reasonable for the intended use.

(2) This quantity is not wasteful and will not otherwise prejudicially and unreasonably affect the public interest.

(c) For all other types of nondomestic livestock, poultry, birds, and animals, the maximum quantity of water approved for beneficial use shall be reasonable.

(d) The maximum reasonable quantity of water that may be perfected for nondomestic livestock or poultry use shall not exceed the quantities set forth in subsections (a), (b) and (c) above, unless the water right owner demonstrates both of the following to the chief engineer:

(1) A larger quantity of water was actually applied to beneficial use within the terms, conditions, and limitations of the permit within the perfection period.

(2) The quantity used was not wasted. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, K.S.A. 82a-712, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-3-23. Maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right; exceptions. (a) Except as provided in subsections (c), (d), and (e), for water rights with a priority date before September 22, 2000, the maximum reasonable

annual quantity of water that may be approved for either of the following shall be that quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as specified in K.A.R. 5-3-19(a):

(1) An application for change in place of use for irrigation filed pursuant to K.S.A. 82a-708b and amendments thereto; or

(2) a request to reduce the authorized place of use for irrigation for a water right filed pursuant to K.A.R. 5-7-5.

(b) Except as provided in subsections (c), (d), and (e), for water rights with a priority date on or after September 22, 2000, the maximum reasonable annual quantity of water that may be approved for either of the following shall be that quantity of water reasonably necessary to irrigate crops in the region of the state where the proposed place of use is located as specified in K.A.R. 5-3-19(b):

(1) An application for change in place of use for irrigation filed pursuant to K.S.A. 82a-708b and amendments thereto; or

(2) a request to reduce the authorized place of use for a water right filed pursuant to K.A.R. 5-7-5.

(c) The maximum reasonable quantities allowable in subsections (a) and (b) shall not exceed either of the following:

(1) The applicable quantity specified in either subsection (a) or (b); or

(2) the maximum quantity of acre-feet per acre authorized by the vested water right or certificate of appropriation, whichever is greater. The maximum authorized quantity of acre-feet per acre shall be calculated by dividing the maximum annual quantity of water authorized when the application for change or request to reduce is filed by the number of acres authorized when the application for change is filed.

(d) The quantities specified in subsections (a), (b), and (c) may be exceeded only if the applicant demonstrates to the chief engineer that the requested quantity is reasonable for the intended irrigation use, is not wasteful, and will not otherwise prejudicially and unreasonably affect the public interest and if either of the following conditions is met:

(1) Because of specialty crops or other unusual conditions, the quantity specified in K.A.R. 5-3-19(a) is insufficient.

(2) A request for reduction of the authorized place of use is made for a water right located in both the Rattlesnake Creek Subbasin and the Big

Bend Groundwater Management District Number Five to comply with the agriculture water enhancement program and both of the following conditions are met:

(A) The reduction of the authorized place of use will lead to an overall reduction in water use.

(B) The reduction of the authorized place of use pursuant to paragraph (d)(2) requires the approval of any future reduction or change to a water right so reduced to meet the requirements in subsections (a), (b), (c), and (e) of this regulation and in K.A.R. 5-5-11.

(e) The maximum annual quantity of water approved pursuant to this regulation shall not exceed the maximum annual quantity of water authorized by the water right when the change application is approved. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2009 Supp. 82a-707(e) and K.S.A. 2009 Supp. 82a-708b; effective Sept. 22, 2000; amended, T-5-8-16-10, Aug. 16, 2010; amended Nov. 19, 2010.)

5-3-24. Reasonable quantity for irrigation use. The Kansas department of agriculture, division of water resources' map titled "reasonable quantities for irrigation use in Kansas, by county," dated October 21, 1999, is hereby adopted by reference. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-3-25. Conditions on permits and certificates. (a) All terms, conditions, and limitations placed on an approval of application by the chief engineer pursuant to the provisions of K.S.A. 82a-712, and amendments thereto, shall remain in full force and effect until expressly modified or removed by the chief engineer.

(b) Unless the terms and conditions are expressly modified or removed by the subsequent approval, certification, or other order of the chief engineer, none of the following shall modify or remove any of the terms, conditions, and limitations placed on the original approval of applications or water right:

(1) The approval of an application to change the place of use, the point of diversion, or the use made of water under the authority of K.S.A. 82a-708b and amendments thereto;

(2) the issuance of a certificate of appropriation pursuant to K.S.A. 82a-714 and amendments thereto; or

(3) the issuance of any other findings and order relative to the approval of application or water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-708b, K.S.A. 1999 Supp. 82a-711, K.S.A. 82a-712, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-3-26. Closed townships in Pawnee and Buckner drainage basins in Pawnee, Hodge-man, Ness, and Finney counties. (a) Except as specified in subsection (c), the following townships in the Pawnee and Buckner drainage basins shall be closed to new appropriations of water:

- (1) T 20 S:
 - (A) R 19 W through R 26 W;
 - (B) R 18 W, section 7 and sections 17 through 36; and
 - (C) R 17 W, section 31;
- (2) T 21 S:
 - (A) R 30 W, sections 1 through 4, 9 through 16, 21 through 28, and 33 through 36;
 - (B) R 21 W through R 29 W;
 - (C) R 20 W and R 19 W, sections 1 through 6; and
 - (D) R 18 W, sections 1 through 24;
- (3) T 22 S:
 - (A) R 30 W, sections 1 through 4, 9 through 16, 21 through 28, and 33 through 36;
 - (B) R 21 W through R 29 W;
 - (C) R 19 W and R 20 W, sections 13 through 36;
 - (D) R 18 W, sections 20 through 36; and
 - (E) R 17 W, sections 20, 21, and 30;
- (4) T 23 S:
 - (A) R 22 W through R 26 W;
 - (B) R 21 W, sections 1 through 24, and 27 through 32;
 - (C) R 20 W, sections 1 through 18;
 - (D) R 19 W, sections 1 through 12 and 14 through 18; and
 - (E) R 18 W, sections 3 through 10; and
- (5) T 24 S:
 - (A) R 23 W through R 26 W;
 - (B) R 22 W, sections 1 through 23 and 26 through 35; and
 - (C) R 21 W, sections 5, 6, and 7.

(b) Except as specified in subsection (c), all new applications that propose a point of diversion in any of the areas described in subsection (a) that are pending approval on the effective date of this regulation shall be dismissed.

(c) The closure of the townships listed in subsection (a) to new appropriations of water shall not apply to the following types of wells:

- (1) Wells for domestic use;

(2) wells authorized by temporary permits; and

(3) wells authorized by term permits of fewer than five years.

This regulation shall be effective on and after October 25, 2002. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-711 and K.S.A. 82a-721; effective Sept. 22, 2000; amended, T-5-6-27-02, June 27, 2002; amended Oct. 25, 2002.)

5-3-27. Equus Beds special groundwater quality area. (a) A special groundwater quality area located within the boundaries of the Equus Beds groundwater management district no. 2 shall be hereby established in the following area consisting of approximately 36 square miles in north-west Harvey County, south-central McPherson County, and northeast Reno County, Kansas:

(1) Sections 3 through 10, 15 through 22, and 27 through 34, of township 22 south, range 3 west, Harvey County;

(2) sections 31 through 34, township 21 south, range 3 west, and section 36, township 21 south, range 4 west, McPherson County; and

(3) sections 1, 12, 13, 25, 26, and 36, township 22 south, range 4 west, Reno County, Kansas.

(b) Each application for a new appropriation of groundwater, a newly constructed well, or a change in the point of diversion for a well within the area shall be reviewed by the chief engineer to determine the effect of the proposed appropriation or well on the movement of saltwater pollution in the area.

(c) A test well log shall accompany each type of application described in subsection (b) within the area described in subsection (a) above and shall include the following information:

(1) Depth to bedrock;

(2) a water quality analysis of water taken from the bottom 20 feet of the aquifer, including sodium and chloride concentrations; and

(3) a water quality analysis of water taken within the top 20 feet of the aquifer, including specific conductance and chloride concentrations.

(d) If the chief engineer can not determine whether the proposed application will affect the movement of saltwater pollution in the area in a manner that is adverse to the public interest or that will cause impairment to other water rights by causing an unreasonable deterioration of the water quality, then the applicant shall submit any information the chief engineer needs to make that determination. The information shall be submit-

ted within a reasonable time period specified by the chief engineer.

(e) The chief engineer shall submit the proposed application to the board of the Equus Beds groundwater management district no. 2 for its review and recommendation. The board shall have 30 days to review the application and provide its recommendation to the chief engineer. The recommendation of the board shall be considered by the chief engineer in making a decision as to whether the application can be approved as filed or modified.

(f) The application shall be dismissed and its priority forfeited if either of the following conditions is met:

(1) The chief engineer determines that approval of the application will affect the movement of saltwater pollution in the area in a manner that will prejudicially and unreasonably affect the public interest or that will cause impairment to other water rights by causing an unreasonable deterioration of the water quality because of saltwater pollution.

(2) The applicant fails to submit the information requested by the chief engineer within the time specified.

(g) The application shall be approved if both of the following conditions are met:

(1) The chief engineer determines that the approval of the application, as filed or modified, will not affect the movement of saltwater pollution in the area in a manner that is adverse to the public interest and will not cause impairment to other water rights by causing an unreasonable deterioration of the water quality because of saltwater pollution.

(2) The application meets all other statutory and regulatory criteria.

(h) In addition to reporting the information normally required in the water use reports required by K.S.A. 82a-732, and amendments thereto, each owner of a water right or approval of application shall also report the depth to the static water level in each well, in a manner acceptable to the chief engineer.

(i) All groundwater diversion works permitted in the Equus Beds special groundwater quality area shall be equipped with a water flowmeter that meets the specifications adopted by the chief engineer, except for domestic wells, temporary wells, and wells authorized by term permits for fewer than five years. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c, K.S.A. 82a-709, K.S.A. 82a-710, K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-732; effective Sept. 22, 2000.)

5-3-28. Lyons special groundwater quality area. (a) A special groundwater quality area all in Rice County, Kansas, and partially located within the boundaries of the Big Bend groundwater management district no. 5 shall be hereby established in the following described area consisting of approximately 37 square miles in central Rice County, Kansas:

(1) Sections 33, 34, and 35 of township 19 south, range 8 west;

(2) sections 1-4, 9-16, 21-25, township 20 south, range 8 west;

(3) sections 7, 17-21, 27-34, township 20 south, range 7 west; and

(4) sections 3-5, township 21 south, range 7 west.

(b) Each application for a new appropriation of groundwater, a newly constructed well, or a change in point of diversion for a well proposed to be located within the area shall be reviewed by the chief engineer to determine whether the proposed appropriation will have any adverse effect on the movement and remediation of saltwater pollution south and east of Lyons, Kansas.

(c) A test well log shall accompany each type of application filed for a point of diversion described in subsection (b) that is proposed to be located within the area described in subsection (a), and shall include the following information:

(1) Depth to bedrock;

(2) a water quality analysis of water taken from the bottom 20 feet of the aquifer, including analysis of sodium and chloride concentrations; and

(3) a water quality analysis of water taken within the top 20 feet of the aquifer, including analysis of sodium and chloride concentrations.

(d) If the chief engineer can not determine whether the proposed application will affect the movement and cleanup of saltwater pollution south and east of Lyons in a manner that is adverse to the public interest or that will cause impairment to other water rights by causing an unreasonable deterioration of the water quality, then the applicant shall submit any information the chief engineer needs to make that determination. The information shall be submitted within a reasonable time period specified by the chief engineer.

(e) If the proposed point of diversion is located within the district, the proposed application shall be submitted by the chief engineer to the board of the district for review and recommendation. The board shall have 30 days to review the application and submit its recommendation to the chief en-

gineer. The recommendation of the board shall be considered by the chief engineer in making a decision as to whether the application can be approved as filed or modified.

(f) The application shall be dismissed and its priority forfeited if either of the following conditions is met:

(1) The chief engineer determines that approval of the application will affect the movement and cleanup of saltwater pollution south and east of Lyons in a manner that prejudicially and unreasonably affects the public interest or that will cause impairment to other water rights by causing an unreasonable deterioration of the water quality because of saltwater pollution.

(2) The applicant fails to submit the information requested by the chief engineer within the time specified.

(g) The application shall be approved if both of the following conditions are met:

(1) The chief engineer determines that the approval of the application, as filed or modified, will not affect the movement and cleanup of saltwater pollution south and east of Lyons in a manner that would prejudicially and unreasonably affect the public interest and will not cause impairment to other water rights by causing an unreasonable deterioration of the water quality because of saltwater pollution.

(2) The application meets all other applicable statutory and regulatory criteria. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c, K.S.A. 82a-709, K.S.A. 82a-710, K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-732; effective Sept. 22, 2000.)

5-3-29. Ozark and Springfield plateau aquifers. (a) Except as specified in subsections (b) and (c), the Ozark aquifer and the Springfield plateau aquifer in the following townships in Cherokee, Crawford, Allen, Bourbon, Neosho, and Labette counties in Kansas shall be closed to new appropriations of water: ranges 20 east through 25 east and townships 26 south through 35 south.

(b) The closure of townships listed in subsection (a) to new appropriations of water shall not apply to the following types of wells:

- (1) Wells for domestic use;
- (2) wells authorized by temporary permits;
- (3) wells meeting the requirements of K.A.R. 5-3-16a; and
- (4) wells meeting both of the following conditions:

(A) Are authorized by a term permit of five or fewer years, which can be extended by the chief engineer not beyond December 31, 2010, and over which the chief engineer retains jurisdiction to dismiss or amend if necessary to prevent impairment of the water quantity, rate, or quality or to otherwise protect the public interest; and

(B) Are used as an alternate source of water supply that is actively being planned, financed, and constructed and that will be available no later than December 31, 2010.

(c) Notwithstanding the provisions of paragraph (b)(4)(A), the term permits may be extended by the chief engineer beyond December 31, 2010 or may be converted by the chief engineer to regular permits to appropriate water, if both of the following conditions are met:

(1) A study has been completed before December 31, 2010, determining the safe yield of the Ozark aquifer and the Springfield plateau aquifer.

(2) Extending the term of the term permit or converting the term permit to a regular permit to appropriate water will not result in any of the following:

- (A) Causing the safe yield to be exceeded;
- (B) impairing prior permits or water rights; or
- (C) prejudicially and unreasonably affecting the public interest. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-711; effective, T-5-8-23-04, Aug. 23, 2004; effective Nov. 29, 2004.)

Article 4.—DISTRIBUTION OF WATER BETWEEN USERS

5-4-1. Distribution of water between users when a prior right is being impaired. In responding to a complaint that a prior water right is being impaired, the following procedure shall be followed:

(a) Complaint. The complaint shall be submitted in writing to the chief engineer or that person's authorized representative. The chief engineer shall take no action until the written complaint is submitted and, for non-domestic groundwater rights, the information specified in paragraph (b) (2) is provided.

(b) Investigation. The chief engineer shall investigate the physical conditions involved, according to the water rights involved in the complaint.

(1) If the water right is domestic, the chief engineer may require the complainant to provide a written report similar to that described in paragraph (b)(2).

(2) If the water right claimed to be impaired is not a domestic right and its source of water is groundwater, the complainant shall provide to the chief engineer a written report completed within 180 days preceding the date of the complaint. Within 30 days of the complainant's request, the chief engineer shall provide the complainant with data from the division of water resources that is relevant to preparation of the required report. The complainant's report shall meet the following requirements:

(A) Be prepared by a licensed well driller, a professional engineer, or a licensed geologist;

(B) describe the construction and the components of the well;

(C) provide data to show the extent to which the well has fully penetrated the productive portions of the aquifer with water of acceptable quality for the authorized use; and

(D) provide testing and inspection data to show the extent to which the pump and power unit are in good working condition to make full use of the available aquifer.

(3) In assessing the complainant's written report, the chief engineer may use all relevant data, including historical data from water well completion records, Kansas geological survey bulletins, and other data in the water right files.

(4) If the area of complaint is located within the boundaries of a groundwater management district (GMD), the chief engineer shall notify the GMD of the complaint before initiating the investigation and shall give the board of directors of the GMD the opportunity to assist with the investigation.

(5) If the source of water is groundwater, the chief engineer may require hydrologic testing to determine hydrological characteristics as part of the investigation. The chief engineer shall provide notice to water right owners in a geographic area sufficient to conduct the hydrologic testing and to determine who could be affected by the actions made necessary by the results of the investigation. These water right owners shall be known as the potentially affected parties. As part of the investigation, the chief engineer may require access to points of diversion or observation wells and may require the installation of observation wells.

(6) Data acquired during the investigation shall be provided to the complainant and any other persons notified for review and comment at their request as the investigation proceeds.

(c) Report. The chief engineer shall issue a report stating the relevant findings of the investigation.

(1) If the complainant's water right is a domestic water right or has surface water as its source and the complainant claims impairment by the diversion of water pursuant to surface rights, the chief engineer shall provide a copy of the report to the complainant and to the potentially affected parties. This report shall constitute the final report of the investigation.

(2) If the complainant's water right is not a domestic right and has groundwater as its source or if the complainant's water right has surface water as its source and claims impairment by the diversion of water pursuant to groundwater rights, a copy of the report shall be provided by the division of water resources to the complainant and to the potentially affected parties. The report shall be posted by the division of water resources on the department of agriculture's web site. This report shall constitute the initial report of the investigation.

(A) If the initial report shows impairment, the potentially affected parties shall have the opportunity to submit written comments on the initial report within 30 days of its posting on the department's web site or a longer period if granted by the chief engineer. The chief engineer shall consider the written comments of the potentially affected parties.

(B) If the area of complaint is located within the boundaries of a GMD, the chief engineer shall provide a copy of the initial report to the GMD and shall consider any written comments submitted by the GMD board within 30 days of the posting of the initial report on the department's web site or a longer period if granted by the chief engineer.

(C) Nothing in this regulation shall prevent the chief engineer from regulating water uses that the chief engineer has determined are directly impairing senior water rights during the comment period or, if applicable, before obtaining written comments by the GMD board during the comment period.

(3) After reviewing comments on the initial report from potentially affected parties and, if applicable, from the GMD board, the chief engineer shall issue a final report, which shall be provided to the complainant, the potentially affected parties, and the GMD board if applicable and shall be posted on the department of agriculture's web site.

(4) The chief engineer may require conservation plans authorized by K.S.A. 82a-733, and amendments thereto, based on the initial and final reports.

(5) If the chief engineer's final report determines impairment and the source of water is a regional aquifer, the final report shall determine whether the impairment is substantially caused by a regional overall lowering of the water table. If the impairment is determined to be substantially caused by a regional overall lowering of the water table, no further action shall be taken under this regulation, and the procedure specified in K.A.R. 5-4-1a shall be followed.

(d) Request to secure water. If the complainant desires the chief engineer to regulate water rights that the final report has found to be impairing the complainant's water right, the complainant shall submit a written request to secure water to satisfy the complainant's prior right. The request to secure water shall be submitted on a prescribed form furnished by the division of water resources. The complainant shall specify the minimum reasonable rate needed to satisfy the water right and shall also provide information substantiating that need. The chief engineer shall determine how to regulate the impairing rights. Each request to secure water to satisfy irrigation-use water rights shall expire at the end of the calendar year in which the request was submitted.

(e) Notice of order.

(1) The chief engineer shall give a written notice and directive to those water right holders whose use of water must be curtailed to secure water to satisfy the complainant's prior rights.

(2) If the area of complaint is located within the boundaries of a GMD and if the final report determines that the impairment is substantially due to direct interference, the chief engineer shall allow the GMD board to recommend how to regulate the impairing water rights to satisfy the impaired right.

(3) The chief engineer may consider regulating the impairing rights the next year and rotating water use among rights.

(4) All water delivered to the user's point of diversion for that individual's use at the specified rate or less shall be applied to the authorized beneficial use and shall count against the quantity of water specified unless the user notifies the chief engineer or authorized representative that diversion and use will be discontinued for a period of time for good reason.

(5) When the quantity of water needed has been delivered to the user's point of diversion or when the user discontinues that individual's use of water, those persons who have been directed to

regulate their use shall be notified that they may resume the diversion and use of water.

(6) If the available water supply in the source increases, the chief engineer may allow some or all of the regulated users to resume use, depending on the supply. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended Oct. 29, 2010.)

5-4-1a. Distribution of water between users when a prior right is being impaired due to a regional lowering of the water table. (a)

When a complaint is received that a prior right to the use of water is being impaired, the procedure specified in K.A.R. 5-4-1 shall be followed until the determination is made that the impairment is caused substantially by a regional lowering of the water table.

(b)(1) If the area of complaint is located within the boundaries of a groundwater management district (GMD), the GMD board shall recommend the steps necessary to satisfy senior water rights. Recommendations may include following the GMD management program, amending the GMD management program, or pursuing any other means to satisfy senior water rights. The GMD board shall submit its recommendations to the chief engineer within six months of the determination that the impairment is caused substantially by a regional lowering of the water table or within a longer time if approved by the chief engineer.

(2) The GMD board shall publish notice of its recommendations once in a newspaper of general circulation in the county where the impairment is occurring.

(3) The chief engineer shall determine the appropriate course of action to satisfy senior water rights. To that end, the chief engineer shall consider the GMD's timely recommendations and may conduct a study similar to that described in paragraph (c)(1).

(4) The chief engineer shall publish notice of the course of action once in a newspaper of general circulation in the county where the impairment is occurring.

(c)(1) If the area of complaint is located outside the boundaries of a GMD and determined to be caused by a regional lowering of the water table, the chief engineer shall conduct a study to determine the appropriate course of action. The study shall include a determination of the effectiveness and economic impact of administering one or more water rights in accordance with K.A.R. 5-4-

1, the effectiveness and economic impact of the types of corrective controls listed under K.S.A. 82a-1038 and amendments thereto, and any other means to satisfy senior water rights while preserving the economic vitality of the region.

(2) The chief engineer shall determine the appropriate course of action, based on the study described in paragraph (c)(1).

(3) The chief engineer shall publish notice of the course of action once in a newspaper of general circulation in the county where the impairment is occurring. (Authorized by and implementing K.S.A. 82a-706a; effective Oct. 29, 2010.)

5-4-2. Protection of releases from storage under low-flow conditions. (a) As used only in this regulation, the following terms shall have the meanings specified in this subsection:

(1) “Low-flow conditions” shall mean that the natural flow below a reservoir is not sufficient to satisfy the demand for water use below the reservoir by known domestic water rights and by permits and water rights of record in the office of the chief engineer.

(2) “Natural flow” shall mean water that is flowing in a river or stream, except water that is entitled to be protected from diversion.

(b) If the owner of a surface water right below a reservoir could physically divert water that has been released from storage under the authority of the state of Kansas or that has been released from storage pursuant to an agreement between the state and federal government and that owner has been notified by the chief engineer that low-flow conditions exist, that owner shall not divert any water under that surface water right without the written permission of the chief engineer.

(c) If the owner of a surface water right described in subsection (b) desires to divert water after being notified that low-flow conditions exist, that owner shall submit a written request to the chief engineer containing all of the following information:

- (1) The water right number;
- (2) the following information for the owner:
 - (A) Name and telephone number; and
 - (B) if available, electronic mail address, fax number, and cellular telephone number;
- (3) the name and telephone number of any representative authorized by the owner to request and receive permission to divert water under low-flow conditions from the chief engineer. Each request shall also contain, if available, the electronic

mail address, cellular telephone number, and fax number of the authorized representative;

(4) the total quantity of water that has been diverted under that water right during that current calendar year; and

(5) the length of time and the maximum rate of diversion which the owner is requesting to divert water.

(d) As soon as practical after receiving the request, the owner may be notified in writing by the chief engineer if any natural flow is available to be diverted under the authority of that water right.

(e) If an owner has been notified that low-flow conditions exist, diversion of any water without the written permission of the chief engineer shall cause the owner to be subject to any enforcement action available to the chief engineer, including levying a civil penalty pursuant to K.S.A. 82a-737, and amendments thereto.

(f) If an owner has been notified that low-flow conditions exist, diversion of water in excess of the rate and quantity authorized by the express written permission of the chief engineer shall cause the owner to be subject to any enforcement action available to the chief engineer, including levying a civil penalty pursuant to K.S.A. 82a-737, and amendments thereto.

(g) Written notice may be issued by the chief engineer to all owners of surface water rights notified pursuant to subsection (b) to inform the owners when low-flow conditions no longer exist. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2007 Supp. 82a-737; effective Oct. 31, 2008.)

5-4-4. Well spacing. (a) The spacing between wells shall be sufficient to prevent direct impairment between wells located in a common source of supply or hydraulically connected sources of supply and to protect the public interest. Except as set forth in subsection (b), the following guidelines shall be used to determine the spacing required between wells permitted by the chief engineer in a common source of supply, unless it is determined by the chief engineer in any specific instance that the spacing guidelines set forth in this regulation are insufficient to prevent direct impairment or are not necessary to prevent direct impairment.

(b) Whenever an applicant proposes to divert water from a source of supply in a location where there is a significant hydraulic connection between the proposed source of supply and another

er source or sources of supply, the chief engineer shall determine the spacing necessary to prevent impairment and to protect the public interest on a case by case basis.

(c) Except as set forth in subsection (e) below, each well that is described in an application for a permit to appropriate water for beneficial use or for a term permit, excluding any domestic or temporary well, shall meet the minimum spacing requirements set out in paragraphs (1) and (2) below.

(1) The minimum distance from the well which is the subject of the application to all other senior authorized non-domestic and non-temporary wells in the same aquifer or a hydraulically connected aquifer shall be:

(A) four miles between wells whose common source of supply is the confined Dakota aquifer system;

(B) one-half mile between wells whose common source of supply is the unconfined Dakota aquifer system; and

(C) 1320 feet for wells whose common source of supply is any other aquifer.

(2) In addition to meeting the minimum spacing requirements of paragraph (1) above, the minimum distance from the well which is the subject of the application to all domestic wells, except where the domestic well owner has given the applicant written permission to reduce the spacing interval, shall be:

(A) one-half mile for wells whose common source of supply is the confined Dakota aquifer system;

(B) 1320 feet for wells whose common source of supply is the unconfined Dakota aquifer system; and

(C) 660 feet for wells whose common source of supply is any other aquifer.

(d) Except as provided in subsection (e), the location of a well or wells on an application to change the point of diversion under an existing water right shall either:

(1) meet the spacing requirements in paragraphs (c)(1) and (c)(2) above; or

(2) not decrease the distance to other wells or authorized well locations by more than 300 feet.

(e) This regulation shall not apply if the chief engineer has adopted another regulation, or issued an order pursuant to K.S.A. 82a-1036 *et seq.*, specifying a different well spacing for the source of supply in which the proposed point of diversion is located.

(f) In the case of a battery of wells, the distance shall be measured from the geographic center of the points of diversion comprising the battery.

(g) If the proposed point of diversion does not meet the well spacing requirements in this regulation, the applicant shall be notified by the chief engineer in writing prior to dismissal that the requirements have not been met. The applicant shall then have 15 days to request time in which to submit additional information. Upon written request, the applicant shall be given a specified reasonable amount of time by the chief engineer to submit an engineering or similar type of hydrologic analysis to show that the spacing can be decreased without impairing existing rights or prejudicially and unreasonably affecting the public interest. The burden shall be on the applicant to make such a showing to the satisfaction of the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-711; effective May 31, 1994.)

5-4-5. Approval of application for additional rate only. (a) Except as set forth in subsection (c), an application for a permit to appropriate water for beneficial use that requests only an increase in the authorized rate of diversion, and no net increase in maximum annual quantity, from a specific point of diversion already authorized by another water right or approval of application shall be exempt from complying with any safe yield, allowable appropriation, or similar type of criteria adopted by the chief engineer if both of the following conditions are met:

(1) The application requests only an increase in the authorized maximum rate of diversion of 15 percent or less.

(2) There has been no significant physical enlargement of the capacity of the original diversion works to divert water. If a well has been replaced, reconstructed, and reequipped in accordance with an approval of an application for change by the chief engineer pursuant to K.S.A. 82a-708b and amendments thereto in substantially the same way that the original diversion works were constructed, that type of well shall not be considered to be a significant physical enlargement of the diversion works. Conversion to a battery of wells or adding an additional well shall be considered to be a significant physical enlargement of the capacity of the diversion works.

(b) Except as set forth in subsection (c), an application to increase the rate of diversion by more than 15 percent that requests no net increase in maximum annual quantity from a specific point of diversion already authorized by another water

right or approval of application shall be exempt from complying with any safe yield, allowable appropriation, or similar type of criteria adopted by the chief engineer if the conditions in either paragraph (b)(1) or (2) are met:

(1)(A) The application was filed within the time authorized to perfect any water right authorizing that point of diversion.

(B) The application is filed to increase the authorized maximum rate of diversion to the rate the original diversion works were physically capable of diverting water under actual maximum operating conditions, or less.

(2) The appropriator demonstrates to the chief engineer that authorizing an increase in the rate of diversion meets the following criteria:

(A) Will not impair existing water rights;

(B) will not prejudicially and unreasonably affect the public interest; and

(C) will not substantially increase the consumptive use in violation of K.A.R. 5-5-3.

(c) If the chief engineer adopts a regulation pertaining to applications for additional rate only for a specific groundwater management district, or issues an order concerning that type of application pursuant to an intensive groundwater use control area (IGUCA) proceeding authorized by K.S.A. 82a-1036 et seq. and amendments thereto, the application for additional rate shall be processed by the chief engineer pursuant to the provisions of that regulation or IGUCA order. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-701(f), K.S.A. 1999 Supp. 82a-711, K.S.A. 82a-712, K.S.A. 82a-1036, K.S.A. 82a-1037, K.S.A. 1999 Supp. 82a-1038, K.S.A. 82a-1039, and K.S.A. 82a-1040; effective Sept. 22, 2000.)

5-4-8. Custodial care of the state. (a) For any groundwater or surface water right placed in the custodial care of the state, the following criteria shall be met by the chief engineer:

(1) Not reappropriate the water authorized to be diverted by a water right in the custodial care of the state;

(2) continue to include the priority, terms, limitations, authorized rate and quantity, and other conditions of the water right in any analysis or action conducted for the permitting, management, regulation, or administration of other water rights or applications to appropriate water;

(3) not declare the water right abandoned for the nonuse of water. Placement of the water right in the custodial care of the state shall be deemed

to be due and sufficient cause for nonuse of a water right pursuant to K.S.A. 82a-718 and amendments thereto; and

(4) not dismiss the water right, unless the chief engineer determines that the geographic area in which the water right is located no longer meets the requirements of K.S.A. 2-1919(2), and amendments thereto, and reopens the area to new appropriations of water.

(b) A water right owner desiring to place a portion of an existing water right in the custodial care of the state shall request the division to divide the water right. Each portion of a divided water right shall be treated as a separate water right and administered accordingly. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(d) and K.S.A. 1999 Supp. 82a-718; effective Sept. 22, 2000.)

Article 5.—CHANGE IN THE PLACE OF USE, THE POINT OF DIVERSION OR THE USE MADE OF WATER UNDER AN EXISTING WATER RIGHT

5-5-1. Filing an application for change. (a)

An application for approval to change the place of use, the point of diversion, the use made of water, or combinations thereof, filed pursuant to K.S.A. 82a-708b and amendments thereto, shall be made on a form prescribed by the chief engineer and shall include whatever information is required by the chief engineer to properly understand the proposed change in the place of use, the point of diversion, the use made of water, or any combination of these.

(b) Before the application may be accepted for filing, the application shall be signed by at least one owner of the water right, or a duly authorized agent of an owner.

(c) Except as set forth in subsection (e), before any approval of an application can be granted, all of the water right owners, including their spouses, or a duly authorized agent of the owners of the water right, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application, or a written request is filed by one or more owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) (1) An application to change the location of a groundwater point of diversion that proposes to do only the following shall be signed by at least

one owner of the approval of application or water right, or the duly authorized agent, who verifies upon oath or affirmation all of the items specified below in paragraph (e)(2):

(A) Move the location of the well 300 or fewer feet; and

(B) have the new well located on land owned by all the same owners as the owners of the original point of diversion.

(2) (A) The signer of the application for change has the authority to sign the application on behalf of all the owners.

(B) None of the ownership interests of any of the owners of the approval of application or water right will be adversely affected if the application for change is approved as filed.

(C) If the application is not approved expeditiously, there will be substantial damage to property, public health, or safety. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-708b; modified, L. 1978, ch. 460, May 1, 1978; amended Sept. 22, 2000.)

5-5-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-708b; effective May 1, 1980; revoked May 1, 1983.)

5-5-2a. Complete change application. (a) An application to change a water right pursuant to K.S.A. 82a-708b, and amendments thereto, shall be considered to be a "complete application," if the application completely and accurately meets all of the requirements specified in this regulation and the following criteria:

(1) The requirements specified in K.S.A. 82a-708b, and amendments thereto;

(2) any water conservation plans required by the chief engineer pursuant to K.S.A. 82a-733, and amendments thereto;

(3) the requirements specified in K.A.R. 5-5-1;

(4) the requirements specified in K.A.R. 5-5-5;

(5) the requirements specified in K.A.R. 5-3-4d;

(6) a demonstration that the proposed point of diversion meets all applicable well spacing criteria; and

(7) the requirements of K.S.A. 82a-301 through K.S.A. 82a-305a, and amendments thereto, if the proposed point of diversion, or rediversion, is a dam or stream obstruction.

(b) If the applicant is requesting a waiver or exemption of a regulation pursuant to K.S.A. 82a-1904, and amendments thereto, the applicant shall submit a written request for the waiver or

exemption, and documentation to support the waiver or exemption.

(c) If the proposed point of diversion is located within the boundaries of a groundwater management district, a final recommendation or an analysis of water availability has been received from the groundwater management district within the time allowed by the chief engineer concerning the approval, denial, or modification of the application.

(d) If any questions have been raised concerning whether approval of the application could cause impairment of senior water rights or prejudicially and unreasonably affect the public interest, the applicant shall submit sufficient information to resolve those questions.

(e) If any actions are required to be taken by the applicant on other approvals of applications or water rights owned by the applicant in order to make the application for change approvable, including dismissals, division agreements, reductions in water rights in accordance with K.A.R. 5-7-5, and applications for change, all necessary forms shall be completed and filed with the chief engineer.

(f) If the application involves a change in the place of use or the use made of water, the applicant shall submit all information and data necessary to ensure that the consumptive use will not be increased substantially in violation of K.A.R. 5-5-3.

(g) If the application proposes to add one or more additional wells in accordance with the provisions of K.A.R. 5-5-16, the applicant shall submit all tests, data, and information required by that regulation.

(h) If there is an issue as to whether the water right for which the change application has been filed has been abandoned in whole or in part pursuant to K.S.A. 82a-718, and amendments thereto, the applicant shall submit whatever information is necessary to resolve all abandonment issues.

(i) Each application shall be accompanied by an aerial photograph or a detailed plat with a scale of one inch equals 1,320 feet, or a U.S. geological survey topographic map with a scale of 1:24,000. The following information shall be plotted on the plat, photograph, or topographic map:

(1) The section corners;

(2) the center of the section, identified by the section number, township, and range;

(3) the actual location of the currently authorized point of diversion and the location of the proposed point of diversion indicated by appropriate symbols;

(4) the location of the place of use identified by crosshatching or by some other appropriate method;

(5) the location of all other water wells of every kind within one-half mile of the well or wells to be authorized by the proposed appropriation, each of which shall be identified by its use and the name and mailing address of the owner, if the proposed appropriation is for use of groundwater;

(6) the name and mailing address of the owner or owners of each tract of land adjacent to the stream for a distance of one-half mile upstream and one-half mile downstream from the property lines of the land owned or controlled by the applicant, if the proposed appropriation is for the use of surface water;

(7) the locations of proposed or existing dams, dikes, reservoirs, canals, pipelines, power-houses, and other structures for the purpose of storing, conveying, or using water; and

(8) a north arrow and scale.

All information shown on the photograph, plat, or map shall be legible. Black line prints may be submitted in lieu of the original drawing if a plat is submitted.

(j) The applicant shall certify on the application that all water wells of any kind located within one-half mile of the requested point of diversion have been plotted on the plat, photograph, or map attached to the application.

(k) The applicant shall submit all information and data necessary to demonstrate that the application complies with the applicable regulations adopted by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-708b, K.S.A. 82a-709, K.S.A. 82a-710, K.S.A. 2002 Supp. 82a-711, K.S.A. 2002 Supp. 82a-718, K.S.A. 82a-733, and K.S.A. 2002 Supp. 82a-1904; effective Oct. 24, 2003.)

5-5-3. Change in consumptive use. The extent of consumptive use shall not be increased substantially after a vested right has been determined or the time allowed in which to perfect the water right has expired, including any authorized extension of time to perfect the water right. (Authorized by K.S.A. 82a-706a, 82a-708b; effective May 1, 1983.)

5-5-4. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-708b; effective May 1, 1980; revoked May 1, 1981.)

5-5-5. Signatures required on change applications. If more than one person is the owner of a water right, and an application is filed for a

change in the place of use, point of diversion, use made of the water, or any combination thereof, only the signature(s) of the landowner(s) whose portion of the water right(s) is (are) involved in the change shall be required on the application. If the extent of each owners interest in the water right has not been legally determined, then all landowners holding an undetermined portion of the water right must sign the change application or the landowners must submit an agreement signed by all landowners agreeing how the water right should be divided. (Authorized by K.S.A. 82a-706a and 82a-708b; effective May 1, 1980.)

5-5-6. Failure to construct diversion works at authorized location. (a) If an application to appropriate water for beneficial use is approved by the chief engineer, the location of the point of diversion shall be limited to a specific tract of land and to within 300 feet of a point identified in distances measured in feet north and west from the southeast corner of the legal section.

(b) If the diversion works were not constructed at the location authorized for the point of diversion, but the appropriator can demonstrate to the satisfaction of the chief engineer that all of the following criteria have been met, the authorized location shall be corrected to the actual location of the point of diversion by a correctional order issued by the chief engineer:

(1) The original application was filed before January 1, 1978.

(2) The diversion works were constructed before the date the original application to appropriate water was signed.

(3) It was not discovered that the actual diversion works were not constructed at the authorized point of diversion until after the application was approved.

(4) The diversion works were constructed at a location that could have been approved at the time the original application was filed based on the criteria in effect at the time the original application was filed.

(c) An application for a change in point of diversion filed pursuant to K.S.A. 82a-708b and amendments thereto shall be approved by the chief engineer, authorizing the actual location where the diversion works were constructed and extending the time to construct the diversion works until the end of the calendar year in which the application to change the point of diversion was approved, if the diversion works were not constructed at the authorized location, but the ap-

proprietor can demonstrate to the satisfaction of the chief engineer that all of the following criteria have been met:

(1) The original application was filed with the chief engineer before January 1, 1978.

(2) The diversion works were completed after the application was filed, but within the time authorized to construct the diversion works.

(3) The diversion works were constructed within 1,320 feet of the authorized point of diversion.

(4) The diversion works were constructed at a location that could have been approved at the time that the original application was filed based upon the criteria in effect at the time the original application was filed.

(5) The change application meets the other criteria of K.S.A. 82a-708b and amendments thereto.

If the actual point of diversion is within a groundwater management district, the application shall be sent to the groundwater management district board for review and recommendation.

(d) The point of diversion shall be authorized at the actual location by approval of a new application to appropriate water by the chief engineer if the diversion works were not constructed at the authorized location, but the proprietor can demonstrate to the chief engineer that all of the following criteria have been met:

(1) The original application was filed on or after January 1, 1978.

(2) The diversion works were subsequently completed within the time authorized to complete the diversion works.

(3) The diversion works were constructed within 1,320 feet of the authorized point of diversion.

(4) The time authorized to complete the diversion works has expired.

(5) There is no water available for a new appropriation to be approved at the location of the actual point of diversion.

(6) The application would have met all the criteria for a new application that were in effect at the time the original new application was filed.

If the actual point of diversion is within a groundwater management district, the application shall be sent to the groundwater management district board for review and recommendation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-708b, and K.S.A. 82a-728; effective May 1, 1980; amended Sept. 22, 2000.)

5-5-6c. Authorized point of diversion or place of use. (a) If a point of diversion or place

of use meets the following conditions, the authorized location shall be administratively corrected by the chief engineer to the more accurate location and the owner notified of this action:

(1) Has been determined by the chief engineer to be located at the authorized location by a vested right determination, a certificate of appropriation, or other similar action or approval by the chief engineer;

(2) has not been physically moved or expanded since the location was certified or otherwise approved by the chief engineer; and

(3) is determined by the chief engineer to be incorrect based on a more accurate survey, a global positioning system determination, or other reliable means.

No enforcement action shall be taken against the owner of the water right solely because the location was determined to be at an unauthorized location with the use of better technology than was previously available.

(b) The maximum annual quantity of water authorized to be used by the water right shall not be decreased or increased because of any administrative correction made to the water right pursuant to subsection (a). (Authorized by and implementing K.S.A. 82a-706a; effective Oct. 31, 2008.)

5-5-7. Waste of water. Each person shall not commit a waste of water as defined in these regulations. Upon a finding by the chief engineer that waste of water has occurred, the chief engineer may suspend use of that water right until the owner shows to the satisfaction of the chief engineer that the waste of water will no longer occur. (Authorized by K.S.A. 82a-706(a); implementing K.S.A. 82a-706; effective Dec. 3, 1990.)

5-5-8. Standards for approval of an application for a change in the place of use and a change in the use made of water. (a) Each application for a change in the place of use or the use made of water which will materially injure or adversely affect water rights or permits to appropriate water with priorities senior to the date the application for change is filed shall not be approved by the chief engineer.

(b) Each approval of a change application shall be conditioned by the chief engineer with the terms, conditions and limitations the chief engineer deems necessary to protect the public interest and enforce the terms of K.A.R. 5-5-3.

(c) As used in K.A.R. 5-5-3, “consumptive use” means gross diversions minus:

(1) waste of water, as defined in K.A.R. 5-1-1(cc); and

(2) return flows to the source of water supply:

(A) through surface water runoff which is not waste; and

(B) by deep percolation.

(d) The maximum annual quantity and maximum rate of diversion of water authorized by an approval of an application for a change in the use made of water shall not exceed the maximum annual quantity or maximum rate of diversion perfected at the time the application for change in the use made of water is filed with the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-708b; effective Nov. 28, 1994.)

5-5-9. Approval of application for change in the use made of water from irrigation to any other type of beneficial use of water. (a)

The approval of a change in the use made of water from irrigation to any other type of beneficial use of water shall not be approved if the change will cause the net consumptive use from the local source of water supply to be greater than the net consumptive use from the same local source of water supply by the original irrigation use based on the following requirements:

(1) The maximum annual quantity of water to be allowed by the approved change shall be the authorized quantity of the water right multiplied by the consumptive use percentage specified for the county within which the change is approved, as shown on the department’s map titled “consumptive use percentages in Kansas, by county,” dated August 3, 2017 and hereby adopted by reference.

(2) In determining whether the net consumptive use of water will be increased by the proposed change in the use made of water, the applicant shall be given credit by the chief engineer for any return flows from the proposed type of beneficial use of water that will return to the same local source of supply as the return flows from the originally authorized type of beneficial use of water, as substantiated by the applicant to the satisfaction of the chief engineer by an engineering report or similar type of hydrologic analysis.

(3) The authorized quantity to be changed to the new type of beneficial use of water shall never exceed the maximum annual quantity authorized by the water right.

(4) If a water right that overlaps the authorized place of use of one or more other water rights, either in whole or in part, is being changed to a different type of beneficial use of water, the total net consumptive use of all water rights after the change is approved shall not exceed the total net consumptive use of all of the rights before the change is approved.

(5) The approval for a change in the use made of water shall also be limited by that quantity reasonable for the use proposed by the change in the use made of water in order to prevent waste pursuant to K.A.R. 5-1-1.

(b) Upon request of the applicant, the historic net consumptive use actually made during the perfection period, or before June 28, 1945 for vested rights, under the water right proposed to be changed shall be considered by the chief engineer. The burden shall be on the owner to document that historic net consumptive use with an engineering study, or equivalent documentation and analysis, and demonstrate to the satisfaction of the chief engineer that the analysis submitted by the applicant is a more accurate estimate of the historic net consumptive use than the net consumptive use calculated using the methodology specified in paragraph (a)(1).

(c) If the methods specified in subsection (a) produce an authorized annual quantity of water that could result in impairment of other water rights, the chief engineer shall make a site-specific net consumptive use analysis to determine the quantity of water that was actually beneficially consumed under the water right. If the water right is within a groundwater management district and the district has additional site-specific data available, the data may be submitted to the chief engineer for consideration. The quantity approved shall be limited to the quantity determined to be reasonable by the chief engineer’s analysis.

(d) A term permit that would increase the consumptive use of the water right or would otherwise circumvent the limits specified in this regulation shall not be issued to any applicant. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended Sept. 22, 2017.)

5-5-10. Partial changes in the use made of water from irrigation to another type of beneficial use of water. (a) If an irrigation right is to be divided and only a portion of the rate and quantity will be changed to a different beneficial

use of water, only that portion of the annual quantity of the water right being changed to a different type of beneficial use of water shall be reduced as necessary to prevent the net consumptive use from increasing.

(b) The authorized place of use for the irrigation right may be reduced in proportion to the reduction in annual quantity caused by the change. If the irrigator wants to retain more than that person's proportional allotment of acres after the change, the procedures specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine whether the irrigator shall be allowed to retain more acreage.

(c) The authorized rate of diversion shall be divided between the irrigation use and the non-irrigation use. Each reasonable division of the rate by the parties shall be approved. A reasonable division of the rate shall be based on the actual rate of withdrawal at the time of the application and the existing physical conditions of the water source at the time of the application. The division of the maximum rate of diversion shall not be required to be proportional to the division of the quantity if the division of the rate of diversion is reasonable to divert each portion of the annual quantity of water after the division of the water right is made.

(d) The division of the annual quantity shall be calculated as follows:

(1) Calculate the maximum quantity that could be changed to another type of beneficial use of water if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(2) Divide the annual quantity sought to be changed to the new beneficial use of water by the maximum quantity that could be changed if the entire water right were changed. The result shall be the percentage of the entire reduced water right that will be changed to the new beneficial use of water. The remaining percentage of the current water right may be retained by the irrigation water right owner.

(3) Multiply the remaining percentage times the total currently authorized quantity. The result shall be the annual quantity of water that may be retained by the irrigation water right owner. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended Sept. 22, 2017.)

5-5-11. Applications for change in place of use for irrigation purposes. (a) For the purpose of this regulation, "base acreage" means:

(1) the maximum number of acres actually legally irrigated in any one calendar year on or before December 31, 1994 if the perfection period expired on or before December 31, 1994 or the water right is a vested right; or

(2) if the perfection period expires after December 31, 1994, and the perfection period has not expired at the time the change application has been filed, the base acreage shall be the number of acres authorized by the permit; or

(3) if the perfection period expires after December 31, 1994, and the perfection period has expired at the time the change application was filed, the base acreage shall be the maximum acreage legally irrigated in any one calendar year during the perfection period.

(4) Any year in which any of the terms, conditions and limitations of the water right or permit were violated shall not be used to determine base acreage.

(b) An application to change the authorized place of use for irrigation purposes which would permit the applicant to exceed the base acreage by 10 acres or 10 percent, whichever is less, shall not be approved by the chief engineer because it would result in a substantial increase in net consumptive use in violation of K.A.R. 5-5-3 except when one of the six following criteria are met.

(1) Identical places of use.

(A) The change application shall be filed only for the purpose of creating an identical place of use with another water right or rights;

(B) there shall not be a net increase in authorized acres;

(C) each water right involved in the proposed identical overlap in place of use shall be certified by the chief engineer prior to processing the change application if approval of the change application would authorize an increase in base acreage; and

(D) the total quantity authorized by all existing water rights and all permits involved shall be reasonable to irrigate the land authorized after the change in place of use is approved.

(2) Necessity to install more efficient irrigation system; limited acres and quantity.

(A) The change applicant shall submit information demonstrating to the satisfaction of the chief engineer that it is necessary to increase the base acreage so that a significantly more efficient irrigation delivery system may be installed. Types of crops to be grown or tillage practices used shall not be considered in deciding whether the proposed system is more efficient.

(B) If the chief engineer approves the application for a change in place of use pursuant to this subsection, the following limitations shall apply.

(i) The authorized quantity of water under the water right shall be limited to a 5 year fixed allocation, computed by dividing the net irrigation requirement (NIR), as set forth in K.A.R. 5-5-12, for the 50% chance rainfall for the county where the place of use is located, by an efficiency factor of 0.85, multiplying by the base acreage as determined in subsection (a) of this regulation, and then multiplying by 5. In any given year, the water right owner shall still be authorized to divert the maximum annual quantity authorized, provided that the 5 year allocation is not exceeded.

(ii) The maximum number of irrigated acres that shall be allowed under the proposed change in place of use shall be computed by multiplying the currently authorized annual quantity by 0.85 and dividing by the NIR, as set forth in K.A.R. 5-5-12, for the 80% chance rainfall for the county where the place of use is located.

(iii) The approval of the change shall be conditioned so that the use of water in excess of the five year allocation shall result in a two year suspension of all water use under that water right and a subsequent restriction of the authorized place of use to the base acreage at a location specifically set forth in the change approval.

(3) Necessity to install a more efficient irrigation system; limited quantity.

(A) The groundwater management district in which the point of diversion is located shall agree to assume monitoring responsibility to ensure compliance with the conditions of the change approval;

(B) the applicant shall submit information demonstrating to the satisfaction of the chief engineer that it is necessary to increase the base acreage so that a significantly more efficient irrigation delivery system may be installed;

(C) the applicant shall submit a feasible operation plan demonstrating to the satisfaction of the chief engineer that the amount of water available for appropriation under that water right is reasonable to irrigate the number of acres requested to be irrigated; and

(D) the water right owner shall have no recent pattern of water use significantly in excess of the maximum annual quantity of water authorized.

(E) If the chief engineer approves the application for a change in place of use pursuant to this subsection, the following limitations shall apply.

(i) The authorized quantity of water under the water right shall be limited to a 5 year fixed allocation, computed by dividing the net irrigation requirement (NIR), as set forth in K.A.R. 5-5-12, for the 50% chance rainfall for the county where the place of use is located by an efficiency factor of 0.85, multiplying by the base acreage irrigated as determined in subsection (a) of this regulation, and then multiplying by 5. In any given year, the water right owner shall still be authorized to divert the maximum annual quantity authorized, provided that the 5 year allocation is not exceeded.

(ii) The approval of the change shall be conditioned so that the use of water in excess of the five year allocation shall result in a two year suspension of all water use under that water right and a subsequent restriction of the authorized place of use to the base acreage at a location specifically set forth in the change approval.

(4) Rotation of the irrigated land within the authorized place of use.

(A) The point of diversion is located outside a groundwater management district or the groundwater management district in which the point of diversion is located shall agree to assume monitoring responsibility to ensure compliance with the conditions of the change approval;

(B) the water right owner shall have no recent pattern of water use significantly in excess of the maximum annual quantity of water authorized; and

(C) approval of the change application shall result in a net increase in the number of acres authorized for irrigation purposes solely for the purpose of rotation of the irrigated land within the authorized place of use.

(D) If the chief engineer approves the application for a change in place of use pursuant to this subsection, the following limitations shall apply.

(i) Approval of the change application shall be limited by the chief engineer so that the net acres physically irrigated in any one calendar year after the change approval shall not exceed the base acreage; and

(ii) the approval shall be conditioned so that the use of water on more than the maximum number of acres authorized to be irrigated in any one calendar year shall result in a two year suspension of all water use under that water right and a subsequent restriction of the authorized place of use to the base acreage at a location specifically set forth in the change approval.

(5) Specific groundwater management district regulation.

The application shall meet the criteria in a regulation adopted by the chief engineer pursuant to K.S.A. 82a-1028(o) and K.S.A. 82a-706a specifically for changes in place of use for irrigation purposes for the groundwater management district in which the point of diversion is located.

(6) No increase in historic net consumptive use.

The applicant shall demonstrate to the satisfaction of the chief engineer, with an engineering report or similar type of hydrologic analysis, that the historic net consumptive use will not be increased substantially if the proposed change in place of use is approved.

(c) If the chief engineer determines that the application cannot be approved as filed, the applicant shall be notified in writing by the chief engineer prior to denial that the change application requirements have not been met and the reason for the proposed denial.

(1) In this written notice the chief engineer shall allow the applicant 15 days to request time in which to submit additional information to show why the application should be approved.

(2) Upon written request, the applicant shall be given a reasonable time specified by the chief engineer to submit an engineering report or similar type of hydrologic analysis to show that approval of the change application will not substantially increase the historic net consumptive use.

(3) The applicant shall have the burden of demonstrating to the satisfaction of the chief engineer that approval of the change application will not cause the historic net consumptive use to be increased substantially.

(d) Whether or not the time to perfect the water right has expired, including any authorized extensions of time, the application for a change in place of use to change the size of the authorized place of use for irrigation purposes may be approved without the certificate of appropriation being issued except as provided in subsection (b)(1)(C) of this regulation.

(1) If a certificate of appropriation has not been issued, the increase in base acreage shall be determined based on reliable information.

(2) The types of acceptable information shall include, but not be limited to, field inspection reports or U.S. department of agriculture records.

(e) A flow meter meeting the specifications adopted by the chief engineer, and installed and maintained in a manner satisfactory to the chief

engineer, shall be required by the chief engineer in all cases where there is an increase in the base acreage authorized to be irrigated by the approval of the change in the place of use, except when:

(1) the application for change in place of use is filed solely to create an identical place of use with other water rights; and

(2) the total quantity authorized by all existing water rights and all permits to appropriate water that are involved equals or exceeds the NIR, as set forth in K.A.R. 5-5-12, in that county for a 50% chance rainfall divided by an irrigation efficiency of 0.85. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-708b; effective Nov. 28, 1994.)

5-5-12. Net irrigation requirements (NIR). The following amounts shall be used as the net irrigation requirements (NIR).

County	50% Chance Rainfall	80% Chance Rainfall
Allen	7.1" = 0.59'	9.9" = 0.83'
Anderson	6.1" = 0.51'	9.4" = 0.78'
Atchison	7.2" = 0.60'	10.3" = 0.86'
Barber	12.6" = 1.05'	14.6" = 1.22'
Barton	12.0" = 1.00'	14.4" = 1.20'
Bourbon	6.8" = 0.57'	9.6" = 0.80'
Brown	7.1" = 0.59'	10.6" = 0.88'
Butler	9.2" = 0.77'	12.0" = 1.00'
Chase	8.7" = 0.73'	11.4" = 0.95'
Chautauqua	8.6" = 0.72'	11.4" = 0.95'
Cherokee	7.0" = 0.58'	9.9" = 0.83'
Cheyenne	13.7" = 1.14'	15.4" = 1.28'
Clark	13.7" = 1.14'	15.7" = 1.31'
Clay	9.2" = 0.77'	12.2" = 1.02'
Cloud	10.3" = 0.86'	12.7" = 1.06'
Coffey	6.8" = 0.57'	9.9" = 0.83'
Comanche	13.0" = 1.08'	15.1" = 1.26'
Cowley	9.7" = 0.81'	12.3" = 1.03'
Crawford	7.0" = 0.58'	9.8" = 0.82'
Decatur	12.7" = 1.06'	14.8" = 1.23'
Dickinson	9.4" = 0.78'	12.3" = 1.03'
Doniphan	7.3" = 0.61'	10.3" = 0.86'
Douglas	6.8" = 0.57'	9.8" = 0.82'
Edwards	13.0" = 1.08'	15.1" = 1.26'
Elk	8.7" = 0.73'	11.3" = 0.94'
Ellis	12.2" = 1.02'	14.6" = 1.22'
Ellsworth	11.5" = 0.96'	13.7" = 1.14'
Finney	14.5" = 1.21'	16.3" = 1.36'
Ford	13.7" = 1.14'	15.7" = 1.31'
Franklin	5.8" = 0.48'	9.1" = 0.76'
Geary	8.4" = 0.70'	11.5" = 0.96'
Gove	13.1" = 1.09'	15.3" = 1.28'
Graham	12.4" = 1.03'	14.7" = 1.23'
Grant	14.9" = 1.24'	16.7" = 1.39'
Gray	13.8" = 1.15'	16.1" = 1.34'
Greeley	14.7" = 1.23'	16.5" = 1.38'
Greenwood	8.1" = 0.68'	11.1" = 0.93'
Hamilton	15.2" = 1.27'	16.9" = 1.41'

County	50% Chance Rainfall	80% Chance Rainfall	County	50% Chance Rainfall	80% Chance Rainfall
Harper	11.7" = 0.98'	14.0" = 1.17'	Wichita	14.4" = 1.20'	16.3" = 1.36'
Harvey	10.2" = 0.85'	12.9" = 1.08'	Wilson	8.0" = 0.67'	10.7" = 0.89'
Haskell	14.5" = 1.21'	16.4" = 1.37'	Woodson	7.4" = 0.62'	10.4" = 0.87'
Hodgeman	13.4" = 1.12'	15.5" = 1.29'	Wyandotte	7.0" = 0.58'	9.8" = 0.82'
Jackson	7.4" = 0.62'	10.5" = 0.88'	(Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-708b; effective Nov. 28, 1994.)		
Jefferson	7.0" = 0.58'	10.1" = 0.84'	5-5-13. Relocation of alluvial wells. (a) If an authorized point of diversion is a well that has as its source of supply an alluvium in a reach of a basin that is fully appropriated or closed to new appropriations, the approval of a change in point of diversion, and any subsequent approvals of changes in points of diversion, shall not authorize the distance between the well and the centerline of the stream to be decreased by more than 10 percent as measured from the following:		
Jewell	10.6" = 0.88'	13.1" = 1.09'	(1) The authorized well location when the basin became fully appropriated or was closed to new appropriations; and		
Johnson	6.6" = 0.55'	9.5" = 0.79'	(2) the centerline of the stream when the change application was filed.		
Kearny	14.9" = 1.24'	16.6" = 1.38'	(b) Only for the purposes of applying this regulation, the term "stream" shall include the main stem and any tributary to the main stem that was a perennial stream when the basin was closed to new appropriations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2007 Supp. 82a-708b; effective Sept. 22, 2000; amended Oct. 31, 2008.)		
Kingman	11.7" = 0.98'	14.0" = 1.17'	5-5-14. Duties of owners of approvals of applications and water rights. (a) All of the owners of an approval of application or a water right shall be responsible for taking all legally required actions necessary to maintain the validity of the approval of application or water right, including the filing of statutorily required fees, reports, and applications.		
Kiowa	13.2" = 1.10'	15.1" = 1.26'	(b)(1) Unless the approval of application or the water right has been severed from the authorized place of use and unless the requirements specified in either paragraph (b)(2) or (b)(3) have been met, all of the owners of the authorized place of use shall be considered to be the owners of the approval of application or the water right.		
Labette	7.3" = 0.61'	10.3" = 0.86'	(2) Unless the chief engineer has documentation to the contrary, an approval of application or water right for municipal use shall be considered to be owned by the entity owning and operating the water distribution system. A water right for an irrigation district shall be considered to be owned by the irrigation district.		
Lane	13.7" = 1.14'	15.7" = 1.31'			
Leavenworth	7.0" = 0.58'	9.9" = 0.83'			
Lincoln	11.3" = 0.94'	13.6" = 1.13'			
Linn	5.6" = 0.47'	9.0" = 0.75'			
Logan	13.9" = 1.16'	15.8" = 1.32'			
Lyon	7.5" = 0.63'	10.5" = 0.88'			
Marion	9.6" = 0.80'	12.2" = 1.02'			
Marshall	8.7" = 0.73'	11.4" = 0.95'			
McPherson	10.8" = 0.90'	13.1" = 1.09'			
Meade	14.3" = 1.19'	16.1" = 1.34'			
Miami	5.0" = 0.42'	9.0" = 0.75'			
Mitchell	10.8" = 0.90'	13.3" = 1.11'			
Montgomery	8.1" = 0.68'	10.9" = 0.91'			
Morris	8.5" = 0.71'	11.4" = 0.95'			
Morton	15.4" = 1.28'	17.1" = 1.43'			
Nemaha	7.8" = 0.65'	10.9" = 0.91'			
Neosho	7.1" = 0.59'	10.2" = 0.85'			
Ness	13.3" = 1.11'	15.3" = 1.28'			
Norton	12.3" = 1.03'	14.4" = 1.20'			
Osage	7.0" = 0.58'	9.9" = 0.83'			
Osborne	11.7" = 0.98'	13.8" = 1.15'			
Ottawa	10.5" = 0.88'	12.9" = 1.08'			
Pawnee	12.7" = 1.06'	14.9" = 1.24'			
Phillips	11.7" = 0.98'	14.0" = 1.17'			
Pottawatomie	8.1" = 0.68'	11.1" = 0.93'			
Pratt	12.6" = 1.05'	14.6" = 1.22'			
Rawlins	13.2" = 1.10'	15.1" = 1.26'			
Reno	11.4" = 0.95'	13.8" = 1.15'			
Republic	10.0" = 0.83'	12.6" = 1.05'			
Rice	11.5" = 0.96'	13.8" = 1.15'			
Riley	8.5" = 0.71'	11.4" = 0.95'			
Rooks	12.0" = 1.00'	14.3" = 1.19'			
Rush	12.6" = 1.05'	14.8" = 1.23'			
Russell	11.3" = 0.94'	14.1" = 1.18'			
Saline	10.8" = 0.90'	13.1" = 1.09'			
Scott	14.0" = 1.17'	15.9" = 1.33'			
Sedgwick	10.7" = 0.89'	13.1" = 1.09'			
Seward	14.5" = 1.21'	16.4" = 1.37'			
Shawnee	7.4" = 0.62'	10.2" = 0.85'			
Sheridan	12.9" = 1.08'	15.0" = 1.25'			
Sherman	14.1" = 1.18'	15.7" = 1.31'			
Smith	11.4" = 0.95'	13.6" = 1.13'			
Stafford	12.3" = 1.03'	14.5" = 1.21'			
Stanton	15.6" = 1.30'	17.2" = 1.43'			
Stevens	14.8" = 1.23'	16.8" = 1.40'			
Sumner	10.3" = 0.86'	13.2" = 1.10'			
Thomas	13.5" = 1.13'	15.4" = 1.28'			
Trego	12.9" = 1.08'	15.0" = 1.25'			
Wabaunsee	7.8" = 0.65'	10.7" = 0.89'			
Wallace	14.3" = 1.19'	16.1" = 1.34'			
Washington	9.2" = 0.77'	12.0" = 1.00'			

(3) Unless the chief engineer has documentation to the contrary, an approval of application or water right that authorizes water to be used for either of the following shall be considered to be owned by the watershed district:

- (A) Sediment control in a reservoir; or
- (B) recreation in a reservoir constructed, maintained, and operated by a watershed district. (Authorized by and implementing K.S.A. 82a-706a; effective Sept. 22, 2000; amended Oct. 31, 2008.)

5-5-16. Additional wells. (a) An application to change a point of diversion by adding an additional point of diversion to divert groundwater, by either constructing a new well or moving a portion of a water right to a well that has previously been authorized by the chief engineer, shall not be approved unless the application meets the following requirements:

(1) Each proposed point of diversion shall meet the requirements of K.S.A. 82a-708b, and amendments thereto, and any applicable regulations adopted by the chief engineer.

(2) The total maximum quantity of water authorized to be diverted each calendar year by the original well or wells, and the additional well or wells, shall not exceed any of the following limits:

(A) The maximum annual quantity of water that has been perfected;

(B) the maximum annual quantity of water authorized to be diverted before approval of the change; or

(C) the maximum consumptive use of water during the perfection period as required by K.A.R. 5-5-3 and as specified in either of the following:

(i) If the water right authorizes the use of water for irrigation use, the consumptive use of water shall be presumed to not be increased in violation of K.A.R. 5-5-3 if the maximum annual quantity requested does not exceed the quantity in acre-feet calculated by use of the following formula: multiply the maximum number of acres legally irrigated in any one year during the perfection period by the 80 percent chance net irrigation requirements (N.I.R.), as specified in K.A.R. 5-5-12 expressed in acre-feet, and divide that number by a delivery efficiency of 0.85; or

(ii) if the water right authorizes the use of water for irrigation and an additional well or wells are authorized for a beneficial use of water that is not irrigation, the consumptive use of the portion of the water right used for irrigation shall be determined as specified in paragraph (a)(2)(C)(i). The

non-irrigation portion of the water right available for diversion shall be determined as specified in K.A.R. 5-5-9 and K.A.R. 5-5-10.

(3) The total maximum rate of diversion that may be authorized for the original well or wells and the additional well or wells shall not be greater than the total maximum rate of diversion that could have been diverted from the original well or wells if they were currently being replaced by new wells at substantially the originally authorized location or locations in the same local source of supply. The maximum rate of diversion shall be one of the following:

(A) The total rate of diversion based on a current water flow rate test done on the point or points of diversion; or

(B) a value resulting from a hydraulic analysis, which may include rate tests, pump tests, and water level data, submitted by the applicant and acceptable to the chief engineer based on the veracity of its data and its proper application of scientific principles, showing the current capacity of the aquifer to yield water at the currently authorized point or points of diversion.

(4) A condition shall be placed on the approval of the application for change authorizing the additional well or wells that provides that, for the sole purpose of administering wells concerning direct impairment, the additional well or wells shall be considered to have the priority of the date the application was filed to add the additional well or wells.

(b) The applicant shall submit the following information:

(1) A well completion log of the currently authorized well or a stratigraphic log of a test hole located within 300 feet of the currently authorized well;

(2) the depth of the currently authorized well;

(3) the current depth to the static water level of the currently authorized well;

(4) a stratigraphic log of a test hole located within 300 feet of the proposed location of each of the proposed additional well or wells; and

(5) any additional information that the chief engineer may require to understand the nature of the proposed additional well or wells.

(c) The proposed additional well or wells shall meet one of the following conditions:

(1) Meet the well spacing requirements to all other wells with a priority earlier than the date on which the change application was filed; or

(2) demonstrate by a hydraulic analysis, which may include rate tests, pump tests, and water level data, as submitted by the applicant and acceptable

to the chief engineer based on the veracity of its data and its proper application of scientific principles, that the approval of an additional well within 300 feet of a currently authorized well location, or within the geographic center of a currently authorized battery of wells, will neither impair any water rights senior to the date on which the application for change was filed nor prejudicially affect the public interest.

(d) Each point of diversion authorized by an approval of an application for change for an additional well shall have a specific assignment of a maximum instantaneous rate of diversion and a maximum annual quantity of water.

(e) Each well authorized by a water right that has been changed under the provisions of this regulation shall be equipped with a separate water flowmeter that meets or exceeds the specifications for water flowmeters adopted by the chief engineer.

(f) Each approval of an additional well or wells shall have a condition that reserves jurisdiction for the chief engineer to review the approval of the additional well or wells at intervals of at least five years, and not more than 10 years, to determine if the total annual quantity of water actually being withdrawn by all wells authorized by the approval of an application for change is exceeding the total annual quantity of water that could have been physically withdrawn if the additional well or wells had not been approved. If the chief engineer determines during the review that the total annual quantity being withdrawn by all the wells, including the additional wells, exceeds the total annual quantity of water that could have been physically withdrawn by the original well or wells, the total maximum annual quantity that can be withdrawn by all the wells shall be reduced by the chief engineer to the total maximum annual quantity that could have been physically withdrawn by the original well or wells. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-708b; effective Sept. 22, 2000; amended Oct. 24, 2003; amended Sept. 22, 2017.)

Article 6.—STORAGE OF WATER

5-6-1. Application proposing storage, contents. Any person intending to store water may make application to the chief engineer in the same manner as any other person making application for permit to appropriate water for beneficial use. The application shall set forth the same general information as any other applica-

tion for permit to appropriate water for beneficial use and, in addition, shall be accompanied by information to show:

(a) The area-capacity data of the reservoir in which the water is to be stored.

(b) The drainage area.

(c) The names and mailing addresses of the owners of lands that will be inundated by water accumulated in the reservoir.

(d) Any additional information as may be required by the chief engineer for a proper understanding of the proposed appropriation and storage of water. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-6-2. Storage of water in watershed district reservoirs. (a) Each person filing an application for a permit to appropriate water for beneficial use and proposing to store the water in a watershed district reservoir shall submit one of the following with the application:

(1) A copy of an agreement or letter from the board of directors of the watershed district that states it was mutually agreed and understood at the time an easement was granted by the landowner that the landowner was to have the use of space in the sediment pool to store water to which the landowner is entitled under the water appropriation act; or

(2) a copy of a resolution by the board of directors that shows when the board allocated or gave to the applicant the use of all, or a specified part of, the sediment pool for the storage of water in accordance with the Kansas water appropriation act.

(b) If surface water will be stored in a watershed district reservoir with a capacity of more than 15 acre-feet and an application to appropriate water to be stored in the reservoir was not filed before July 1, 2008, a separate application shall be filed to appropriate water to store water in each watershed district reservoir.

(c) If a reservoir operated by a watershed district has a capacity of more than 15 acre-feet and no application to appropriate water has been filed with the chief engineer before July 1, 2008, the watershed district shall release, drain, pump, or siphon water from behind the dam and maintain the quantity of water stored behind the dam to 15 acre-feet or less. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and 82a-709; modified, L. 1978, ch. 460, May 1, 1978; amended Oct. 31, 2008.)

5-6-3. Potential net evaporation. (a) The Kansas department of agriculture, division of water resources' map titled "potential net evaporation, in inches, for Kansas," dated September 6, 1996, is hereby adopted by reference for the purpose of determining potential net evaporation from a free water surface.

(b) The values on the map shall be used in all situations in which determination of potential net evaporation from a free water surface is necessary, including the following:

(1) Calculating the maximum annual quantity of water allowed to be appropriated for the storage of surface water in a reservoir;

(2) computing the annual amount of evaporation that will be caused by exposing the groundwater table;

(3) calculating the quantity of evaporation from surface water or exposed groundwater that will be used to determine annual water use; and

(4) determining the maximum annual quantity of water that is perfected pursuant to K.S.A. 82a-714 and amendments thereto.

(c) The values shown on the map shall be used unless the applicant provides, or the chief engineer has available, better or more site-specific data concerning potential net evaporation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-6-4. Determination of potential annual runoff. (a) Unless the applicant for an approval of application supplies, or the chief engineer has available, better or more site-specific data, the potential annual runoff shall be determined using the following:

(1) A 20 percent chance of occurrence of runoff by extrapolating from the "annual yield of runoff" graph of the United States department of agriculture, natural resources conservation service, national engineering handbook series, part 650, engineering field handbook, EFM notice KS-38, dated December 12, 1991, which is adopted by reference;

(2) the soil cover complex number of the drainage basin, using the "generalized soil cover complex number" map of Kansas produced by the Kansas department of agriculture, division of water resources, dated August 1999, which is hereby adopted by reference;

(3) the normal annual precipitation in the watershed as set forth in K.A.R. 5-6-12; and

(4) the area of the watershed of the reservoir determined by using a United States geological survey 7½-minute topographic map.

(b) In computing the potential annual runoff of the watershed of the reservoir, if the quantity of water applied for, or authorized by, prior upstream surface water and groundwater applications, approvals of applications, and existing water rights within the watershed of the reservoir will significantly decrease the potential annual runoff available for appropriation in the reservoir, the impact of those rights on the potential annual runoff shall be subtracted from the total computed potential annual runoff in order to determine the potential annual runoff available. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e) and K.S.A. 1999 Supp. 82a-711; effective Sept. 22, 2000.)

5-6-5. Maximum reasonable annual quantity for storage of water for beneficial use in a reservoir.

The maximum reasonable annual quantity of water that may be authorized for appropriation by the chief engineer for diversion and storage in a reservoir shall be limited to the lesser of either of the following: (a) The potential annual runoff as determined pursuant to K.A.R. 5-6-4; or

(b) one of the following:

(1) (A) A three-year supply of water to be reddiverted for all authorized beneficial uses; and

(B) a three-year supply of water for indirect use; or

(2) if the total maximum annual quantity of water requested for storage in paragraphs (b)(1)(A) and (B) exceeds the reservoir capacity, the maximum annual quantity of water authorized to be diverted and stored in any one year shall not exceed the total of the following:

(A) The annual quantity of water reddiverted for beneficial use;

(B) the reservoir capacity; and

(C) one year of indirect use from the reservoir. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 82a-707(e), K.S.A. 2007 Supp. 82a-711, and K.S.A. 82a-712; effective Sept. 22, 2000; amended Oct. 31, 2008.)

5-6-6. Initial filling and refilling of a reservoir.

(a) The initial filling of a reservoir that has a capacity that exceeds the maximum annual quantity of water authorized shall be authorized by a special condition on the approval of application.

(b) Each refilling of a reservoir after the release of water for maintenance or similar reasons shall be required to be authorized by a term permit if the reservoir capacity exceeds the maximum annual quantity authorized. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-6-7. Determination of average annual potential net evaporation loss. The average annual potential net evaporation loss shall be determined by multiplying the surface area of the reservoir at the top of the reservoir capacity times the value for average annual potential net evaporation, as set forth in K.A.R. 5-6-3, for the township in which the point of diversion is located. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-6-8. Determination of average annual seepage loss from a reservoir. Average annual seepage loss from a reservoir shall be determined by the chief engineer based on relevant, credible information furnished by the applicant. If no relevant, credible information is supplied by the applicant, it shall be assumed by the chief engineer that there is no seepage loss. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-6-9. Administration of surface water stored in a reservoir. Water lawfully stored within any reservoir authorized to store water for subsequent beneficial use shall not be subject to administration unless senior water right holders downstream of the reservoir make an appropriate request to have water bypassed to satisfy their senior water right within two weeks of the runoff event, or any other time frame in which inflow to the reservoir could reasonably have been expected to be available to the downstream senior water right if the reservoir had not impounded the water. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706b; effective Sept. 22, 2000.)

5-6-10. Authorized place of use for stored surface water. The approval of application shall limit the authorized place of use to the actual location where the water will be put to beneficial use. If the authorized use is for recreational use within the reservoir only, the authorized place

of use shall not exceed the size and location of the surface area of the reservoir at the elevation of the top of the principal spillway. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711 and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-6-11. Reasonable rate of diversion for storage of surface water in a reservoir. Each approval of application shall limit the rate of diversion for storage of surface water in a reservoir to all natural flows not necessary to satisfy all of the following:

- (a) Senior water rights;
- (b) senior approvals of applications;
- (c) senior water reservation rights; and
- (d) senior minimum desirable stream flows pertaining to the use of water from the same source of water supply. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712; effective Sept. 22, 2000.)

5-6-12. Average annual precipitation. (a) The Kansas department of agriculture, division of water resources' map titled "normal annual precipitation, by township, 1961-1990," dated September 29, 1999, is hereby adopted by reference for the purpose of determining average annual precipitation.

(b) The data on the map shall be used in all situations in which the determination of average annual precipitation is necessary, including calculating the maximum annual quantity of water allowed to be appropriated for the storage of surface water in a reservoir.

(c) The values shown on the map shall be used unless the applicant provides, or the chief engineer has available, better or more site-specific data concerning average annual precipitation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711; effective Sept. 22, 2000.)

5-6-13. Water level measurement tube specifications. (a) The Kansas department of agriculture, division of water resources' document titled "specifications for water level measurement tube," dated November 5, 1999, is hereby adopted by reference.

(b) If a water level measurement tube is required by the chief engineer to be installed, the required water level measurement tube shall be installed in accordance with the specifications for water level measurement tubes adopted by the chief engineer. These requirements are in addi-

tion to those made by the Kansas department of health and environment pursuant to the groundwater exploration and protection act, K.S.A. 82a-1201 et seq., and amendments thereto.

(c) As long as the well is permitted, the water level measurement tube shall be maintained in a satisfactory condition. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000.)

5-6-13a. Check valve specifications. The Kansas department of agriculture, division of water resources' document titled "check valve specifications," dated March 14, 2003, is hereby adopted by reference. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706, K.S.A. 82a-706a, and K.S.A. 82a-712; effective Oct. 24, 2003.)

5-6-14. Irrigation with effluent from a confined feeding facility lagoon. An individual who irrigates with effluent pumped from a confined feeding facility lagoon or runoff retention pit shall not be required to have an approval of application pursuant to K.S.A. 82a-701 et seq. and amendments thereto, unless there are more than 15 acre-feet of average annual runoff meeting the following criteria:

(1) Is generated from outside of the confined feeding facility;

(2) is impounded in the lagoon or runoff retention pit; and

(3) is used for irrigation purposes. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-705 and 82a-707(a); effective Sept. 22, 2000.)

5-6-15. Drainage basin boundaries. (a) The following electronic data files, all dated February 14, 2002, prepared by the division of water resources, Kansas department of agriculture, using data developed by the United States geological survey and the natural resource conservation service, are hereby adopted by reference by the chief engineer for the purpose of defining the boundaries of the 62 drainage basins in Kansas:

(1) dwrbasins.dbf;

(2) dwrbasins.sbn;

(3) dwrbasins.sbx;

(4) dwrbasins.shp; and

(5) dwrbasins.shx.

(b) The electronic data files described in subsection (a) shall be used in all situations in which determination of the basin boundaries is necessary.

(c) The boundaries shown in the electronic data files shall be used unless the applicant provides,

or the chief engineer has available, better or more site-specific data concerning the actual drainage basin boundaries. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-706a; effective Sept. 22, 2000; amended Oct. 24, 2003.)

Article 7.—ABANDONMENT AND TERMINATION

5-7-1. Due and sufficient cause for non-use. (a) Each of the following circumstances shall be considered "due and sufficient cause," as used in K.S.A. 82a-718 and amendments thereto:

(1) Adequate moisture from natural precipitation exists for the production of grain, forage, or specialty crops, as determined by the moisture requirements of the specific crop.

(2) A right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought.

(3) Water is not available from the source of water supply for the authorized use at times needed.

(4) Water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture, and water conservation, as documented by any of the following:

(A) Furnishing to the chief engineer a copy of a contract showing that land that has been lawfully irrigated with a water right that has not been abandoned is enrolled in a multiyear federal or state conservation program that has been approved by the chief engineer;

(B) enrolling the water right in the water right conservation program in accordance with K.A.R. 5-7-4, K.A.R. 5-7-4b, and K.S.A. 2013 Supp. 82a-741 and amendments thereto; or

(C) any other method acceptable to the chief engineer that can be adequately documented by the owner before the nonuse takes place.

(5) Management and conservation practices are being applied that require the use of less water than authorized. If a conservation plan has been required by the chief engineer, the management and conservation practices used shall be consistent with the conservation plan approved by the chief engineer to qualify under this subsection.

(6) The chief engineer has previously approved the placement of the point of diversion in a stand-by status in accordance with K.A.R. 5-1-2.

(7) Physical problems exist with the point of diversion, distribution system, place of use, or the

operator. This circumstance shall constitute due and sufficient cause only for a period of time reasonable to correct the problem.

(8) Conditions exist beyond the control of the owner that prevent access to the authorized place of use or point of diversion, as long as the owner is taking reasonable affirmative action to gain access.

(9) An alternate source of water supply was not needed and was not used because the primary source of supply was adequate to supply the needs of the water right owner.

(10) The chief engineer determines that a manifest injustice would result if the water right were deemed abandoned under the circumstances of the case.

(11) The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer but is not closed by a safe-yield analysis.

(12) The water right has been deposited in a water bank authorized by K.S.A. 2013 Supp. 82a-761 through K.S.A. 2013 Supp. 82a-773, and amendments thereto.

(13) Water use, as authorized by the water right, is suspended because the water right is enrolled in a multiyear flex account, pursuant to K.S.A. 2013 Supp. 82a-736 and amendments thereto.

(b) In addition to circumstances considered due and sufficient cause pursuant to subsection (a), both of the following requirements shall also be met to constitute due and sufficient cause for nonuse of water:

(1) The reason purporting to constitute due and sufficient cause shall have in fact prevented, or made unnecessary, the authorized beneficial use of water.

(2) Except for the temporarily discontinued use of water as provided by paragraph (a)(4) and for physical problems with the point of diversion or distribution system as provided by paragraph (a)(7), the owner shall maintain the diversion works in a functional condition.

(c) Each year of nonuse for which the chief engineer finds that due and sufficient cause exists shall be considered to interrupt the successive years of nonuse for which due and sufficient cause does not exist.

(d) When a verified report of the chief engineer, or the chief engineer's authorized representative, is made a matter of record at a hearing held pursuant to K.S.A. 82a-718, and amendments thereto, that establishes nonuse of a water right for five or more successive years, the water right owner shall have

the burden of showing that there have not been five or more successive years of nonuse without due and sufficient cause. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2013 Supp. 82a-718; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1986; amended May 31, 1994; amended Oct. 24, 2003; amended May 21, 2010; amended April 18, 2014.)

5-7-2. Waiver of hearing. The owner of a water right may waive any hearing on the questions of abandonment and termination of such right by letter to the chief engineer requesting that it be terminated and its priority forfeited. In the event of such waiver the chief engineer shall cause the termination and forfeiture of priority date to be made a matter of record in his office and shall notify the owner of the water right of his or her action by regular mail. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978.)

5-7-3. (Authorized by K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; revoked May 31, 1994.)

5-7-4. Water rights conservation program; tier 1. (a) Applications for enrollment in the water rights conservation program (WRCP) received on or before December 31, 2009, shall be considered for enrollment in the program as tier 1 applications. Enrollment in tier 1 of the WRCP approved by the chief engineer and continued compliance with the WRCP shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718, and amendments thereto, and K.A.R. 5-7-1.

(b) In order to qualify for enrollment in the WRCP as a tier 1 applicant, all of the following requirements and conditions shall be met:

(1) The point of diversion shall be located in either of the following locations:

(A) An area that is closed to new appropriations of water, except for temporary permits, term permits, and domestic use; or

(B) some other area designated by the chief engineer as an area where it would be in the public interest to allow water rights to be placed in the WRCP. In areas within the boundaries of a groundwater management district, the recommendations of the board of the district shall be taken into consideration by the chief engineer.

(2) Each of the owners of the water right shall agree to totally suspend all water use authorized by that water right for the duration of the contract.

(3) The owner or owners of the water right shall sign a contract with the chief engineer, or the chief engineer's authorized representative, before placing the water right into the WRCP. The contract shall be binding on all successors in interest to the water right owner.

(4) Only an entire water right may be placed into the WRCP. If a portion of a water right has been abandoned, the portion that is still in good standing may be enrolled in the WRCP. If a water right is administratively divided by the chief engineer, each portion of that divided water right shall be considered to be an entire water right for the purpose of this regulation.

(A) If at least five successive years of nonuse have occurred before application for enrollment in the WRCP, a determination of whether or not that water right is subject to abandonment before entry into the program, including an analysis of any reasons given that might constitute due and sufficient cause for nonuse, shall be made by the chief engineer.

(B) If, after review of the information, it appears that the right has been abandoned, the statutory procedures, including the right to a hearing, shall be followed to determine whether or not the right has been abandoned.

(5) Only the portion of a water right in good standing at the time of application for enrollment may be entered into the WRCP.

(c) Other requirements of enrollment in the WRCP program shall include the following:

(1) Water rights shall be placed into the WRCP for a definite period of calendar years of no fewer than five and no more than 10. Each WRCP contract shall terminate upon expiration of the time period specified in the contract.

(2) The water right owner or operator shall not be required to maintain the diversion works or delivery system during the period of the WRCP contract. If the pump is removed from a well, the well shall be properly capped or sealed during the contract. These requirements shall be in addition to those made by the Kansas department of health and environment pursuant to the groundwater exploration and protection act, K.S.A. 82a-1201 et seq. and amendments thereto.

(3) A certificate determining the extent to which a water right has been perfected shall be issued by the chief engineer before entering the water right into the WRCP if all of the following conditions are met:

(A) An applicant has a permit to appropriate water for beneficial use and has perfected all, or any portion, of the water right authorized by the permit.

(B) The time in which to perfect the water right has expired, including any authorized extensions of time.

(C) A field inspection has been completed.

(4) If the time to perfect the water right, or any authorized extension of that right, has not expired, enrollment in the WRCP shall be considered as suspending the time to perfect. Upon expiration of the WRCP contract pertaining to this water right, the time to perfect shall again commence, and the applicant shall be required to perfect the water right within the remainder of the time allowed to perfect, or any authorized extension of that time.

(5) Each year after authorized enrollment in the WRCP, the water use correspondent shall indicate on the water use report that no water was used because the water right was enrolled in the WRCP.

(6) If the owner breaches, or causes or allows a breach of, the WRCP contract with the chief engineer, each year of nonuse between the effective date of the contract and the date of the breach shall be counted as years of nonuse without due and sufficient cause for the purpose of determining whether or not the water right has been abandoned pursuant to K.S.A. 82a-718, and amendments thereto. Before this penalty is imposed, the owner shall be given an opportunity to show either of the following:

(A) A breach of contract did not occur.

(B) A breach occurred, but either was minor or has been cured, and should not constitute grounds for imposing the penalty. (Authorized by K.S.A. 82a-706a and K.S.A. 2013 Supp. 82a-741; implementing K.S.A. 82a-706, K.S.A. 82a-713, K.S.A. 2013 Supp. 82a-714, K.S.A. 2013 Supp. 82a-718, and K.S.A. 2013 Supp. 82a-741; effective July 1, 1994; amended Sept. 22, 2000; amended Dec. 28, 2009; amended April 18, 2014).

5-7-4a. Conservation reserve program.

(a) Enrollment of all, or part of, the authorized place of use in the conservation reserve program (CRP) shall not be considered good cause to extend the time to construct the diversion works.

(b) If an authorized place of use has been placed into the CRP after the diversion works have been completed but before the time to perfect the water right has expired, the appropriator may request and receive an extension of time to perfect the water right for the length of time that the authorized place of use is enrolled in the CRP program, plus the length of time remaining to perfect the water right, if all of the following conditions are met:

(1) The diversion works were properly completed within the time allowed by the approval of application.

(2) The time to perfect the water right as set forth in the approval of the application has not expired at the time the request for the extension is filed.

(3) The appropriator furnishes the chief engineer with a copy of the CRP contract, including the aerial photograph designating which land has been placed into the CRP program. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-713 and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-7-4b. Water rights conservation program; tier 2. (a) Each application for enrollment in the water rights conservation program (WRCP) received on or after July 1, 2011, shall be considered as a WRCP tier 2 application.

(b) Enrollment of a water right in tier 2 of the WRCP shall be by order of the chief engineer and compliance with the requirements of subsection (d).

(c) For a water right to be eligible to be enrolled in tier 2 of the WRCP, each of the following requirements shall be met:

(1) Except for domestic use, the point of diversion shall be located in either of the following locations:

(A) An area that is closed to new appropriations of water by regulation or order of the chief engineer or, only within the Ogallala aquifer, is effectively closed due to overappropriation determined by a safe-yield analysis; or

(B) some other area designated by the chief engineer as an area where it would be in the public interest to allow water rights to be placed in the WRCP. In areas within the boundaries of a groundwater management district, the recommendations of the board of the district shall be taken into consideration by the chief engineer.

(2) Each of the owners of the water right shall agree to totally suspend all water use authorized by the water right for the duration of the enrollment period.

(3) The owner or owners of the water right shall submit an application to the chief engineer, or the chief engineer's authorized representative, requesting that the water right be enrolled.

(4) Only an entire water right may be enrolled in the WRCP. If a water right is administratively divided by the chief engineer, each portion of the water right shall be considered to be an entire water right.

(5) The water right shall not be deemed abandoned pursuant to K.S.A. 82a-718, and amendments thereto.

(d) Requirements of any order enrolling a water right in the WRCP shall include the following:

(1) Water rights shall be placed into the WRCP for a definite period of calendar years of no fewer than five and no more than 10 as requested by the application.

(2) The water right owner or operator shall not be required to maintain the diversion works or delivery system during the period of enrollment. If the pump is removed from a well, the well shall be properly capped or sealed during the period of enrollment. These requirements shall be in addition to those requirements made by the Kansas department of health and environment pursuant to the groundwater exploration and protection act, K.S.A. 82a-1201 et seq. and amendments thereto.

(3) A certificate determining the extent to which a water right has been perfected shall be issued by the chief engineer before enrolling the water right in the WRCP.

(4) Each year after authorized enrollment in the WRCP, the water use correspondent shall indicate on the water use report that no water was used because the water right was enrolled in the WRCP.

(e) Each diversion of water for beneficial use, other than domestic use, under authority of a water right while enrolled in the WRCP shall result in revocation of the enrollment order and the loss of due and sufficient cause for nonuse of water during the portion of the enrollment period occurring before the diversion.

(f) Each diversion of water for beneficial use, other than domestic use, during the enrollment period shall be considered a violation of the order enrolling the water right. Any such diversion of water may result in a civil penalty pursuant to K.S.A. 2013 Supp. 82a-737, and amendments thereto. (Authorized by and implementing K.S.A. 2013 Supp. 82a-741; effective April 18, 2014.)

5-7-5. Reduction of an existing water right. (a) In order to have an approval of application or water right reduced, the water right owner may file, at any time, a request to reduce any of the following:

(1) The authorized maximum annual quantity of water;

(2) the authorized maximum rate of diversion;

(3) the authorized place of use;

(4) the authorized points of diversion;

(5) the types of beneficial use; or

(6) any combination of paragraphs (a)(1) through (a)(5).

(b) The request to reduce a water right shall be filed on a form prescribed by the chief engineer.

(c) The request to reduce shall be submitted in proper form and shall include the following information:

(1) Except as set forth in subsection (d) below, notarized signatures of all water right owners that would be required by K.A.R. 5-5-1 to sign an application for change under K.S.A. 82a-708b and amendments thereto;

(2) a clear description of which portion or portions of the approval of application or water right are proposed to remain;

(3) a statement that all of the owners of the approval of application or water right are waiving any right they might have to a hearing concerning the dismissal or abandonment of any portion of the approval of application or water right that they are requesting to have removed; and

(4) any other information requested by the chief engineer.

(d) A request solely to reduce the authorized place of use that will not affect the approval of application or water right in any other way shall be only required to be signed only by all of the owners of the authorized place of use that is proposed to be deleted.

(e) A reasonable request to reduce an approval of application or water right that is submitted in proper form shall be approved by the chief engineer unless it will cause the impairment of existing water rights or prejudicially and unreasonably affect the public interest. If the request to reduce the water right or approval of application is to remove a point of diversion, the approval shall reduce only that maximum annual quantity of water and maximum rate of diversion associated with the authorized point of diversion that is removed.

(f) A request to reduce an existing water right shall not be considered to be an application for a change pursuant to K.S.A. 82a-708b and amendments thereto, so no application fee shall be required. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and 82a-721; effective Sept. 22, 2000.)

Article 8.—CERTIFICATION OF WATER RIGHTS

5-8-1. Certification of a water right. Prior to the issuance of a certificate of appropriation by the chief engineer pursuant to an application under which water has been applied to the land of

more than one owner, these landowners shall be allowed an opportunity to submit to the chief engineer an agreement signed by all landowners involved recommending how the water right should be divided among them. (Authorized by K.S.A. 82a-706a and 82a-714; effective May 1, 1980.)

5-8-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712 and 82a-714; effective May 1, 1980; revoked May 1, 1981.)

5-8-3. Perfection; multiple water rights.

(a) The total maximum annual quantity of water that can be perfected by all water rights authorized to divert water to the same authorized place of use, shall be limited to the maximum quantity of water actually physically and legally diverted and applied to beneficial use on the common authorized place of use during any one calendar year during the perfection period for the water right being certified.

(b) The junior water right shall be limited by means of a limitation clause in the certificate so that the authorized annual quantity of water for the junior water right, when combined with all senior water rights authorized to apply water to beneficial use on the common authorized place of use, does not exceed either of the following standards:

(1) The annual quantity of water reasonable for the type of beneficial use made of the water; and

(2) the total annual quantity of water legally diverted by all water rights to the common authorized place of use during any one calendar year during the perfection period of the junior water right.

(c) The limitation clause on the junior water right being certified shall not restrict the total annual quantity authorized to be diverted to the authorized place of use to less than the total annual quantity of water authorized by the senior water right or water rights for beneficial use on the common authorized place of use.

(d) The owner whose water right is being certified shall be sent a draft certificate showing the maximum rate of diversion and maximum annual quantity of water that are being proposed for the certificate. The water right owner shall be given a reasonable time period of no fewer than 30 days to comment on the draft certificate and to provide any additional information concerning the water diverted and applied to beneficial use on the authorized place of use during the perfection period in accordance with the terms, conditions, and limitations of the approval of application, and all

other water rights and approvals of applications authorized to divert water to the common authorized place of use.

(e) In certifying a water right with a priority date before the effective date of this regulation, the provisions of subsection (a) shall be followed to the extent possible. If sufficient information is not available to make the determination described in subsection (a), the best information available shall be utilized by the chief engineer to determine the quantity of water applied to the authorized place of use during any one calendar year during the perfection period under the authority of the approval of application being certified and all other water rights. The standard set forth in paragraph (b)(1) shall be applied, even if sufficient information is not available to make the determination described in subsection (a). (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 82a-713, and K.S.A. 1999 Supp. 82a-714(a); effective Sept. 22, 2000.)

5-8-4. Construction of diversion works.

(a) A reasonable period of time for construction of diversion works shall be not less than one full year following the approval of the application to appropriate water. If a person demonstrates that a reasonable long-term schedule for development of diversion works or other infrastructure is in the public interest, that information shall be taken into consideration by the chief engineer in determining a reasonable period of time for the construction of diversion works.

(b) For good cause shown by the applicant, a reasonable extension of time to construct the diversion works shall be allowed by the chief engineer, if the request for extension is filed pursuant to the requirements of K.A.R. 5-3-7 and is accompanied by the statutorily required filing fee.

(c) If the total time allowed to construct the diversion works has been more than 16 months and fewer than 24 months, an extension of time shall be granted by the chief engineer only if the applicant meets the following criteria:

- (1) Demonstrates good cause;
- (2) provides a copy of a contract with the well driller or other information substantiating the intent to proceed to complete the construction of the diversion works in an expeditious manner;
- (3) files the request for extension pursuant to the requirements of K.A.R. 5-3-7; and
- (4) submits the statutorily required filing fee.

(d) If the total time allowed to construct the diversion works equals or exceeds 24 months, an

extension of time may be granted only if the applicant demonstrates to the chief engineer that circumstances beyond the control of the applicant necessitate the extension of time.

(e)(1) The applicant shall file a notice of completion of diversion works and the statutorily required field inspection fee with the chief engineer no later than March 1 following the deadline to construct the diversion works. The notice of completion of diversion works shall be filed on a form prescribed by the chief engineer.

(2) If a water flowmeter has been required by the chief engineer as a condition of the permit, the applicant shall also file a notice of completion of installation of a water flowmeter on a form prescribed by the chief engineer. This form shall be due at the same time that the notice of completion of diversion works form is due.

(f)(1) The applicant shall be sent a notice by the chief engineer giving the applicant 30 days to show that the diversion works were completed within the time allowed in accordance with the terms, conditions, and limitations of the approval of application and to pay the field inspection fee, if it has not already been paid, under either of the following conditions:

(A) A notice of completion of diversion works has not been completely and timely filed with the chief engineer.

(B) Information on file in the office of the chief engineer indicates that the diversion works were not properly constructed within the time allowed to construct the diversion works, including any authorized extensions of time.

(2) The permit shall be dismissed and its priority forfeited if the applicant fails to perform the following:

(A) To demonstrate that the diversion works were completed within the time allowed by the approval of application; and

(B) to pay the statutorily required field inspection fee, if it has not already been paid. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712, K.S.A. 82a-713, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-8-6. Perfection of a water right. (a) Except for municipal use, a reasonable period of time to perfect a water right shall be no fewer than four full calendar years following the deadline for construction of the diversion works. If the time to construct the diversion works is extended, the perfection period shall be extended to no few-

er than four full calendar years beyond the final deadline to construct the diversion works, unless the owner of the approval of application objects.

(b) A reasonable time to perfect a water right for municipal use shall be no fewer than 20 full calendar years plus the remainder of the calendar year in which the application was approved. Each holder of a permit for municipal use of water shall submit a progress report to the chief engineer 10 full calendar years after the permit was issued. The report shall be submitted on a form prescribed by the chief engineer. The report shall meet the following conditions:

(1) Compare the annual water use projected in the original application with the actual annual water use for the prior 10 years; and

(2) document compliance with an approved conservation plan, if one had been required. If the 10-year review by the chief engineer shows that actual annual water use is significantly less than originally projected, the holder shall revise the estimated annual water use for the next 10 years. If it is in the public interest, the total authorized annual quantity of water for the next 10 years shall be reduced by the chief engineer to a reasonable annual quantity based on the municipal user's revised estimates of annual water use for the next 10 years. If the 10-year review indicates that a required conservation plan was not being complied with or that the conservation plan does not meet the Kansas water office's conservation guidelines for municipal users, as in effect at the time of the review, an order requiring any of the following shall be issued by the chief engineer:

(A) That the conservation plan be amended to comply with current guidelines;

(B) that the user comply with the provisions of the approved conservation plan; or

(C) both of the requirements in paragraphs (b) (2) (A) and (B).

(c) If the applicant demonstrates to the chief engineer that a longer perfection period is necessary to justify purchase or construction of infrastructure related to the diversion, treatment, or distribution of water that actually is being built, the original time to perfect a water right for municipal use or other public entity, including a utility, may be extended for a period not to exceed a total time to perfect of 40 years.

(d) For good cause shown by the applicant, a reasonable extension of time to perfect a water right shall be allowed by the chief engineer if the request for extension is filed pursuant to the terms

of K.A.R. 5-3-7 and is accompanied by the statutorily required filing fee.

(e) If water use reports and other information on file in the office of the chief engineer indicate that no water was applied to the authorized beneficial use during the time allowed to perfect the water right, including any authorized extensions of time, the owner of the approval of application as shown in the records of the chief engineer shall be sent a notice by the chief engineer, giving the owner 30 days to show that water was put to beneficial use within the terms, conditions, and limitations of the permit during the perfection period. If the owner fails to demonstrate that water was so used, the permit shall be dismissed and its priority forfeited. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-707(e), K.S.A. 82a-712, K.S.A. 82a-713, and K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

5-8-7. Extensions of time to perfect a water right. (a) For all beneficial uses of water, except municipal use, the total time to perfect the water right, including extensions of time, shall not exceed 10 years after the calendar year in which the diversion works were required to be completed unless one or more of the following "extenuating circumstances" exist.

(b) "Extenuating circumstances" shall include the following:

(1) Circumstances beyond the control of the owner of the approval of application that have unduly restricted the owner's ability to perfect the water right;

(2) actions or omissions by the chief engineer that make it necessary to extend the time to perfect; and

(3) for applications with a priority before May 1, 1978, the unavailability or lack of credibility of records of water use, crops grown, and the number and location of acres actually irrigated, and other relevant information during the perfection period, but other records or information is available for a period after the perfection period and would reasonably represent the application of water to beneficial use in accordance with the terms, conditions, and limitations of the permit.

(c) The burden shall be on the owner of the approval of application to document the extenuating circumstances described in subsection (b) and justify to the chief engineer the need for the extension of time to perfect the water right.

(d)(1) Extensions of time to perfect for applications with a priority before May 1, 1978, may be

granted in any reasonable increment of years. The total amount of time allowed to perfect the water right shall be reasonable.

(2) Extensions of time to perfect a water right for nonmunicipal use, with a priority on or after May 1, 1978, may be granted in any increment of time until the total time to perfect equals 10 years. After the total time allowed to perfect the water right equals 10 years, extensions of time shall be granted in one-year increments only.

(e) Extensions of the time to perfect a water right for municipal use of water that can be justified shall be extended in five-year increments or less after the original 20-year time period to perfect the water right has elapsed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712 and 82a-713; effective Sept. 22, 2000.)

5-8-8. Owner required to allow chief engineer to conduct timely field inspection for certification. (a) In order to allow the chief engineer to conduct a timely field inspection to certify a water right, the owner of an approval of application shall perform the following:

(1) Operate the diversion works in the same manner that they were operated when water was applied to beneficial use during the perfection period, so that an accurate rate-of-diversion test can be conducted by the chief engineer;

(2) allow the chief engineer access to the diversion works and the authorized place of use for the purpose of making the field inspection; and

(3) allow, cooperate with, and assist the chief engineer in any other ways necessary for the chief engineer to conduct the field inspection.

(b) The owner of the approval of application shall allow the field inspection to be conducted within 365 days after the chief engineer has sent the owner of the approval of application a restricted letter requesting that the chief engineer be allowed to conduct a field inspection. If the owner does not cooperate with, assist, and allow the chief engineer to conduct a field inspection, without good cause, within one year after the restricted letter is sent by the chief engineer, an order shall be issued by the chief engineer requiring the owner of the approval of application to comply with the terms of the restricted letter. The order shall also be sent by restricted mail. If the owner fails to comply with the order of the chief engineer, an action shall be brought by the chief engineer to enforce the order of the chief engineer pursuant to the act for judicial review, and civil enforce-

ment of agency actions, K.S.A. 77-624 et seq. and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-714; effective Sept. 22, 2000.)

Article 9.—TEMPORARY PERMITS

5-9-1. Application for temporary permit acceptable for filing. To be acceptable for filing, an application for temporary permit to appropriate water for beneficial use shall meet the following requirements: (a) Be made on the form prescribed by the chief engineer;

(b) be signed by the applicant or an authorized representative of the applicant;

(c) be accompanied by the statutory application fee;

(d) contain all the information requested for the proposed use as set forth in the prescribed application form; and

(e) include any other information requested by the chief engineer that is necessary to understand the application. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-727; effective May 1, 1979; amended Oct. 24, 2003.)

5-9-1a. Term permit application. Each application for a term permit shall meet the following requirements: (a) Be submitted on a form prescribed by the chief engineer; and

(b) be accompanied by the fee for any new application to appropriate water for beneficial use specified in K.S.A. 82a-708a(b), and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2007 Supp. 82a-708a(b), and K.S.A. 82a-709; effective Oct. 31, 2008.)

5-9-1b. Approvals and extensions of term permits. (a) Except as specified in subsection (b), each approved term permit shall be valid for five years or less. A term permit shall not be extended for a total of more than five years, including the original approval.

(b) (1) Term permits for contamination remediation may be initially issued for not more than 20 years and may be extended in increments of not more than 10 years, for a total period not to exceed 40 years.

(2) Term permits for hydraulic dredging may be initially issued for not more than 10 years and may be extended in increments of not more than 10 years, for a total period not to exceed 30 years.

(3) Term permits for fire protection may be initially issued for not more than 20 years and may

be extended in increments of not more than 10 years, for a total period not to exceed 30 years.

(4) Term permits for the use of water containing more than 5,000 milligrams of chlorides per liter of water may be initially issued for not more than 10 years and may be extended in increments of not more than 10 years, for a total period not to exceed 20 years.

(c) An application for new term permit or a request to extend an existing term permit that does not meet the criteria specified in subsections (a) and (b) shall not be approved. If the applicant proposes to continue the water use, the applicant shall amend the new application or file a new application. Approval of the amended or new application by the chief engineer shall be received by the applicant before the proposed water use may continue. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and 82a-712; effective Oct. 31, 2008.)

5-9-1c. Request to extend a term permit.

Any term permit may be extended as provided in K.A.R 5-9-1b if the request to extend the term permit meets the following requirements: (a) Is received at least 30 days before the expiration of the term permit;

(b) is signed by the holder of the term permit or its authorized agent;

(c) meets one of the following conditions:

(1) Will extend the total term of the permit for five years or less; or

(2) will extend the total term of the permit in excess of five years, if the application meets the requirements of safe yield, allowable appropriation, and similar regulatory criteria; and

(d) includes all of the following:

(1) Good cause for extension of the term is provided;

(2) approval of the extension will not impair an existing water right or permit;

(3) extension of the term permit will not prejudicially and unreasonably affect the public interest;

(4) the applicant has complied with the terms, conditions, and limitations of the previous term permit; and

(5) the applicant has access to the proposed point of diversion and the proposed place of use. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and 82a-712; effective Oct. 31, 2008.)

5-9-1d. No water right perfected under term permit. No water right shall be perfected pursuant to a term permit. (Authorized by K.S.A.

82a-706a; implementing K.S.A. 82a-706a and 82a-712; effective Oct. 31, 2008.)

5-9-2. Priority. Upon receipt in the office of the chief engineer of an acceptable application for temporary permit to appropriate water, accompanied by the statutory application fee, a stamp showing the date and time of receipt shall be placed on the application form. The date and time of receipt of the application shall establish the priority to the use of the water. The priority shall terminate on the date when use of water will be discontinued as set forth in the application or any authorized extension of time thereof. (Authorized by K.S.A. 82a-727; effective May 1, 1979.)

5-9-3. Quantity. A temporary permit shall not be granted for a quantity of water in excess of 4,000,000 gallons, except for either of the following:

(a) Dewatering purposes; or

(b) water that is to be diverted from a source located on a construction site and used on the construction site in connection with a project that the chief engineer has approved pursuant to K.S.A. 82a-301 through 82a-305a or K.S.A. 24-126, and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 82a-727; effective May 1, 1979; amended Dec. 3, 1990; amended June 22, 2012.)

5-9-4. Place of use limitation. A temporary permit shall not be granted for more than one place of use. (Authorized by K.S.A. 82a-727; effective May 1, 1979.)

5-9-5. Point of diversion limitation. A temporary permit shall not be granted authorizing more than one point of diversion from any source of supply. (Authorized by K.S.A. 82a-727; effective May 1, 1979.)

5-9-6. Approval of application. The approval of an application for a temporary permit shall be by endorsement on the application by the chief engineer. The endorsement shall set forth the terms, limitations, and conditions necessary for the protection of the public interest. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-727; effective May 1, 1979; amended Oct. 24, 2003.)

5-9-7. Extension of time. For good cause shown by the applicant the chief engineer may grant an extension of time to continue the use of water under a temporary permit beyond the date

authorized as shown in the approval of the application. The term of a temporary permit shall not exceed six (6) months including any authorized extension of time thereof. (Authorized by K.S.A. 82a-727; effective May 1, 1979.)

5-9-8. Ownership. A temporary permit for the appropriation of water shall not be transferable. (Authorized by K.S.A. 82a-727; effective May 1, 1979.)

5-9-10. Application fee for a temporary permit. The fee for an application for a temporary permit or extension of a temporary permit shall be twenty-five dollars (\$25.00). This regulation shall be effective on and after September 1, 1982. (Authorized by K.S.A. 82a-727; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983.)

5-9-11. Documentation of access to source of water supply for temporary permit. Before approval of a temporary permit, the applicant shall show that permission for access to the source of water supply has been obtained from the landowner or landowners of the property where the proposed point of diversion will be located. If permission is granted in an oil and gas lease, it shall be sufficient for the applicant to indicate this on the application for a temporary permit to appropriate water. If the water is to be obtained from land not covered by the oil and gas lease, then the permission of the landowner or landowners shall be adequately documented. (Authorized by and implementing K.S.A. 82a-727; effective Sept. 22, 2000.)

Article 10.—WATER APPROPRIATION

5-10-1. (Authorized by K.S.A. 82a-706a, K.S.A. 1982 Supp. 82a-708a; implementing K.S.A. 1982 Supp. 82a-708a; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; revoked May 1, 1988.)

5-10-2. (Authorized by K.S.A. 82a-706a, K.S.A. 1982 Supp. 82a-708a; implementing K.S.A. 1982 Supp. 82a-708a; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; revoked May 1, 1988.)

5-10-3. (Authorized by K.S.A. 82a-706a, K.S.A. 1982 Supp. 82a-708b; implementing K.S.A. 1982 Supp. 82a-708b; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; revoked May 1, 1988.)

5-10-4. Waiver or exemptions. The chief engineer may grant an exemption or waiver from any regulation adopted by the chief engineer if it is shown that the granting of such exemption or waiver will not prejudicially nor unreasonably affect the public interest and that it will not impair an existing water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-711, 82a-712; effective May 1, 1983.)

5-10-5. Administration of water use among vested right holders. If, during the administration of water rights, each appropriation right and approved permit to appropriate water for beneficial use has been regulated in accordance with the provisions of K.S.A. 82a-706b, the division of water resources shall administer the water available from that source of supply among the holders who have active vested rights, including vested rights for domestic purposes, on a proportional basis and in a manner which will provide, if possible, sufficient flow in the stream for vested rights for domestic purposes. The proportionment may be accomplished by a pro rata reduction in the rate or quantity that each vested right shall be allowed to divert, by setting up a rotation system or by any other equitable method. Vested rights shall be administered in this manner unless they have been adjudicated by a court of competent jurisdiction as to priority or rotation and then the chief engineer shall administer them in accordance with the order of the court. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-704a and K.S.A. 82a-706; effective May 1, 1986.)

5-10-6. Procedure for determination of an active vested domestic water right. The existence of an active domestic vested water right shall be determined by the chief engineer as follows:

(a) Information shall be filed with the chief engineer on a form prescribed by the chief engineer concerning the dates beneficial use of water was made, and the nature and extent of the active domestic vested right.

(b) Affidavits from at least three competent disinterested persons shall be filed by the claimant on a form prescribed by the chief engineer or other reliable substantiating evidence shall be submitted to the chief engineer by the claimant documenting the dates beneficial use of water was made, and the nature and extent of the active domestic vested right.

(c) Within a reasonable time, the staff of the division of water resources shall investigate the information submitted.

(d) Notice.

(1) Written notice of the claim shall be sent by the chief engineer to all water right owners of record in the office of the chief engineer with an authorized point of diversion within one-half mile of the claimed point of diversion.

(2) In addition, one notice in a newspaper with general circulation in the county in which the point of diversion is located shall be published by the chief engineer. Such published notice shall contain:

(A) the name of the claimant;

(B) the location of the claimed point of diversion; and

(C) a declaration that it is a claim for a domestic vested right.

(3) All notices shall be given at least 14 days prior to the close of the record.

(e) A copy of the chief engineer's draft order determining the active domestic vested water right and any comments received in response to the notices shall be furnished to the claimant by the chief engineer or the chief engineer's authorized representative.

(f) The claimant shall be given thirty days from the date the chief engineer mails the draft to the claimant in which to submit additional information, request a hearing concerning the determination, or both.

(g) If a hearing is requested by the claimant in a timely manner, or the chief engineer deems it to be in the public interest to do so, a hearing shall be held by the chief engineer, or the chief engineer's authorized representative, within a reasonable time.

(h) The chief engineer shall issue the order determining whether the claimed active vested domestic right exists and, if so, determining the nature and extent of that right.

(i) The order determining the active vested domestic right shall be made a matter of record in the office of the chief engineer. In addition, a copy of the order shall be furnished to the claimant by the chief engineer, with instructions that it shall be filed with the register of deeds in the county in which the point of diversion is located.

(j) All vested domestic water rights shall be assumed to have a priority of June 28, 1945 until they have been adjudicated by a court of competent jurisdiction. Vested domestic rights shall be administered in accordance with K.A.R. 5-10-5. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-705a; effective Nov. 28, 1994.)

Article 11.—ASSURANCE DISTRICTS

5-11-1. Definitions. As used in these rules and regulations and the water assurance program act by the division of water resources in the administration of the water assurance program act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section.

(a) "Board" means the board of directors of a water assurance district.

(b) "Chief engineer" means the chief engineer of the division of water resources of the Kansas state board of agriculture. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective May 31, 1994.)

5-11-2. Determination of benefits. (a) A water assurance district member may apply in writing to the board to be removed as a member of the district if that member is no longer receiving benefits from supplementing the stream by assurance reservoir releases because:

(1) the member no longer has a water right or permit; or

(2) the member's water right or permit has been reduced so that the member is no longer receiving benefits.

(b) The board shall forward the request to be removed as a member from the district to the chief engineer, who shall determine whether the member will be receiving benefits. The chief engineer shall forward the results of that determination to the board in writing within a reasonable time.

(1) If the chief engineer determines that the member will continue to receive benefits, the chief engineer shall notify the board and the member's application to be removed shall be dismissed by the board.

(2) If the chief engineer determines that the member will no longer be receiving benefits, the chief engineer shall notify the board and it shall be determined by the board whether the member will be removed from the district and the terms of removal. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective May 31, 1994.)

Article 12.—AQUIFER STORAGE AND RECOVERY

5-12-1. Aquifer storage and recovery permitting. (a) An operator may store water in an aquifer storage and recovery system under a permit to appropriate water for artificial recharge

if the water appropriated is source water. The requirements of this article shall be in addition to any requirements of the Kansas department of health and environment concerning underground injection wells, including article 46 of the regulations adopted by the Kansas department of health and environment.

(b) Each application for a permit to appropriate water for artificial recharge shall describe the horizontal and vertical extent of the basin storage area in which the source water will be stored.

(1) The horizontal extent shall be determined by a closed boundary within which the recharge system used to store the water will be physically located. The recharge system may include recharge pits, recharge trenches, recharge wells, or other similar systems that cause source water to enter the storage volume of the basin storage area, either by gravity flow or by injection. The basin storage area may be subdivided into smaller areas representative of the areas that may be recharged by the individual recharge systems.

(2) The vertical extent shall be defined by a minimum index level and a maximum index level for the basin recharge storage area, or for each subdivided area within the basin storage area if the basin storage area is subdivided. The maximum index water level shall represent the maximum storage potential for the basin storage area.

(c) Each application for a permit to appropriate water for artificial recharge shall specify the maximum annual quantity and maximum rate of diversion of source water.

(d)(1) Each application for a permit to appropriate water for artificial recharge shall include a methodology for accounting for water stored in a basin storage area both on an annual basis and on a cumulative basis so that recharge credits can be calculated. If more than one application for a permit to appropriate water for artificial recharge relates to the same aquifer storage and recovery system, each application shall use the same methodology for accounting for water stored in the basin storage area. The accounting of the water balance of all water entering and leaving the basin storage area shall be determined by using sound engineering methods based on actual measurements, generally accepted engineering methodology, or a combination of both.

(2) Approval of any application for a permit to appropriate water for artificial recharge shall be contingent upon the chief engineer's approval of the method for accounting for the basin storage area.

(e) Each applicant for recovery of water stored by the holder of a permit to appropriate water for artificial recharge to store water in a basin storage area shall obtain a permit separate from the aquifer storage permit to appropriate water for beneficial use for each well used to recover the water stored. The maximum annual quantity of water that may be appropriated for this purpose shall be no more than the maximum cumulative recharge credits available to the operator of the aquifer storage and recovery system. These credits shall be determined by the accounting methodology approved under a permit to appropriate water for artificial recharge pertaining to the aquifer storage and recovery system. In determining whether diversion of the annual quantity impairs other water rights, the following data may be considered by the chief engineer:

(1) The maximum storage volume available in the basin storage area;

(2) the spatial distribution of recharge and withdrawal systems;

(3) the maximum rate of diversion at which the water will be withdrawn; and

(4) any other relevant information.

Recharge credits may be accumulated over more than one year, and any amount of recharge credits available may be withdrawn in accordance with the permit if the withdrawal does not impair other water rights.

(f) The approval of application, if the water to be diverted is the water artificially recharged into the basin storage area, shall be conditioned upon the following:

(1) Generally accepted engineering methodology;

(2) a maximum annual quantity that does not exceed the recharge credits; and

(3) an annual reporting that complies with K.A.R. 5-12-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2015 Supp. 82a-711 and K.S.A. 82a-712; effective Sept. 22, 2000; amended April 29, 2016.)

5-12-2. Aquifer storage and recovery accounting. (a) In addition to annual water use reporting requirements pursuant to K.S.A. 82a-732, and amendments thereto, on June 1 of each year the permit holder of an aquifer storage or recovery system shall report an accounting of water in the basin storage area to the chief engineer and to any groundwater management district identified in subsection (c) of this regulation. The annual report for the preceding calendar

year shall account for all water entering and leaving the basin storage area and shall specifically compute the amount of recharge credits held in the basin storage area.

(b) The report shall be in the form prescribed by the chief engineer and shall address the items in the water balance for the basin storage area, which may include the following amounts:

- (1) Natural and artificial recharge;
- (2) groundwater inflow and outflow;
- (3) evaporation and transpiration;
- (4) groundwater water diversions from all non-domestic wells;
- (5) infiltration from streams;
- (6) groundwater discharge to streams;
- (7) the calculated recharge credits; and
- (8) any other information that in the opinion of the chief engineer is pertinent to the basin storage and surrounding areas.

The annual accounting shall specifically take into account the amounts of natural recharge, artificial recharge, groundwater inflow, groundwater outflow, evapotranspiration, and groundwater pumpage. Groundwater pumpage shall include recharge credits withdrawn as well as pumpage from all nondomestic wells in the basin storage area. The annual accounting shall include any additional items within a basin storage area that would be necessary to determine the amount of recharge credit available for recovery.

(c) If any part of the basin storage area is within the boundaries of a groundwater management district, the permit holder of any aquifer storage or recovery system shall furnish a copy of the annual report to the district board for comments by June 1 of each year.

(d) If a groundwater management district receives an annual report, the district may provide comments to the chief engineer if the comments are submitted to the chief engineer within 30 days of the district's receipt of the report identified in subsection (c) of this regulation.

(e) The permit holder may be required by the chief engineer to submit additional information pertinent to the system. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711 and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-12-3. Hearings. (a) A hearing shall be held by the chief engineer in the general vicinity where an applicant proposes aquifer storage and recovery before approval of any such application for aquifer storage and recovery.

(b) If any part of a proposed basin storage area is within the boundaries of a groundwater management district, the hearing required by subsection (a) of this regulation shall be held within the groundwater management district. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711 and K.S.A. 82a-712; effective Sept. 22, 2000.)

5-12-4. Aquifer storage and recovery systems in a groundwater management district. A groundwater management district may recommend rules and regulations pertaining to monitoring and accounting requirements for that portion of the basin storage area that falls within the district's boundaries. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711, K.S.A. 82a-712, and K.S.A. 82a-1028(o); effective Sept. 22, 2000.)

Article 13.—SAND AND GRAVEL PIT OPERATIONS

5-13-1. Notice of intent to open or expand a sand and gravel pit operation. Each operator desiring to open or expand a sand and gravel pit operation shall file a notice of intent to open or expand a sand and gravel pit operation on a form prescribed by the chief engineer before opening or expanding the sand and gravel pit operation.

The following information shall be included on the form:

- (a) The legal description of the sand and gravel pit operation;
- (b) the date the project began or will begin;
- (c) the number of acres of the groundwater table that will be exposed by the project at the time active mining ceases;
- (d) a legal description and a map showing the location of the groundwater that will be exposed at the time active mining ceases;
- (e) the year the pit excavation is estimated to be completed;
- (f) measures that will be used to protect the area groundwater supply from pollution; and
- (g) any other pertinent information that may be required by the chief engineer to understand the nature of the proposed project and to ensure that the provisions of K.S.A. 82a-734, and amendments thereto, and any regulations promulgated thereunder, are being complied with. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-2. Determination of “substantially adverse impact on the area groundwater supply.”

(a) A sand and gravel operation shall be deemed to cause a “substantially adverse impact on the area groundwater supply,” as provided in K.S.A. 82a-734 (b) and amendments thereto, if the sand and gravel pit operation is opened or expanded after the effective date of this regulation in any township that has an average annual potential net evaporation greater than 18 inches per year as determined from K.A.R. 5-6-3.

(b) In any township that has an average annual potential net evaporation of 18 or fewer inches per year, as determined from K.A.R. 5-6-3, the opening or expansion of a sand and gravel pit operation, shall be deemed to not cause a “substantially adverse impact on the area groundwater supply,” as provided in K.S.A. 82a-734 and amendments thereto, unless the chief engineer can demonstrate that the project will cause one or more of the following:

(1) A direct impairment to a groundwater approval of application or water right;

(2) an unreasonable deterioration of the groundwater quality;

(3) an unreasonable raising or lowering of the static water level; or

(4) prevention of any waters of the state from moving to a person having a prior right to use these waters. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-3. Determination of when groundwater evaporation is a beneficial use.

On and after the effective date of this regulation, whenever the opening or expansion of a sand and gravel operation is considered to cause a substantially adverse impact on the area groundwater supply pursuant to K.A.R. 5-13-2, the evaporation caused shall be considered to be a beneficial use, and the operator shall be required to receive an approval of application, or approval of an application for change, pursuant to K.S.A. 82a-701 et seq. and amendments thereto, before exposing the groundwater table to evaporation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-711, K.S.A. 82a-721, and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-4. Exemption. (a) To the extent that groundwater evaporation causes a substantially adverse impact to the area groundwater supply pursuant to K.A.R. 5-13-2, a new application to

appropriate the groundwater evaporation caused by the project shall be exempt from meeting the safe yield, allowable appropriation, or similar types of regulations adopted by the chief engineer. This exemption shall be granted if the operator meets all of the criteria in subsection (b) because exempting the quantity of water that has been, or will be, evaporated by exposing the groundwater table beneath the proven reserves will not prejudicially and unreasonably affect the public interest and will not impair any existing water right.

(b) Except as set forth in subsection (e), in order to qualify for this exemption, the operator shall show that on December 31, 1999, all of the following conditions were met:

(1) The operator had an active, existing sand and gravel mining operation.

(2) If required, the operator had a valid surface-mining license issued pursuant to the surface-mining land conservation and reclamation act, K.S.A. 49-601 et seq., and amendments thereto.

(3) If required, the operator had made a timely application for a hydraulic dredging permit or had received a hydraulic dredging permit issued pursuant to the Kansas water appropriation act.

(4) The operator had filed the water use reports required by, and paid any civil fines assessed by the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto.

(5) The operator had paid the water protection fees required by K.S.A. 82a-954, and amendments thereto.

(6) To the extent necessary to physically operate, the operator had acquired all local permits and local zoning approvals.

(7) The operator had purchased, leased, or otherwise acquired legal control over proven sand and gravel reserves.

(8) The operator had filed an application to appropriate water or filed a notice of intent to open or expand a sand and gravel pit operation with the chief engineer when required by K.S.A. 82a-734(a), and amendments thereto.

(c) It shall be the burden of the operator to show that the operator meets the requirements of subsection (b) by filing the necessary information or documentation with the chief engineer on or before December 31, 2001. An extension of time may be granted by the chief engineer for good cause if the request for extension of time is filed by the operator with the chief engineer before December 31, 2001.

(d) To the extent that the operator meets the requirements of subsection (b) above, an application to appropriate water for evaporation of the groundwater caused by exposing the groundwater table shall be exempt from complying with safe yield, allowable appropriation, and similar types of regulations adopted by the chief engineer. This exemption shall apply to all the evaporation caused by exposing the groundwater table up to the areal extent of the proven reserves that existed on December 31, 1999.

(e) If, on the effective date of this regulation, an operator was in the process of establishing a replacement operation for an active, existing sand and gravel pit operation, an exemption shall be allowed by the chief engineer for the proposed replacement operation according to subsection (d) on terms, conditions and limitations that will neither cause impairment of existing water rights nor prejudicially and unreasonably affect the public interest if all of the following criteria are met:

(1) The proposed replacement sand and gravel operation is located outside the boundaries of all groundwater management districts and intensive groundwater use control areas.

(2) The geocenter of the proposed replacement operation is located within two miles of the geocenter of the existing, active operation.

(3) The proposed replacement operation met the provisions of paragraphs (b)(1) through (b)(6) of this regulation on December 31, 1999.

(4) The proposed replacement project meets the requirements of paragraphs (b) (7) and (8) on the effective date of this regulation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721, K.S.A. 1999 Supp. 82a-1904, and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-5. Approval of pit operations that are opened or expanded after the effective date of this regulation. Except as set forth in K.A.R. 5-13-4, pit operations that are excavated or expanded after the effective date of this regulation and that have a substantial adverse impact on the area groundwater supply shall meet one of the following conditions:

(a) Receive prior approval of the chief engineer for a new permit to appropriate an annual quantity of water sufficient to offset the evaporation caused by exposing the groundwater table in a manner described in K.A.R. 5-13-7;

(b) acquire existing water rights and receive approval of the chief engineer to change the point of

diversion, place of use, and the use made of water to authorize the water rights to be used for the project in a manner described in K.A.R. 5-13-7;

(c) acquire and take out of production sufficient water rights in the manner described in K.A.R. 5-13-7 to offset the net average annual evaporation caused by exposing the groundwater table; or

(d) any combination of the above. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-6. Determination of the maximum rate of diversion and annual quantity of water.

The annual quantity of water, in acre-feet, required to be appropriated for evaporation caused by exposing the area groundwater table shall be determined by multiplying the exposed groundwater surface area of the project in acres by the potential net evaporation in inches, for Kansas, as found in K.A.R. 5-6-3, and dividing by 12. The rate of diversion shall be the natural rate of evaporation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-7. Offsets for evaporation of groundwater.

The net average annual quantity of groundwater evaporation shall be authorized, accounted for, or offset in one or more of the following ways:

(a) An approval of application or water right currently authorizes the use of water at that pit location.

(b) A new approval of application authorizes the use of water at that pit location.

(c) Acceptable quality surface water that is legally and physically available for groundwater recharge is authorized to be diverted into the proposed project.

(d) Both of the following conditions are met:

(1) Water is made available by acquiring all, or a portion of, an existing water right to any of the following:

(A) Use surface water or groundwater, or both, that is hydraulically connected to a stream channel aquifer in which the project is located;

(B) use groundwater from an unconsolidated regional aquifer that is within a two-mile radius of the geocenter of the project that is the same unconsolidated regional aquifer in which the project is located, or a hydraulically connected aquifer; or

(C) use groundwater from an unconsolidated regional aquifer that is within a 3.5 mile radius of the geocenter of the project and is the same un-

consolidated regional aquifer in which the project is located, or a hydraulically connected aquifer, if the operator can demonstrate to the chief engineer that sufficient water rights to offset the evaporation caused by the project cannot be acquired within a two-mile radius of the geocenter of the project after making reasonable and prudent efforts to find both proven reserves and water rights.

(2) The applicant demonstrates to the chief engineer that the acquired water right, or portion of it, will no longer be exercised by any of the following:

(A) Placing it in the custodial care of the state;
 (B) placing it in a perpetual trust approved by the chief engineer; or

(C) restricting its future use in some other way that the chief engineer determines to be adequate to ensure that it will no longer be exercised.

(e) Diffused surface water is diverted into the project from inside a berm surrounding the project built to prevent unacceptable quality surface water from entering the groundwater table. The average annual amount of runoff shall be determined from a map titled “figure 12. — mean annual runoff in Kansas,” dated June 1982, published by the Kansas water office and hereby adopted by reference, unless the applicant demonstrates to the chief engineer, or the chief engineer has, better, more site-specific data.

(f) Any other water credit or offset that the chief engineer determines will adequately offset the groundwater evaporation caused by the pit operation. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-8. Offset calculations. All of the following requirements shall apply with respect to an offset water right described in K.A.R. 5-13-7(d):
 (a) No physical diversion of the offset water right shall be required or allowed.

(b) The project shall receive credit for 100 percent of the net consumptive use of the water right used as an offset.

(c) Credit for acquisition of an existing surface water right shall be given for an equivalent quantity of water that is legally and physically available within the terms, conditions, and limitations of the surface water right at the location of the groundwater pit. The quantity of water available at the groundwater pit from the acquired surface water right shall be calculated by taking into account the following:

(1) Stream gains;
 (2) stream losses;
 (3) transit losses;
 (4) water supplied from intervening tributaries;
 and

(5) water needed to satisfy senior surface water rights to the same source of supply.

(d) Credit for acquisition of a groundwater right with a point of diversion located in the same stream channel aquifer as the groundwater pit shall be given for either of the following:

(1) A groundwater right located within a two-mile radius of the groundwater pit; or

(2) a groundwater right in the same source of water supply with a point of diversion located more than two miles up gradient of the geocenter of the groundwater pit for the quantity of water legally and physically available under that groundwater right at its original point of diversion, minus the transit loss between the original groundwater point of diversion and the geocenter of the proposed pit. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-9. Easements and covenants. The applicant shall provide any easements or covenants, attached to or running with the land, that are necessary to document that the offset water acquired pursuant to K.A.R. 5-13-7 will continue to be legally available to offset the evaporation of groundwater. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-721 and K.S.A. 82a-734; effective Sept. 22, 2000.)

5-13-10. Time to construct the diversion works for a sand and gravel pit operation.

(a) As used in this regulation, “completion of diversion works” means that both of the following have occurred:

(1) All equipment necessary to begin to operate a sand and gravel operation, including the hydraulic dredge, has been installed.

(2) Sufficient overburden has been excavated to begin to expose the groundwater to evaporation.

(b) A reasonable time to construct the diversion works for a sand and gravel pit operation shall be not less than one full year following the approval of the application to appropriate water.

(c) For good cause shown by the applicant, a reasonable extension of time to construct the diversion works shall be allowed by the chief engineer if both of the following conditions are met:

(1) The request for extension is filed pursuant to the requirements of K.A.R. 5-3-7.

(2) The request for extension is accompanied by the statutorily required filing fee. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-712 and 82a-713; effective Sept. 22, 2000.)

5-13-11. Time to perfect a water right for evaporation of groundwater. (a) A reasonable time to perfect a water right for evaporation of groundwater caused by a sand and gravel pit operation shall be neither less than five calendar years plus the remainder of the calendar year in which the application was approved, nor more than 20 years plus the remainder of the calendar year in which the application was approved.

(b)(1) For good cause shown by the applicant, a reasonable extension of the time to perfect the water right shall be allowed by the chief engineer if both of the following conditions are met:

(A) The request is timely filed pursuant to the terms of K.A.R. 5-3-7.

(B) The request is accompanied by the statutorily required filing fee.

(2) The total time to perfect a water right shall not exceed 40 years. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-713; effective Sept. 22, 2000.)

Article 14.—ENFORCEMENT AND APPEALS

5-14-1. Enforcement. (a) Except as set forth in subsection (i), the procedure set forth below shall be followed whenever enforcement action is taken by the chief engineer after becoming aware that a person may be performing any of the following:

(1) Violating any provision of K.S.A. 82a-701 et seq., and amendments thereto;

(2) violating any provision of a regulation adopted pursuant to that act; or

(3) violating a term, condition, or limitation of an approval of application or water right.

(b) The alleged violation shall be investigated by the chief engineer.

(c) A written report of the investigation shall be prepared by the chief engineer. This report shall include any documents regarding the matter that were relied upon or prepared by the chief engineer. This report shall be made a part of the official record of the chief engineer. If an approval of application or a water right is involved, the report shall be made an official part of that file.

(d)(1) If the investigation shows that no violation has occurred or that enforcement action is not warranted, no further enforcement action shall be taken at that time.

(2) If the investigation determines that a violation has occurred, an order shall be issued by the chief engineer. The owner or owners of the approval of application or water right, as shown in the records of the chief engineer, shall be served by delivering a copy in person or sending a copy of the order by restricted mail. The order shall specify the following:

(A) What the violation is;

(B) what actions are necessary to correct the violation;

(C) what a reasonable time is in order to correct the violation. Extensions of time to correct a violation may be granted by the chief engineer if good cause is shown by the violator or owner;

(D) that the order will become effective immediately; and

(E) that a hearing may be requested within 15 days of the issuance of the order. The request for a hearing may include a request for a stay of the order. If the person shows good cause why a stay should be granted, a stay may be granted by the chief engineer.

(e) If the violation is corrected within the time specified by the chief engineer, the violator shall notify the chief engineer. An inspection shall be conducted by the chief engineer to determine if the violation has been corrected. If the violation has been corrected, the diversion of water may continue within the terms, conditions, and limitations of the approval of application or water right.

(f) If the violation is not corrected within the time specified by the chief engineer, an order requiring that unauthorized or illegal diversion of water cease until the violation is corrected shall be issued by the chief engineer.

(g) If the violator ceases diversion of water and then corrects the violation, the violator shall notify the chief engineer when the violation is corrected. The diversion works and the authorized place of use, as appropriate, shall be inspected by the chief engineer to determine if the violation has been corrected. If the chief engineer determines that the violation has been corrected, the order prohibiting diversion of water shall be rescinded by the chief engineer as soon as possible. When the owner or violator receives notice from the chief engineer that the order prohibiting the diversion of water has been rescinded, the diversion of water may recommence.

(h) (1) Any of the actions listed in paragraph (h) (2) may be taken by the chief engineer if the violator performs any of the following acts and fails to cease the diversion of water as ordered by the chief engineer:

(A) Violates any provision of K.S.A. 82a-701 et seq., and amendments thereto;

(B) violates any provision of a regulation adopted pursuant to that act; or

(C) violates a term, condition, or limitation of an approval of application or a water right.

(2) If the violator performs any act listed in paragraph (h)(1), any of the following actions may be taken by the chief engineer:

(A) Bring an action to enforce the orders of the chief engineer pursuant to the act for judicial review and civil enforcement of agency actions, K.S.A. 77-624 et seq., and amendments thereto;

(B) request the attorney general to bring an action in the name of the state of Kansas;

(C) request that criminal proceedings be brought pursuant to K.S.A. 82a-728, and amendments thereto;

(D) enter into a consent order with the violator specifying the remedial actions that shall be taken by the violator;

(E) take any other legally permissible enforcement action; or

(F) any combination of the above actions.

(i) The provisions of this regulation shall not apply to any actions taken by the chief engineer pursuant to K.S.A. 82a-706b, and amendments thereto, to enforce water right priorities and to prevent direct impairment by either of the following:

(1) Junior water rights; or

(2) illegal diversions of water.

(j) After the violator has been issued an order as specified in subsection (f), the violator may request an administrative hearing before the chief engineer in accordance with the provisions of K.A.R. 5-14-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706, 82a-706b, 82a-706d, and 82a-728; effective Sept. 22, 2000.)

5-14-2. Request for conference hearing.

(a) Each written request for a hearing of an order issued by the chief engineer according to K.A.R. 5-14-1 shall be served on the chief engineer within 15 days of the issuance of the order. The request for a hearing may include a request for a stay of the order. If the requester demonstrates good cause for a stay to the chief engineer, a stay of the order may be granted by the chief engineer.

(b) If a request for a hearing is not served on the chief engineer within 15 days after the order is issued by the chief engineer, the order shall become a final agency action as defined by K.S.A. 77-607, and amendments thereto.

(c) If a request for a hearing is filed with the chief engineer within 15 days of the issuance of an order, a conference adjudicative hearing shall be held by the chief engineer.

(d) A conference hearing shall be an informal proceeding conducted according to the following criteria:

(1) The hearing officer shall regulate the course of a conference proceeding.

(2) Only parties may testify and present written exhibits.

(3) Only parties may offer comments on the issues.

(4) The hearing officer may conduct all or part of the hearing by telephone, or other electronic means, if each participant in the hearing has the opportunity to participate in the entire proceeding while it is taking place.

(5) The hearing shall be recorded at the agency's expense.

(6) Any party, at the party's expense and subject to any reasonable conditions that the chief engineer may establish, may cause a person other than the chief engineer to prepare a transcript from the chief engineer's recording or cause additional recordings to be made during the hearing.

(e) After the conference adjudicative hearing, or completion of a full adjudicative hearing if the conference hearing was converted to a full hearing, a final agency action, as defined by K.S.A. 77-607, and amendments thereto, shall be issued by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-706b; effective Sept. 22, 2000.)

5-14-3. Orders. (a) An order subject to review pursuant to K.S.A. 82a-1901, and amendments thereto, shall be issued by the chief engineer in each of the following matters:

(1) The approval or dismissal of an application to change the place of use, the point of diversion, the use made of water, or any combination of these, filed pursuant to K.S.A. 82a-708b and amendments thereto;

(2) the approval or dismissal of an application to appropriate water for beneficial use filed pursuant to K.S.A. 82a-711 and amendments thereto;

(3) the declaration of abandonment and termi-

nation of a water right pursuant to K.S.A. 82a-718 and amendments thereto; and

(4) the suspension of the use of water under a term permit, an approved application for a permit to appropriate water for beneficial use, an appropriation right, or a vested right, pursuant to K.S.A. 82a-770 and amendments thereto.

(b) Each order that is issued pursuant to K.S.A. 82a-737, and amendments thereto, and is subject to review pursuant to K.S.A. 82a-1901, and amendments thereto, shall be issued by the chief engineer, or the chief engineer's designee, in the assessment of civil penalty, the modification of a person's water right or permit to use water, the suspension of a person's water right or permit to use water, or any combination of these.

(c) Unless limited or prohibited by statute, any person to whom the order is directed or who has a property interest that could be adversely affected by the action or proposed action may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, without filing a request for a hearing before the chief engineer.

(d) The chief engineer shall not be required to hold a hearing before issuing an order unless required by statute.

(e)(1) Any person to whom an order will be directed may request a hearing before the chief engineer before the issuance of an order by the chief engineer. The person shall then be notified by the chief engineer that, if the request is granted by the chief engineer, the person shall not be allowed to have a second hearing before the chief engineer after the issuance of the order. Within 15 days after the notice is sent, the person shall notify the chief engineer whether the requestor wants to proceed with a hearing before the chief engineer issues the order.

(2) If a hearing is held by the chief engineer before the issuance of the order by the chief engineer and the person to whom the order is directed still desires to have the order reviewed, the person shall seek review pursuant to K.S.A. 82a-1901, and amendments thereto, if that type of review is authorized by statute.

(f) If a person to whom an order was directed did not have a hearing before the issuance of an order, that person may request a hearing before the chief engineer after issuance of the order. The person shall submit a written request for hearing to the chief engineer within 15 days of service of the order pursuant to K.S.A. 77-531, and amendments thereto. If a hearing is not requested, the

person may seek review pursuant to K.S.A. 82a-1901, and amendments thereto, within 30 days of service of the order pursuant to K.S.A. 77-531 and amendments thereto, if that type of review is authorized by statute. Each request for a hearing shall meet the following requirements:

(1) Be filed in writing with the chief engineer within 15 days after the date of service of the order; and

(2) set forth the factual and legal basis for the hearing request. The factual basis may be stated generally and shall not be required to be specific if the written request clearly establishes the existence of disputed facts. The request for hearing may be denied if the request fails to clearly establish factual or legal issues.

(g) A request for intervention in a matter pending hearing from a person or persons other than those to whom the order is directed may be granted by the chief engineer if all of the following conditions are met:

(1) The chief engineer has issued a notice of hearing.

(2) The person requesting to intervene has filed a notice with the chief engineer that the order in the pending matter could adversely affect one or more of the following:

(A) The person's property interest in the pending matter;

(B) the person's water right or permit to appropriate water; or

(C) the person's statutory duty to act.

(3) The chief engineer has determined that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2008 Supp. 82a-708b, 82a-711, 82a-718, 82a-737, 82a-770, and 82a-1901; effective Sept. 22, 2000; amended March 20, 2009.)

5-14-3a. Hearing procedure. The procedures specified in this regulation shall apply to any hearing held by the chief engineer pursuant to K.A.R. 5-14-3. Upon notice to all parties, these procedures may be applied by the chief engineer to any other hearings held under the Kansas water appropriation act. (a) Unless otherwise required by statute, the following persons and entities shall be allowed to be parties to a formal hearing before the chief engineer:

(1) The division of water resources, Kansas department of agriculture (DWR);

(2) the person or persons to whom the order is, or will be, directed;

(3) the applicant to change the place of use, the point of diversion, the use made of water, or any combination of these, under K.S.A. 82a-708b and amendments thereto, or the applicant to appropriate water for beneficial use under K.S.A. 82a-711, and amendments thereto;

(4) the owners of the proposed place of use and the owners of the place of use authorized under the application, water right, or permit to appropriate water; and

(5) any other person who has filed a timely petition for intervention in accordance with K.A.R. 5-14-3(e).

(b) The hearing shall be presided over by the chief engineer or the chief engineer's designee. Authority may be delegated by the chief engineer to the presiding officer to issue the order or to make written recommendations to the chief engineer after the hearing.

(c) Unless otherwise required by statute, the presiding officer shall issue a written notice of hearing to all parties and to any person who requests notice of a hearing.

(1) Notice of hearing shall be served on the parties as required by statute, but not later than 15 days before the hearing.

(2) The notice of hearing shall be served by mail, facsimile, electronic mail, or hand-delivery and shall be evidenced by a certificate of service. If due diligence fails to locate a person allowed to be a party, then notice by publication shall be made in the manner indicated in K.A.R. 5-14-3a (d) (2).

(3) The notice of hearing shall include the following:

(A) A case or other identification number and a descriptive title, which shall appear on all correspondence relating to the docket. If more than one matter has been consolidated for hearing, all numbers and descriptive titles shall appear on all correspondence;

(B) the names and mailing addresses of all parties;

(C) a statement of the time, place and nature of the hearing. If more than one matter has been consolidated for hearing, statement of the nature of the hearing shall include all matters to be heard;

(D) a statement that the presiding officer may complete the hearing without the participation of any party who fails to attend or participate in a prehearing conference, hearing, or other stage in the proceeding; and

(E) if nonparties are provided an opportunity to submit comments, the time and place where oral comments will be accepted and the deadline and mailing address for the submission of written comments.

(4) For abandonment hearings under K.S.A. 82a-718, and amendments thereto, the notice of hearing shall include a copy of the verified report of the chief engineer or the chief engineer's representative.

(d) Unless otherwise required by statute, if members of the public will be given an opportunity to submit oral and written comments, notice of the hearing shall be caused by the chief engineer to be distributed in the place or places where the action or proposed action will be effective.

(1) Notice of hearing shall be given as required by statute, but no later than 15 days before the hearing.

(2) The notice of hearing may be published in a newspaper of general circulation where the action or proposed action will be effective as required by statute, but shall be published at least 15 days before the hearing. The notice of hearing shall not be required to be in the form of a legal notice. The notice may also be given by any other means reasonably calculated to reach the residents of the area.

(e) Only the parties named in the notice of hearing or otherwise designated by the chief engineer may participate in the hearing.

(1) Any party may participate in person or, if the party is a corporation or other artificial person, by an authorized representative.

(2) Any party may be represented, at the party's own expense, by legal counsel or, if permitted by law, some other representative.

(3) The presiding officer may refuse to allow representation that would constitute the unauthorized practice of law.

(4) The presiding officer may give nonparties the opportunity to present oral or written statements to be included in the record of the proceedings.

(5) The presiding officer may consider only oral statements that are given under oath or affirmation and signed written statements.

(6) The presiding officer shall allow all parties a reasonable opportunity to challenge or rebut all oral and written statements received.

(f) The presiding officer may allow any party to participate in prehearing conferences, the hearing, or any other stage of the proceedings by telephone or videoconference.

(1) Unless otherwise authorized by the presiding officer, the party wishing to participate by telephone shall notify the presiding officer at least 48 hours in advance of the prehearing conference. The party wishing to participate by telephone may be granted a continuance if the presiding officer is not able to grant the request.

(2) The presiding officer may require the party wishing to participate by telephone to initiate the call.

(3) The presiding officer may refuse to allow any party to participate by telephone if the party has not notified the presiding officer in advance and made arrangements for that participation or if any party objects.

(g) The presiding officer may hold one or more prehearing conferences as necessary to address preliminary matters or to facilitate the hearing.

(1) Notice of all prehearing conferences shall be given by the presiding officer to all parties and to all persons who have requested that notice. Notice may also be given to other interested persons at least 15 days before the prehearing conference.

(2) The notice of prehearing conference shall include the following:

(A) The names and mailing addresses of all parties;

(B) a statement of the time, place, and nature of the prehearing conference; and

(C) a statement that the presiding officer may complete the hearing without the participation of any party who fails to attend or participate in a prehearing conference, hearing, or other stage in the proceeding.

(3) The presiding officer shall issue a prehearing order after each prehearing conference.

(h) Discovery shall be limited to matters that are clearly relevant to the proceeding.

(i) Each party shall have the opportunity to file pleadings, objections, and motions. At the presiding officer's discretion, any party may be given an opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed orders.

(1) Each party shall serve a copy of any written filings on each of the other parties.

(A) Service may be made by mail, facsimile, electronic mail, or hand-delivery.

(B) Service shall be presumed if the person making service signs a written certificate of service.

(C) Service by mail shall be complete upon mailing.

(2) The presiding officer shall notify all parties of the deadlines for written filings and may extend the deadlines upon request of any party.

(A) Unless otherwise stated in the notice or order of the presiding officer, all deadlines to file documents within a specific number of days shall end at the close of business on the third working day after the deadline set in the notice or order mailed out by the presiding officer.

(B) In computing any deadline, the day of service shall not be included. Working days shall not include Saturdays, Sundays, state holidays, and federal holidays.

(3) The presiding officer shall not be required to consider any written filing that has not been filed on or before the deadline or that is not served on all parties.

(4) Service upon an attorney of record shall be deemed to be service upon the party represented by the attorney.

(j) After the presiding officer has issued a notice of hearing and before an order is issued, no party or its attorneys shall discuss the merits of the proceedings with the presiding officer or with any other person named in the prehearing order as assisting the presiding officer in the hearing, unless all parties have the opportunity to participate.

(1) If the presiding officer receives an ex parte communication, the presiding officer shall notify all parties that an ex parte communication has been received and place the notice in the record of the pending matter. The notice shall contain the following:

(A) A copy of any written ex parte communication received and any written response to the communication; and

(B) a memorandum stating the substance of any oral ex parte communication received, any oral response made, and the identity of each person from whom the oral ex parte communication was received.

(2) Any party may submit written rebuttal to an ex parte communication within 15 days after service of notice of the communication. If any party submits a written rebuttal to an ex parte communication, that party shall simultaneously serve a copy on all other parties and the presiding officer. All timely filed written rebuttals shall be placed in the record of the pending matter.

(3) A presiding officer who has received an ex parte communication shall withdraw from the pending matter if the presiding officer determines that the communication has rendered the presid-

ing officer no longer qualified to hear the pending matter because of bias, prejudice, or interest.

(4) Any party may petition for the disqualification of a presiding officer upon discovering facts establishing grounds for disqualification because of bias, prejudice, or interest.

(5) Each presiding officer whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. The facts and reasons for the presiding officer's decision shall be entered into the record.

(k) The presiding officer may consolidate any proceedings if there are common issues to be resolved or a common factual basis for the proceedings. The presiding officer may consolidate proceedings on the presiding officer's own motion or upon the request of the parties to all proceedings.

(l) The presiding officer may continue the hearing or any other proceeding on that person's own motion or at the request of a party.

(1) A party shall notify all other parties before requesting a continuance.

(2) The presiding officer shall not be required to continue the hearing if all other parties have not been consulted or if any party objects.

(3) Each party who requires a continuance because of an emergency shall notify the presiding officer and any other party as soon as the party reasonably determines that an emergency exists.

(m) Each party shall have a reasonable opportunity to be heard. Each party shall be given the opportunity to present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as may be restricted by a pre-hearing order or limited grant of intervention.

(1) Unless otherwise limited by this regulation or the presiding officer, each party and each intervenor shall be given an opportunity to make opening statements and closing arguments.

(2) Unless the parties have been required to exchange exhibits before the hearing, each party shall bring a copy of each document offered as evidence for each party and at least two copies for the presiding officer. If possible, the original document, or a certified copy of the document, shall be offered into evidence at the hearing.

(3) All hearings shall be open to the public.

(4) All testimony of parties and witnesses shall be made under oath or affirmation.

(5) The direct examination of each witness shall be followed by cross-examination of the witness. Cross-examination shall be limited in scope to the testimony upon direct examination.

Redirect examination shall be limited in scope to the testimony upon cross-examination. Recross-examination shall be limited in scope to the testimony upon redirect.

(6) No more than one attorney for each party shall examine or cross-examine a witness. The presiding officer may require that only one attorney be allowed to cross-examine a witness on behalf of all parties united in interest.

(7) All testimony shall be taken on the record unless the presiding officer grants a request to go off the record.

(8) At the time determined by the presiding officer, the presiding officer shall announce that the record of exhibits and testimony shall be closed and, if applicable, that the matter has been taken under advisement.

(9) The record shall not be reopened except upon order of the presiding officer or the chief engineer.

(n)(1) In any hearing concerning an application filed under K.S.A. 82a-708b or K.S.A. 82a-711 and amendments thereto, the applicant shall bear the burden of proving, by a preponderance of the evidence, that the application should be approved.

(2) If the DWR does not offer opinion testimony concerning whether and how the application complies or does not comply with the applicable regulations, its participation in the hearing shall be limited as follows:

(A) The DWR shall make a proffer of the records of the agency pertaining to the pending matter and may offer the testimony of fact witnesses to lay foundation for the proffer. These witnesses may be cross-examined, but cross-examination shall be limited to the scope of the direct questioning.

(B) If any member of the DWR's staff is called as a witness for or is cross-examined by another party, the DWR shall be allowed to conduct cross-examination of the witnesses offered by that party.

(3) The applicant shall be heard after the DWR's proffer, unless the presiding officer determines that another order of presentation will facilitate the conduct of the hearing.

(4) If the DWR offers opinion testimony concerning whether and how the application complies or does not comply with the applicable regulations, the DWR shall be heard after the applicant and the DWR may participate in the hearing to the same extent as the applicant, unless the presiding officer determines that a different order of presentation will facilitate the conduct of the hearing.

(5) The presiding officer shall determine the order in which other parties and interveners may be heard.

(o) In hearings concerning the assessment of a civil penalty, the modification of a water right, the suspension of a water right, or the suspension of the use of water under a water right, the following requirements shall be met:

(1) The DWR shall bear the burden of proving, by a preponderance of the evidence, that a violation under K.S.A. 82a-737 and amendments thereto or K.S.A. 82a-770 and amendments thereto, or both, has occurred.

(2) The DWR shall be heard first at the hearing, unless the presiding officer determines that a different order of presentation will facilitate the conduct of the hearing. The presiding officer shall determine the order in which other parties and interveners may be heard.

(p) In an abandonment hearing pursuant to K.S.A. 82a-718 and amendments thereto, the DWR shall first present the verified report specified in K.S.A. 82a-718, and amendments thereto.

(1) The verified report shall be a report of the DWR's investigation into the water use history and shall contain the following:

(A) Documentation that shows the use or non-use of water authorized by the water right as established by the contents of the DWR water right file and as reported to the DWR, pursuant to K.S.A. 82a-732 and amendments thereto;

(B) the analysis of the documentation used in the verified report by the preparer of the verified report;

(C) a conclusion citing the specific successive years of nonuse to meet the criteria for abandonment found in K.S.A. 82a-718 and amendments thereto; and

(D) the years for which due and sufficient cause for nonuse pursuant to K.A.R. 5-7-1 was reported to the chief engineer pursuant to K.S.A. 82a-732, and amendments thereto, and verified by the DWR.

(2)(A) If the verified report specified by K.S.A. 82a-718(a), and amendments thereto, establishes that there has been no lawful, beneficial use of water for the period of time specified in K.S.A. 82a-718(a) and amendments thereto and that due and sufficient cause for the nonuse of water has not been reported to the DWR pursuant to K.S.A. 82a-732 and amendments thereto during this period, this shall be considered to be prima facie evidence that the water right has been abandoned.

(B) Upon a determination by the presiding officer that prima facie evidence of abandonment exists, the water right owner shall bear the burden of rebutting the prima facie evidence by a preponderance of the evidence establishing that there had been lawful, beneficial use of water during the time period in question or that due and sufficient cause existed for the nonuse of water during the period of time in question, or both, to avoid the application of K.S.A. 82a-718(a) and amendments thereto.

(3) The DWR may participate in the hearing to the same extent as the owner or owners of the water right.

(4) The DWR shall be heard first at the hearing, unless the presiding officer determines that another order of presentation will facilitate the conduct of the hearing.

(5) The presiding officer shall determine the order in which other parties and interveners may be heard.

(q) During the hearing, all of the following shall apply:

(1) The presiding officer shall not be bound by the technical rules of evidence.

(2) The presiding officer shall give the parties a reasonable opportunity to be heard and to present evidence.

(3) The presiding officer shall give effect to the privileges listed in K.S.A. 60-426 through 436, and amendment thereto, and any other privileges recognized by law.

(4) Evidence shall not be required to be excluded solely if the evidence is hearsay.

(5) All parties may note, in the record, their exceptions to any ruling or other action of the presiding officer.

(6) If the presiding officer sustains an objection to evidence or testimony, the party may make a proffer of the excluded evidence. The presiding officer may add other statements to clearly show the character of the evidence, the form in which the evidence was offered, and the objection and the ruling made. Upon request, the excluded testimony or evidence shall be marked and preserved for the record upon appeal.

(7) Without notice to the parties and without receiving a request from any party, the presiding officer may take administrative notice of the following:

(A) The Kansas water appropriation act and other Kansas statutes;

(B) regulations promulgated by the chief engineer;

(C) orders issued by or on behalf of the chief engineer; and

(D) specific facts and propositions of general knowledge that are so universally known or known within the profession that they cannot reasonably be the subject of dispute or that are capable of immediate and accurate determination by using easily accessible sources of indisputable accuracy.

(8) Upon reasonable notice to the parties and the opportunity to contest and offer rebuttal evidence, the presiding officer may also take administrative notice of any of the following:

(A) Scientific or technical matters within the DWR's specialized knowledge;

(B) the record of other proceedings before the DWR; and

(C) codes and standards that have been adopted by an agency of the United States, the state of Kansas, or any other state or by a nationally recognized organization or association.

(r) The hearing and all prehearing conferences shall be electronically recorded at the expense of the Kansas department of agriculture (KDA).

(1) Copies of electronic recordings may be obtained from the DWR. Written transcripts of the recording shall be available by request, and the requestor shall pay the cost of transcription.

(2) The DWR shall hire and pay for a court reporter if deemed necessary by the presiding officer for the presiding officer's use or for the preservation of testimony for later use in a court proceeding. Written transcripts shall be obtained directly from the court reporter at the requester's expense.

(s) If the chief engineer has not delegated authority to the presiding officer to issue an order, the presiding officer shall issue written recommendations to the chief engineer after the record of the hearing is closed.

(1) The recommendations shall be signed by the presiding officer and shall contain a statement of the recommended decision and the facts and conclusions of law upon which the recommended decision is based.

(2) The presiding officer shall serve the original, signed recommendations on the chief engineer and a copy of the recommendations on each party and on its counsel of record, if any, in the manner specified in this regulation.

(3) The recommendations shall state that the parties have at least 15 days after service in which to provide written comments to the chief engineer and shall contain a certificate of service. After the rec-

ord of the hearing is closed, no party may submit additional evidence unless specifically permitted to do so by the presiding officer in advance of the submission. In order to receive permission to submit additional evidence, the party shall file a written request with the presiding officer, in advance, with a copy to each other party. Each other party shall be given a reasonable chance to respond to the request to submit additional information. If additional evidence is allowed, each other party shall be allowed a reasonable opportunity to rebut the additional evidence submitted.

(4) All comments submitted within the specified time frame shall be considered by the chief engineer before issuing an order.

(5) The order shall state that it is subject to review by the secretary of agriculture pursuant to K.S.A. 82a-1901, and amendments thereto.

(t) An order shall be issued by the chief engineer or, if so authorized, the presiding officer after the record of the hearing is closed.

(1) The order shall be signed by the chief engineer or the presiding officer and shall contain a statement of the relevant law and the facts upon which the decision is based.

(2) The order shall be served on each party or its counsel of record in the manner specified in these regulations and shall contain a certificate of service.

(3) If the presiding officer made recommendations to the chief engineer, the order shall state which recommendations, if any, have been accepted by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2008 Supp. 82a-708b, 82a-711, 82a-718, 82a-737, 82a-770, 82a-1038, and 82a-1901; effective March 20, 2009.)

5-14-4. Appeal of the failure of the chief engineer to timely issue a certificate of appropriation.

(a) The time period specified in K.S.A. 82a-714(c), and amendments thereto, shall begin when the time authorized to perfect the water right, including any authorized extensions of time, expires.

(b) If the chief engineer fails to issue a certificate of appropriation within the time limit specified by K.S.A. 82a-714(c) and amendments thereto, the water right owner may file a request for review with the secretary of agriculture pursuant to K.S.A. 82a-1901, and amendments thereto, within 15 days of the expiration of the time period specified in K.S.A. 82a-714(c) and amendments

thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-714 and K.S.A. 1999 Supp. 82a-1901; effective Sept. 22, 2000.)

5-14-5. Conditions of a request for a conference hearing. (a) Any request for a conference hearing before the chief engineer shall meet the following conditions:

(1) Be in writing and be served on the chief engineer within 15 days of the issuance of the summary order;

(2) clearly admit, deny, or explain each of the findings of facts and conclusions of law in the summary order;

(3) identify any facts and conclusions of law that the person disputes and intends to place at issue; and

(4) state any other defenses and the bases for those defenses.

(b) If the person states that the person has no knowledge of a particular factual allegation, that allegation shall be deemed denied in the request. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-706b; effective Sept. 22, 2000.)

5-14-6. Informal settlement. At any time during the proceedings conducted under K.A.R. 5-14-2, K.A.R. 5-14-3, or K.A.R. 5-14-4, the alleged violator may request a settlement conference. The request shall be in writing and shall be served on the chief engineer on behalf of the alleged violator. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 Supp. 82a-1901; effective Sept. 22, 2000.)

5-14-7. Conversion of a conference hearing. (a) At any point during a conference hearing being conducted according to K.A.R. 5-14-2, the conference hearing may be converted by the chief engineer to a full adjudicative hearing to be heard by the chief engineer.

(b) The conversion of a conference hearing to a full adjudicative hearing may be effected only upon providing notice to all parties to the original proceedings.

(c) The record of the conference hearing may be used in the full adjudicative hearing.

(d) After a conference hearing is converted to a full adjudicative hearing, the hearing officer shall perform the following:

(1) Give any additional notice to parties or other persons necessary to satisfy the requirements of a full adjudicative hearing; and

(2) conduct any additional proceedings necessary to satisfy the requirements of a full adjudicative hearing.

(e) If the conference hearing is converted to a full adjudicative hearing, the full adjudicative hearing shall be conducted according to the following criteria:

(1) The hearing officer shall regulate the course of the proceedings.

(2) The parties may testify and present exhibits.

(3) The hearing officer may allow nonparties an opportunity to present oral or written statements and exhibits.

(4) All testimony shall be given under oath.

(5) To the extent necessary for full disclosure of all relevant facts and issues, the hearing officer shall afford to all parties the opportunity to respond, present evidence and arguments, conduct cross-examination, and submit rebuttal evidence.

(6) The hearing officer may conduct all or part of the hearing by telephone or other electronic means, if each party in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(7) The hearing shall be recorded at the agency's expense.

(8) Any party, at that party's expense and subject to any reasonable conditions that the state agency may establish, may cause a person other than the state agency to prepare a transcript from the state agency's recording or cause additional recordings to be made during the hearing. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and 82a-706b; effective Sept. 22, 2000.)

5-14-10. Civil penalties for violations other than exceeding the authorized quantity of water.

(a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds that any of the violations specified in K.S.A. 82a-737, and amendments thereto, have occurred, a written order may be issued by the chief engineer pursuant to K.S.A. 82a-737(e), and amendments thereto.

(b) Civil penalties.

(1) Any civil penalty assessed in any order issued under this regulation may be no greater than the civil penalties specified in subsection (m) for each applicable violation. Any day on which the violation continues to occur may constitute a separate offense. If an order is issued, the chief engineer may include all known violations of this regulation or K.A.R. 5-14-12, or both, and all penalties

pertaining to a given water right in the order. The order may include violations of this regulation or K.A.R. 5-14-12, or both, applicable to multiple water rights. Separate penalties may be assessed for each violation cited in a single order.

(2) The monetary penalties and suspension terms specified in subsection (m) may be reduced due to one or more of the following factors:

(A) The absence of any prior penalty assessed under the Kansas water appropriation act, or implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred and if that calendar year is not determinable, then preceding the calendar year in which the order is issued for the most recent violation;

(B) the absence of intentional noncompliance or gross negligence; or

(C) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative or by personnel from a groundwater management district.

(c) Lower-tier miscellaneous. Any of the following actions or inactions may constitute a lower-tier miscellaneous violation:

(1) Operating and maintaining a water flowmeter or other water-measuring device required by the chief engineer that is out of compliance as specified in K.A.R. 5-1-9, unless the violation is a meter manipulation;

(2) failure to properly implement a conservation plan required by the chief engineer;

(3) committing a waste of water; and

(4) violating an order of the chief engineer or a term, condition, or limitation of a water right, approval of application, term permit or temporary permit, or any regulation not otherwise specifically listed as a violation in this regulation.

(d) Failure to provide information. Any of the following actions or inactions may constitute a failure to provide information:

(1) Failure to file a required monthly report; and

(2) failure to provide complete and accurate water use or other data, information, or records requested by the chief engineer or authorized representative, except the annual water use reports required by K.S.A. 82a-732 and amendments thereto, within the following time frames:

(A) For information regarding water use during administration of a water right, within 24 hours of the chief engineer's or authorized representative's request; and

(B) for all other information, within 15 days of the request made by the chief engineer or authorized representative or within any other time frame prescribed by the chief engineer or authorized representative when the request is made.

(e) Unauthorized diversion or threat to divert. Any of the following actions may constitute an unauthorized diversion or threat to divert:

(1) A threat to divert water without authorization from the chief engineer;

(2) irrigating an unauthorized place of use;

(3) diverting water at a rate in excess of the authorized rate of diversion;

(4) diverting water from an unauthorized point of diversion of water; and

(5) applying water to an unauthorized type of beneficial use.

(f) Denial of access. It may be a violation for any person to deny access to authorized agents of the chief engineer as required by K.S.A. 82a-706b, and amendments thereto.

(g) Lack of water flowmeter. It may be a violation for any person to fail to timely install, or to remove and fail to replace, a required water flowmeter or other acceptable water-measuring device.

(h) Noncompliance with a substantial order. Any of the following actions may constitute a violation of a substantial order of the chief engineer:

(1) Violating a cease-and-desist order issued by the chief engineer;

(2) violating an order of the chief engineer issued pursuant to K.S.A. 82a-706b, and amendments thereto;

(3) violating any order of the chief engineer issued pursuant to K.S.A. 82a-1038, K.S.A. 82a-1041, or K.S.A. 82a-745, and amendments thereto, or any associated term permit, relating to an intensive groundwater use control area, local enhanced management area, or water conservation area; and

(4) violating a minimum desirable streamflow order issued by the chief engineer pursuant to K.A.R. 5-15-1 through 5-15-3.

(i) Meter manipulation.

(1) Any of the following actions may constitute meter manipulation:

(A) Causing a water flowmeter or other acceptable water-measuring device to show an incorrect or inaccurate reading by any method, including any of the following:

(i) Tampering with the meter in any way;

(ii) physically altering the meter reading or the propeller;

(iii) operating the water flowmeter in reverse orientation or running the water flowmeter in reverse by any means; or

(iv) altering a water flowmeter from its factory specifications in a manner that causes the meter to underreport actual water use; and

(B) removing a seal placed on a pump, diversion device, or water flowmeter without the written permission of the chief engineer or the chief engineer’s authorized representative.

(2) If a penalty is assessed for meter manipulation under this regulation and more than one water right is serviced by a single meter, then a single penalty may be assessed for all water rights serviced by that meter.

(j) Falsification. Any of the following actions may constitute falsification:

(1) Providing false water use data, including providing inaccurate information during a perfection period or after a water right has been certified, that underreports or overreports water use; and

(2) falsifying any other required data or information.

(k) Noncompliance with a special condition of change application approval.

(1) Any of the following actions may constitute a violation of a special condition of a change application approval:

(A) Violating any of the terms and conditions of a multiyear allocation; and

(B) violating a term or condition limiting the net acres that may be irrigated in any one calendar year pursuant to an approval to allow annual rotation of the authorized place of use for irrigation.

(2) The suspension specified in subsection (m) may apply to all or any portion of the annual water use authorized by the water right, any term permit, and any water right upon which a multiyear allocation or rotation was based. Additionally, a subsequent restriction of the authorized place of use to the base acreage at a location specified in the change approval may be applied. After any suspension has expired, the water right may revert to all conditions in effect on the water right before approval of the change application that authorized the multiyear allocation or rotation.

(l) Penalties for water rights in a term permit. If falsification or meter manipulation occurs during the term of a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit, and the base water right

may be suspended for what would have been the remainder of the term permit. In addition to the suspension, a penalty corresponding to the falsification or meter manipulation violation cited may be imposed. Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term permit.

(m) Penalty table. The following table may specify the maximum civil penalty and the maximum suspension term that may be assessed by the chief engineer for each violation of this regulation:

Violation	Monetary penalty	Maximum number of days monetary penalty applied	Suspension of water use
Lower-tier miscellaneous	\$500 per day	20	One year
Failure to provide information	\$500 per day, for each day the violation exists	20	One year
Unauthorized diversion or threat to divert	\$500 per day	20	One year
Denial of access	\$1,000 per day	10	Three years
Lack of water flowmeter	\$1,000 per day	10	Three years
Noncompliance with a substantial order	\$1,000 per day	10	Five years
Meter manipulation	\$1,000 per day	10	Five years
Falsification	\$1,000 per instance of falsification	Not applicable	Five years
Noncompliance with a special condition of a change application approval	\$1,000 per day	10	Two years

(n) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in Kansas may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

(o) Appeal. Any person aggrieved by an order of the chief engineer may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, and after exhaustion of administrative remedies, may

appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-737, and K.S.A. 2016 Supp. 82a-1901; effective Oct. 24, 2003; amended Oct. 31, 2008; amended July 14, 2017.)

5-14-11. Civil fines; water use reporting.

(a) Any owner of a water right or approval of application may be assessed a civil penalty of \$1,000 per year for each water right or approval of application for which the owner does not perform the following:

(1) Timely submit an annual water use report pursuant to K.S.A. 82a-732, and amendments thereto; and

(2) submit a complete and accurate water use report pursuant to K.S.A. 82a-732, and amendments thereto.

(b) If the owner submits both the complete and accurate water use report and payment of the civil penalty after March 1 but before June 1, the civil penalty per water right or approval of application may be reduced to \$250 for each water right or approval of application.

If the owner submits the reduced civil penalty but not the water use report after March 1, the civil penalty may increase on June 1 to the maximum civil penalty of \$1,000 for each water right or approval of application. The initial reduced civil penalty received after March 1 but before June 1 shall be applied toward the maximum civil penalty owed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2016 Supp. 82a-732, and K.S.A. 2016 Supp. 82a-737; effective Oct. 24, 2003; amended Sept. 22, 2017.)

5-14-12. Civil penalties for exceeding the authorized quantity of water. (a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds a diversion of water in excess of the authorized quantity, a written penalty order may be issued by the chief engineer pursuant to 82a-737(e), and amendments thereto.

(b) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in this state may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent

heir, assignee, purchaser, or other subsequent holder of the water right.

(c) Penalty categories. Any violation for diversion of water in excess of the authorized quantity may be subject to the penalties specified in one of the following categories, as listed in subsection (e): category 1, category 2, category 3, or category 4.

(1) A category 1 penalty may be assessed if no penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(2) A category 2 penalty may be assessed if one prior penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(3) A category 3 penalty may be assessed if two prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(4) A category 4 penalty may be assessed if three or more prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(d) Severity level of violation. Any violation may be assigned a severity level based upon the amount of water diverted in excess of the authorized quantity, according to the following:

(1) A water right that has exceeded its authorized quantity by less than an amount equal to the amount resulting from 24 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level A penalty.

(2) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 24 hours of pumping but less than an amount equal to 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level B penalty.

(3) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level C penalty.

(e) Penalty table. The following table may be used to determine the maximum civil penalty and the maximum reduction or modification of the water right that may apply to each violation, based on the penalty category and the severity level of the violation:

Penalty category	Severity level A	Severity level B	Severity level C
1	Written notice of noncompliance	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a reduction in quantity equal to three times the quantity overpumped, not to exceed the annual authorized quantity
2	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a one-year suspension	\$1,000 per day and three-year suspension
3	\$1,000 per day and a one-year suspension	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension
4	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension	\$1,000 per day and a five-year suspension

(f) Mitigating factors. The monetary penalties and suspension terms specified in subsection (e) may be reduced due to one or more of the following factors:

(1) The absence of any prior penalty assessed under the Kansas water appropriation act, or the implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred;

(2) the absence of intentional noncompliance or gross negligence; or

(3) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative of the chief engineer or by personnel from a groundwater management district.

(g) Notice of noncompliance. Any notice of noncompliance issued under this regulation may

be considered a category 1 penalty for purposes of classifying any future violation.

(h) Multiple water rights.

(1) If multiple water rights or permits authorize the use of water from a single point of diversion and if the water used exceeds the total quantity of water authorized by the water rights and permits, all water rights and permits under which the water was lawfully diverted may be deemed to be violated unless sufficient evidence to the contrary is offered by one or more of the water right owners.

(2) Any monetary penalty assessed under this regulation may be applied jointly and separately to the water rights, any temporary quantity reduction may be applied proportionally to each water right based on the authorized quantities for the water rights, and any suspension may be applied to all the water rights, unless it can be determined that the quantity available under a given water right was not exceeded.

(i) Penalties for water rights in a term permit. For each instance of diversion of water in excess of the total authorized quantity under a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit. For each revocation, a suspension may be applied to the base water right for what would have been the remainder of the term of the permit, in addition to any penalty assessed according to subsection (e). Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term of the term permit.

(j) Expiration of penalty.

(1) Any penalty assessed by the chief engineer for diversion of water in excess of the authorized quantity under this regulation may expire four calendar years after the end of the calendar year in which the penalty was assessed.

(2) Any penalty that has not expired may be counted as a prior penalty for purposes of determining the category level of any future penalty for diversion of water in excess of the authorized quantity.

(3) A penalty that has expired under paragraph (j)(1) shall not be considered in assessing a future penalty under this regulation or under K.A.R. 5-14-10.

(4) A penalty that has expired shall not be expunged from the record of a water right and, except as otherwise provided in this regulation,

may be considered by the chief engineer for any purposes pursuant to the Kansas water appropriation act, K.S.A. 82a-701 et seq. and amendments thereto, and the implementing regulations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-737; effective July 14, 2017.)

Article 15.—MINIMUM DESIRABLE STREAMFLOWS

5-15-1. Administration of minimum desirable streamflow. (a) Except as specified in subsection (d), if the streamflow at a minimum desirable streamflow (MDS) gaging station falls below the streamflow established in K.S.A. 82a-703c, and amendments thereto, for a period of seven consecutive days, a determination of whether the following conditions have been met shall be made by the chief engineer:

(1) The actual daily average streamflow at the gage has been less than the streamflow trigger value set by K.A.R. 5-15-4.

(2) If an alluvial aquifer has a significant effect on streamflow, the static groundwater level in the alluvial aquifer above the gage is insufficient to maintain MDS in the stream.

(b) Whenever the chief engineer determines that MDS administration should occur according to subsection (d) or because the conditions specified in paragraphs (a)(1) and (2) have both been met, water rights and approvals of applications with a priority after April 12, 1984 shall be administered in order of priority as necessary to protect the appropriate minimum desirable streamflow specified in K.S.A. 82a-703c, and amendments thereto. Owners of record in the office of the chief engineer of water rights and approvals of applications that are being administered shall be notified by the chief engineer that water rights and approvals of applications are being administered to protect MDS. This notification shall be made by certified mail, personal notice, or other verifiable means.

(c) After administration to protect MDS has begun, no person that has received notice according to subsection (b) may divert water under the authority of a water right or approval of application with a priority after April 12, 1984, unless one of the following conditions is met:

(1) The owner of the water right or approval of application has entered into an annual MDS consent order with the chief engineer in accordance

with the provisions of K.A.R. 5-15-2 and is diverting water in accordance with the terms of that MDS consent order.

(2) The chief engineer has determined, in accordance with the provisions of K.A.R. 5-15-3, that administration of water rights and approvals of applications with a priority after April 12, 1984 is no longer necessary to protect MDS and has notified the owners by certified mail, personal notice, or other verifiable means that diversions may continue in accordance with the terms, conditions, and limitations of the water right or approval of application.

(d) If the streamflow at an MDS gaging station falls below the level established in K.S.A. 82a-703c, and amendments thereto, for a period of seven consecutive days and no streamflow trigger value has been set for an MDS gaging station in K.A.R. 5-15-4, a determination of whether and when MDS administration will begin and how it should occur shall be made by the chief engineer, based on the following factors:

(1) The general hydrologic conditions affecting streamflow in the stream reach;

(2) the magnitude and duration of recent streamflows;

(3) the extent to which groundwater contributes to streamflow;

(4) the effects of drought on streamflow;

(5) the existence and effect of relevant water management agreements;

(6) the magnitude of the effect that the administration of water rights with priorities junior to the MDS values would have on the streamflow; and

(7) the effect of reservoir operations.

This regulation shall be effective on and after August 27, 2002. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-703a, 82a-703b, and 82a-703c; effective, T-5-4-29-02, April 29, 2002; effective Aug. 27, 2002.)

5-15-2. Minimum desirable streamflow consent orders. (a) An annual minimum desirable streamflow (MDS) consent order according to K.A.R. 5-15-1(c)(1) may be entered into by the chief engineer and the owner of the water right or approval of application to divert surface water. This consent order shall contain the following provisions:

(1) Whenever the chief engineer has determined that the administration of water rights and approvals of applications to divert surface water

with a priority after April 12, 1984 is necessary to protect the minimum desirable streamflow set by K.S.A. 82a-703c, and amendments thereto, water shall not be diverted under the authority of these water rights or approval of applications unless the owner has been notified by the chief engineer by certified mail, personal notice, or other verifiable means that either of the following conditions has been met:

(A)(i) The chief engineer has determined that the average daily streamflow has been, or is likely to be, at or above the temporary surface water diversion threshold for a period of time specified in K.A.R. 5-15-4 or set by the chief engineer according to K.A.R. 5-15-1(d); and

(ii) the chief engineer has determined that water is available to be diverted during that time period under the priority of water rights or approval of applications with a priority after April 12, 1984 without impairing senior water rights or senior water reservation rights.

(B) The chief engineer has determined that it is no longer necessary to administer water rights and approval of applications to protect the minimum desirable streamflow set by K.S.A. 82a-703c, and amendments thereto.

(2) The owner of the water right or approval of application shall properly install and maintain a water flowmeter on all points of diversion authorized by the water rights or approval of applications in accordance with regulations adopted by the chief engineer.

(3) The water right owner agrees that failure to abide by either of the following will result in the suspension of the water right or approval of application pursuant to K.S.A. 82a-737, and amendments thereto, for the remainder of the calendar year, and any other enforcement actions that may be authorized by law:

(A) The terms of the MDS consent order; or

(B) the terms, conditions, and limitations of the water right or approval of application.

(4) The water right owner agrees to comply with any other provisions that the chief engineer determines are necessary to prevent impairment, protect MDS values, and protect the public interest.

(b) If the chief engineer determines that hydrologic conditions indicate that some groundwater will be available to be pumped in the basin during the next water-use season or year by water rights or approval of applications with a priority after April 12, 1984, the owner of the water right or

approval of application may enter into an annual MDS consent order pursuant to K.A.R. 5-15-1(c) (1) to divert groundwater, upon approval of the chief engineer. This consent order shall contain the following provisions:

(1) Whenever the chief engineer has determined that the administration of water rights and approval of applications to divert groundwater with a priority after April 12, 1984 is necessary to protect minimum desirable streamflows set by K.S.A. 82a-703c, and amendments thereto, groundwater shall not be diverted under the authority of the water right or approval of application unless the owner has been notified by the chief engineer by certified mail, personal notice, or other verifiable means that one of the following conditions has been met:

(A) During MDS administration during that calendar year, the owner is authorized to divert, pursuant to the owner's water right or approval of application, a quantity of water not to exceed that quantity of water set forth in K.A.R. 5-15-4 as the well pumping allowance.

(B) The chief engineer has determined that it is no longer necessary to administer water rights and approvals of applications to protect the minimum desirable streamflows set by K.S.A. 82a-703c, and amendments thereto.

(2) The owner of the water right or approval of application shall properly install and maintain a water flowmeter on all points of diversion authorized by the water right or approval of application in accordance with regulations adopted by the chief engineer.

(3) The total quantity of water authorized to be diverted under the water right or approval of application during a calendar year shall not exceed the annual quantity of water authorized.

(4) The water right owner agrees that failure to abide by either of the following will result in the suspension of the water right or approval of application for the remainder of the calendar year, and any other enforcement actions that may be authorized by law:

(A) The terms of the MDS consent order; or

(B) the terms, conditions, and limitations of the water right or approval of application.

(5) The water right owner agrees to comply with any other provisions that the chief engineer determines are necessary to prevent impairment, protect MDS values, and protect the public interest.

This regulation shall be effective on and after

August 27, 2002. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-703a, 82a-703b, and 82a-703c, and K.S.A. 2001 Supp. 82a-737; effective, T-5-4-29-02, April 29, 2002; effective Aug. 27, 2002.)

5-15-3. Cessation of minimum desirable streamflow administration. (a) Except as specified in subsection (c), whenever the chief engineer determines that both of the conditions specified in subsection (b) have been met, the administration of water rights and approvals of applications with a priority after April 12, 1984 to protect minimum desirable streamflows pursuant to K.S.A. 82a-703c, and amendments thereto, shall be declared by the chief engineer to be no longer necessary. The owners of those water rights and approvals of applications shall be notified by the chief engineer by certified mail, personal notice, or other verifiable means that the owners may recommence diverting water in accordance with the terms, conditions, and limitations of their water rights or approvals of applications.

(b)(1) The streamflows at the minimum desirable streamflow (MDS) gage have exceeded the streamflows established by K.S.A. 82a-703c, and amendments thereto, for a period of 14 consecutive days.

(2) If a significant alluvial aquifer exists, the average static water level in the alluvial aquifer has recovered sufficiently to maintain MDS in the stream.

(c) Whenever the chief engineer determines that hydrologic conditions indicate that MDS values have been met or exceeded and are likely to be maintained for the foreseeable future, MDS administration may be declared by the chief engineer to be no longer necessary even if both of the conditions of subsection (b) have not been met.

This regulation shall be effective on and after August 27, 2002. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-703a, 82a-703b, and 82a-703c; effective, T-5-4-29-02, April 29, 2002; effective Aug. 27, 2002.)

5-15-4. Standards for minimum desirable streamflow. The streamflow trigger values, temporary surface water diversion thresholds, and well pumping allowances set forth in the following table shall be used whenever appropriate in these regulations.

MDS gaging station	streamflow trigger value	temporary surface water diversion threshold	well pumping allowance
Republican River Concordia	150 percent of the daily average MDS value* for the 60 preceding days	115 percent of MDS value* for a period of at least five days	32 percent of the maximum annual quantity of water that has not been diverted under the authority of that water right or approval of application, at the time MDS administration begins
Republican River Clay Center	150 percent of the daily average MDS value* for the 60 preceding days	100 percent of MDS value* for a period of at least five days	32 percent of the maximum annual quantity of water that has not been diverted under the authority of that water right or approval of application, at the time MDS administration begins

* “MDS value” means the minimum desirable streamflow value established by K.S.A. 82a-703c, and amendments thereto.

This regulation shall be effective on and after August 27, 2002. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-703a, 82a-703b, and 82a-703c; effective, T-5-4-29-02, April 29, 2002; effective Aug. 27, 2002.)

Article 16.—FLEX ACCOUNT

5-16-1. Definitions. The terms and definitions in this regulation shall apply to this article and to K.S.A. 82a-736, and amendments thereto, unless the context clearly requires otherwise. (a) “Subdivision or subdivisions of the place of use for the base water right” means one or more portions of the authorized place of use under the base water right that are identifiable and completely circumscribed by the boundaries of place of use for the base water right.

(b) “Water conservation” means conservation by means of actual physical changes in a water distribution system or management practices that improve water use efficiency, which shall include one or more of the following:

- (1) Conversion from flood irrigation to center

pivot irrigation with a nozzle package designed to improve water use efficiency;

- (2) conversion to subsurface drip irrigation;
- (3) removal of an end gun, resulting in a significant reduction in the number of irrigated acres; or
- (4) enrollment of the base water right in the water right conservation program, the conservation reserve program, or any other multiyear water conservation program approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013.)

5-16-2. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-708a(d), as amended by L. 2002, Ch. 181, § 21; effective Oct. 11, 2002; revoked June 21, 2013.)

5-16-3. Establishing a multiyear flex account. (a) A multiyear flex account shall be established by filing an application for a multiyear flex account and a term permit on a form prescribed by the chief engineer. Each application shall meet the following requirements:

(1) Except as specified in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a multiyear flex account. Each application shall be accompanied by the appropriate filing fee;

(2) be date-stamped showing the date the application was filed with the chief engineer;

(3) indicate the five consecutive calendar years that are to be designated as the multiyear flex account period; and

(4) indicate whether the multiyear flex account period will commence with the year in which the application is made if filed before October 1, or with the next calendar year after the calendar year in which the application is filed.

(b) Before any application to establish a multiyear flex account and a term permit will be accepted for filing, the application shall be signed by at least one owner of the water right or an authorized agent of an owner of the water right.

(c) Before the multiyear flex account can be established or the term permit approved, all of the water rights owners, or an authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a multiyear flex account and apply for a term permit shall be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The multiyear flex account shall not be established and the term permit to exercise the multiyear flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013.)

5-16-4. Conditions on the term permit.

(a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights or a subdivision or subdivisions of the place of use for the base water right.

(b) The types of use authorized by a term permit shall be limited to the types of use authorized by the base water right or rights.

(c) The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

5-16-5. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2010 Supp. 82a-736, as amended by L. 2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; revoked June 21, 2013.)

5-16-6. Multiyear flex accounts and term permits. (a) The duration of the multiyear flex account and term permit shall be five consecutive calendar years.

(b) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year in the period

used to determine the base average usage, then the actual water use for that calendar year shall be deemed to be zero.

(c) There shall be no carryover of unused quantities of water from one multiyear flex account or term permit to another multiyear flex account or term permit.

(d) No multiyear flex account shall be allowed if the multiyear flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto, or any local enhanced management area created pursuant to K.S.A. 82a-1041, and amendments thereto.

(e) Water flowmeters shall be required under all multiyear flex account term permits and shall meet all of the following requirements:

(1) A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the base water right.

(2) Each water flowmeter and the measuring chamber shall be sealed to the diversion works in a manner to ensure that the flowmeter and the measuring chamber can not be removed and reinstalled without breaking the seal.

(3) Each water flowmeter register shall be sealed in a manner to ensure that the register can not be manipulated without breaking the seal.

(4) Each replacement of a water flowmeter during the duration of a multiyear flex account shall be equipped with an anti-reverse-flow mechanism.

(f) Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a multiyear flex account. Nothing in this subsection shall prevent a multiyear flex account term permit from authorizing a subdivision of the place of use for the base water right as the place of use for the multiyear flex account.

(g) All water diverted pursuant to a term permit and the base water rights associated with the term permit shall be counted against the quantity of water deposited in the multiyear flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

5-16-7. Conditions under which a base water right may be exercised. Each term permit approved by the chief engineer pursuant to K.S.A. 82a-736, and amendments thereto, shall in-

clude the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised to the extent that all of the following conditions are met: (a) The base water right is in priority, including priority with respect to any established minimum desirable streamflow.

(b) The annual quantity of water authorized by the base water right has not been diverted during that calendar year.

(c) The five-year quantity authorized by the term permit has not been completely used.

(d) The use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013.)

Article 17.—WATER BANKING

5-17-1. Definitions for water banking. As used in these water banking regulations, in the Kansas water banking act, K.S.A. 82a-761 et seq. and amendments thereto, and by the chief engineer in the administration of this act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) “Bankable water right” means a water right, or portion of a water right, that meets the requirements of the following:

- (1) K.S.A. 82a-764, and amendments thereto; and
- (2) the water bank charter.

In calculating the portion of a water right that is bankable, credit shall be given for any water conservation practices implemented according to this regulation. The bankable portion of linked water rights shall be determined on a case-by-case basis. For a surface water right that has water available from a water assurance district, the quantity of water available from the water assurance district may be considered when determining how much of the water right is bankable.

(b) “Good standing,” only for the purposes of the Kansas water banking act and regulations, means a water right, or portion of a water right, that meets all of the following criteria:

(1) Except as set forth in paragraph (b)(2), the water right, or portion of a water right, has been lawfully put to beneficial use within the past five years.

(2) For a water right that has been enrolled in the water right conservation program (WRCP) or a water right whose authorized place of use has been enrolled in the conservation reserve program (CRP), the water right has been put to lawful beneficial use within the five-calendar-year period before enrollment in the program. A water right that is currently enrolled in the WRCP shall not be deposited in a water bank. If the authorized place of use is currently enrolled in the CRP, the water right shall not be deposited in a water bank, unless the authorized place of use has been changed to a place of use that is not enrolled in the CRP and water has actually been applied to beneficial use on the newly authorized place of use for at least one calendar year.

(3) All of the following conditions regarding the water right are met:

(A) In the five calendar years before the water right is deposited or placed in a safe deposit account, there has not been a conviction associated with that water right pursuant to K.S.A. 82a-728, and amendments thereto.

(B) No civil penalty has been assessed pursuant to K.S.A. 82a-737, and amendments thereto, against anyone for violations relating to the water right.

(C) The water right has not been suspended pursuant to K.S.A. 82a-737, and amendments thereto.

(D) No order of the chief engineer relating to the water right has been disobeyed.

(E) The applicant who is applying to deposit the water right into, or lease water from, a water bank or to withdraw water from a safe deposit account has a history of compliance with contracts with the water bank and term permits used to withdraw water from a water bank or from a safe deposit account.

(c) "Long-term rolling average," only for the purposes of the Kansas water banking act, means a five-year running average of the net consumptive use of all the participating rights. This average shall be calculated by adding together the average net consumptive use for each participating right in a hydrologic unit.

The average shall first be computed after the water bank has been in operation for three years. For each year after the third year, another year's data shall be added until five years of data are available. After the water bank has been in operation for five years or more, the last five years of data shall be used to calculate the average. The resulting number shall then be compared against the average annual net consumptive use of partic-

ipating rights in that hydrologic unit for the representative past period.

(d) "Net consumptive use" means the gross diversion of water for beneficial use, minus the following:

(1) Waste of water, as defined in K.A.R. 5-1-1; and

(2) return flows to the source of water supply through surface water that is not waste and by deep percolation.

For irrigation use, only as used in the water banking act and regulations, net consumptive use shall be calculated as 85 percent of the actual legal gross diversions in any one calendar year or calculated using some other methodology approved by the chief engineer as complying with standard engineering practices. Net consumptive use for all other types of water use shall be calculated in accordance with a methodology approved by the chief engineer as complying with standard engineering practices.

The average annual net consumptive use for the representative past period shall be calculated by first calculating the average annual net consumptive use for each participating right for the representative past period and then adding those averages together. If a participating right did not legally divert water during any year in the representative past period or was not authorized to divert water, that year shall be counted as zero in computing the average annual consumptive use for that water right for the representative past period.

(e) "Participating rights" means all of the water rights in a hydrologic unit that are under contract to be deposited in a water bank or safe deposit account.

(f) "Representative past period" means a period of at least 10 consecutive years occurring entirely before the date on which the water bank is chartered and having a reasonable balance of years with above-normal and below-normal precipitation. For a water right not permitted during the entire representative past period, for the sole purpose of determining the portion of that water right that is bankable pursuant to K.S.A. 82a-765(b)(9) and amendments thereto, the water bank may select a different representative past period, but the bankable portion of each water right shall be the lesser of either of the following:

(1) The annual quantity of water perfected; or

(2) the average percentage of water rights determined to be bankable, for all water rights in that hydrologic unit that were permitted for the representative past period occurring entirely before the date on which the bank was chartered.

(g) “Severely depleted groundwater aquifer” means an aquifer that meets any of the following criteria:

(1) The chief engineer has declared the aquifer to be an aquifer in need of recovery pursuant to K.S.A. 2-1919, and amendments thereto.

(2) The average static water level decline in the hydrologic unit, based on a representative sample of wells distributed throughout the hydrologic unit, in the 20 calendar years immediately preceding the calendar year in which the water bank was chartered is substantially greater than the average annual variability in the static water level in the hydrologic unit.

(3) The average yield of the groundwater aquifer is not sufficient to meet the 50 percent chance net irrigation requirements (N.I.R.) for crops typically grown in the hydrologic unit using methods of irrigation typically used in that hydrologic unit.

(h) “Severely depleted stream course” means a stream reach that has been declared by the chief engineer to be a stream reach in need of stream recovery pursuant to K.S.A. 2-1919, and amendments thereto.

(i) “Water conservation practices” means actual physical changes in a water distribution system or management practices that were made to improve water use efficiency during the representative past period, including the following:

(1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;

(2) irrigation scheduling;

(3) conversion to subsurface drip irrigation; and

(4) removal of an end gun, resulting in a reduction in the number of irrigated acres.

The applicant shall have the burden of documenting the implementation of water conservation practices that could have altered the results of the calculation of the portion of the water right that is bankable, to the detriment of the applicant. (Authorized by and implementing K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-2. Application to deposit a water right into a water bank or withdraw a deposit.

(a) Each water right owner proposing to deposit all or a portion of a water right into a water bank shall complete an application on a form prescribed by the water bank and approved by the chief engineer. The application shall be filed with the water bank on or before April 1 of the year in which the deposit will be made. A water right, or a portion of a water

right, may be deposited only in increments of full calendar years. A water right shall not be eligible for deposit if water use occurred under the water right, or a portion of the water right, at any time from January 1 through March 31 of the year in which the deposit will be made. The application shall contain the following information concerning the water right, or portion of the water right, that is proposed to be deposited:

(1) The file number of the water right to be deposited;

(2) if the water right is a vested right or an appropriation right that has been certified by the chief engineer, specification of that status;

(3) the hydrologic unit from which the water right is authorized to withdraw water;

(4) the calendar years during which the water right will be on deposit. This period shall not exceed five years; and

(5) any CRP contracts that were in effect for any part of the representative past period.

(b) A water right may be withdrawn from deposit only if both of the following conditions are met:

(1) The water right has not been leased in whole or part.

(2) An application to withdraw the water right from deposit is made before July 1 of the calendar year for which the deposit has been made. Withdrawal of a water right during one calendar year also shall withdraw the water right from deposit in any subsequent years for which the water right may have been deposited. (Authorized by K.S.A. 2009 Supp. 82a-769; implementing K.S.A. 2009 Supp. 82a-763, K.S.A. 2009 Supp. 82a-764, and K.S.A. 2009 Supp. 82a-769; effective Aug. 13, 2004; amended May 21, 2010.)

5-17-3. Contract for deposit of a water right.

(a) Each water right owner that has an application approved for the deposit of all or a portion of a water right into a water bank and that desires to deposit all or a portion of the water right into the water bank shall enter into a contract with the water bank that includes the following provisions and information:

(1) The file number of the water right to be deposited;

(2) the hydrologic unit from which the water is authorized to be withdrawn;

(3) the calendar years during which the water right will be on deposit, which shall not exceed five years;

- (4) the quantity of water to be deposited;
- (5) the terms of payment for the deposit;
- (6) if a portion of a water right is deposited, an agreement that the quantity of water pumped under the portion of the water right that is not deposited shall not exceed the difference between the bankable portion of the water right and the amount deposited; and
- (7) an acknowledgment of the specific fines or suspension penalties that will be imposed for violation of the contract.

(b) The water bank shall notify the chief engineer of each water right deposit before the deposit is leased. This notice shall include a determination of the annual quantity of water that is bankable for each water right and the portion of the bankable quantity of the water right that has been deposited. If an entire water right is deposited, no water may be pumped under that water right, except under the authority of a lease from a water bank and a term permit issued by the chief engineer to exercise that lease. If a portion of a water right is deposited, the annual quantity of water pumped under the portion of the water right that is not deposited shall not exceed the difference between the bankable portion of the water right and the amount deposited. An order may be issued by the chief engineer after the deposit notifying the owner of the annual quantity of water, if any, that may be diverted under the original water right to prevent the net consumptive use of the water right from being increased. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-4. Application to lease water. (a) Each person proposing to lease water from a water bank shall complete an application for a contract to lease water on a form prescribed by the water bank and approved by the chief engineer and an application for a term permit. The application for the contract shall be filed with the water bank. The application for a term permit shall be filed with the chief engineer. Each application shall include the following information concerning the water proposed to be leased:

- (1) The quantity of water to be leased;
- (2) the proposed maximum rate of diversion;
- (3) the calendar years during which water is proposed to be leased, which shall not exceed the length of the water bank charter plus three calendar years;

- (4) the location of the proposed point of diversion, including the hydrologic unit;
- (5) the proposed place of use;
- (6) the proposed use made of water;
- (7) the water flowmeter reading from the proposed point of diversion, if the water will be diverted from an existing point of diversion, at the time the application is filed;

(8) the file numbers of the other water rights and approvals of applications that authorize use of water from the proposed point of diversion; and

- (9) if the proposed use is for irrigation, the number of acres that will be irrigated and the number of acres of each type of crop that will be grown.

(b) Any water bank may enter into a lease extending beyond the length of the water bank charter only if both of the following conditions are met:

(1) The water bank charter has a procedure approved by the chief engineer that sets forth how the leases will be administered if the water bank is dissolved.

(2) The bank charter assigns the responsibility and cost of administering the leases after the water bank is dissolved to a responsible person or entity.

(c) Any applicant whose application meets all the criteria in subsections (a) and (b) may enter into a contract to lease water from the water bank if sufficient water rights have been deposited in the same hydrologic unit where the point of diversion and the place of use are proposed to be located to cover the lease. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-5. Contract to lease water. Any person who has an application approved by the water bank for the lease of water from the water bank may enter into a contract with the water bank to lease water. The contract shall be entered into before a term permit can be issued by the chief engineer and shall include the following information and provisions:

- (a) The quantity of water to be leased;
- (b) the maximum rate of diversion at which the leased water will be diverted;
- (c) the calendar years during which water will be leased, which shall not exceed the length of the water bank charter plus three calendar years;
- (d) the location of the point of diversion where the leased water will be diverted, including the hydrologic unit;

- (e) the use made of the water to be leased;
- (f) the place of use of the water to be leased. The place of use shall be identical to a place of use authorized by an existing water right or approval of application, or shall be an entirely new place of use;
- (g) the terms of payment for the lease of water;
- (h) the penalties for breach of the lease, including those set forth in K.A.R. 5-17-13; and
- (i) a provision that if the term permit is not obtained by a certain date or the term permit is dismissed for any reason, the contract shall not be exercised. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-6. Conditions on the term permit to exercise a contract to lease water. (a) A contract to lease water may be exercised only if the chief engineer approves an application for a term permit to divert the leased water.

(b) The following conditions shall be imposed by the chief engineer on the term permit authorizing the use of water leased from a water bank:

(1) The maximum reasonable quantity of water that may be diverted per calendar year, as set forth in K.A.R. 5-17-17, and the maximum quantity of water that may be diverted during the term of the permit;

(2) the maximum rate of diversion;

(3) the term of the permit, which shall not exceed the length of the water bank charter plus three calendar years;

(4) the authorized point of diversion;

(5) the authorized place of use;

(6) the authorized use made of the leased water;

(7) a provision that the diversion shall not cause the impairment of any existing water rights;

(8) a provision that the diversion shall not cause an increase in depletion to any severely depleted groundwater aquifer or severely depleted stream course;

(9) a provision that the leased water shall be diverted from, and used within, the same hydrologic unit where the water rights were deposited; and

(10) a provision that any violation of a term permit used to exercise a lease shall make the permittee subject to the penalty provisions of K.A.R. 5-17-13. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-7. Contract to deposit water in a safe deposit account. (a) Each person proposing to deposit water into a safe deposit account shall enter into a contract with the water bank on a form prescribed by the water bank and approved by the chief engineer. The contract shall include the following information and provisions and any other provision needed to ensure that the deposit complies with the provisions of the Kansas water banking act and regulations:

(1) The term of the contract, which shall be for a specific number of calendar years and shall not exceed the length of the water bank charter plus three years;

(2) the proposed deposit of water, which shall be from a water right that is bankable;

(3) the water right from which water is being deposited. The water right shall be in good standing and shall be vested or certified;

(4) the hydrologic unit from which water is being deposited;

(5) the terms of payment for the deposit and a provision that any fees paid are not refundable if the water user voids the contract, or causes it to be void, for any reason;

(6) the location of the point of diversion authorized by the water right that is proposed to be deposited;

(7) the water right file numbers of any linked water rights that are proposed to be deposited; and

(8) a provision that the contract shall be entered into by December 31 of the year preceding the first year for which the owner desires to make a deposit in the safe deposit account.

(b) The amount of water that may be deposited in any year shall not exceed 25 percent of the quantity of unused water from the preceding year.

(c) At the end of the term of the contract to deposit water in a safe deposit account, including any extensions of time, all water in the account shall be forfeited.

(d) There shall not be multiple safe deposit accounts for any point of diversion.

(e) The term of a safe deposit account may be extended by the chief engineer upon request of the owner for a period not to exceed the length of the water bank charter plus three calendar years. Any water bank may extend a safe deposit account beyond the length of the water bank charter only if both of the following conditions are met:

(1) The water bank charter has a procedure approved by the chief engineer that sets forth how the safe deposit accounts will be administered if the water bank is dissolved.

(2) The bank charter assigns the responsibility and costs of administering the accounts after the water bank is dissolved to a responsible person or entity. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-8. Depositing water in a safe deposit account. (a) Each calendar year in which water is deposited, the depositor shall file a deposit slip, on a form prescribed by the water bank and approved by the chief engineer, with the water bank indicating the quantity of water that was unused and the quantity of water that the depositor proposes to deposit.

(b) Water shall be deposited in an existing safe deposit account no later than March 1 of the year following the calendar year in which the water was not used.

(c) When the deposit is made, the depositor shall furnish the water bank with the following information:

(1) The water flowmeter readings at the beginning and end of the calendar year in which the water was not used under the water right; and

(2) the quantity of water proposed to be deposited.

(d) The water bank shall accept for deposit the quantity of water that meets the provisions of the water bank charter and the Kansas water banking act and regulations. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-9. Term permit to use water that was deposited in a safe deposit account. (a) Before approval of a term permit to use water deposited in a safe deposit account, the water bank shall certify to the chief engineer the quantity of water that is in the safe deposit account.

(b) Before any water that has been deposited into a safe deposit account may be used, the applicant shall apply for a term permit, submit the appropriate filing fee, and receive approval from the chief engineer. Each term permit shall contain the following conditions:

(1) The maximum rate of diversion of water;

(2) the maximum quantity of water that may be diverted the remainder of that calendar year, which shall not exceed the quantity of water certified by the water bank to be in the safe deposit account;

(3) the length of the term permit, which shall not exceed December 31 of the year in which the term permit was issued by the chief engineer. No extensions of time shall be granted for this type of term permit;

(4) a provision that the use of water under the term permit shall not impair any existing water rights;

(5) a provision that the use of water under the term permit shall not cause an increase in the depletion of a severely depleted groundwater aquifer or severely depleted stream course; and

(6) a provision that violation of any of the terms of the term permit shall subject the owner to the penalty provisions of K.A.R. 5-17-13. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-10. Water bank charter proposal. (a) Each proposed water bank charter submitted to the chief engineer shall contain all of the following:

(1) Information showing that the proposed operations and policies of the water bank are consistent with the Kansas water banking act, the Kansas water appropriation act and regulations, the Kansas state water plan, the policies of any groundwater management district that is located within the boundaries of the proposed water bank, and the water assurance district operation agreements of any water assurance district located within the boundaries of the proposed water bank;

(2) information that demonstrates that there is sufficient participation to make the water bank's operations practical and feasible, including economically;

(3) a petition declaring an intent to establish a water bank that is signed by at least five percent of the water right owners within the water bank's proposed boundaries;

(4) the names of at least five members of the proposed governing body of the water bank, their addresses, and the public and private interests that each represents;

(5) the proposed boundaries of the water bank, including information showing that the boundaries of the proposed water bank do not overlap the boundaries of another water bank;

(6) for groundwater banks, an enumeration of all the hydrologic units and sources of water supply within the water bank boundaries, including alluviums, terrace deposits, and regional aquifers, both confined and unconfined, that have similar

aquifer properties. The aquifer properties shall include the saturated thickness and water level changes over the representative past period;

(7) for a water bank that includes surface water, a list of the streams and their tributaries that are to comprise the water bank and a methodology to limit the leasing of surface water so that it does not impair senior surface water rights and minimum desirable streamflow;

(8) the designation of a representative past period;

(9) a comprehensive method to account for the following:

(A) The amount of water deposited and the length of the contracts for deposit;

(B) the amount of water leased from the water bank and the length of the lease contracts; and

(C) the identification of the hydrologic units from which deposits and leases are being made;

(10) for a water bank that includes the use of groundwater, a proposed plan to ensure that the net amount of water consumed by the deposited water rights will be at least 10 percent less than the average net amount of water consumed by the deposited water rights for the representative past period. The proposed plan shall require the comparison of the average annual net consumption for the deposited water rights for the five-year period after a water bank is chartered or rechartered with the average net consumptive use for the deposited water rights for the representative past period;

(11) a list of any severely depleted groundwater aquifers or severely depleted stream courses;

(12) a plan to ensure that there will be no increase in the depletion of severely depleted groundwater aquifers or severely depleted stream courses;

(13) a method for determining the water rights that are bankable and the portion that is bankable;

(14) a procedure for dissolution of the water bank;

(15) for a bank using groundwater, a methodology for ensuring that the total quantity of groundwater leased each year does not exceed 90 percent of the average annual quantity collectively diverted pursuant to all deposited water rights or portions of water rights from each hydrologic unit for the representative past period;

(16) for a water bank that authorizes safe deposit accounts, a methodology to ensure that the users of safe deposit accounts will not increase the consumption of groundwater; and

(17) for a water bank that authorizes safe deposit accounts, a provision setting the maximum percentage of unused water from the previous year that may be deposited in a safe deposit account.

(b) After the body wishing to charter the water bank submits the proposed water bank charter to the chief engineer, it shall be circulated by the chief engineer to any groundwater management districts and water assurance districts located within the boundaries of the proposed water banks and to the Kansas water office for comments as to whether the proposed water bank charter complies with the provisions of K.S.A. 82a-765, and amendments thereto. Comments regarding the proposed water bank charter shall be due within 30 days after comments are requested by the chief engineer, unless an extension of time is requested within the time allowed and granted by the chief engineer for good cause shown. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-765 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-11. Annual reports of water banks.

Each water bank shall file an accounting report with the chief engineer each calendar year containing the following information: (a) The file numbers of the water rights, or portion of the water rights, deposited in the water bank;

(b) the annual quantity of water authorized for diversion for each water right deposited and a determination of the bankable quantity of water associated with each deposited water right;

(c) the term of each deposit;

(d) the hydrologic unit from which each water right was deposited;

(e) the file number of each term permit authorizing a lease of water;

(f) the term of the lease;

(g) the annual quantity of water that has been leased from each hydrologic unit;

(h) the hydrologic units where the leased water was diverted;

(i) the net year-end balance of water deposited versus water leased in each hydrologic unit within the water bank's boundaries;

(j) the annual quantity of water deposited into safe deposit accounts;

(k) the annual quantity of water used from safe deposit accounts;

(l) the hydrologic unit in which water was deposited in a safe deposit account;

(m) the total year-end balance of water remaining in safe deposit accounts after the 10 percent year-end reduction for all individual accounts;

(n) the total quantity of water diverted during the last three calendar years, by type of use;

(o) the total number of acres irrigated and the number of acres of each crop grown during the last three calendar years;

(p) any contracts that were breached, the nature of the breaches, and the enforcement actions taken by the water bank; and

(q) the average annual quantity of water diverted during the representative past period of each water right that has been deposited in the water bank. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-766 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-12. Water use reports. (a) Each owner of a water right authorized for irrigation use that deposits a water right in a water bank or deposits water in a safe deposit account, and each person that leases water for irrigation use and any linked water rights, shall file the water use report required by K.S.A. 82a-732, and amendments thereto, on or before December 1 of the year for which water use is being reported.

(b) Each owner of a water right authorized for non-irrigation use that deposits a water right in a water bank or deposits water in a safe deposit account, and each person that leases water for non-irrigation use and any linked water rights, shall file the water use report required by K.S.A. 82a-732, and amendments thereto, on or before January 10 of the year following the year for which water use is being reported.

(c) The failure of a water right owner to submit a complete and accurate water use report, including water flowmeter readings, as required by this regulation shall result in civil fines in the amounts set forth in K.A.R. 5-14-11.

(d) If a water use report is inadequate to accurately determine the actual water use during any calendar year, then that year shall be counted as having had no water use for the purpose of determining the extent to which a water right is bankable pursuant to K.S.A. 82a-764, and amendments thereto, unless the water use report is corrected as set forth in K.A.R. 5-3-5o. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-766 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-13. Enforcement. If any person violates any of the following, enforcement action may be taken by the chief engineer as specified in K.A.R. 5-14-1 and K.A.R. 5-14-10:

(a) A term, condition, or limitation of a term permit issued to authorize the diversion of leased water;

(b) a term, condition, or limitation of a term permit issued to withdraw water from a safe deposit account;

(c) a term, condition, or limitation of a water right that has been deposited in the water bank or a safe deposit account;

(d) any order of the chief engineer concerning the deposit or lease of a water right; or

(e) any order or condition placed on the use of the remainder of a water right that was partially deposited in the water bank or a safe deposit account. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-769 and K.S.A. 2003 Supp. 82a-770; effective Aug. 13, 2004.)

5-17-14. Water flowmeters. (a) The following points of diversion shall meet the requirements specified in subsection (b):

(1) Within a groundwater bank, all non-domestic, non-temporary wells within the boundaries of the water bank;

(2) within a surface water bank, all non-domestic, non-temporary surface water points of diversion within the boundaries of the water bank; and

(3) within a groundwater and surface water bank, all non-domestic, non-temporary points of diversion within boundaries of the water bank.

(b) While a water bank is operating, each of the points of diversion described in subsection (a) shall meet one of the following requirements:

(1) Be equipped with a water flowmeter meeting the requirements of K.A.R. 5-1-4 through K.A.R. 5-1-12;

(2) be sealed by the chief engineer; or

(3) be approved by the chief engineer as having another objectively verifiable means of determining that water has not been pumped, including capping the well, removal of the pump, or removal of a permanent power source.

(c) If a water flowmeter does not function properly whenever water is being diverted, it shall be assumed, for the purpose of determining compliance with the water right and the term permit issued to withdraw leased water or water deposited in a safe deposit account, that the diversion works have been operated continuously at the tested rate of diversion since the last time the waterflow meter was confirmed by the chief engineer or a groundwater management district to have been

operating properly. If the diversion works have not been tested by the chief engineer or a groundwater management district, it shall be assumed that the diversion works have been operated continuously at the authorized rate of diversion during the entire time the water flowmeter was out of compliance. Either of the assumptions specified in this subsection may be rebutted if the water right owner submits objective documentation of the actual quantity of water diverted while the water flowmeter was out of compliance. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-766 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-15. Private sale or lease of water right facilitated by a water bank. If a water bank provides services to facilitate the sale or lease of water rights, the owner of the water rights that are bought, sold, or leased between private parties shall be required to comply with all applicable statutes and regulations, including any regulation of the chief engineer limiting the distance that a point of diversion may be moved. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-763 and K.S.A. 2003 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-16. Priority of use of water rights and permits. (a) If multiple water rights or permits authorize the use of water from a single point of diversion, the water shall be considered to be used in the order of priority with the earliest priority first.

(b) If the water used exceeds the total quantity of water authorized by the water rights and permits described in subsection (a) that authorize water use from that point of diversion, all water rights and permits under which the water was lawfully diverted shall be deemed to be violated unless this presumption is rebutted by one or more of the water right owners. (Authorized by K.S.A. 2003 Supp. 82a-769; implementing K.S.A. 2003 Supp. 82a-769 and K.S.A. 2003 Supp. 82a-770; effective Aug. 13, 2004.)

5-17-17. Waste of leased water and safe deposit account water. For using leased water or water withdrawn from a safe deposit account, the quantity not considered to be waste for irrigation use shall be 150 percent of the value specified in K.A.R. 5-3-24 for the county where the point of diversion is located. (Authorized by K.S.A. 2002 Supp. 82a-769; implementing K.S.A. 2002 Supp.

82a-763 and K.S.A. 2002 Supp. 82a-769; effective Aug. 13, 2004.)

5-17-18. Reimbursable and non-reimbursable costs. (a) The following costs incurred by the chief engineer for assistance and services to implement the Kansas water banking act shall be reimbursable by a water bank:

(1) The cost of reviewing and approving a proposed water bank charter;

(2) the cost of determining the extent to which a water right is bankable and in good standing;

(3) the cost of reviewing an annual report filed by a water bank and conducting the analysis necessary to determine if the water bank has complied with the terms of the Kansas water banking act;

(4) extra costs incurred to require water use reports to be filed earlier than March 1, the tracking of that information, and reporting that information to a water bank;

(5) increased costs incurred to provide other water use and water right information to water banks or water bank customers;

(6) the costs to monitor and enforce the provisions of the Kansas water banking act;

(7) the costs of meetings and other discussions with water bank officials and employees;

(8) the cost of enforcement of terms, conditions, and limitations of term permits issued to allow withdrawal of leased water and water from safe deposit accounts;

(9) if additional enforcement of water rights and permits is requested by a water bank, enforcement costs that would not have been incurred by the chief engineer in the ordinary course of business against all water rights diverting water from within the boundaries of the water bank to prevent overpumping; and

(10) the cost incurred if a water bank or a water bank customer requests the chief engineer to hold an abandonment hearing necessary to determine whether a water right is bankable that would not have been done in the ordinary course of business by the chief engineer at that time.

(b) The following costs incurred by the chief engineer for assistance and services to implement the Kansas water banking act shall not be reimbursable by a water bank:

(1) The cost of issuing a term permit to allow diversion of leased water;

(2) the cost of issuing a term permit to allow withdrawal of water from a safe deposit account;

(3) enforcement costs that the chief engineer would have incurred in the ordinary course of business to take action against all water rights diverting water from within the boundaries of the water bank to prevent overpumping; and

(4) the cost of adopting regulations to implement the act. (Authorized by K.S.A. 2002 Supp. 82a-769; implementing K.S.A. 2002 Supp. 82a-769 and K.S.A. 2002 Supp. 82a-771; effective Aug. 13, 2004.)

Article 19.—LOCAL ENHANCED MANAGEMENT AREAS

5-19-1. Definitions. Each of the following terms, as used in this article of the division's regulations, shall have the meaning specified in this regulation:

(a) "GMD" means a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto.

(b) "LEMA" means a local enhanced management area pursuant to K.S.A. 82a-1041, and amendments thereto.

(c) "LEMA plan" means the document adopted by a groundwater management district that specifies the basis for the designation and operation of a local enhanced management area.

(d) "Presiding officer" means either the chief engineer or a hearing officer appointed for the purpose of conducting public hearings regarding a local enhanced management area pursuant to K.S.A. 82a-1041, and amendments thereto. (Authorized by K.S.A. 82a-1041; implementing K.S.A. 74-510a and K.S.A. 82a-1041; effective Dec. 27, 2021.)

5-19-2. LEMA plans. (a) Before a GMD's board of directors recommends formal approval of a LEMA plan and submission to the chief engineer for review, the GMD's board of directors or staff may request the division to assist in the development of the LEMA plan or to informally review the LEMA plan.

(b) In addition to the requirements for LEMA plans specified in K.S.A. 82a-1041 and amendments thereto, each GMD that recommends approval of a LEMA plan and formally submits the LEMA plan to the chief engineer shall ensure that the LEMA plan includes the following:

(1) Each condition specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, that the LEMA plan is intended to address;

(2) a statement of each goal that the LEMA plan is intended to achieve;

(3) documentation that quantifies how any corrective controls that establish allocations, cuts, or limitations to water use would affect each individual water right within the proposed boundaries;

(4) an appropriate appeals procedure for water right owners based on the corrective controls implemented;

(5) an executive summary of the proposed goals and corrective controls;

(6) documentation, evidence, or other information indicating that the proposed corrective controls will meet each stated goal of the proposed LEMA plan;

(7) a description of how the boundary of the proposed LEMA was determined;

(8) a description of how due consideration was given to water users who already have implemented reductions in water use resulting in voluntary conservation measures if the corrective controls result in any allocations, reductions, or limitations of water rights that are based on past use. If applicable, the description shall include the following:

(A) An explanation of the criteria or methods used to address voluntary water management or conservation that reduced water usage; and

(B) A requirement that any owner or holder of a water right provide documentation of any voluntary conservation that resulted in the use of less water;

(9) if applicable to the LEMA plan, specification of how past reductions in water use resulting in voluntary conservation will be considered in any appeal process provided; and

(10) if a stated goal of the LEMA plan is to address an impairment or there are known cases of direct impairment within the LEMA, an explanation of how each impairment is legally addressed.

(c) A separate memorandum containing a summary of the public outreach conducted by the GMD before recommending the LEMA plan for approval shall be submitted simultaneously with the LEMA plan and shall include a description of any changes made to the LEMA plan due to any public comments.

(d) If the stated goal of a LEMA plan is to improve water quality, the GMD's board of directors or staff may consult with the chief engineer before formal submission of the proposed LEMA plan to determine which requirements in subsections (b) and (c) are applicable and to determine any other information necessary in order for the chief engi-

neer to perform a review of the LEMA plan. (Authorized by and implementing K.S.A. 82a-1041; effective Dec. 27, 2021.)

5-19-3. Public hearings. (a) If the chief engineer initiates proceedings to designate a LEMA, the chief engineer may preside over any public hearings or may designate a presiding officer.

(b) If, following the initial hearing, the presiding officer determines that the proposed LEMA plan meets the initial requirements in K.S.A. 82a-1041 and amendments thereto, then a second hearing or hearings on the elements of the proposed LEMA plan shall be held. Each subsequent hearing shall include consideration of the LEMA plan's corrective controls, the likelihood that the LEMA plan will achieve the stated goals, and any other matters deemed necessary by the presiding officer.

(c) If a presiding officer is appointed to conduct a subsequent hearing as described in subsection (b), the presiding officer for the subsequent hearing shall be authorized only to make recommendations to the chief engineer and shall not have the authority to issue an order of decision or an order of designation.

(d)(1) Before any public hearing, the presiding officer shall hold a prehearing conference, with at least 15 days of notice, to select a date for the public hearing, specify the procedures to be followed at the public hearing, set any deadlines, and consider any other matters necessary for conducting the public hearing.

The presiding officer may establish any procedural rules that are deemed necessary or expedient for the conduct of the public hearing, including holding formal and informal phases of testimony, rules for discovery, and cross-examination of witnesses.

(2) Following the prehearing conference, the presiding officer shall issue a prehearing order that specifies the formal parties designated pursuant to paragraph (d)(1) if requested, all procedures to be followed during the public hearing, all deadlines, and any other matters necessary for conducting the public hearing.

(e) If formal and informal phases of testimony are held, the GMD that proposed the LEMA and the division shall be considered formal parties at the public hearing. Each other person or entity that wishes to be designated as a formal party shall file a timely request with the presiding officer. The presiding officer shall have discretion to

approve or deny any request based upon the effect that the proposed LEMA would have on that person or entity or the timeliness of the person's or entity's request.

(f) Each GMD proposing a LEMA plan shall be required to prove that the LEMA plan meets the requirements of K.S.A. 82a-1041, and amendments thereto, and that the corrective controls are sufficient to meet the stated goals. The GMD's representative shall call witnesses or testify first, followed by the division, and then by any other formal parties, unless the presiding officer determines that another order of testimony will better facilitate the proceedings. The division may proffer its record along with providing testimony or in lieu of providing testimony.

(g) In all hearings, the presiding officer shall make any rulings regarding procedure and evidence that are necessary to provide all interested persons and entities with a reasonable opportunity to be heard and present evidence into the record, whether the persons or entities are admitted as formal parties or not. The presiding officer shall not be bound by the formal rules of evidence or by any rules of civil procedure. In each case, all testimony received during the hearing or admitted as evidence during the hearing shall be taken under oath or affirmation, and a reasonable opportunity after the hearing shall be provided for the submission of written testimony and comments.

(h) During each hearing for the renewal of a LEMA plan that proposes adoption of a LEMA plan substantially similar to the LEMA plan that was previously adopted, the hearing schedule and requirements may be consolidated and simplified if notice of the consolidation or simplification is provided in the public notice required by K.S.A. 82a-1041 and amendments thereto, the proposing GMD does not object, and all parties are given a reasonable opportunity to be heard.

(i) The GMD and other parties shall not be required to pay any costs related to the presiding officer, hearing location, court reporter, and published notice or any other costs related to hosting a public hearing that may be approved by the chief engineer, except that the GMD may assist in organizing the hearing and may contribute funds to cover part or all of any costs incurred by the division.

(j) The presiding officer may conduct any public hearing by using a medium for interactive communication that meets the requirements of the Kansas open meetings act, K.S.A. 75-4317 et

seq. and amendments thereto, if requested or approved by the GMD. The presiding officer may hold any prehearing, scheduling, or other conference by using a medium for interactive communication at the presiding officer's sole discretion. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1041; implementing K.S.A. 74-510a and K.S.A. 82a-1041; effective Dec. 27, 2021.)

5-19-4. Due consideration for past voluntary water conservation. (a) Each past reduction in water use that has resulted in voluntary water conservation implemented during any period upon which a LEMA plan's corrective controls are based shall be given due consideration by the GMD's board of directors or staff in determining allocations or eligible acres under a LEMA plan if the allocations or eligible acres are based on past use.

(b) If the GMD's board of directors or staff determines that water use has already been voluntarily reduced through management or conservation practices, the allocation or eligible acres under the LEMA plan or the average used to determine individual allocations and eligible acres may be adjusted based on the amount of water conserved for each year that the conservation measure was in place.

(c) The GMD's board of directors or staff, in consultation with the chief engineer, may develop or apply any other criteria or methods to determine reductions in water use that resulted in voluntary conservation that are suitable to local conditions under the LEMA plan. (Authorized by and implementing K.S.A. 82a-1041; effective Dec. 27, 2021.)

5-19-5. Review and modification of a designated LEMA. (a) Once a LEMA has been designated by the chief engineer, the corrective controls in the LEMA plan shall remain in place until the LEMA expires pursuant to the terms of the LEMA plan or until the LEMA plan is changed.

(1) A GMD's board of directors or staff may request assistance in developing changes or informally reviewing any proposed changes to a LEMA plan before recommending adoption of the changes and submitting the changes to the chief engineer for consideration.

(2) In order to change an existing LEMA plan, each proposed change shall first be adopted by resolution of the GMD and then sent to the chief engineer for a public hearing.

(3) If the chief engineer determines that the proposed changes should be made part of the LEMA plan based on the findings at a public hearing, an order amending the LEMA plan shall be issued. However, no amendments may be retroactively applied in a way that requires greater reductions in water use than were required by the existing LEMA plan.

(b) If any proposed changes result from a formal review of the LEMA plan pursuant to K.S.A. 82a-1041 and amendments thereto or as required by the LEMA plan, the proposed changes with the chief engineer's findings shall be sent to the GMD's board of directors following the formal review hearing. The GMD's board of directors shall have 60 days to review the proposed changes and approve, reject, or amend the proposed changes.

(1) If the proposed changes are approved by resolution of the GMD, the chief engineer shall issue a LEMA review order containing the chief engineer's findings and implementing the changes and amending the LEMA plan.

(2) If the proposed changes are rejected by resolution of the GMD or the GMD fails to act within 60 days, the chief engineer shall issue a LEMA review order summarizing the chief engineer's findings and recommendations but without ordering any changes or amending the LEMA plan.

(3) If the proposed changes are amended by resolution of the GMD and sent back to the chief engineer, an additional public hearing to consider the amendments shall be held. The additional hearing shall allow for the submission of written comments and may be conducted by using a medium for interactive communication that meets the requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto. The amendments to the proposed changes shall not be amended by the chief engineer but may only be adopted or rejected as received from the GMD. Following the public hearing on the amendment, the chief engineer shall issue an order with findings that either reject the changes or order the amendment of the LEMA plan.

(c) Each hearing to consider changes in a designated LEMA and each formal review hearing shall be conducted pursuant to the hearing requirements in K.A.R. 5-19-3, unless the existing LEMA plan prescribes different or additional procedural requirements for a formal review.

(d) In addition to any topics required by the LEMA plan to be reviewed, each LEMA plan formal review hearing shall, at a minimum, include

review and consideration of the effectiveness of the current corrective controls to meet the LEMA plan's stated goal. This subsection shall not serve as a limitation on topics that the presiding officer may hear or that the public may present during a formal review. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1041; implementing K.S.A. 82a-1041; effective Dec. 27, 2021.)

Article 20.—INTENSIVE GROUNDWATER USE CONTROL AREA

5-20-1. Intensive groundwater use control area; public hearings. (a) In any case in which the chief engineer initiates proceedings for the designation of an intensive groundwater use control area (IGUCA), an independent hearing officer shall be appointed by the chief engineer. The independent hearing officer shall meet the following requirements:

(1) Not have been an employee of the department of agriculture for at least five years before the appointment;

(2) be admitted to practice law in this state; and

(3) be knowledgeable by training and experience in water law and administrative procedure.

(b)(1) The independent hearing officer shall conduct one or more public hearings to determine whether both of the following conditions are met:

(A) One or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(B) The public interest requires that one or more corrective control provisions should be adopted.

(2) If both of the conditions in paragraph (b)(1) are met, the independent hearing officer shall recommend the boundaries of the IGUCA.

(c) At the public hearing specified in subsection (b), all of the following requirements shall be met:

(1) Documentary and oral evidence shall be taken, and a full and complete record of the public hearing shall be kept.

(2) The division of water resource's (DWR's) staff shall make a proffer of the records of the division pertaining to the proposed IGUCA and may present background, hydrologic, and other information and an analysis of that information, concerning the area in question.

(3) The DWR's proffer and any other DWR presentations shall be heard first, unless the hearing officer determines that a different order of presentation will facilitate the conduct of the hearing.

(4) If any part of the proposed IGUCA is within the boundaries of a groundwater management

district (GMD), a representative of that GMD shall be allowed to present the GMD's own data, analysis, comments, provisions of the GMD's revised management plan, regulations, and recommendations at any public hearing.

(5) Each person shall be allowed to give an oral statement under oath or affirmation or to present documentary evidence, including a signed written statement.

(6) At the end of the public hearing, a reasonable opportunity for any person to submit oral or written comments concerning the matters presented may be allowed by the hearing officer.

(7) The hearing shall be conducted according to the procedure specified in K.A.R. 5-14-3a. The hearing officer shall have the discretion to use a different procedure if it facilitates the conduct of the hearing.

(8) The independent hearing officer shall make the following findings of fact:

(A) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(B) whether the public interest requires that one or more corrective control provisions should be adopted.

(9) The independent hearing officer shall transmit the findings to the chief engineer.

(d) The proceeding shall be concluded if the independent hearing officer finds that at least one of the following conditions is met:

(1) None of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(2) The public interest does not require that any corrective control provisions should be adopted.

(e) The procedure specified in subsection (f) shall be followed by the chief engineer if the independent hearing officer meets all of the following conditions:

(1) Finds that one or more of the conditions specified in K.S.A. 82a-1036, and amendments thereto, exist;

(2) finds that public interest requires that any one or more corrective control provisions should be adopted; and

(3) recommends the boundaries of the proposed IGUCA.

(f) If the independent hearing officer makes the findings and recommendation specified in subsection (e), one or more public hearings shall be conducted by the chief engineer to determine the following:

(1) What the goals of the IGUCA should be;

(2) what corrective control provisions should be adopted; and

(3) what the final boundaries of the IGUCA should be. After the hearing, the order described in K.S.A. 82a-1038, and amendments thereto, shall be issued by the chief engineer. The chief engineer's order shall include the independent hearing officer's findings of fact.

(g) Notice of the public hearings held by the independent hearing officer shall be given by regular mail and by publication, as specified in K.S.A. 82a-1037 and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 74-510a, K.S.A. 82a-1036, K.S.A. 82a-1037, and K.S.A. 2008 Supp. 82a-1038; effective Sept. 18, 2009.)

5-20-2. Formal review of intensive groundwater use control area orders.

(a) For each intensive groundwater use control area (IGUCA) designated by order of the chief engineer before July 1, 2008, pursuant to K.S.A. 82a-1038 and amendments thereto, a public hearing to review the designation shall be conducted by the chief engineer within seven years of the effective date of this regulation. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(b) For each IGUCA designated by order of the chief engineer on or after July 1, 2008, a public hearing to review the designation shall be conducted by the chief engineer within seven years after the order is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(c) Upon the request of a petition signed by at least five percent of the affected water users in an IGUCA designated by order of the chief engineer, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

(d) Written notice of a public review hearing shall be given to each person holding a water right in the affected area. Notice of the hearing shall be given by publication in a newspaper or newspapers of general circulation within the affected area at least 30 days before the date set for the hearing. The notice shall indicate the reason for the hearing and shall specify the time and place of the hearing. At the public review hearing, documentary and oral evidence

shall be taken, and a full and complete record of the public review hearing shall be kept.

(e) The following shall be considered by the chief engineer at the public review hearing:

(1) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(2) whether the public interest requires that the IGUCA designation be continued. The state shall have the burden of proving the need for continuance of the IGUCA designation.

(f) Based on the review specified in subsection (e), one of the following actions shall be taken by the chief engineer:

(1) Continue the IGUCA with its original or current corrective control provisions;

(2) reduce the restrictions imposed by one or more corrective control provisions within the scope and goals specified in the original IGUCA order;

(3) reduce the IGUCA boundaries;

(4) increase any allocations within the IGUCA;

(5) address any other issues that have been identified in the review; or

(6) revoke the IGUCA order and implement alternative measures, if necessary, to address the water issues in the affected areas.

(g) If, as a result of the review specified in subsection (e), the chief engineer determines that the restrictions imposed by current corrective control provisions may need to be increased or additional corrective control provisions may be needed, a hearing shall be conducted by the chief engineer according to K.A.R. 5-14-3a.

(h) If, as a result of the review specified in subsection (e), the chief engineer determines that the boundaries of the IGUCA may need to be increased, a new IGUCA proceeding shall be initiated by the chief engineer pursuant to K.A.R. 5-20-1. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-1036; effective Sept. 18, 2009.)

**Article 21.—WESTERN KANSAS
GROUNDWATER MANAGEMENT
DISTRICT NO. 1**

5-21-1. Definitions. As used in these rules and regulations, the following words and phrases shall have the meaning ascribed to them in this section.

(a) "Aquifer" means a geologic water-bearing formation that will yield considerable quantities of water to wells and springs.

(b) “Board” means the board of directors constituting the governing body of the western Kansas groundwater management district no. 1.

(c) “Chief engineer” means the chief engineer of the division of water resources of the Kansas state board of agriculture.

(d) “District” means the western Kansas groundwater management district no. 1.

(e) “Authorized representative of the board” means an individual designated by the board to perform duties and functions on its behalf.

(f) “Groundwater” means water below the surface of the earth.

(g) “Substantially” means within 300 feet of the approved location, but in no case closer to other wells than the minimum spacing requirements allow.

(h) “Tailwater” means that portion of the irrigation water applied which appears as run-off from the authorized place of use.

(i) “Tailwater re-use system” means a facility to collect, store and transport irrigation tailwater for reapplication to the authorized place of use.

(j) “Unconsolidated aquifer” means unconsolidated deposits that will yield water in a sufficient quantity to supply pumping wells and springs.

(k) “Waste of water” means any act or omission which causes:

(1) groundwater to be diverted or withdrawn from a source of supply and not used, managed or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply thereby causing impairment of a person’s right to the use of water;

(3) groundwater intended for irrigation use to escape and drain from the authorized place of use; or

(4) groundwater to be applied to an authorized beneficial use in excess of the needs for such use.

(l) “Well” means any excavation that is drilled, cored, bored, washed, driven, dug or otherwise constructed when the intended use of such excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by K.S.A. 82a-1028(o); effective May 1, 1979; amended May 23, 1994.)

5-21-2. Tailwater control and waste. No water user shall allow water which is pumped or diverted from any aquifer to leave the land under

the water user’s direct supervision and control. If the water is re-used, the user shall apply the water consistent with the approved application to appropriate water for beneficial use, vested right, or appropriation right. All water users shall construct and operate the water distribution systems in a manner as to prevent waste of water, and shall do everything necessary and proper to preserve the quality of the groundwater resources within the district. (Authorized by K.S.A. 1978 Supp. 82a-1028(o); effective May 1, 1979.)

5-21-3. Well spacing requirements.

(a) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water from the Ogallala aquifer shall be spaced at least 2,640 feet from all other non-domestic wells constructed into the Ogallala aquifer.

(b)(1) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water from the Dakota aquifer shall be spaced at least four miles from all other non-domestic wells constructed into the Dakota aquifer.

(2) Each well in the Dakota aquifer shall be sealed off between the Dakota aquifer and any other aquifers in a manner that prevents migration of water to or from the Dakota aquifer and any other aquifers.

(c) Each well included in an application for a permit to appropriate water for a beneficial use, other than domestic use, that proposes the diversion or withdrawal of water shall be at least 1,320 feet away from each domestic well constructed into the same aquifer unless the applicant has received written permission from the neighboring well owner or the applicant owns each domestic well.

(d) The location of each well on an application for approval to change the point of diversion under an existing water right shall be no more than 1,320 feet from the originally authorized point of diversion and shall meet one of the following requirements:

(1) Not decrease the distance to any other wells or authorized well locations by more than 300 feet; or

(2) meet the minimum well spacing requirements in this regulation.

(e) Each new well shall be drilled in the location substantially as shown on the approved appli-

cation and the accompanying map, plat, or aerial photograph.

(f) Exceptions to this regulation may be granted on an individual basis by recommendation of the board in conjunction with the approval of the chief engineer. The applicant may be required by the board to submit information as it deems necessary in order to make the determination. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1979; amended May 23, 1994; amended March 17, 2017.)

5-21-4. Safe yield. (a) Except as specified in subsection (c), the district shall be closed to new appropriations of water in the portions of the unconsolidated aquifers commonly known as the Ogallala formation and the Niobrara formation that are located within the district.

(b) The approval of each application for a change in the point of diversion shall be subject to the following requirements, if the diversion works have not been completed under the original approved application:

(1) The proposed appropriation, when added to the vested rights, prior appropriation rights, and earlier priority applications, shall not exceed the allowable safe yield amount for the area included within a two-mile-radius circle, which is approximately 8,042 acres, of the proposed well.

(2) For the purpose of analysis, all vested rights, certificates, permits, and prior unapproved applications shall be considered to be fully exercised, and all limitation clauses listed on permits to appropriate water and certificates shall be considered to be in force.

(3) In the case of an application for change in the point of diversion referred to in subsection (b), each application and water right with a priority earlier than the priority established by the filing of the application for change shall be included in the analysis.

(4) The allowable annual safe yield amount shall be calculated using the following formula:

$$Q = \frac{ARt}{12}$$

Q = the allowable annual safe yield amount in acre-feet per year

A = area of consideration, within a two-mile-radius circle, approximately 8,042 acres

R = average annual recharge of 0.5 inches per year

(5) If part of the radial area is located outside the district boundary, that part shall be included

in the depletion analysis only if the chief engineer determines that hydraulically connected groundwater exists in that portion of the area outside the district. A part of the area of consideration lying outside the state of Kansas shall not be included in the analysis.

(6) If wells authorized under a vested right, a certified water right, or a permit to appropriate water are divided by the circumference of the radial area, the authorized quantity of water shall be assigned to each well. If specific quantities are not authorized for each well, a proportional amount shall be assigned to each well.

(c) This regulation shall not apply to the following:

(1) Domestic use;

(2) temporary permits and term permits; and

(3) a new application filed to appropriate groundwater in any area of the district not within an intensive groundwater use control area, meeting all of the following criteria:

(A) The sum of the annual quantity requested by the proposed appropriation and the total annual quantities authorized by prior permits allowed because of an exemption pursuant to this subsection does not exceed 15 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.

(B) Well spacing criteria in the area have been met.

(C) The approval of the application does not authorize an additional quantity of water out of an existing authorized well with a nondomestic permit or water right that would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(D) All other criteria for approving a new application to appropriate water at that location have been met.

(d) Exceptions to this regulation may be granted on an individual basis by recommendation by the board in conjunction with the approval of the chief engineer. The applicant may be required by the board to submit information necessary in order to make the determination. (Authorized by K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-708b, and K.S.A. 2009 Supp. 82a-1028; effective May 23, 1994; amended Sept. 22, 2000; amended April 15, 2011.)

5-21-5. Battery of wells. Within the boundaries of the district, an application for change of

point of diversion from one well to a battery of wells shall not be approved unless the application meets the following criteria:

(a) The proposed points of diversion constitute a “battery of wells” as defined in K.A.R. 5-1-1.

(b) If the application for change has been filed pursuant to an appropriation right, the certificate shall be issued before approval of the application for change.

(c) The maximum annual quantity and maximum instantaneous diversion rate approved shall not exceed the maximum annual quantity and the maximum instantaneous diversion rate actually used during any of the three consecutive full calendar years before the application.

(d) The application meets the criteria for the approval of a new application. However, the wells comprising the battery of wells shall not be required to meet the well spacing requirements of K.A.R. 5-21-3 in relationship to each other. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 22, 2000.)

5-21-6. Water flowmeters. (a) Except as specified in subsection (b), each well authorized within the boundaries of the district shall be equipped with a totalizing water flowmeter that is installed and maintained in accordance with the specifications in K.A.R. 5-1-4 through 5-1-12. Each water right owner shall maintain the water flowmeter so that the flowmeter functions properly whenever the diversion of water can reasonably be expected to occur. If the water flowmeter fails to function properly, the owner shall promptly initiate action to repair or replace the meter or to correct any problems with the installation.

(b) The following types of water use shall be exempt from the requirements of this regulation:

(1) Domestic use; and

(2) use pursuant to a temporary permit to appropriate water. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 82a-706c and K.S.A. 2015 Supp. 82a-1028; effective Jan. 24, 2003; amended May 27, 2016.)

5-21-7. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5 and K.S.A. 2001 Supp. 82a-1903, as amended by L. 2002, Ch. 137, § 7; effective Jan. 24, 2003; revoked Nov. 15, 2019.)

5-21-8. Percent change of saturated thickness. The map titled “percent change in saturated thickness of the High Plains aquifer, west central Kansas, 1950 to average 1997-1999” and designated as the Kansas geological survey open file report 2000-15B, dated July 25, 2000, is hereby adopted by reference. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 22, 2000.)

5-21-9. Saturated thickness. The map titled “saturated thickness of unconsolidated aquifer, west central Kansas average 1997-1999” and designated as the Kansas geological survey open file report 2000-15A, dated July 25, 2000, is hereby adopted by reference. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 22, 2000.)

Article 22.—EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

5-22-1. Definitions. As used in article 22 of these regulations, by the Equus Beds groundwater management district no. 2 in the implementation of the groundwater management district act and by the division of water resources in the administration of the Kansas water appropriation act, the following terms shall have the meanings ascribed to them in this regulation, unless the context clearly requires otherwise.

(a) “Above-baseflow stage” means streamflow that is in response to a significant runoff event during which period the water-level elevation of the stream is greater than the elevation of the adjacent water table.

(b) “Aquifer” means any geologic formation capable of yielding water in sufficient quantities that it can be diverted for beneficial use.

(c) “Aquifer storage” means the act of storing water in the unsaturated portion of an aquifer by artificial recharge for subsequent diversion and beneficial use.

(d) “Aquifer storage and recovery system” means a physical infrastructure that meets the following conditions:

(1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and

(2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.

(e) “Area of consideration” means the two-mile-radius circle whose center is the lo-

cation of the proposed point of diversion. The area of consideration equals 8,042 acres minus the area of the circle that meets the following conditions:

(1) Is outside the district boundary;
 (2) is inside an intensive groundwater use control area with a declining water table; and

(3) is in an area where the bedrock is not overlain by an aquifer.

(f) "Artificial recharge" means the use of source water to artificially replenish the water supply in an aquifer.

(g) "Bank storage" means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.

(h) "Bank storage well" means a well used to divert or withdraw water from bank storage.

(i) "Baseflow" means groundwater that seeps, flows, or is otherwise naturally discharged from an aquifer into a stream.

(j) "Baseflow allocation" means the annual quantity of water assigned to a baseflow node expressed in acre-feet per calendar year. The natural discharge to the stream shall be assumed to be equivalent to the rate of flow in the stream that is equaled or exceeded 90 percent of the time.

(k) "Baseflow node" means an artificial point located in the channel of a watercourse for the purpose of allocating a proportional amount of the baseflow.

(l) "Basin storage area" means the portion of the aquifer's unsaturated zone used for aquifer storage that has defined horizontal boundaries and is delimited by the highest and lowest index water levels.

(m) "Basin storage loss" means that portion of artificial recharge naturally flowing or discharging from the basin storage area.

(n) "Battery of wells" means either of the following:

(1) A group of two or more wells that meets the following conditions:

(A) Withdraws water from the same local source of supply;

(B) is connected to a common pump by a manifold or piping; and

(C) supplies water to a common distribution system; or

(2) a group of not more than four wells that meets the following conditions:

(A) Withdraws water from the same local source of supply;

(B) is located within a 300-foot-radius circle of the geographic center of the battery of wells;

(C) supplies water to a common distribution system;

(D) does not exceed a combined capacity of 800 gallons per minute; and

(E) has an individual pump installed in each well with a maximum capacity of 400 gallons per minute.

A battery of wells shall be considered to be one point of diversion.

(o) "Board" means the board of directors constituting the governing body of the Equus Beds groundwater management district no. 2.

(p) "Completed substantially as shown on aerial photograph, topographic map, or plat" means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.

(q) "Confined aquifer" means either of the following:

(1) An aquifer overlain and underlain by impermeable layers; or

(2) an aquifer in which the groundwater is under pressure greater than atmospheric pressure and will rise in a well above the elevation at which groundwater is first encountered.

(r) "Conjunctive use" means the management of the aquifer to achieve safe yield and the operation of the aquifer in coordination with a surface water system to enhance the use of the total water supply availability, in accordance with the provisions of the Kansas water appropriation act.

(s) "Consumptive use" means gross diversion minus the following:

(1) Waste of water; and

(2) return flows to the source of water supply by at least one of the following:

(A) Through the surface water runoff that is not waste; and

(B) by deep percolation.

(t) "District" means the Equus Beds groundwater management district no. 2.

(u) "Free-water surface" means water that is exposed to the atmosphere, including lakes, ponds, and pits that intercept the water table.

(v) "Geographic center" means either of the following:

(1) The arithmetic mean of the northing and westing coordinates or measurements for each well in a battery of wells; or

(2) the apparent center of a groundwater pit.

(w) "Groundwater" means water below the surface of the earth.

(x) "Groundwater pit" means an excavation in the earth that meets all of the following criteria:

(1) Exposes the current or historic groundwater table;

(2) has caused, or will likely cause, annual evaporation of groundwater; and

(3) has a perimeter equal to or greater than the depth of the excavation.

(y) “Index water level” means water-level elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a basin storage area and the volume of stored water available for recovery, based upon accounting methodology and the conditions of the permit.

(z) “Non-consumptive use” means the beneficial use of water in which essentially all of the water diverted from the source of supply is returned to the source of supply.

(aa) “Person” means a natural person, a partnership, an organization, a corporation, a municipality, and any agency of the state or federal government.

(bb) “Point of diversion” means the point at which water is diverted or withdrawn from a source of water supply.

(cc) “Primary well” means a well equipped with a flowmeter for which a standby well is available.

(dd) “Recharge” means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(ee) “Recharge credit” means the quantity of water that is stored in a basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

(ff) “Safe yield” means the total quantity of groundwater meeting the following conditions:

(1) Can be artificially withdrawn from an aquifer; and

(2) naturally discharges to a stream without exceeding the aquifer recharge value for the area of consideration and without impairing the water rights diverting from the aquifer.

(gg) “Standby well” means a well that meets the following conditions:

(1) Is used to provide water for any of the following:

(A) Fire protection;

(B) emergency purposes; or

(C) any period during which the primary well has mechanical failure, maintenance, or power failure;

(2) is maintained in good operating condition;

(3) withdraws water from the same source of supply as the primary well;

(4) is located within 300 feet of the primary well;

(5) is limited to the same rate and quantity authorized by the primary well’s appropriation or vested right;

(6) is equipped with a flowmeter; and

(7) is operated only when water is temporarily unavailable from the primary well or wells, except when water is needed for fire protection or a similar type of emergency.

(hh) “Stream” means any watercourse that has a well-defined bed and well-defined banks, and that flows continuously during the calendar year, except during periods of drought.

(ii) “Surface water” means water in creeks, rivers, or other watercourses, and in reservoirs, lakes, and ponds. This term shall not include water in groundwater pits.

(jj) “Thermal exchange” means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(kk) “Unconfined aquifer” means an aquifer with a water table at atmospheric pressure.

(ll) “Waste of water” means any act or omission that causes any of the following:

(1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person’s right to the use of water;

(3) the escaping and draining of water intended for irrigation use from the authorized place of use; or

(4) the application of water to an authorized beneficial use in excess of the needs for this use.

(mm) “Water balance” means the method of determining the amount of water in storage in a basin storage area by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(nn) “Water table” means the top or surface of an unconfined or confined aquifer at which the pore water pressure is atmospheric.

(oo) “Well” means any excavation that is drilled, cored, bored, washed, driven, dug, or otherwise constructed if the intended use of the excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective May 1, 1979; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004.)

5-22-2. Well spacing requirements. (a) Except as specified in subsections (d) and (e), the minimum spacing of all nondomestic and nontemporary wells described in an application for permit to appropriate water for beneficial use, an application for a term permit, or application to change the point of diversion shall be the following:

(1) 1,320 feet from all nondomestic wells, groundwater pits, and baseflow nodes; and

(2) 660 feet from all domestic wells.

(b) The minimum spacing interval from the geographic center of a battery of wells to each nondomestic well, groundwater pit, and baseflow node shall be 1,620 feet. The minimum spacing interval from the geographic center of a battery of wells to each domestic well shall be 960 feet.

(c) The minimum spacing interval from the edge of a groundwater pit to each nondomestic well, the edge of any other groundwater pit, and baseflow node shall be 1,320 feet and 330 feet to a domestic well.

(d)(1) In the areas described in the following table, the requirements specified in paragraphs (2), (3), and (4) of this subsection shall apply:

Township	Range	Section	County
23 South	6 West	31, 32 and 33	Reno
23 South	7 West	31 through 36	Reno
24 South	6 West	4 through 9, and 13 through 36	Reno
24 South	7 West	1 through 36	Reno
25 South	5 West	30 and 31	Reno
25 South	6 West	1 through 36	Reno
25 South	7 West	1 through 36	Reno
26 South	5 West	6, 7, and 8; 17 through 21; and 27 through 35	Reno
26 South	6 West	1 through 36	Reno
26 South	7 West	1 through 36	Reno

(2) The minimum spacing of all nondomestic and nontemporary wells with an authorized rate of diversion of 401 gallons per minute or more, as described in an application for permit to appropriate water for beneficial use, term permit, or application to change the point of diversion, shall be the following:

(A) 2,640 feet from all other nondomestic wells, groundwater pits, and baseflow nodes; and

(B) 660 feet from all domestic wells.

(3) The minimum spacing of a battery of wells with a total authorized rate of diversion of 401 gallons per minute or more, as described in an application for permit to appropriate water for bene-

ficial use, term permit, or application to change the point of diversion shall be the following:

(A) 2,940 feet from all nondomestic wells, groundwater pits, and baseflow nodes; and

(B) 960 feet from all domestic wells.

(4) The minimum spacing interval from the edge of a groundwater pit to each nondomestic well, the edge of any other groundwater pit, and baseflow node shall be 1,320 feet. The minimum spacing interval from the edge of a groundwater pit to a domestic well shall be 330 feet.

(e) The following types of wells shall not be subject to this well-spacing regulation:

(1) A standby well;

(2) a bank storage well;

(3) a well authorized pursuant to the approval of an application to change the point of diversion that meets both of the following conditions:

(A) The number of wells comprising the point of diversion remains unchanged; and

(B) each point of diversion is proposed to be relocated 300 feet or less from the currently authorized location;

(4) the minimum spacing interval of nondomestic wells to domestic wells, if the domestic well owner has granted written permission to reduce the spacing interval; and

(5) the minimum spacing interval of groundwater pits to nondomestic, nontemporary, or domestic wells, if the well owner has granted written permission to reduce the spacing interval. (Authorized by and implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; effective May 1, 1979; amended Oct. 15, 1990; amended March 7, 1994; amended Jan. 10, 2003.)

5-22-3. Waste of water. It shall be a violation of these rules and regulations for any person, private corporation, public corporation, municipality, company, institution, township, county, state agency or federal agency to waste water as defined in these regulations. (Authorized by K.S.A. 1978 Supp. 82a-1028(o); effective May 1, 1979.)

5-22-4. Metering. (a) Each water flowmeter, gauge, or other measuring device required by the district shall meet the minimum specifications adopted by the chief engineer by regulation.

(b) The owner of the water right or approval of application shall perform the following:

(1) Ensure that the water flowmeter is properly installed in accordance with the specifications adopted by the chief engineer by regulation;

(2) maintain the water flowmeter in satisfactory working condition whenever the diversion works can reasonably be expected to operate; and

(3) ensure that the water flowmeter measures all of the discharge from the diversion works and does not measure any other discharge, including tailwater and sewage lagoon effluent. (Authorized by and implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; effective May 1, 1979; amended Oct. 15, 1990; amended Jan. 10, 2003.)

5-22-4a. Water flowmeter requirement.

Each nondomestic, nontemporary well meeting any of the following conditions shall be equipped with a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4: (a) A well operated under the authority of an approval of application issued on or after September 1, 1987;

(b) a well operated under the approval of an application for change in the place of use, the point of diversion, or the use made of the water, or any combination of these, filed after September 1, 1987;

(c) a well that meets the standards for being a standby well as specified in K.A.R. 5-22-1;

(d) a well for which a certificate of appropriation was issued on or after July 1, 1995;

(e) a well not equipped with a water flowmeter before December 31, 2010. Each such well shall be equipped with a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4, pursuant to the following schedule:

(1) On or before December 31, 2012, each well in the northeast quarter of every section located within the district boundaries;

(2) on or before December 31, 2013, each well in the southeast quarter of every section located within the district boundaries;

(3) on or before December 31, 2014, each well in the southwest quarter of every section located within the district boundaries; and

(4) on or before December 31, 2015, each well in the northwest quarter of every section located within the district boundaries; or

(f) a well for which the board determines it is necessary to have a water flowmeter to ensure any of the following:

(1) The accuracy of reported water use;

(2) compliance with the terms, conditions, and limitations of the water right, approval of application, or approval of change; or

(3) nonimpairment of other water rights. (Authorized by and implementing K.S.A. 2010 Supp.

82a-1028; effective Jan. 10, 2003; amended Aug. 5, 2011.)

5-22-4b. Water flowmeter maintenance.

(a) If a water flowmeter required by the district is ever out of compliance, the owner shall promptly repair or replace the water flowmeter, or correct any problems with the installation.

(b) A water flowmeter shall be considered to be out of compliance if any of the following conditions is met:

(1) The water flowmeter registers less than 94 percent or more than 106 percent of the actual volume of water passing the water flowmeter. If necessary, this determination may be made by a field test conducted or approved by the chief engineer.

(2) The seal placed on the totalizer by the manufacturer or the manufacturer's authorized representative has been broken, or the totalizer value has been reset or altered without the authorization of the manufacturer, an authorized representative of the manufacturer, or the chief engineer.

(3) A seal placed on the water flowmeter or totalizer by the chief engineer has been broken.

(4) The water flowmeter register is not clearly visible or is unreadable for any reason.

(5) There is not full pipe flow through the water flowmeter.

(6) The flow-straightening vanes have not been properly designed, manufactured, and installed.

(7) The water flowmeter is not calibrated for the nominal size of the pipe in which the flowmeter is installed.

(8) The water flowmeter is not installed in accordance with the manufacturer's installation specifications. However, five diameters of straight pipe above the water flowmeter sensor and two diameters below the water flowmeter sensor shall be deemed the minimum required spacing, regardless of the manufacturer's installation specifications.

(9) A water flowmeter is installed at a location where the flowmeter does not measure all of the water diverted from the source of supply. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

5-22-4c. Water flowmeter testing by a non-district person.

If a water right owner desires to have a water flowmeter flow rate test performed by a person other than district staff to comply with

any requirement of the district, that person may be approved by the board to perform a water flowmeter flow rate test if the person demonstrates to the district both of the following: (a) The person has the training, skills, and experience necessary to properly conduct the test.

(b) The person has the appropriate water flowmeter to perform the test, and the water flowmeter has been tested for accuracy with water flowmeter test equipment that has been found to be accurate using standards traceable to the national institute of standards and technology (NIST). The equipment shall have been tested and found to be accurate within 12 months of performing the water flowmeter test. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

5-22-4d. Water flowmeter installation procedures. (a) If installation of a water flowmeter is required by the board, the owner of the approval of application or the water right shall be notified of the requirement in writing.

(b) A water flowmeter shall be installed on a new or replacement point of diversion within 30 days after the point of diversion is operational, or before the diversion of water, whichever occurs first.

(c) Unless otherwise specified by the board, a water flowmeter shall be installed on an existing point of diversion within 30 days of the issuance of the water flowmeter order by the district, or before the diversion of water, whichever occurs first.

(d) An extension of time to install the water flowmeter may be granted by the board, or the board's designee, if a request for an extension of time is filed with the district before the expiration of the time to install the water flowmeter and one of the following conditions is met:

(1) The water right owner has a contract with a vendor to install a water flowmeter, but the vendor cannot complete the installation within the time allowed.

(2) Weather, site conditions, or other conditions beyond the control of the owner prevent the water flowmeter from being installed within the time allowed.

(3) The owner demonstrates any other reason constituting good cause why the water flowmeter cannot be installed within the time allowed and that granting an extension of time will not be adverse to the public interest.

(e) The water right owner shall notify the district within 30 days after the required water

flowmeter is installed. The notification shall be submitted on a form prescribed by the board, or the board's designee.

(f) An inspection of the water flowmeter installation may be made by the board, or the board's designee, to determine if the water flowmeter has been properly installed in accordance with the requirements of K.A.R. 5-22-4, K.A.R. 5-22-4a, and K.A.R. 5-22-4b.

(g) If an inspection is made by the board or the board's designee, the owner shall be notified by the board, or the board's designee, of the results of the inspection in writing. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2010 Supp. 82a-1028; effective Nov. 12, 2004; amended Aug. 5, 2011.)

5-22-5. (Authorized by K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective May 1, 1980; amended Oct. 15, 1990; revoked Jan. 10, 2003.)

5-22-6. Noncompliance; penalties; appeal procedures. (a) Any person may file with the board a written or verbal complaint that someone is allegedly violating any regulation of the district, any provision of the Kansas water appropriation act, or a term, condition, or limitation of an approval of application or a water right.

(b) The alleged violation shall be investigated by the district staff.

(c) A written report of the investigation shall be prepared by the district staff.

(d) If the investigation determines that a violation of a regulation of the district has occurred, an order shall be issued by the board or its designee. The order shall specify the following:

(1) What the violation of the regulation is;

(2) what actions are necessary to correct the violation;

(3) what a reasonable time is for correcting the violation. Extensions of time to correct a violation may be granted by the board if good cause is shown by the violator or owner;

(4) that the order will become effective immediately; and

(5) that a hearing may be requested within 15 days of the issuance of the order. The request for a hearing may include a request for a stay of the order. If the person shows good cause why a stay should be granted, a stay may be granted by the board.

(e) The owner or owners of the approval of application or water right, as shown in the records

of the district, shall initially be notified of the violation verbally, in writing, or by other means. Regardless of the means of initial notification, a copy of the order shall also be served by delivering a copy of the order in person or by restricted mail.

(f) The record of the complaint, the investigation, and the notice of violation shall be made a part of the official records of the district.

(g) If the violation is corrected by the deadline specified by the board, the violator shall notify the district staff. An inspection shall be conducted by the district staff to determine if the violation has been corrected. If the violation has been corrected, the diversion of water may continue within the terms, conditions, and limitations of the approval of application or water right.

(h) If the violation is not corrected by the deadline specified by the board, an order requiring that unauthorized or illegal diversion of water cease until the violation is corrected shall be issued by the district.

(i) If the violator ceases diversion of water and then corrects the violation, the violator shall notify the district when the violation is corrected. The diversion works and the authorized place of use, as appropriate, shall be inspected by the district staff to determine whether the violation has been corrected. If the board determines that the violation has been corrected, the order prohibiting the diversion of water shall be rescinded by the board. When the owner or violator receives notice from the district that the order prohibiting the diversion of water has been rescinded, the diversion of water may recommence.

(j) If the violator performs any act described in subsection (a), any of the following actions may be taken by the board:

(1) If applicable, bring an injunctive action to enforce the order of the district;

(2) if applicable, request enforcement assistance from the chief engineer;

(3) if applicable, request that criminal proceedings be brought pursuant to K.S.A. 82a-728, and amendments thereto;

(4) if applicable, request that the county attorney or district attorney initiate injunctive remedies pursuant to K.S.A. 68-184, and amendments thereto, to prevent the occurrence of a nuisance;

(5) enter into a consent order with the violator specifying the remedial actions that shall be taken by the violator;

(6) require the installation of a water flowmeter;

(7) take any other legally permissible enforcement action; or

(8) any combination of the actions specified in paragraphs (j)(1) through (7).

(k) After the violator has been issued an order as specified in subsection (d), the violator, or anyone whose legal rights, duties, privileges, immunities, or other legal interests could be affected by the order, may appeal the order to the board. The appeal shall be filed within 15 days of the issuance of the order.

(l) The appeal petition shall state the basis for the appeal and shall be accompanied by documentation supporting the appeal.

(m) During the appeal, any relevant information or data may be considered by the board, including relevant data and information submitted by any person whose legal rights, duties, privileges, immunities, or other legal interests could be affected by the order.

(n) After consideration of the appeal, one of the following actions shall be taken by the board:

(1) Remand the matter to the district staff with instructions for additional investigation; or

(2) notify the violator and the chief engineer of the board's final decision. The violator and all other parties shall be notified of the board's decision by certified mail.

(o)(1) Within 15 days after the service of the board's decision on the violator and any other affected party, the violator or any other affected party may file with the board a written request for reconsideration, which shall state the specific grounds for the request for reconsideration. The petition for reconsideration shall be deemed denied if not acted on by the board within 30 days.

(2) If the request for reconsideration is granted by the board, an administrative hearing shall be held by the board within 30 days of the date on which the request is filed with the board. After the hearing, the board may affirm, reverse all or part of, or modify the order of the board. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective May 1, 1980; amended Dec. 10, 2004.)

5-22-7. Safe yield. (a) Except as specified in subsection (b), the approval of each application for a change in the point of diversion, term permit, and permit to appropriate water for beneficial use shall be subject to the following requirements:

(1) The sum of prior appropriations shall include all of the following:

- (A) The proposed application;
- (B) vested rights;
- (C) appropriation rights;
- (D) term permits;
- (E) earlier priority applications; and
- (F) baseflow nodes.

The sum of prior appropriations shall not exceed the allowable safe-yield amount for the area of consideration. The non-consumptive use of groundwater previously authorized by the chief engineer shall be excluded from the sum of prior appropriations.

(2) The quantity authorized on all prior permits, certificates, and vested rights, the quantity requested on prior applications, and the quantities allocated to baseflow nodes shall be used to calculate the sum of prior appropriations and baseflow allocations.

(3) All conditions and limitation clauses listed on all prior appropriations and applications in the area of consideration shall be considered in effect.

(4) The baseflow allocation for baseflow nodes shall be calculated using the formula $Q_a = T/N$ where:

(A) Q_a is the baseflow allocation per baseflow node in acre-feet per year;

(B) T is the total baseflow allocation for a reach of a stream in acre-feet per calendar year. T is the average of the 12 calendar months' daily flow values in cubic feet per second that were equaled or exceeded 90 percent of the time during a specifically designated hydrologically significant period of record, times a factor of 724; and

(C) N is the number of baseflow nodes established on a stream or reach of a stream. Nodes are located at the upstream end of the watercourse reach and thereafter at the intersection of the channel of a watercourse and an arc of a 1,320-foot-radius circle whose center is located on the previously established baseflow node.

(5) The allowable safe-yield amount shall be calculated using the formula $S = A \times K$ where:

(A) S is the allowable safe-yield amount in acre-feet per year;

(B) A is the area of consideration; and

(C) K is an aquifer recharge value in feet. Everywhere in the district, except in McPherson county and the well spacing areas specified in K.A.R. 5-22-2(d)(1), K is equal to 0.5 feet per year.

(i) In McPherson county, K is a constant equaling 0.25 feet per year.

(ii) In the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located south of the centerline of

the North Fork Ninnescah river, K is equal to 0.25 feet per year. In the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located north of the centerline of the North Fork Ninnescah river, K is equal to 0.1667 feet per year.

K is calculated by multiplying the recharge percentage times the average annual precipitation of 2.5 feet per year. The recharge percentage is 10 percent in McPherson county and the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located south of the centerline of the North Fork Ninnescah river, 6.667 percent in the well spacing areas specified in K.A.R. 5-22-2(d)(1) and located north of the centerline of the North Fork Ninnescah river, and 20 percent for the rest of the district.

(6) When evaluating an application for a change in the point of diversion, each application with a priority earlier than the priority established by the filing of the application of change shall be included in the safe-yield analysis.

(7) If the perimeter of the area under consideration intersects a group of wells authorized under prior applications, permits, certificates, or vested rights, a reasonable quantity of water shall be assigned to each well based upon the best available information.

(b) The following shall not be subject to this regulation:

(1) An application to appropriate groundwater in an area not closed by regulation or intensive groundwater use control area order by the chief engineer to new non-domestic, non-temporary permits and term permits for five or fewer years, if all of the following conditions are met:

(A) The annual quantity of water requested in the application does not exceed 15 acre-feet;

(B) the sum of the annual quantity of water requested in the application and the total annual quantities of water authorized by prior approvals of applications allowed because of an exemption pursuant to this regulation does not exceed 45 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion;

(C) the approval of the application does not authorize an additional quantity of water out of an existing authorized point of diversion with a non-domestic approval of application or water right that would then authorize a total combined annual quantity of water from that point of diversion in excess of 15 acre-feet;

(D) the approval of the application does not authorize an additional quantity of water to be used

on a currently authorized non-domestic place of use in excess of 15 acre-feet;

(E) the approval of the application does not authorize an additional quantity of water to be pumped through a common distribution system in excess of 15 acre-feet;

(F) the application meets the well spacing criteria in K.A.R. 5-22-2;

(G) the application meets the requirements of all other applicable regulations in effect when the application is filed; and

(H) the maximum authorized rate of diversion does not exceed 50 gallons per minute;

(2) an application for a non-consumptive use of groundwater;

(3) an application for change in point of diversion, if the following conditions are met:

(A) The diversion works were completed 300 feet or less from the originally authorized point of diversion and within 150 feet of the location approved by the chief engineer;

(B) a notice of completion was timely filed with the chief engineer under the original approval of application; and

(C) if located within the well spacing areas specified in K.A.R. 5-22-2(d)(1), both of the following conditions are met:

(i) The number of wells comprising the point of diversion is not proposed to be increased; and

(ii) each point of diversion is proposed to be relocated 300 feet or less from the currently authorized location, the currently authorized point of diversion and diversion works have been completed, and a notice of completion has been timely filed with the chief engineer before the effective date of this regulation;

(4) an application requesting only an additional rate of diversion on an existing well, if the approval of the application meets the following requirements:

(A) Is limited to the maximum annual quantity of water authorized by a prior certified, vested, or appropriation right; and

(B) contains both of the following requirements:

(i) The approved application for additional rate shall be dismissed if the prior certified, vested, or appropriation right is dismissed and terminated; and

(ii) the approved or certified maximum annual quantity of water shall be reduced in an amount equal to any subsequent reduction in the maximum annual quantity of water authorized by the prior certified, vested, or appropriation right;

(5) an application for a standby well;

(6) an application for a bank storage well only to the extent that the bank storage well is withdrawing bank storage water; and

(7) an application for an aquifer storage and recovery well. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1983; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004; amended May 14, 2010; amended June 12, 2015; amended March 25, 2016.)

5-22-8. Change applications. (a) Except as set forth in subsection (d), the approval of each application for a change in point of diversion for a vested right, appropriation right, permit, term permit, or an application to appropriate groundwater shall be subject to the following requirements:

(1) The maximum distance a replacement well can be located from the originally authorized location shall be 2,640 feet.

(2) A replacement well located more than 300 feet from the currently authorized location shall comply with the provisions of K.A.R. 5-22-2.

(3) An application for a change in point of diversion shall be accompanied by either a completed abandoned-well or inactive-well agreement if the original well will no longer be authorized by any other vested right, appropriation right, approval of application, or term permit and the well has not been properly physically adapted for, and actually used for, domestic use. The completed agreement shall be submitted by the applicant with the application for a change in point of diversion on a form prescribed by the district.

(4) Each point of diversion described in the application shall be equipped with a water flowmeter that meets or exceeds the criteria of K.A.R. 5-22-4, K.A.R. 5-22-4a, K.A.R. 5-22-4b, and K.A.R. 5-22-4d.

(b) The approval of each application for a change in place of use or the use made of water for a vested right, appropriation right, approval of application, and term permit shall have a condition that a water flowmeter that meets or exceeds the requirements of K.A.R. 5-22-4, K.A.R. 5-22-4a, K.A.R. 5-22-4b, and K.A.R. 5-22-4d be installed on each point of diversion described in the application.

(c) Except as specified in subsection (d), each approval of application for a change in place of use for irrigation purposes shall be subject to the following requirements:

(1) If the time to perfect the water right has expired, the water right shall be certified before the change application may be approved.

(2) The approval of the application for change in place of use shall not authorize an increase in the size of the authorized place of use in excess of the limits specified in K.A.R. 5-5-11(b).

(d) An application for change in place of use for irrigation purposes filed only for the purpose of creating an identical place of use with another water right or rights shall not be subject to subsection (c) if all of the following conditions are met:

(1) There is not a net increase in the number of authorized acres.

(2) Each water right involved in the proposed identical overlap in place of use is certified by the chief engineer before processing the change application if approval of the change application would authorize an increase in base acreage as defined in K.A.R. 5-5-11(a).

(3) The total quantity authorized by all existing water rights and all permits involved is reasonable to irrigate the land authorized after the change in place of use is approved. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004.)

5-22-9. Exceptions. Each recommendation timely submitted by the district concerning an exemption from, or waiver to, a regulation adopted by the chief engineer shall be considered by the chief engineer. An exception to these regulations may be granted by the chief engineer if the applicant demonstrates that the exception will neither impair a use under an existing right nor prejudicially affect the public interest. (Authorized by K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Oct. 15, 1990; amended Nov. 12, 2004.)

5-22-10. Aquifer storage and recovery system: data reporting requirements. (a) Each person operating an aquifer storage and recovery system of which all or part of is within the boundaries of the district shall file an annual report with the district no later than June 1 for the previous calendar year. The report shall contain the water balance in the basin storage area and, in addition to the information required by K.A.R. 5-12-2, information about the following, as specified:

(1) Source water:

(A) The type;
 (B) the quantity of water available;
 (C) the quantity of water surface water and bank storage water diverted;
 (D) the basin storage loss; and
 (E) the chemical, physical, radiological, and biological quality for each type of source water diverted;

(2) aquifer storage:

(A) The artificial recharge techniques used;
 (B) the quantity of source water recharged by each technique used;

(C) the total quantity of source water stored in the basin storage area; and

(D) the chemical, physical, radiological, and biological quality for each type of water stored;

(3) recovery of stored water:

(A) A monthly and annual summary of recharge credits withdrawn from each recovery well; and

(B) the chemical, physical, radiological, and biological quality of the water recovered; and

(4) hydrologic conditions:

(A) The quarterly index water levels;

(B) the key groundwater quality parameters;

(C) the monthly and annual precipitation quantities;

(D) the annual groundwater withdrawals from all wells except domestic wells;

(E) the annual streamflow, including baseflows and above-baseflow stage;

(F) a summary of the conjunctive use amounts; and

(G) the water supply and demand forecast for the next three years.

(b) The operator of the aquifer storage and recovery system shall furnish the district with whatever analyses, data, and other supporting documentation are necessary to understand and verify the report.

(c) The board shall review the report and submit its findings and recommendations to the chief engineer regarding the report no later than September 1 of the calendar year in which the report is required to be filed. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Dec. 10, 2004.)

5-22-12. Application processing requirements and procedures. (a) Except as provided in subsection (c), each application for any of the following shall be subject to the requirements and procedures in subsection (b):

(1) Appropriate water for beneficial use;

(2) change the point of diversion, the use made of water, the place of use, or any combination of these; or

(3) obtain a term permit.

(b)(1) Before final action is taken on an application, a copy of the application shall be submitted by the chief engineer to the district for review and recommendation.

(2) The district staff shall conduct a review of the proposed application. The district staff's recommendation to the chief engineer shall be consistent with the provisions of the Kansas water appropriation act, the groundwater management district act, and the regulations adopted by the chief engineer pursuant to those acts.

(3) Within 15 working days after the date the chief engineer submits the application to the district for review, or any extension of time approved by the chief engineer, the district staff shall submit to the chief engineer its findings and recommendation for approval, denial, or modification of the application and shall specify the basis for the recommendation. At the same time the district submits its recommendation to the chief engineer, the recommendation shall also be served on the applicant and any other parties to the proceedings.

(4) A district staff's findings and recommendation concerning an application may be appealed to the board by the applicant or anyone whose legal rights, duties, privileges, immunities, or other legal interests may be affected by approval, denial, or modification of the application.

(5) The petition for review by the board shall be filed by the party appealing the recommendation with the board within 30 days after the date of the letter sending the findings and recommendations by the staff of the district to the applicant or other party. The petition shall state the basis for the appeal and shall be accompanied by documentation supporting the appeal.

(6) During the appeal, any relevant information or data may be considered by the board, including relevant data and information submitted by a person whose legal rights, duties, privileges, immunities, or other legal interests may be affected by approval, denial, or modification of the application.

(7) After consideration of the appeal, one of the following actions shall be taken by the board:

(A) Remanding the matter to the district staff with instructions for additional investigation; or

(B) notifying the applicant and the chief engineer of the board's final recommendation. The

applicant and all other parties shall be notified of the board's decision by certified mail.

(8) Within 15 days after the service of the board's decision on the applicant and any other party, the applicant or any other party may file with the board a written request for reconsideration, which shall state the specific grounds for the request for reconsideration. The petition for reconsideration shall be deemed denied if not acted on by the board within 30 days.

(c) The following shall not be subject to this regulation:

(1) The domestic use of water;

(2) an application for a temporary permit; and

(3) an application to change the point of diversion if both of the following conditions are met:

(A) The point of diversion is proposed to be moved less than 300 feet; and

(B) the point of diversion is not a battery. (Authorized by and implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; effective Jan. 10, 2003.)

5-22-13. Potential net evaporation. (a)

The map titled "annual potential net evaporation in inches for Equus Beds groundwater management district no. 2 (annual average evaporation minus annual normal precipitation)," prepared by the district and dated June 11, 2002, is hereby adopted by reference for the purpose of determining potential net evaporation from a free-water surface within the district.

(b) The values on the map shall be used in all situations in which the determination of potential net evaporation from a free-water surface is necessary, including the following:

(1) Computing the annual amount of evaporation that will be caused by exposing the groundwater table;

(2) calculating the quantity of surface water that is reasonably expected to be replaced with groundwater pumped under an approval of application or water right;

(3) calculating the average annual evaporation from groundwater that will be used to determine annual water use; and

(4) determining the maximum annual quantity of water that is perfected pursuant to K.S.A. 82a-714, and amendments thereto.

(c) The values shown on the map shall be used unless the applicant provides, or the chief engineer or the district has available, better or more site-specific data concerning potential net evaporation.

ration. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Dec. 10, 2004.)

5-22-14. Maximum reasonable quantity for beneficial use. (a) The maximum annual quantity of water deemed reasonable for irrigation use shall be the following:

(1) 1.3 acre-feet per acre in Harvey, McPherson, and Sedgwick counties; and

(2) 1.4 acre-feet per acre in Reno county.

(b) The following quantities shall be used to determine the maximum annual quantity of water deemed reasonable for nondomestic livestock and poultry use:

Livestock or poultry	Drinking water (gallons per day)	Units
Cattle, beef	15	per head
Cattle, dairy	35	per head
Swine finishing	5	per head
nursery	1	
sow and litter	8	
gestating sow	6	
Sheep	2	per head
Horses	12	per head
Poultry chickens	9	100 layers
turkeys	30	100 turkeys
Calves (750 pounds or less)	10	per head
Goats	9	per head

(c) The maximum reasonable quantity of water that may be approved for nondomestic livestock and poultry use for applications approved on or after the effective date of this regulation shall be limited as specified in subsection (b), unless the applicant demonstrates with adequate supporting information that the quantity of water and rate of diversion requested meet the following conditions:

- (1) Are reasonable for the intended use;
- (2) are not wasteful; and
- (3) will not otherwise prejudicially and unreasonably affect the public interest.

(d) For all other types of nondomestic livestock, poultry, birds, and animals, the maximum quantity of water approved for beneficial use shall be reasonable. The applicant shall justify the quantity of water requested with information on peer water use, the historical measured usage, a professional recommendation, or any other relevant information.

(e) Each applicant who seeks to appropriate water for industrial use shall submit information to demonstrate that the annual quantity of water requested is reasonable for that particular type of industrial use. The information submitted shall include the quantity of water reasonable for that type of industrial use based on current industry standards and a use of technology that is economically and technically feasible for that industry at that location.

(f) Unless the applicant demonstrates a projected deviation from actual population trends, a reasonable annual quantity of water for municipal use shall not exceed the lesser of either of the following:

(1) 200 gallons per capita per day; or

(2) 110 percent of the last three years' average per capita per day usage, excluding industries that use over 200,000 gallons per year, times 365 days per year, times the projected population for the twentieth year after the application is filed, plus reasonable projected water use for industries that use over 200,000 gallons per year. Population projections shall be made using one of the following:

(A) Accepted statistical methods using historic population trends for the applicant; or

(B) data from the U.S. census bureau, Kansas water office population projections, or the Kansas census bureau. Projected deviations from historic population trends shall be justified by the applicant.

(g) The maximum annual quantity of water deemed reasonable to be provided from a well to a pond, lake, or reservoir that does not expose the current or historical water table shall be calculated using the formula $Q_c = [(E+S)/12] \times A_{sw} + F$ where:

(1) Q_c is the maximum quantity of water use in acre-feet;

(2) E is the potential net evaporation in inches per year;

(3) S is the seepage loss based on soil and subsoil in inches per year;

(4) A_{sw} is the surface area of the pond in acres as measured at the elevation of the lowest uncontrolled spillway; and

(5) F is the quantity of water in acre-feet necessary to fill the pond initially.

(h) The maximum annual quantity of water deemed reasonable to replace the evaporation from a groundwater pit shall be calculated using the formula $Q_c = (E/12) \times A_{wt}$ where:

(1) Q_c is the maximum annual quantity of evaporation of groundwater from the pit in acre-feet;

(2) E is the potential net evaporation in inches per year; and

(3) A_{wt} is the area of the water table exposed in the groundwater pit expressed in acres. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Dec. 10, 2004.)

5-22-15. Limitations on the use of fresh groundwater. (a) Fresh groundwater shall not be used for any of the following purposes, unless the applicant demonstrates before approval of the application that the use of other waters is not technologically or economically feasible:

- (1) The enhanced recovery of oil or gas;
 - (2) solution mining;
 - (3) the construction of storage caverns in subsurface salt deposits;
 - (4) the displacement and extraction of hydrocarbons from subsurface storage;
 - (5) any use that is not a beneficial use, as defined in K.A.R. 5-1-1; and
 - (6) any use that is not in the public interest.
- (b) "Other waters" shall include the following:
- (1) Water having a chloride content of more than 500 milligrams per liter (mg/l);
 - (2) water that is otherwise contaminated so that it is not drinkable;
 - (3) renewable surface water; and
 - (4) water that is being reclaimed, recycled, or reused. (Authorized by K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 82a-706a, K.S.A. 2003 Supp. 82a-711, and K.S.A. 2003 Supp. 82a-1028; effective Dec. 10, 2004.)

5-22-17. Bank storage wells. (a) Each applicant for one or more bank storage wells shall demonstrate all of the following:

- (1) The hydraulic connection from the streambed and banks to each bank storage well screen is sufficient to transmit bank storage water from the bed and banks of the stream to each bank storage well screen at a rate sufficient to sustain the authorized rate of diversion of the well or wells.
- (2) Within seven days after the pumping of all bank storage wells has ceased, the water level in each bank storage well, or a monitoring well located within 100 feet of that bank storage well, will recover to an elevation equal to or greater than the water level elevation immediately before the bank storage well began to pump, adjusted for any regional groundwater level changes not caused by the pumping of the bank storage well.

(3) The naturally occurring and artificially induced rate of infiltration from the bed and banks of the stream when bank storage is occurring will be sufficient to meet the following conditions:

- (A) Equal or exceed the authorized rate of diversion of all of the bank storage wells;
 - (B) prevent impairment caused by all bank storage wells; and
 - (C) prevent groundwater mining caused by all bank storage wells.
- (b) If an application for a bank storage well is approved by the chief engineer, the applicant shall install one or more water-level measurement tubes at locations that will allow adequate monitoring of groundwater quality and groundwater levels within the area where the annual cone of depression of the bank storage well or wells could be greater than 0.5 feet. Each water-level measurement tube shall be constructed and maintained in accordance with K.A.R. 5-6-13. (Authorized by K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2003 Supp. 82a-1028; effective Nov. 12, 2004.)

Article 23.—SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 3

5-23-1. Definitions. As used in these regulations, by the southwest Kansas groundwater management district in the implementation of the groundwater management district act, and by the division of water resources in the administration of the Kansas water appropriation act and the groundwater management district act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation. (a) "Confined aquifer" means an aquifer overlain and underlain by impermeable layers. Groundwater in a confined aquifer is normally under pressure greater than atmospheric pressure.

(b) "High plains aquifer" means the aquifer comprised of the undifferentiated Pleistocene-age deposits, Quaternary loess, alluvium, dune sand, the Ogallala formation, and deeper aquifers that are in vertical or horizontal hydraulic contact with the Ogallala formation.

(c) "Hydraulic contact" means the absence of an impermeable layer between aquifers.

(d) "Theis analysis" means the Theis non-equilibrium equation analysis described in pp. 108-113 in "ground water and wells: a reference book

for the water-well industry,” published in 1966 by Edward E. Johnson, Inc. The pages specified in this subsection are hereby adopted by reference.

(e) “Unconfined aquifer” means an aquifer in which the groundwater is exposed to the atmosphere through openings in the overlying materials. The upper surface of an unconfined aquifer is the water table.

(f) “Well” means any artificial excavation that is drilled, cored, bored, washed, driven, dug, or otherwise constructed when the intended use of the excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028(o); implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1981; amended May 1, 1985; amended Sept. 22, 2000; amended Feb. 27, 2004.)

5-23-2. Tailwater control and waste. No water user shall allow waste of water. If the water is re-used, the user shall apply the water consistent with the approved application to appropriate water for beneficial use, vested right or appropriation right. All water users shall construct and operate the water distribution systems in a manner as to prevent the waste of water, and shall do everything necessary and proper to preserve the quality of the groundwater resources within the district. (Authorized by K.S.A. 1980 Supp. 82a-1028(o); implementing K.S.A. 1980 Supp. 82a-1028(n); effective May 1, 1981.)

5-23-3. Minimum well spacing requirements: high plains aquifer. (a) (1) The minimum horizontal distance between each proposed nontemporary, nondomestic well and all other senior nontemporary, nondomestic wells diverting water from the high plains aquifer shall be determined from the following schedule.

Quantity per well (acre-feet per year)	Minimum well spacing requirement
15 or less	660 feet
16–200.....	1,300 feet
201–300.....	1,600 feet
301–400.....	1,900 feet
401–500.....	2,100 feet
more than 500.....	2,300 feet

(2) The minimum well spacing requirement shall be based on the maximum annual quantity of water. The required well spacing shall be the greater of either of the following:

(A) The minimum spacing for the total authorized and requested quantity of water for the proposed well; or

(B) the total authorized and requested annual quantity of water for the nontemporary, nondomestic well against which the spacing is being measured that is senior to the date on which the application was filed. If the quantity of water applied for includes a fraction of an acre-foot, the quantity of water shall be rounded down to the next whole number of acre-feet for the purpose of applying the table in this subsection.

(b) The location of a well or wells on an application for approval to change the point of diversion under an existing water right shall be no more than 2,640 feet from the currently authorized and completed point of diversion.

(c) A well shall be exempt from the minimum well spacing requirements of this regulation if the well meets either of the following conditions:

(1) The well is being replaced within 300 feet of the currently authorized point of diversion.

(2) The proposed replacement well location improves the spacing to all other wells for which the spacing requirement was not met on the date on which the application for a change in point of diversion was filed and continues to meet requirements for spacing to all wells for which the spacing requirement was met at the time the application for change in point of diversion was filed.

(d) No application for approval to change the point of diversion under an approved application for which the original well has not been drilled shall be approved if the location of the proposed point of diversion decreases the distance from the approved location to any other existing wells to less than the spacing requirement for new applications.

(e) Each nondomestic, nontemporary well shall be located a minimum of 660 feet from all domestic wells with a priority earlier than the date on which the change application was filed, unless all of the following conditions are met:

(1) The domestic well is owned by the applicant.

(2) The applicant signs a written request to waive the requirements for spacing to the domestic well.

(3) The applicant submits information documenting the location and depth of the domestic well and any other information necessary for the chief engineer to determine whether the domestic well is likely to be impaired.

(4) A Theis analysis or other hydraulic analysis

shows that the domestic well is not likely to be impaired by the proposed well.

(f) In the case of a battery of wells, as defined in K.A.R. 5-1-1, the minimum horizontal distance shall be measured from the geographic center of the wells comprising the battery.

(g) The total annual quantity per well shall be the sum of all of the quantities authorized or requested by any water rights, permits, or applications requesting or authorizing that well as a point of diversion. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-711, K.S.A. 2002 Supp. 82a-708b, and K.S.A. 82a-1028; effective May 1, 1981; amended May 1, 1985; amended Aug. 28, 1989; amended Sept. 30, 1991; amended Sept. 22, 2000; amended Feb. 27, 2004.)

5-23-3a. Minimum well spacing requirements: confined aquifers. (a)(1) The minimum horizontal distance between each proposed nontemporary, nondomestic well and all other senior nontemporary, nondomestic wells diverting water from a confined aquifer shall be determined from the following schedule.

Quantity per well (acre-feet per year)	Minimum well spacing requirement	Required distance from hydraulic contact point
15 or less	660 feet	2,640 feet
16 to 25	2,300 feet	1 mile
26 to 100	5,280 feet	2 miles
More than 100	10,560 feet	5 miles

(2) The minimum well spacing requirement shall be based on the authorized maximum annual quantity of water. The well spacing requirement shall be the greater of either of the following:

(A) The minimum spacing for the total authorized and requested annual quantity of water of the proposed well; or

(B) the total authorized and requested quantity of water for nontemporary, nondomestic well against which spacing is being measured that is senior to the date on which the application was filed.

The total annual quantity of water per well shall be the sum of all of the quantities authorized or requested by any water rights, approvals of applications, or applications requesting or authorizing that well as a point of diversion.

If the quantity of water applied for includes a fraction of an acre-foot, the quantity of water shall be rounded down to the next whole number of acre-feet for the purpose of applying the table in this subsection.

(b) In the case of a battery of wells, as defined in K.A.R. 5-1-1, the minimum horizontal distance shall be measured from the geographic center of the wells comprising the battery.

(c) A well penetrating both a confined and unconfined aquifer shall be constructed to prevent the vertical migration of water between the aquifers. A well diverting water from the Dakota aquifer system shall be constructed to prevent the vertical migration of water between the Dakota aquifer system and all other freshwater aquifers.

(d) The location of a well or wells on an application for approval to change the point of diversion under an existing water right shall be no more than 2,640 feet from the currently authorized and completed point of diversion.

(e) A well shall be exempt from the minimum well spacing requirements of this regulation if the well meets either of the following conditions:

(1) The well is being replaced within 300 feet of the currently authorized point of diversion.

(2) The proposed replacement well location improves the spacing to all other wells for which the spacing requirement was not met on the date on which the application for a change in point of diversion was filed and continues to meet requirements for spacing to all wells for which the spacing requirement was met at the time the application for change in point of diversion was filed.

(f) No application for approval to change the point of diversion under an approval of application for which the original well has not been drilled shall be approved if the location of the proposed point of diversion decreases the distance from the approved location to any other existing wells to less than the spacing requirements for a new application.

(g) Each nondomestic, nontemporary well shall be located a minimum of 1,320 feet from all domestic wells in the same or a hydraulically connected aquifer with a priority earlier than the date on which the change application was filed, unless all of the following conditions are met:

(1) The domestic well is owned by the applicant.

(2) The applicant signs a written request to waive the requirements for spacing to the domestic well.

(3) The applicant submits information documenting the location and depth of the domestic well and any other information necessary for the chief engineer to determine whether the domestic well is likely to be impaired.

(4) A Theis analysis or other hydraulic analysis shows that the domestic well is not likely to be impaired by the proposed well.

(h) The minimum horizontal distance between a nontemporary, nondomestic well withdrawing water from a confined aquifer and a well withdrawing water from an unconfined aquifer shall be 660 feet. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-711, K.S.A. 2002 Supp. 82a-708b, and K.S.A. 2002 Supp. 82a-1028; effective Sept. 22, 2000; amended Feb. 27, 2004.)

5-23-4. High plains aquifer. (a) Except as specified in subsection (b), the district shall be closed to new appropriations of water in the high plains aquifer.

(b) This regulation shall not apply to the following:

- (1) Wells for domestic use;
- (2) wells authorized by temporary permits;
- (3) wells authorized by term permits of no more than five years;

(4) an application to appropriate 15 acre-feet of water or less if all of the following conditions are met:

(A) The area is closed to new appropriations, but the sum of the annual quantity requested by the proposed appropriation and the total quantities authorized by prior permits because of this exemption does not exceed 15 acre-feet in a circle with a radius of two miles surrounding the proposed point of diversion.

(B) Well spacing criteria have been met.

(C) Approval of the application will not authorize an additional quantity of water out of an existing well authorized by a nondomestic approval of application or water right, which would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(D) All other criteria for processing a new application have been met.

(c) Each application filed to request a well within the area described in subsection (e) shall include a driller's log, an electric log, and a laboratory analysis from a state-certified laboratory of the chloride concentrations in samples taken from whatever depths are necessary to determine the vertical location where the chloride concentrations exceed 250 milligrams per liter (mg/l). The samples shall be taken from a well located within a 300-foot radius of the proposed well. A state-certified laboratory analysis shall be used to determine the vertical location of the chloride concentrations exceeding 250 mg/l.

(d) Each well constructed in the area described in subsection (e) shall be constructed in a manner that prevents the movement of water containing 250 mg/l of chlorides beyond its naturally occurring condition.

(e) The level of chlorides may exceed 250 mg/l in the following areas:

(1) The west ½ of townships 33, 34, and 35 south, range 28 west in Meade County, Kansas;

(2) the east ½ of township 33 south, range 29 west in Meade County, Kansas;

(3) all of townships 34 and 35 south, ranges 29 and 30 west in Meade County, Kansas; and

(4) all of townships 34 and 35 south, ranges 31 and 32 west and the east ½ of townships 34 and 35 south, range 33 west in Seward County, Kansas. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 82a-706a, K.S.A. 2015 Supp. 82a-711, and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1981; amended May 1, 1986; amended Aug. 28, 1989; amended Sept. 22, 2000; amended Nov. 21, 2003; amended May 13, 2016.)

5-23-4a. Criteria for closing townships to new appropriations. (a) Entire townships shall be closed to further appropriation of water for beneficial use from the high plains aquifer if at least one of the following conditions exists:

- (1) The entire township is fully appropriated.
- (A) A township shall be considered to be fully appropriated if the aquifer within the township would be depleted by 40 percent or more in 25 years if current vested rights and appropriations are fully exercised and all limitation clauses listed on permits to appropriate water and certificates are in force.

(B) Aquifer depletion shall be calculated using the allowable annual appropriation formula described in subsection (b) with the area of consideration equal to the number of acres within sections of land containing saturated thickness within the township.

(2) The average saturated thickness of the aquifer within the township is 50 feet or less, as set forth in K.A.R. 5-23-15.

(3) The aquifer has been depleted by 20 percent or more since 1950. Depletion since 1950 shall be determined from maps or data, or both, recommended by the board and adopted by the chief engineer by regulation.

(4) Groundwater pumping has lowered the water level of the high plains aquifer, which has diminished the baseflow from the aquifer to the

stream and impaired senior domestic surface water rights and other senior surface water rights.

(5) Groundwater pumping in an area has lowered the water level of the freshwater to the point that the issuance of additional approvals of applications will induce water in excess of 250 milligrams per liter chlorides to mix with overlying freshwater, causing contamination of the overlying freshwater.

(b) Except for the types of wells listed in subsection (c), the proposed appropriation, when added to the vested rights, prior appropriation rights, and earlier priority applications, shall not exceed, in 25 years, a calculated rate of depletion of 40 percent of the saturated thickness underlying the area of consideration. For the purpose of analysis, all vested rights, appropriation rights, approvals of applications, and prior unapproved applications shall be considered to be fully exercised, and all limitation clauses on approvals of application and certificates shall be considered to be in force. The allowable annual appropriation shall be calculated using the following formula:

$$\text{Allowable Aquifer Yield} = \frac{0.40AMS}{25} + \frac{AR}{12}$$

Allowable aquifer yield = the amount of water, measured in acre-feet, available annually for appropriation from a proposed point of diversion (well).

A = the "area of consideration" shall be equal to the number of acres within sections containing saturated thickness within the township and within the district.

M = the number of feet of average saturated thickness of the high plains aquifer within the township as set forth in K.A.R. 5-23-15.

S = the storage coefficient or a specific yield of 15 percent.

R = average annual recharge and return flow, which shall be one inch per year.

(c) The calculation specified in subsection (b) shall not include the following types of wells:

- (1) Wells for domestic use;
- (2) wells authorized by temporary permits; and
- (3) wells authorized by term permits of fewer than five years. (Authorized by K.S.A. 82a-706a and 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 30, 1991; amended Sept. 22, 2000; amended Nov. 21, 2003.)

5-23-4b. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Sept. 22, 2000; amended Nov. 21, 2003; revoked May 13, 2016.)

5-23-5. (Authorized by K.S.A. 1980 Supp. 82a-1028(o); implementing K.S.A. 1980 Supp. 82a-1028(n); effective May 1, 1981; revoked Nov. 21, 2003.)

5-23-6. Water-measuring devices. The diversion works for each nontemporary, nondomestic well located within the boundaries of the district shall be equipped with a water flowmeter that meets or exceeds the specifications in K.A.R. 5-1-4 through 5-1-12.

(a) The owner shall perform the following:

(1) Ensure that the water flowmeter is installed according to specifications in K.A.R. 5-1-4 through 5-1-12;

(2) maintain the water flowmeter in proper working condition whenever the diversion of water for nondomestic use can reasonably be expected to occur; and

(3) promptly initiate action to repair or replace any water flowmeter that is out of compliance, and correct any problems with the installation of a water flowmeter.

(b) The owner shall notify the district, on a form prescribed by the district, within 30 days after any of the following:

- (1) A new water flowmeter is installed.
- (2) A water flowmeter is repaired and reinstalled.
- (3) A water flowmeter is repaired without removing the water flowmeter.
- (4) An improper water flowmeter installation has been corrected.

(c) An extension of time to install a water flowmeter may be granted by the district for a reasonable period of time if just cause is shown to the district. Each appeal shall be filed with the board at least 10 days before a regularly scheduled board meeting. Just cause may include any of the following:

(1) A contract has been signed by the owner and the seller to sell or install the water flowmeter, but the seller cannot complete the sale or installation before diversion of water will take place.

(2) Weather conditions prevent the water flowmeter from being installed before the diversion of water.

(3) Legal proceedings prevent the owner from installing the water flowmeter.

(4) The supply of natural gas to power the well has been cut off by the seller of the natural gas for reasons beyond the control of the owner of the water right.

(d) A water flowmeter shall not be required to be installed if any of the following criteria is met:

(1) A well is authorized to divert 15 acre-feet or less per calendar year.

(2) Two or more wells are authorized by the same water right or approval of application with one authorized annual quantity of water for all the wells, and all of the water diverted by all of the wells is measured by a single water flowmeter prior to its application to beneficial use.

(3) The well is enrolled in a multiyear federal conservation program or the water rights conservation program pursuant to K.A.R. 5-7-4.

(4) The well is registered as inactive with the Kansas department of health and environment.

(5) An affidavit is filed by the owner with the district stating that the well is not, and will not be, operated until a water flowmeter meeting the specifications in K.A.R. 5-1-4 through 5-1-12 is properly installed. Thirty days before operating the well, the owner shall file a notice with the district indicating that a water flowmeter has been installed and indicate when the owner proposes to begin the diversion of water. (Authorized by and implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; effective May 1, 1981; amended May 1, 1985; amended Jan. 10, 2003.)

5-23-7 and 5-23-8. (Authorized by K.S.A. 1980 Supp. 82a-1028(o); implementing K.S.A. 1980 Supp. 82a-1028(n); effective May 1, 1981; revoked May 1, 1985.)

5-23-9. (Authorized by K.S.A. 1980 Supp. 82a-1028(o); implementing K.S.A. 1980 Supp. 82a-1028(n); effective May 1, 1981; revoked Aug. 28, 1989.)

5-23-11. Procedures for non-compliance with rules and regulations. The district, its board or manager, any eligible voter within the district, or any person residing within the district that is at least eighteen (18) years of age, may file a written complaint with the district alleging a violation of these rules and regulations, the management program, the groundwater management district act (K.S.A. 82a-1020 *et seq.*), or the water appropriation act (K.S.A. 82a-701 *et seq.*). The written complaint shall be filed at the district office.

Within thirty (30) days following the filing of the complaint, a representative of the district designated by the board shall investigate the complaint. If the representative of the district finds that a violation has existed or presently exists, the represen-

tative shall issue a written directive to the violator stating the nature of the violation and directing the violator to come into compliance with these rules and regulations.

If the violator fails to comply with the directive, the district may: (1) Seek to enjoin the violator's use of water by suitable action in district court until such time as the violator complies; or

(2) Seek the assistance of the chief engineer and the attorney general of the state of Kansas to enjoin the violator's use of water until such time as the violator complies. (Authorized by K.S.A. 1980 Supp. 82a-1028(o); implementing K.S.A. 1980 Supp. 82a-1028(n); effective May 1, 1981.)

5-23-14. Dakota aquifer system. All evaluations in the southwest Kansas groundwater management district no. 3 involving a determination of the extent of the confined and unconfined Dakota aquifer system shall use the information shown in the Kansas geological survey open file report number 98-37, released August 1998, which is hereby adopted by reference, unless the applicant or the district provides, or the chief engineer has available, better or more site-specific data concerning the extent of the confined and unconfined Dakota aquifer system. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-709, K.S.A. 1999 Supp. 82a-711, and K.S.A. 82a-1028(n); effective Sept. 22, 2000.)

5-23-15. Saturated thickness of the high plains aquifer. All evaluations in the southwest Kansas groundwater management district no. 3 involving a determination of the saturated thickness of the high plains aquifer shall use the information shown in the Kansas geological survey open file report number 98-52, plate B, released February 1999, which is hereby adopted by reference, unless the applicant or the district provides, or the chief engineer has available, better or more site-specific data concerning the saturated thickness of the high plains aquifer. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 1999 Supp. 82a-711 and K.S.A. 82a-1028(n); effective Sept. 22, 2000.)

Article 24.—NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4

5-24-1. Definitions. As used in these regulations for the northwest Kansas groundwater management district no. 4, the following words

and phrases shall have the following meanings. (a) "Area of consideration" means the two-mile-radius circle whose center is the location of the proposed point of diversion. The area of consideration equals 8,042 acres minus any area of the circle that is outside the state of Kansas.

(b) "Base acreage" has the meaning specified in K.A.R. 5-5-11(a).

(c) "Battery of wells" has the meaning specified in K.A.R. 5-1-1.

(d) "Board" means the board of directors constituting the governing body of the northwest Kansas groundwater management district no. 4.

(e) "District" means the northwest Kansas groundwater management district no. 4.

(f) "Tailwater" means that portion of the applied irrigation water that becomes runoff from the authorized place of use.

(g) "Theis analysis" means the Theis non-equilibrium equation analysis described in pp. 108-113 in "ground water and wells: a reference book for the water-well industry," published by Edward E. Johnson, Inc., Saint Paul, Minnesota, in 1966. The pages specified in this subsection are hereby adopted by reference.

(h) "Usable water" means water containing not more than 10,000 milligrams per liter of total dissolved solids.

(i) "Waste of water" has the meaning specified in K.A.R. 5-1-1.

(j) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, or otherwise constructed if the intended use of the excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended May 1, 1985; amended Jan. 30, 2004.)

5-24-2. Allowable withdrawals. (a) Except as specified in subsection (b) the district shall be closed to any new appropriation of water that partially or wholly requests a source of supply that includes the Ogallala formation.

(b) The following types of applications shall not be subject to the closure of the district under this regulation:

(1) A nondomestic application for an approval of application if the proposed point of diversion meets the following criteria:

(A) Is to be located in an alluvial aquifer not closed to new appropriations, except for domestic

use, temporary permits, and term permits for five or fewer years;

(B) meets the well spacing requirements of K.A.R. 5-24-3; and

(C) meets the safe yield requirements of K.A.R. 5-3-9, K.A.R. 5-3-10, and K.A.R. 5-3-11;

(2) a nondomestic application to appropriate water from the Cretaceous system if the proposed point of diversion meets the well spacing criteria of K.A.R. 5-24-3;

(3) an application for a permit to appropriate water for domestic use;

(4) an application for a term permit for five years or less;

(5) an application for a temporary permit;

(6) an application for an approval of application filed on an existing well currently authorized by a vested right, appropriation right, or approval of application that requests a quantity of water equal to or less than the currently available quantity of water that will be conjunctively reduced from a well authorized by either a vested right or certified appropriation right meeting either of the criteria specified in paragraph (c)(1);

(7) an application for an approval of application that meets the criteria of K.A.R. 5-24-10; and

(8) an application for an additional rate of diversion only that meets the requirements of K.A.R. 5-4-5.

(c)(1) To be exempt from this regulation, each application for an approval of application filed on an existing well currently authorized by a vested right, appropriation right, or approval of application that requests a quantity of water equal to or less than the currently available quantity of water that will be conjunctively reduced from a well authorized by either a vested right or certified appropriation right shall meet either of the following criteria:

(A) Be located within 2,640 feet of the existing well that will have its authorized quantity reduced; or

(B) be located within a distance from the currently authorized well for which a Theis analysis shows a .5 foot or greater drawdown, using the following assumptions:

(i) The certified rate of diversion of the currently authorized well;

(ii) the certified annual quantity of water for the currently authorized well;

(iii) the pumping time equal to the time it takes to pump the certified annual quantity at the certified rate of diversion;

(iv) the drawdown computed at the time equal to the pumping time; and

(v) the transmissivity and storage coefficient derived either from a time drawdown aquifer pump test of the currently authorized well or from use of the well log from the currently authorized well or a well log from a test hole or well located within 300 feet of the currently authorized well, using the table on page 26 and the calculation described in the second paragraph on page 27 of the United States geological survey's water-resources investigations report 85-4198, published in 1985. The portions of this document specified in this paragraph are hereby adopted by reference.

(2)(A) For water rights authorized for irrigation use, the currently available quantity of water shall be calculated as follows:

(i) Determine the maximum number of acres actually irrigated during the perfection period. For vested rights, use the maximum number of acres irrigated in any one calendar year before June 29, 1945; and

(ii) use the 80 percent chance rainfall net irrigation requirements (NIR) for corn as specified in K.A.R. 5-5-12 to determine the NIR for each acre, and then divide that value by .85 to adjust for efficiency.

(B) For non-irrigation water rights, the currently available quantity of water shall not exceed the actual consumptive use during the perfection period.

(3) Each well that has a reduced or new water right pursuant to this subsection shall be equipped with a water flowmeter meeting the requirements of article one of the chief engineer's regulations.

(4) The maximum distance that a well shall be relocated under paragraph (c)(1)(B) shall be the distance computed as described in paragraph (c)(1)(B), or 3,960 feet, whichever is less.

(5) The historic consumptive use of a well meeting the requirements of paragraph (b)(6) that is accounted for in the Republican river compact, K.S.A. 82a-518 and amendments thereto, accounting as a stream depletion reaching the Republican river downstream of Trenton dam shall not be transferred to a well that would cause a depletion reaching the Republican river upstream of Trenton dam.

(6) The total net acreage authorized by the following shall not exceed the current net total authorized acreage for both wells:

- (A) The approval of application;
- (B) the water right being reduced; and

(C) the water right currently authorizing the well for which the new water right is sought. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended Aug. 19, 1991; amended Jan. 30, 2004; amended May 13, 2016.)

5-24-3. Well spacing. (a) Except as specified in subsection (b), the spacing between each proposed well and all other wells authorized to withdraw water from the same source of water supply shall be as follows:

(1) In the Ogallala aquifer and in alluvial aquifers not closed to new appropriations, the required minimum spacing for nondomestic, nontemporary wells shall be as follows:

(A) 0 to 175 acre-feet requested: a minimum spacing of 1,400 feet;

(B) 176 to 350 acre-feet requested: a minimum spacing of 2,000 feet;

(C) 351 to 575 acre-feet requested: a minimum spacing of 2,400 feet; and

(D) more than 575 acre-feet requested: a minimum spacing of 2,800 feet.

(2) If the quantity of water authorized or applied for includes a fraction of an acre-foot, the quantity of water shall be rounded off to the nearest acre-foot of water for the purpose of applying this regulation.

(3) Each nondomestic well shall be spaced a minimum of 800 feet from each domestic well constructed in the same aquifer unless the chief engineer determines that one of the following criteria is met:

(A)(i) The domestic well is owned by the applicant;

(ii) the applicant signs a written request to waive the spacing requirement to the domestic well;

(iii) the applicant submits information documenting the location and depth of the domestic well, and any other information necessary to determine whether the domestic well is likely to be impaired; and

(iv) a Theis analysis or other hydraulic analysis done by the chief engineer shows that the domestic well is not likely to be impaired by the proposed well; or

(B)(i) The owner of the domestic well signs a written request to waive the spacing requirement to the domestic well;

(ii) the applicant submits information documenting the location and depth of the domestic

well, and any other information necessary to determine whether the domestic well is likely to be impaired; and

(iii) a Theis analysis or other hydraulic analysis done by the chief engineer shows that the domestic well is not likely to be impaired by the proposed well.

(4) Each nondomestic application for additional water from an existing well already authorized by one or more water rights shall meet the minimum spacing requirements in paragraph (a)(1) for the cumulative total of all existing water rights, earlier appropriations, and the proposed appropriation for that well.

(5) For a battery of wells, the well spacing shall meet the minimum spacing in paragraph (a)(1) based on the total amount of water applied for by the battery of wells. The minimum spacing distance shall be measured from the geocenter of the proposed battery of wells.

(6) Nondomestic wells withdrawing water from a cretaceous aquifer shall be spaced a minimum of four miles from all other wells withdrawing water from a hydraulically connected cretaceous aquifer. The spacing between a nondomestic well withdrawing water from a cretaceous aquifer and a domestic well withdrawing water from the same aquifer shall be a minimum of 2,640 feet unless one of the following criteria is met:

(A)(i) The domestic well is owned by the applicant;

(ii) the applicant signs a written request to waive the spacing requirement to the domestic well;

(iii) the applicant submits information documenting the location and depth of the domestic well, and any other information necessary to determine whether the domestic well is likely to be impaired; and

(iv) a Theis analysis or other hydraulic analysis by the chief engineer shows that the domestic well is not likely to be impaired by the proposed well; or

(B)(i) The owner of the domestic well signs a written request to reduce the spacing requirement to the domestic well;

(ii) the applicant submits information documenting the location and depth of the domestic well, and any other information necessary to determine whether the domestic well is likely to be impaired; and

(iii) a Theis analysis or other hydraulic analysis done by the chief engineer shows that the domestic well is not likely to be impaired by the proposed well.

(b) The well spacing requirements of subsection (a) shall not apply to the following:

(1) Spacing to a standby well;

(2) spacing to another well if either of the following conditions is met:

(A)(i) The other well is owned by the applicant;

(ii) the owner of the other well signs a written request to reduce the spacing requirement to the other well;

(iii) the applicant submits information documenting the location and depth of the other well, and any other information necessary to determine whether the other well is likely to be impaired by the proposed well; and

(iv) a Theis analysis or other hydraulic analysis done by the chief engineer shows that the proposed well is not likely to impair the other well; or

(B)(i) The owner of the other well files a written request to waive the spacing requirement to the proposed well;

(ii) the applicant submits information documenting the location and depth of the other well, and any other information necessary to determine whether the other well is likely to be impaired by the proposed well; and

(iii) a Theis analysis or other hydraulic analysis done by the chief engineer shows that the proposed well is not likely to impair the other well;

(3) a replacement well that meets one of the following criteria:

(A) The well is being replaced within 300 feet of the currently authorized location; or

(B) both of the following conditions are met:

(i) The proposed replacement well location increases the spacing to all other wells for which the spacing requirement was not met on the date the application for a change in point of diversion was filed; and

(ii) the proposed replacement well location continues to meet the requirements for spacing to all wells for which the well spacing requirement was met at the time the application for change in point of diversion was filed; and

(4) an additional well if the original well and the additional well are owned by the same owner or owners. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended Jan. 30, 2004.)

5-24-4. Tailwater control and waste. No person shall commit or allow a waste of water as defined in K.A.R. 5-1-1. Runoff from precipitation shall not be considered a waste of water.

(Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended Jan. 30, 2004.)

5-24-5. Allowable appropriation—reasonable use. (a) The maximum reasonable annual quantity of water for irrigation use shall not exceed the standards adopted in K.A.R. 5-3-19, K.A.R. 5-3-20, K.A.R. 5-3-21, K.A.R. 5-3-23, and K.A.R. 5-3-24.

(b) The annual quantity of water deemed reasonable on an application for municipal use shall be determined using the following criteria:

(1) The annual quantity of water needed for residential use shall be based on a population projection for the ensuing 20 years. The projected population shall be determined by extending present population for 20 years at one and one-half percent per year increase.

(2) The total quantity of water reasonable for the residential population shall then be determined by the following:

(A) Multiplying the projected population by the current per capita use; and

(B) adding a reasonable quantity of water for the present and projected industrial use for the ensuing 20-year-period.

(3) Municipalities may purchase, condemn, or otherwise acquire existing water rights in excess of the quantities set forth in paragraphs (b) (1) and (2) and apply to the chief engineer to change a reasonable quantity of the acquired water rights for municipal use, which shall not exceed 200 percent of the quantity considered reasonable pursuant to paragraphs (b)(1) and (2).

(c) The quantities of water deemed to be reasonable for livestock and poultry shall be determined pursuant to K.A.R. 5-3-22.

(d) All applications for any other type of beneficial use shall be reviewed to determine if the annual quantity of water and rate of diversion requested are reasonable for the intended use based on the best information available. (Authorized by K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5, and K.S.A. 82a-706a; implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; effective May 1, 1983; amended Aug. 19, 1991; amended Jan. 10, 2003.)

5-24-6. Changes in points of diversion. (a) Each replacement well shall meet all of the criteria in either of the following paragraphs:

(1)(A) Be located within 2,640 feet of the currently approved well location; and

(B) meet the well spacing criteria of K.A.R. 5-24-3; or

(2)(A) Be located within a distance from the currently authorized well for which a Theis analysis shows a .5 foot or greater drawdown, using the following assumptions:

(i) The certified rate of diversion of the currently authorized well;

(ii) the certified annual quantity of water for the currently authorized well;

(iii) the pumping time equal to the time it takes to pump the certified annual quantity at the certified rate of diversion;

(iv) the drawdown computed at the time equal to the pumping time;

(v) the transmissivity and storage coefficient derived either from a time drawdown aquifer pump test of the currently authorized well or from use of the well log from the currently authorized well or a well log from a test hole or well located within 300 feet of the currently authorized well, using the procedure specified in K.A.R. 5-24-2(c)(1)(B)(v); and

(B) meet the well spacing criteria of K.A.R. 5-24-3.

(b) The maximum distance that a well may be relocated under paragraph (a)(2) shall be the distance computed as specified in paragraph (a) (2), or 3,960 feet, whichever is less. If the historic consumptive use of the well being replaced is accounted for in the Republican river compact, K.S.A. 82a-518 and amendments thereto, accounting as a stream depletion reaching the Republican river downstream of Trenton dam, that consumptive use shall not be transferred to a well that would cause a depletion reaching the Republican river upstream of Trenton dam.

(c) No change in a point of diversion application that proposes to change the authorized point of diversion from one well to a battery of wells shall be approved unless at least one of the following conditions has been met:

(1) Water is available for appropriation pursuant to K.A.R. 5-24-2 at the geocenter of the proposed battery of wells or would be available if the current water right were dismissed.

(2) The proposed battery of wells meets the requirements of K.A.R. 5-2-3. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended May 1, 1987; amended Jan. 30, 2004.)

5-24-7. Well construction criteria. (a) Each nondomestic well that is not subject to regulation under the Kansas chemigation safety law, K.S.A. 2-3301 et seq., and amendments thereto, and that is completed after May 1, 1983 shall include the installation of a check valve that meets or exceeds specifications adopted by the chief engineer which were in effect at the time the well was completed.

(b) All wells, including domestic wells, to be completed in a cretaceous aquifer shall be constructed in a manner that prevents the cretaceous aquifer from mixing with all quaternary, tertiary, and any other cretaceous water-bearing strata that have no natural hydraulic connection between the formation or formations in which the well will be screened. (Authorized by and implementing K.S.A. 82a-1028; effective May 1, 1983; amended Jan. 10, 2003.)

5-24-8. Resource development plans. (a) A resource development plan may be required by the district to be submitted for any of the following:

(1) A new application to appropriate water for irrigation use;

(2) a nonemergency application to change the place of use or the use made of water from irrigation to another type of use that involves an actual physical change in operation; or

(3) a new application to appropriate water for nonirrigation purposes if one of the following criteria is met:

(A) The quantity of water requested is likely to be unreasonable.

(B) The proposed beneficial use is likely to be inefficient.

(C) The proposed operation is likely to result in a waste of water.

(D) The owner or operator has a recent, documented history of noncompliance with the provisions of the Kansas water appropriation act or regulations adopted pursuant to the act.

(b) Each resource development plan shall include a description of the proposed operation, including the diversion works, the distribution system, and all other matters necessary to determine whether the proposed annual quantity of water is likely to be reasonable and not wasteful.

(c)(1) The applicant shall be notified by the district whenever an applicant is required to submit a resource development plan. This notification shall include the deadline for submitting the

plan. The district shall then review the plan and submit it to the chief engineer with one of the following recommendations:

(A) The application should be approved because the proposed plan meets the regulatory requirements, and those portions of the plan consistent with the conservation plan guidelines adopted by the Kansas water office should be required as a conservation plan as a condition of the approval of application.

(B) The application should be approved if certain changes are made to the plan, and the amended plan should be required as a condition of the approval of application insofar as it is consistent with the water conservation planning guidelines adopted by the Kansas water office.

(C) The plan does not meet the regulatory requirements, and the application should not be approved.

(2) Each water conservation plan required by the chief engineer shall be made a condition of the approval of application. The required water conservation plan shall be fully implemented before diversion of water occurs pursuant to that approval of application. After the plan is implemented, the owner shall maintain the plan in a satisfactory manner.

(d) In addition to meeting the requirements specified in subsection (b), for irrigation use, the resource development plan shall meet the following requirements:

(1) Include irrigation system design, tailwater control methods, well yield, and cropping patterns; and

(2) comply with design criteria meeting the following requirements:

(A) Are set forth in the national engineering handbook (NEH), part 652, irrigation guide, dated November 13, 1997, as amended through the Kansas state supplement dated May 8, 2003, which is hereby adopted by reference; and

(B) are consistent with the "irrigation water conservation program for the state of Kansas," published by the Kansas water office in November 1993 and hereby adopted by reference.

(e) For municipal use, the plan shall comply with the "Kansas 1990 municipal water conservation plan guidelines," second edition, which is published by the Kansas water office and hereby adopted by reference.

(f) In addition to meeting the requirements specified in subsection (b), for all other types of beneficial use, the resource development plan

shall include a description of the proposed use of water in sufficient detail to determine if the proposed use is reasonable and not wasteful. (Authorized by K.S.A. 2002 Supp. 82a-1028 and K.S.A. 82a-706a; implementing K.S.A. 2002 Supp. 82a-1028; effective Jan. 10, 2003; amended Jan. 30, 2004.)

5-24-9. Water flowmeters. (a) Each of the following types of wells shall be equipped with a water flowmeter meeting the water flowmeter and installation specifications in K.A.R. 5-1-4 through K.A.R. 5-1-12 at the time the well is permitted:

(1) Any nondomestic, nontemporary well permitted or drilled after May 1, 1980;

(2) any nondomestic, nontemporary well actually drilled after May 1, 1980 pursuant to an approval of an application for a change in point of diversion; and

(3) any well reduced in annual quantity of water authorized in order to allow approval of another application pursuant to K.A.R. 5-24-2.

(b) In addition to meeting the requirements of this regulation, each owner shall meet the requirements specified in K.A.R. 5-3-5e. (Authorized by K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5, and K.S.A. 82a-706a; implementing K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5, and K.S.A. 2001 Supp. 82a-1903, as amended by L. 2002, Ch. 137, § 7; effective Jan. 10, 2003.)

5-24-10. Exemptions for up to 15 acre-feet of groundwater. (a) In any area of the district that is subject to safe yield criteria and is not closed by specific regulation or intensive groundwater use control area order by the chief engineer to new nondomestic, nontemporary permits and term permits for five or fewer years, each application to appropriate groundwater shall be exempt from meeting the safe yield criteria if all the following conditions are met:

(1) The maximum annual quantity of water proposed in the application is 15 acre-feet or less.

(2) The well spacing criteria of K.A.R. 5-24-3 have been met.

(3) An existing water right from the same source of water supply that has a point of diversion located within two miles of the proposed point of diversion has its authorized annual quantity reduced as described in subsection (b).

(4) All issues relating to the possible abandonment of the offsetting water right are resolved by the chief engineer before determining the annual

quantity of offset water that is available from the existing water right.

(5) The approval of the application does not authorize an additional quantity of water out of an existing authorized well with a nondomestic permit or water right that would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(6) The approval of the application does not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use.

(b) If the water right to be used as the offset for the new appropriation is a water right authorized for irrigation use, the authorized quantity of water needed to offset the new appropriation of not more than 15 acre-feet of water shall be calculated as follows:

(1) Step one.

(A) Multiply the net irrigation requirement for the 50 percent chance rainfall for the county of origin, as specified in K.A.R. 5-5-12, times the maximum number of acres legally irrigated in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage legally irrigated in any one calendar year before June 28, 1945.

(B) The calculation made in paragraph (b)(1)(A) shall result in the maximum annual quantity of water that could be changed to another type of beneficial use if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(2) Step two.

(A) Divide the annual quantity of water desired to be changed to the new beneficial use by the maximum annual quantity of water that could be changed if the entire water right were changed to the new use.

(B) The calculation made in paragraph (b)(2)(A) shall result in the percentage of the entire reduced water right that will be changed to the new use. The remaining percentage of the current water right may be retained by the irrigation water right owner.

(3) Step three.

(A) Multiply the remaining percentage calculated in paragraph (b)(2)(B) times the total currently authorized quantity. The resulting product shall be the annual quantity of water that can be retained by the irrigation water right owner.

(B) The portion of the authorized annual quantity of water not retained by the irrigator as described in paragraph (b)(3)(A) shall be perma-

nently reduced from the authorized annual quantity of the offsetting water right and used to offset the new appropriation.

(c) If the water right to be used as the offset for the new appropriation is an existing water right authorized for nonirrigation use, the total net consumptive use of the offsetting water right after the change and the new appropriation shall not exceed the net consumptive use of the offsetting water right before the change.

(d) The place of use authorized by the offsetting water right shall be reduced in proportion to the reduction in the maximum annual quantity of water as determined in paragraph (b)(1)(B). If the owner of the irrigation water right desires to retain more authorized acres, the directions specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine whether the irrigator may retain more acres in the authorized place of use.

(e) After the use of not more than 15 acre-feet has been approved pursuant to this regulation, no application for change for that water right shall be approved for any quantity of water that would authorize the water to be diverted from a currently authorized point of diversion or to be used on a currently authorized place of use. (Authorized by K.S.A. 82a-706a and K.S.A. 2005 Supp. 82a-1028; implementing K.S.A. 2005 Supp. 82a-1028; effective Jan. 10, 2003; amended Dec. 8, 2006.)

5-24-11. Investigation and enforcement.

The procedure set forth in this regulation shall be followed whenever enforcement action is taken by the district after it becomes aware that a person could be violating any of the regulations adopted by the chief engineer that relate to conservation and management of groundwater within the district.

(a) If a violation is discovered by the district's staff, the enforcement procedure shall begin with the step specified in subsection (c). In all other cases, a complaint may be filed with the district either verbally or in writing. The complaint shall describe and specify the following:

- (1) The nature of the alleged violation;
- (2) the location of the alleged violation;
- (3) the name of the complainant;
- (4) the mailing address of the complainant; and
- (5) any other information necessary for the staff to understand the alleged violation and assist the staff in investigating the complaint.

(b) Before the staff makes any field investigation of the complaint, the staff shall make at least

one attempt to contact an owner, operator, or other responsible representative of the water right or approval of application to notify the individual that a field investigation will be made.

(c) The district's staff shall make an investigation under either of the following circumstances:

(1) A complaint has been filed with the district, and the requirement specified in subsection (b) has been met.

(2) The district's staff discovers a violation of any regulation adopted by the chief engineer relating to conservation and management of groundwater within the district.

(d) A written report of the investigation shall be prepared by the staff. This report shall include any documents relied on or prepared by the staff in investigating the complaint or internally discovered violation. The report shall become a part of the official district record concerning the investigation. If a water right or an approval of application is involved, the report shall be made a part of that file.

(e) If the investigation shows that no violation has occurred or that enforcement action is not warranted, a copy of the report shall be sent to the complainant, if the investigation was prompted by a complaint, and the water right owner. A copy shall be retained in the district office. No further enforcement action shall be taken by the district at that time.

(f)(1) If the investigation determines or confirms that a violation has occurred, the report shall contain an order issued by the district staff, which shall be sent by restricted mail to the water right owner as shown in the district records and to any other person who is known by the district to have been committing the violation. The order shall specify and include the following:

(A) A description of the violation, including the specific regulations that are being violated;

(B) the actions necessary to correct the violation;

(C) a reasonable time frame to correct the violation;

(D) a statement that extensions of time to correct any violation may be granted by the staff if good cause is shown by the water right owner or other responsible party;

(E) a statement that the order is effective immediately;

(F) a statement that if the violation is corrected within the time specified by the order, the violator is required to notify the district, and an inspection will be conducted by the staff to determine if the violation has ceased;

(G) a statement that if any party desires to appeal an order issued by the staff, an appeal to the board is required to be requested within 15 days of the issuance of the order by a water right owner or violator;

(H) a statement that the request for an appeal may also request a stay of the order. If the request or demonstrates good cause for a stay, a stay of the order may be granted by the staff or the board; and

(I) a statement that any subsequent violations of the same nature will be handled as a continuation of the current violation, not a new violation.

(2) A copy of the report shall be sent to the complainant.

(g) If the violation is corrected within the time frame specified by the order, the violator shall notify the district, and an inspection shall be conducted by the staff to determine if the violation has ceased. If the staff investigation determines that the violation has been corrected within the time frame specified by the order and in accordance with the district order, the enforcement activity by the district shall cease.

(h) If the violation has not been corrected within the time frame specified in the order and in the manner specified in the order, one or more of the following actions may be taken by the board:

(1) Seeking an injunction to stop the violation;

(2) requesting enforcement assistance from the chief engineer; or

(3) requesting enforcement assistance from the attorney general. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Jan. 30, 2004.)

Article 25.—BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. 5

5-25-1. Definitions. As used in these regulations for the Big Bend groundwater management district no. 5, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this regulation:

(a) “Aquifer” means a geologic formation capable of yielding water in a quantity sufficient to supply water to a spring or pumping well.

(b) “Baseflow” means groundwater that seeps, flows, or is otherwise naturally discharged from an aquifer into a stream.

(c) “Baseflow node” means an artificial point located in the channel of a stream for the purpose of allocating a proportional amount of the baseflow

to be considered when evaluating a new application to appropriate water from a proposed point of diversion located within two miles of the node.

(d) “Baseflow node allocation” means the annual quantity of water assigned to a baseflow node expressed in acre-feet per year. The baseflow node allocation shall be based on the natural discharge to a stream, which shall be the rate of flow in the stream that is equaled or exceeded 90 percent of the time.

(e) “Bedrock aquifer” means any consolidated material and unconsolidated material that is older than the Dakota formation of the Dakota aquifer system, as defined in K.A.R. 5-1-1, and that will yield water in a quantity sufficient to supply a spring or a pumping well.

(f) “Board” means the board of directors constituting the governing body of the Big Bend groundwater management district no. 5.

(g) “Dakota aquifer” means that portion of the Cretaceous Dakota formation that is capable of yielding water in a quantity sufficient to supply water to a spring or pumping well.

(h) “District” means the Big Bend groundwater management district no. 5.

(i) “Neat cement” means one 94-pound bag of Portland cement mixed with five to six gallons of clean water.

(j) “Portland cement” means class A, type I cement.

(k) “Stream” means any watercourse, or part of a watercourse, with a well-defined bed and banks that flows continuously during the calendar year, except during a drought.

(l) “Sustainable yield” means the long-term yield of the source of supply, including hydraulically connected surface water or groundwater, allowing for the reasonable raising and lowering of the water table.

(m) “Well” means any excavation that is drilled, cored, bored, washed, driven, dug, or otherwise constructed, either by nature or by man, when the proposed use of the excavation is for the acquisition, diversion, or artificial recharge of groundwater. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1987; amended April 19, 1996; amended Oct. 31, 2003.)

5-25-2. Well spacing. (a) With the exception of those wells described in subsection (b), the minimum spacing of all wells described in an ap-

plication to appropriate water for beneficial use, other than those wells for domestic use, shall be 1,320 feet from the following:

(1) All other non-domestic wells and proposed non-domestic wells that carry an earlier priority; and

(2) baseflow nodes.

Non-domestic wells shall be 660 feet from all existing domestic wells, except those domestic wells owned by the applicant.

(b)(1) Each replacement well drilled within 300 feet of the originally authorized point of diversion shall be exempt from the well spacing requirement of subsection (a).

(2) Each non-domestic well that proposes the withdrawal of groundwater from the Dakota aquifer or any bedrock aquifer shall be one mile from all other wells withdrawing groundwater from the same formation, including domestic wells, except those domestic wells owned by the applicant.

(3) Each new well that enables the establishment of augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b, and amendments thereto, in relation to other wells that enable or provide augmentation shall be exempt from the well spacing requirement of subsection (a). (Authorized by K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective May 1, 1980; amended April 19, 1996; amended Oct. 31, 2003; amended Nov. 15, 2019.)

5-25-2a. Change in point of diversion.

(a) The location of a well requested in an application to change a point of diversion shall be no more than 2,640 feet from the point of diversion currently authorized by a vested right, appropriation right, or an application to appropriate water for beneficial use. This well shall also meet the minimum spacing requirement established in K.A.R. 5-25-2. If the point of diversion was not completed at the currently authorized point of diversion, the location of a well requested in an application to change the point of diversion shall be no more than 2,640 feet from the last authorized point of diversion for which the diversion works were completed.

(b) If the current authorization for a well requires one or more observation wells to be installed in accordance with K.A.R. 5-25-10, then the approval of an application for a change in the point of diversion shall also require the installation of one or more new observation wells in

accordance with K.A.R. 5-25-10 if either of the following conditions exists:

(1) The well is proposed to be located 300 feet or more from the currently authorized well location.

(2) The well is proposed to be located more than 50 feet and less than 300 feet from the currently authorized well location, and the water quality analysis required pursuant to K.A.R. 5-25-10 shows that the chloride concentration exceeds 500 milligrams per liter (mg/l) at the currently authorized well location.

(c) The number and location of test holes or observation wells required for the approval of an application to change the point of diversion from a single well to a battery pursuant to subsection (b) shall be based on the locations and the number of wells in the proposed battery. Hydrologic factors, including groundwater flow direction, lithology, and chlorides at the location, shall be considered.

(d) An approval of an application to change the point of diversion shall not authorize the proposed well to be completed in an aquifer other than the aquifer or aquifers in which the currently authorized well was authorized to be completed. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-3. Reasonable appropriation.

(a) An application for a permit to appropriate water for irrigation use shall not be recommended by the board for approval for a quantity in excess of those quantities specified in K.A.R. 5-3-19.

(b) For livestock and poultry, the maximum annual quantity of water shall be limited to those quantities specified in K.A.R. 5-3-22.

(c) For all uses of water, the quantity of water requested shall be reasonable for the proposed beneficial use, and the approval shall neither impair an existing right nor prejudicially and unreasonably affect the public interest. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-711, and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1980; amended April 19, 1996; amended Oct. 31, 2003.)

5-25-4. Sustainable yield.

(a) Except as specified in subsections (b) and (c), the entire district shall be closed to further new surface water and groundwater appropriations.

(b) The following types of applications shall be exempt from the closure of the district to new appropriations of water described in subsection (a):

- (1) Domestic use;
- (2) temporary permits;
- (3) applications for a change in the point of diversion for which the diversion works have been completed under the original approved application;
- (4) standby wells used for emergency purposes only;
- (5) permits to appropriate 15 acre-feet of water or less per year that are exempt pursuant to K.A.R. 5-25-15;
- (6) term permit applications of one year or less and those term applications meeting the requirements of K.A.R. 5-25-13;
- (7) permits to appropriate water from a bedrock aquifer;
- (8) permits to appropriate water from the Dakota aquifer if the applicant can show either of the following:
 - (A) No Pleistocene aquifer exists within 5,280 feet of the proposed well location; or
 - (B) there is a significant difference in hydraulic head between the Pleistocene aquifer and the Dakota aquifer;
- (9) an application that proposes to use water in a manner so that there is no significant consumptive use of the local source of supply either in quantity or availability of water for use by other appropriators;
- (10) any application that will enable or provide augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b and amendments thereto, except that no application shall be approved if the application would impair an existing use. The proposed well location shall meet the spacing requirements of K.A.R. 5-25-2; and
- (11) any application filed pursuant to K.A.R. 5-25-22.

(c)(1) For each application for a change in the point of diversion, if the diversion works have not been completed, the application shall be exempt from the closure to new appropriations specified in subsection (a). However, the proposed appropriation, when added to the vested rights, prior appropriation rights, earlier priority applications, term permits for more than a year, and all baseflow node allocations within a two-mile-radius circle whose center is the location of the proposed well, shall not exceed 1,500 acre-feet. It shall be assumed for purposes of analysis that all prior applications, permits, certificates, and

vested rights are being fully exercised and that all limitation clauses listed on permits and certificates are in force.

(2) If part of the area within the two-mile-radius circle around the proposed well location is outside the district boundaries, the 1,500 acre-feet quantity of water specified in paragraph (c)(1) shall be reduced proportionately by the percentage of the circle lying outside of the district boundaries. Only the baseflow node allocations, vested rights, prior appropriations, earlier priority applications, and term permits for more than one year assigned to wells within the portion of the circle within the district shall be considered.

(3) If all of the wells authorized under a vested right or an application are not included inside the circumference of the circle, then a reasonable quantity shall be allocated to each well based upon the best available information.

(4) Each analysis for an application for a change in the point of diversion specified in subsection (c) shall include all applications with a priority earlier than the priority established by the filing of the application for change. (Authorized by K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2018 Supp. 82a-708b, and K.S.A. 2018 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1981; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 19, 1996; amended March 16, 2001; amended Oct. 31, 2003; amended Nov. 15, 2019.)

5-25-5. Water flowmeter requirements.

Each non-domestic well, except any well authorized by a temporary permit, shall be equipped with a water flowmeter. Each water flowmeter required by the board shall meet or exceed the specifications in K.A.R. 5-1-4 through 5-1-12. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1985; amended April 19, 1996; amended Oct. 31, 2003; amended Nov. 19, 2010.)

5-25-6. Reporting water use. Each water right owner shall report to the board the readings of water meters, gauges and other measuring devices at such times as may be required by the board. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(l); effective May 1, 1980; amended April 19, 1996.)

5-25-7. Water quality tests. Each water right owner shall take water samples from the owner's wells and have water quality analyses made on those samples at the owner's expense at times specified by the board. A laboratory licensed by the Kansas department of health and environment shall conduct the water quality analyses. The type of water quality analyses conducted shall be specified by the board. The owner shall submit the results of the water quality analyses to the board. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(k); effective May 1, 1980; amended April 19, 1996.)

5-25-8. Waste of water. A person shall not commit or allow a waste of water as defined in K.A.R. 5-1-1. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1980; amended April 19, 1996; amended Oct. 31, 2003.)

5-25-9. Procedures for non-compliance with rules and regulations. (a) The district's board or manager, any eligible voter or any person 18 years or older residing within the district may file a written complaint with the district alleging a violation of these rules and regulations, the management program, the groundwater management district act or the Kansas water appropriation act, as amended. The written complaint shall be filed at the district office.

(b) Within 30 days following the filing of the complaint, a representative of the district designated by the board shall investigate the complaint. If the representative of the district finds that a violation exists or did exist, the representative shall issue a written directive to the violator to come into compliance with the applicable rules and regulations, management program and laws, within a reasonable period of time.

(c) If the violator fails to comply with the directive of the representative within a reasonable period of time as determined by the board, the district may:

(1) seek to enjoin the violator's use of water by suitable action in district court until such time as the violator complies;

(2) seek the assistance of the chief engineer and attorney general of the state of Kansas to enjoin the violator's use of water until such time as the violator complies; or

(3) pursue other courses of action in the public interest. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective May 1, 1980; amended May 1, 1981; amended April 19, 1996.)

5-25-10. Test holes and water quality analyses. (a) Except for those types of applications described in K.A.R. 5-25-4(b), each applicant proposing to divert groundwater for non-domestic use within the district shall drill a test hole that shall meet the following requirements:

(1) Be drilled within 20 feet of the proposed well to the bottom of the aquifer;

(2) be completed as an observation well according to the following specifications:

(A) A casing made of schedule 80 PVC with a minimum outside diameter of three inches shall be used;

(B) five feet of well screen shall be installed at the base of the usable aquifer;

(C) the annular space shall be grouted with neat cement from the top of the well screen to the land surface; and

(D) centralizers shall be placed on the casing at intervals of not greater than 40 feet starting at the bottom of the casing; and

(3) be drilled under the supervision of the district.

(b) Each applicant shall have a water sample taken from within five feet of the bottom of the aquifer and shall have the water sample analyzed for chloride content by a laboratory certified by the Kansas department of health and environment. The applicant shall furnish the results of the water quality analysis and a copy of the test hole log to the district.

(c) If the analysis of the water sample taken within five feet of the bottom of the aquifer indicates that the chloride content exceeds 500 milligrams per liter (mg/l), the application to appropriate water shall be recommended for denial by the district unless both of the following conditions are met:

(1) The applicant shows that approval of the application will not cause an unreasonable deterioration of the water quality nor prejudicially and unreasonably affect the public interest.

(2) The applicant desires to proceed and is willing, at the applicant's expense, to drill and complete at least two additional observation wells at locations to be determined by the district based on the lithology and the construction of the proposed well. Both of these two additional observation

wells shall be constructed according to specifications adopted by the district and in the presence of a representative of the district. The two additional observation wells shall be constructed and screened above the saltwater and freshwater interface at a depth specified by the district. If the proposed point of diversion is to be a well battery, the number and location of the test holes and observation wells required shall be determined by the district based on the best hydrogeologic information available, including groundwater flow direction, lithology, and chloride levels.

(d) If at any time the chloride concentration in either of the latter two observation wells exceeds 500 mg/l, the owner shall reduce the instantaneous rate of pumping or the annual quantity pumped, or both, as necessary to reduce the chloride concentration in both observation wells to below 500 mg/l.

(e) The permit shall be dismissed and the owner shall properly plug the well at the owner's expense if either of the following occurs:

(1) Within one year after the chloride concentrations exceed 500 mg/l in either of the two observation wells, the chloride concentrations are not reduced below 500 mg/l.

(2) Operation of the well causes impairment of any other water right, including a domestic water right. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a, and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended April 19, 1996; amended Oct. 31, 2003.)

5-25-11. Determination of well locations.

If a question arises as to where a well is located, the burden of proof shall remain upon the applicant to show the actual location of the well in question. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective May 1, 1983; amended Oct. 31, 2003.)

5-25-12. Approval of application for additional rate only. Each application for a permit to appropriate water for beneficial use that requests only an increase in the authorized rate of diversion, and no net increase in maximum annual quantity, from a specific point of diversion already authorized by another water right or approval of application shall be exempt from meeting the requirements of K.A.R. 5-25-4 if the application meets the requirements of K.A.R. 5-4-5.

(Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-13. Term permits. The approval of an application, or an extension of a term permit, for more than one year may be granted only if one of the following conditions is met:

(a) The term permit authorizes the use of contaminated water. For the purpose of this regulation, water containing chlorides in excess of 1,000 milligrams per liter (mg/l) shall be considered to be contaminated. For other types of contamination, the level of contamination at which an application may be approved in accordance with this regulation shall be based on the best information available.

(b) The term permit authorizes the use of water for aquifer remediation.

(c) The term permit authorizes hydraulic dredging.

(d) The applicant demonstrates that approval of an extension of the expiration date of a term permit for more than one year will neither impair a use under an existing water right or approval of application nor prejudicially and unreasonably affect the public interest. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-14. Battery of wells. (a) An application for a change in point of diversion to convert one well to a battery of wells, as defined in K.A.R. 5-1-1, shall not be considered for approval unless all of the criteria in paragraph (a)(1), (2), or (3) below are met:

(1)(A) The proposed battery of wells meets the definition of a battery of wells as defined in K.A.R. 5-1-1.

(B) The time to construct the diversion works has not expired.

(C) The proposed rate of diversion does not exceed the currently authorized rate of diversion.

(2)(A) The proposed battery of wells meets the definition of a battery of wells as defined in K.A.R. 5-1-1.

(B) Water is available for appropriation at the geocenter of the proposed well battery based on the criteria set forth in K.A.R. 5-25-4(c).

(C) The proposed rate of diversion does not exceed the currently authorized rate of diversion.

(3)(A) The proposed battery of wells meets the definition of a battery of wells as defined in K.A.R. 5-1-1.

(B) A certificate of appropriation has been issued pursuant to K.S.A. 82a-714 and amendments thereto.

(C) The maximum instantaneous rate of diversion approved shall be either of the following:

(i) The maximum instantaneous rate of diversion under normal operating conditions actually used during any of the three consecutive calendar years before the date of the application for change; or

(ii) the tested rate of diversion achieved under actual operating conditions made by a tester approved by the chief engineer. The test of the rate of diversion shall be made within six months either before or after the change application is filed.

(D) The proposed rate of diversion does not exceed the currently authorized rate of diversion.

(b) In addition to meeting the requirements specified in subsection (a), the applicant shall also demonstrate that approval of the battery of wells will not impair existing water rights or approvals of applications and will not prejudicially and unreasonably affect the public interest.

(c) Each permit shall also be conditioned by the chief engineer so that the permit is subject to K.A.R. 5-25-2a (b) and (c). (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-706b, and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-15. Exemptions for up to 15 acre-feet of groundwater. Except as specified in subsections (b) and (c), an application to appropriate groundwater for up to 15 acre-feet of water shall be approved if all of the conditions in subsection (a) are met.

(a) (1) The sum of the annual quantity of water requested by the new application and the total annual quantities authorized by prior approvals of applications because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a one-mile-radius circle surrounding the proposed point of diversion.

(2) The application meets the spacing criteria set forth in K.A.R. 5-25-2.

(3) The approval of an application will not authorize an additional quantity of water from an existing non-domestic vested right, permit, or water right that would result in a total combined annual

quantity of water authorized from the point of diversion in excess of 15 acre-feet.

(4) The applicant demonstrates that approval of up to 15 acre-feet of water will not impair existing water rights or permits to appropriate water for beneficial use and will not prejudicially and unreasonably affect the public interest.

(5) All requirements of K.S.A. 82a-709 and K.S.A. 82a-711, and amendments thereto, and K.A.R. 5-3-1 and K.A.R. 5-3-1b for processing a new application to appropriate water have been met.

(b) Exemptions to approve a new application to appropriate water in accordance with this regulation shall not be approved if the exemption would conflict with any provisions of an intensive groundwater use control area order issued by the chief engineer pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(c) In addition to meeting the conditions in subsection (a), each application to appropriate groundwater for beneficial use shall meet the requirements of subsection (d) if the application includes a proposed point of diversion located within the boundaries of any of the following drainage basins as defined in K.A.R. 5-6-15:

(1) Rattlesnake Creek basin;

(2) Arkansas River basin;

(3) Walnut Creek basin;

(4) Pawnee River basin; and

(5) Buckner Creek basin.

(d) The following requirements shall apply to the applications described in subsection (c):

(1) The maximum annual quantity of water proposed in the application shall be 15 acre-feet or less.

(2) The proposed point of diversion shall meet the spacing criteria provided in K.A.R. 5-25-2.

(3) The authorized quantity of an existing water right shall be reduced, as provided in paragraph (d)(7), to offset the annual quantity requested in paragraph (d)(1), and the existing water right shall divert water from the same source of water supply that has a point of diversion located according to either of the following:

(A) Within 3.5 miles of the proposed point of diversion; or

(B) within a one-mile corridor of the major stream segment designated for stream restoration in the same basin of the proposed point of diversion.

(4) The point of diversion proposed through an offset shall not be closer to a stream than the point of diversion reduced pursuant to paragraph (a)(3) if the authorized well is within three miles of a stream.

(5) All issues relating to the possible abandonment of the offsetting water right shall be resolved by the chief engineer before determining the annual quantity of offset water that is available from the existing water right.

(6) The approval of the application shall not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use.

(7) If the water right to be used as the offset for the new appropriation is a water right authorized for irrigation use, the authorized quantity of water needed to offset the new appropriation of not more than 15 acre-feet of water shall be calculated as follows:

(A) Step one.

(i) Multiply the net irrigation requirement for the 50 percent chance rainfall for the county of origin, as specified in K.A.R. 5-5-12, times the maximum number of acres legally irrigated in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage legally irrigated in any one calendar year before June 28, 1945.

(ii) The calculation made in paragraph (d)(7)(A)(i) shall result in the maximum annual quantity of water that could be changed to another type of beneficial use if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(B) Step two.

(i) Divide the annual quantity of water desired to be changed to the new beneficial use by the maximum annual quantity of water that could be changed if the entire water right were changed to the new use.

(ii) The calculation made in paragraph (d)(7)(B)(i) shall result in the percentage of the entire reduced water right that will be changed to the new use. The remaining percentage of the offsetting water right may be retained by the owner of the irrigation water right.

(C) Step three.

(i) Multiply the remaining percentage calculated in paragraph (d)(7)(B)(ii) times the total currently authorized quantity. The resulting product shall be the annual quantity of water that may be retained by the owner of the irrigation water right.

(ii) The portion of the authorized annual quantity of water not retained by the irrigator as described in paragraph (d)(7)(C)(i) shall be permanently reduced from the authorized annual quantity of the offsetting water right and used to offset the new appropriation.

(8) If the water right to be used as the offset for the new appropriation is an existing water right authorized for non-irrigation use, the total net consumptive use of the offsetting water right after the change and the new appropriation shall not exceed the net consumptive use of the offsetting water right before the change.

(9) The place of use authorized by the offsetting water right for irrigation shall be reduced in proportion to the reduction in the maximum annual quantity of water as determined in paragraph (d)(7)(A)(ii). The directions specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine the number of acres that may be retained.

(e) After the application has been approved pursuant to this regulation, no application to change that water right shall be approved if that approval would authorize the water use to be diverted from any other point of diversion authorized when the application is filed or to be used on any other place of use authorized when the application for change is filed.

(f) An application approved as an exemption under this regulation shall not be leased or placed in a water bank so that the approved water use can be diverted at another location. (Authorized by K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2009 Supp. 82a-711, and K.S.A. 2009 Supp. 82a-1028; effective Oct. 31, 2003; amended May 21, 2010.)

5-25-16. Water quality analyses and observation wells in the Rattlesnake creek subbasin. Groundwater rights that have points of diversion located in the Rattlesnake creek subbasin east and north of federal highways US-281 and US-50 shall be subject to the following requirements: (a) The water right owner, or the authorized representative, shall test water samples to determine, as needed, whether the water being pumped contains more than 300 milligrams of chlorides per liter. The district may require the tests to be made at a frequency not to exceed once in 365 days.

All water quality samples shall be taken in the presence of an authorized representative of the district, and one-half of the sample shall be given to the authorized representative of the district when the sample is taken. The owner shall have the water sample analyzed for chloride content by a laboratory certified by the Kansas department of health and environment. The applicant shall fur-

nish the results of the water quality analysis to the district within 60 days after the date the sample was taken.

(b) If the analysis of the water sample taken indicates that the chloride content exceeds 300 milligrams of chlorides per liter, the owner shall be required, before any approval of a change in point of diversion, to drill an observation well to bedrock in the manner specified in K.A.R. 5-25-10(a). (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2002 Supp. 82a-708b, and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-17. Voluntary reductions of water rights in the Rattlesnake creek subbasin.

Each water right owner in the Rattlesnake creek subbasin that agrees to meet, and does meet, all of the conditions specified in subsections (a) through (e) no later than March 31, 2004 on a water right for a center pivot irrigation system with a priority date on or before April 12, 1984 shall receive a credit toward any reduction required by alternative management actions implemented in accordance with the Rattlesnake creek basin management program accepted by the chief engineer on July 11, 2000. The amount of the credit shall be calculated by multiplying by 1.5 the total number of years that the water right has been voluntarily reduced in accordance with the terms of this regulation before any alternative actions are taken under this program times the quantity of water that was voluntarily reduced. Water right owners who have taken a reduction in their water right under this regulation shall have any further reduction through the Rattlesnake creek basin management program based on the authorized amount before a voluntary reduction is made under this regulation.

(a) The owner permanently reduces the maximum number of acres actually irrigated in any one calendar year during the period 1987 through 1996 by the number of acres previously watered by the end gun and provides documentation to the chief engineer of the number and location of the acres irrigated by the end gun during the period 1987 through 1996.

(b) The owner removes the end gun from the center pivot and certifies to the chief engineer what type of end gun has been removed.

(c) The owner installs pressure regulators on the center pivot to prevent the same rate of diversion from being pumped after the end gun is

removed as was pumped before the end gun was removed and certifies to the chief engineer what pressure regulators have been installed.

(d) The chief engineer permanently reduces the authorized place of use of that water right by the maximum number of acres actually irrigated in any one calendar year by the end gun during the period 1987 through 1996.

(e) The chief engineer permanently reduces the maximum annual quantity authorized by that water right by the quantity of water that is calculated by multiplying the number of acres previously watered by the end gun times the net irrigation requirements (NIR) for the 50 percent chance rainfall for the county in which the point of diversion is located, as set forth in K.A.R. 5-5-12. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-18. Changes of well locations within the Rattlesnake creek basin.

(a) Each application to change the location of a well within the Rattlesnake creek basin by more than 2,640 feet may be approved by the chief engineer if all of the following conditions are met:

(1) The source of water supply for the currently authorized well and the proposed well is the Rattlesnake creek basin as defined in K.A.R. 5-6-15.

(2) The currently authorized well is located within the corridor or the number two priority decline area as defined in figure two of the Rattlesnake creek management plan accepted by the chief engineer on July 11, 2000.

(3) The well will be moved to a location outside the corridor or the number two priority decline area as defined in figure two of the Rattlesnake creek management plan accepted by the chief engineer on July 11, 2000.

(4) The average saturated thickness in the two-mile-radius circle in which the proposed well will be located is greater than 40 feet as shown on the saturated thickness map adopted by reference in K.A.R. 5-25-19.

(5) The water level within the two-mile-radius circle surrounding the proposed well location has not declined in excess of 20 feet of the predevelopment water level as shown in Kansas geological survey bulletins numbered 65, 80, and 88.

(6) The change proposes the relocation of all the water right or a divided water right.

(7) No other well has previously been authorized by the chief engineer to be relocated within

a one-mile radius of the proposed well location under the provisions of this regulation, or the applicant demonstrates that the proposed well will not impair existing water rights.

(8) The water right that is proposed to be changed is vested or certified.

(9) All other statutory and regulatory requirements for approval of a change in point of diversion that do not conflict with this regulation are met.

(b) The approval of the change in point of diversion shall be subject to the conditions specified in this subsection:

The approval of the application to change the point of diversion shall be subject to review by the chief engineer 10 years after the approval of the change application. If the water level at the new well location has declined in excess of 10 feet from the date the new well was drilled, for the sole purpose of administering wells concerning direct impairment, the new well shall be considered to have the priority of the date of the application to change the point of diversion. The owner of the well shall have the option of applying for another change in point of diversion.

(c) The quantity of water that can be approved for a change in point of diversion meeting the requirements of subsection (a) above shall be determined based on the following tables.

Points			
point value for each column at right	saturated thickness at proposed well site, in feet	quantity of water authorized in two-mile-radius circle around proposed well, in acre-feet	feet of decline in two-mile-radius circle around proposed well since pre-development
1	146+	0-1,500	0-4
2	111-145	1,501-3,000	5-8
3	91-110	3,001-4,500	9-12
4	66-90	4,501-6,000	13-16
5	41-65	6,001+	17-20

Percent of a water right that can be moved to a new location

number of points scored by proposed well	percent of water right that can be moved to new well location
3-6	100
7-9	90
10-12	80
13-15	70

(Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-19. Saturated thickness map. (a) The following electronic data files, all dated July 10, 2002 and prepared by the district using data developed by the Kansas geological survey and the district, are hereby adopted by reference by the chief engineer:

- (1) Rattlesnake basin.dbf;
- (2) Rattlesnake basin.sbn;
- (3) Rattlesnake basin.sbx;
- (4) Rattlesnake basin.shp;
- (5) Rattlesnake basin.shx; and
- (6) Wln.dbf.

(b) Except as set forth in subsection (c), the electronic data files described in subsection (a) shall be used in all situations in which determination of the saturated thickness of the aquifer within the boundaries of the district is necessary.

(c) The saturated thickness shown in the electronic data files shall be used unless the applicant provides, or the chief engineer has available, better or more site-specific data concerning the actual saturated thickness of the two-mile-radius circle surrounding the well in question. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; effective Oct. 31, 2003.)

5-25-20. Recommendations by the board.

(a) The following types of applications shall be submitted by the chief engineer to the district for review and recommendation:

- (1) All applications to appropriate water for beneficial use, except for temporary use and domestic use; and
- (2) all applications to change the point of diversion, place of use, the use made of the water, or any combination thereof, except applications to move the point of diversion less than 300 feet.

(b) The district shall conduct a review of the proposed application. Except as set forth in subsection (d), the district's recommendation to the chief engineer shall be consistent with the provisions of the Kansas water appropriation act, the groundwater management district act, and the regulations adopted by the chief engineer pursuant to those acts.

(c) Within 15 working days after the date the chief engineer submits the application to the district for review, or within any extension of time authorized by the chief engineer, the district shall submit its findings and recommendation for approval, denial, or modification of the application and shall specify the basis for the recommendation.

(d) The district may submit to the chief engineer a written recommendation of an exemption from or a waiver of a regulation. If the district submits such a recommendation, the district shall demonstrate to the chief engineer that the granting of the proposed waiver or exemption will not prejudicially and unreasonably affect the public interest and will not cause impairment of any existing water right. (Authorized by K.S.A. 82a-706a and K.S.A. 2002 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, and K.S.A. 2002 Supp. 82a-711; effective Oct. 31, 2003.)

5-25-21. Alternative method for calculating the amount of water deposited in a multiyear flex account. Each water right owner within the boundaries of the district who is otherwise eligible to establish a multiyear flex account under K.S.A. 82a-736, and amendments thereto, and the implementing regulations and who meets all of the requirements in subsection (b) shall be eligible to use the alternative calculation method in subsection (a) pursuant to K.S.A. 82a-736(c)(1)(D)(iii), and amendments thereto, to determine the amount of water deposited in the multiyear flex account.

(a) The alternative calculation method for the district shall be to compute 450 percent of the base water right's certified appropriation. However, the amount of water deposited in the multiyear flex account shall not exceed the greatest of the quantities derived using the calculation methods specified in K.S.A. 82a-736(c)(1)(D), and amendments thereto.

(b) To be eligible to use the alternative calculation method specified in subsection (a), the following requirements shall be met and shall remain met throughout the term of the period covered by the multiyear flex account permit:

(1) The owner shall meet all requirements and conditions for eligibility and participation specified in K.S.A. 82a-736, and amendments thereto, and the implementing regulations, except as modified by this regulation.

(2) The owner's base water right shall be for a center pivot irrigation system with a functional end gun.

(3) The owner shall remove the end gun from the center pivot and cap the end.

(4) Before diverting any water under the multiyear flex account, the owner shall certify to the chief engineer, on forms supplied by the chief engineer, the following information:

(A) The location of the tract of land to be covered by the multiyear flex account term permit;

(B) the length of each center pivot system covered by the multiyear flex account term permit;

(C) the type of end gun removed and any other information sufficient to enable the chief engineer to determine the number of acres irrigated by the end gun; and

(D) the date of removal of the end gun.

(5) The owner shall maintain the center pivot without an end gun for the duration of the period covered by the multiyear flex account term permit.

(6) The authorized place of use shall not be increased during the term of the multiyear flex account permit.

(7) The authorized place of use shall be located wholly within the boundaries of the district.

(c) If the owner qualifies for a multiyear flex account term permit and is eligible under this regulation to use the alternative calculation method, the chief engineer shall enter an order that reduces the authorized place of use of the owner's base water right during the multiyear flex account permit term. The reduced authorized place of use shall be equal to the maximum number of acres legally irrigated by the center pivot system for the previous five calendar years minus the number of acres irrigated by the center pivot system's end gun. (Authorized by K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028; implementing K.S.A. 2015 Supp. 82a-736; effective March 25, 2016.)

5-25-22. Movement of water rights affecting streamflow at Rattlesnake creek. (a)

To improve streamflow at the zenith gage on Rattlesnake creek, otherwise known as United States geological survey gage #07142575, each vested or certified water right located within zone D of the division of water resources' map titled "Rattlesnake creek streamflow response regions," dated February 14, 2018, hereby adopted by reference, and subsequently referred to in this regulation as "response map," shall be eligible to offset new appropriations of water located within the district if all of the following conditions are met:

(1) The source of water supply for the currently authorized well is located within zone D of the response map.

(2) The rate and quantity of the existing water right are the maximum rate and quantity available for the new application. The rate and quantity of a new application for irrigation use shall be determined under K.A.R. 5-5-11. A new application

may change the use made of water. However, the new application shall not allow for an increase in the net consumptive use greater than the existing water right under K.A.R. 5-5-3.

(3) The water right has reported use between January 1, 2003 and December 31, 2012, and the reported use is equal to or greater than 50 percent of the authorized use in at least two years. Each water right enrolled in a state or federal conservation program during this period that required the voluntary cessation of water use shall be eligible for movement under this regulation if all other requirements are met and the applicant demonstrates the existing water right's ability to pump at least 50 percent of authorized use during any year.

(4) The new location will reduce the impact at the zenith gage by 30 percent or more compared to the current location of the well as determined by the response map. The new location is in an area with less than 40 percent impact at the zenith gage as determined by the response map.

(5) The average saturated thickness in the two-mile-radius circle in which the proposed well will be located is greater than 40 feet as shown on the saturated thickness map in K.A.R. 5-25-19. However, additional site-specific information, including data from more recently drilled wells or test holes, may be submitted to demonstrate that the average saturated thickness is greater than 40 feet.

(6) The water level within the two-mile-radius circle surrounding the proposed well location has not declined more than five percent from the pre-development water level as shown in the relevant Kansas geological survey bulletins, including bulletin numbers 65, 80, 88, 120, 205, and 206. Any applicant may submit additional site-specific information, including data from more recently drilled wells or test holes, to demonstrate that the area has not declined more than five percent from the pre-development water level.

(7) The new location will meet the safe-yield analysis based on a two-mile-radius circle with a recharge rate of 2.25 inches and 75 percent available for appropriation pursuant to K.A.R. 5-3-11 or a safe-yield analysis utilizing modeling as completed by the applicant or district.

(8) No other well has previously been authorized by the chief engineer to be relocated within a one-mile radius of the proposed well location under this regulation, or the applicant demonstrates that the proposed well will not impair existing water rights.

(9) All other statutory and regulatory requirements for approval of a new appropriation of water for a beneficial use that do not conflict with this regulation are met.

(b) Any new application may request the movement of the entire existing water right to a new location, the movement of an entire existing water right to multiple locations, or the movement of a partial amount of the existing water right to a new location.

(1) Upon approval of any application under this regulation and the completion of diversion works and the application of water to a beneficial use at each new location, the dismissal of the entire existing water right shall be required except for the portion, if any, remaining in the original location. If the location of a new application is determined to be unfeasible after filing an application, the applicant may submit a new application for another location if diversion works have not been completed and water has not been applied to a beneficial use at the previously proposed location.

(2) If any portion of the existing water right remains in the original location, then the water right owner shall file an application to divide the water right proportionally based on the quantity that will remain and the quantity that will be dismissed to offset each new appropriation before submitting a new application to appropriate water in the district.

(3) For any quantity of the existing water right that remains in the original location, the place of use shall be reduced to the number of acres that can reasonably be irrigated under K.A.R. 5-3-24. This reduction shall be calculated by dividing the remaining quantity of water by the county value according to K.A.R. 5-3-24 to establish the number of acres that can reasonably be irrigated.

(4) A separate application shall be required for each different location that a portion of the existing water right is proposed to offset.

(c) Upon the establishment of a new appropriation under this regulation, the quantity of water dismissed to offset the new appropriation shall not be available for reappropriation in the previous or original location of the water right. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective Nov. 15, 2019.)

Article 30.—DAMS

5-30-1. Approval of or permits for dams.

The chief engineer shall not approve or grant a permit for any dam subject to the jurisdiction of

the chief engineer under the authority of K.S.A. 1979 Supp. 82a-301 through 305a as amended, unless the applicant also receives prior approval of his or her application to appropriate water for beneficial use to be diverted by means of the dam for which the approval or permit is sought, unless the sole proposed use for the water is for domestic use. (Authorized by K.S.A. 82a-706a and 82a-709; effective May 1, 1980.)

Article 40.—DESIGN OF EARTH DAMS

5-40-1. Definitions. As used in K.S.A. 82a-301 through 82a-305a and amendments thereto, in the regulations adopted pursuant to these statutes, and by the chief engineer in administering K.S.A. 82a-301 through 82a-305a and amendments thereto, the following terms shall have the meanings ascribed to them in this regulation, unless the context clearly requires otherwise:

(a) “Application” means the formal document and any required supporting information that are submitted to the chief engineer and request a permit, pursuant to K.S.A. 82a-301 through 82a-305a, and amendments thereto.

(b) “Appurtenant works” means the primary spillway and other conduits through a dam, the valves, the auxiliary spillway, the service spillway, the stilling basin, any constructed outlet channel, all dikes and berms designed and constructed to protect the dam, the drains, and all other features constructed to protect or operate a dam.

(c) “As-built drawings” means the drawings showing a permitted project and all appurtenant works as the project and works were actually built. This term shall include the following:

(1) All deviations from the plans that were approved by the chief engineer;

(2) the location and design of any instruments and monitoring equipment that were installed at the site;

(3) the location and elevation of any benchmarks; and

(4) a certification that the permitted project was constructed as shown on the as-built drawings.

(d) “Authorized representative” means any employee of the chief engineer designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(e) “Auxiliary spillway” means an open channel that is constructed over or around an embankment for the purpose of conveying safely past the dam the flows that are greater than the primary

spillway design discharge and that can be stored in the detention storage. This term is also known as an emergency spillway.

(f) “Benchmark” means a reference point or object of known elevation and location that is not expected to move horizontally or vertically during the life of the project.

(g) “Borrow area” means land, usually located near the dam, from which earth used to construct the embankment will be excavated.

(h) “Breach analysis” means an engineering analysis to determine the areas that would be inundated if a dam failed.

(i) “Channel change” means any project that alters the course, current, or cross section of any stream.

(j) “Chief engineer” means the chief engineer, division of water resources of the Kansas department of agriculture.

(k) “Control section” means the immediate downstream end of the level section of an open-channel earthen spillway. The elevation of the control section is the elevation of the open-channel spillway crest.

(l) “Cutoff collar” means a projecting flange built or installed completely around the outside of a pipe to lengthen the path of seepage along the outer surface of the pipe.

(m) “Cutoff trench” means an excavation under a dam to be later filled with impervious material to prevent or reduce the seepage of water through the foundation of a dam.

(n) “Design discharge” means the maximum rate of flow, expressed in cubic feet per second, released from a dam’s spillways for the design storm.

(o) “Design storm” means the precipitation event specified in K.A.R. 5-40-22 that is the minimum precipitation event required to be used to design a particular dam.

(p) “Detention storage” means the volume in the reservoir between the lowest uncontrolled spillway, not including any low-flow augmentation works, and the crest of the auxiliary spillway.

(q) “Detention storm” means the storm described in K.A.R. 5-40-23.

(r) “Easily erodible soils” means soils with a high content of fine sand or silt and with little or no cohesion or plasticity, including fine sand, silt, sandy loam, and silty loam.

(s) “Effective height” means the difference in elevation between the crest of an auxiliary spillway or service spillway and the lowest point of the downstream toe of a dam. If the dam does not

have an auxiliary or service spillway, the effective height means the difference in elevation between the top of the dam and the lowest point of the downstream toe of the dam.

(t) “Effective storage” means the volume of storage space in a reservoir below the crest of the auxiliary spillway or service spillway and above the elevation of the downstream toe of the dam at its lowest point. Effective storage shall not be reduced by accounting for accumulated sediment.

(u) “Embankment” means the earthen-fill portion of the dam.

(v) “Emergency action plan” means a formal document that identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life if the dam fails.

(w) “Erosion-resistant soils” means cohesive soils with a high clay content and high plasticity, including silty clay, sandy clay, and clay.

(x) “Freeboard” means the vertical distance between the maximum water surface elevation attained during the design storm and the top of the dam.

(y) “General plan” means a plan adopted by a watershed district, drainage district, or similar entity required by statute to be approved by the chief engineer, including any of the plans formulated under K.S.A. 24-901 and K.S.A. 24-1213, and amendments thereto.

(z) “Hazard” means the property or people that could be damaged or endangered by the failure of a dam, including people or property that might be inundated. This term shall include a public or industrial water supply stored in the reservoir created by the dam that would be released if the dam failed.

(aa) “High-impact dams” means all of the following classes of dams:

- (1) Size class 4, hazard class A dams;
- (2) size classes 3 and 4, hazard class B dams; and
- (3) all hazard class C dams, using the definitions of hazard class and size class in K.A.R. 5-40-20 and K.A.R. 5-40-21.

(bb) “Hydraulically most distant point in the watershed” means the point in a watershed from which a raindrop falling at that point takes the longest time to reach the dam.

(cc) “Impervious material” means material that allows a relatively low rate of water movement through its cross section.

(dd) “Inspection year” means the period on and after May 1 of one year through April 30 of

the following year. The inspection year shall be named for the calendar year in which the inspection year ends.

(ee) “Inundation area” means the area below a dam that will be inundated with water as determined by conducting a breach analysis meeting the requirements specified in K.A.R. 5-40-24.

(ff) “Invert” means the lowest point on the inside of the outlet of a conduit.

(gg) “Low-flow augmentation works” means any uncontrolled conduit, orifice, or other appurtenant works that slowly release water from storage in a reservoir, or bypass low flow through a reservoir.

(hh) “Low-impact dams” means all of the following classes of dams:

(1) Size classes 1, 2, and 3, hazard class A dams; and

(2) size classes 1 and 2, hazard class B dams, using the definitions of hazard class and size class in K.A.R. 5-40-20 and K.A.R. 5-40-21.

(ii) “Maintenance” means the actions or upkeep performed on a dam or its appurtenances to compensate for wear and tear on the dam and appurtenances and to preserve the dam and appurtenances so that the dam and appurtenances function properly until they are removed, including woody vegetation control; grass seeding; burrowing animal control; repair of minor erosion, cracks, animal burrows, and minor settling; care of pipes, piezometers, drains, valves, gates, and other mechanical devices; replenishment of rip-rap; and removal of debris from spillways.

(jj) “Modification” means any change in a dam or its appurtenances that involves a change to or significant disturbance of the embankment, an alteration of the flow characteristics of a spillway, a change in the storage capacity or freeboard, or any other significant alteration in the functioning of the dam.

(kk) “Navigable stream” means any of the following:

- (1) The Arkansas river;
- (2) the Missouri river; or
- (3) the Kansas river.

(ll) “One percent-chance storm” means a rainfall event that has a one percent chance of being equaled or exceeded one or more times in a year.

(mm) “Owner of a dam” means the owner or owners of the land upon which a dam and appurtenant works are constructed unless an easement authorizes another person or entity to construct and maintain a dam on that easement. With such an easement, the holder of the easement shall be considered to be the owner of the dam.

(nn) “Perennial stream” means a stream, or part of a stream, that flows continuously during all of the calendar year, except during an extreme drought.

(oo) “Permanent pool” means the storage space in a reservoir below the elevation of the lowest uncontrolled spillway, not including any low-flow augmentation works. This term is also known as the “normal pool.”

(pp) “Permit” means the consent or other formal document issued by the chief engineer that authorizes the construction, repair, or modification of a dam, channel change, or stream obstruction, and its operation and maintenance.

(qq) “PMP” means the probable maximum precipitation that can occur in a precipitation event as prescribed by K.A.R. 5-40-31.

(rr) “Prejurisdictional dam” means any of the following:

(1) A dam constructed before May 28, 1929;

(2) a dam constructed by an agency or political subdivision of state government, other than a county, city, town, or township, before April 11, 1978; or

(3) a dam constructed before July 1, 2002 that is 25 or more feet in height and impounds less than 30 acre-feet of water at the top of the dam.

(ss) “Primary spillway” means the uncontrolled outlet device through a dam that provides the initial outlet for storm flows, usually consisting of either of the following:

(1) A riser structure in combination with an outlet conduit; or

(2) a canopy or hooded inlet structure in combination with an outlet conduit.

This term is also known as a “principal spillway.”

(tt) “Rainfall excess” means that part of the rain in a given storm that falls at intensities exceeding the infiltration capacity of the land and that is the volume of the rain available for direct runoff.

(uu) “Reservoir” means the area upstream from a dam that contains, or can contain, impounded water.

(vv) “Repair” means any action, other than maintenance, taken to restore a dam and its appurtenant works to their original permitted condition.

(ww) “Service spillway” means an open-channel spillway constructed over or around a dam embankment to convey safely past the dam all flows entering the reservoir that cannot be stored in the reservoir behind a dam that does not have a primary spillway.

(xx) “Size factor” means the effective height of the dam, expressed in feet, multiplied by the effective storage of the reservoir, expressed in acre-feet.

(yy) “Stilling basin” means an open structure or excavation at the outlet of a spillway that dissipates the energy of fast-moving water being discharged from the spillway to protect the streambed below a dam from erosion.

(zz) “Stream” means any watercourse that has a well-defined bed and well-defined banks and that has a watershed above the point marking the site of the project that exceeds the following number of acres in the zones specified:

(1) Zone three: 640 acres for all geographic points within any county west of a line formed by the adjoining eastern boundaries of Phillips, Rooks, Ellis, Rush, Pawnee, Edwards, Kiowa, and Comanche counties;

(2) zone two: 320 acres for all geographic points within any county located east of zone three and west of a line formed by the adjoining eastern boundaries of Republic, Cloud, Ottawa, Saline, McPherson, Reno, Kingman, and Harper counties; and

(3) zone one: 240 acres for all geographic points within any county located east of zone two.

The flow of a stream is not necessarily continuous and can occur only briefly after a rain in the watershed. If the site of the project has been altered so that a determination of whether the well-defined bed and banks did exist is not possible, it shall be presumed that the bed and banks did exist if the watershed acreage criteria specified in this subsection have been met, unless the owner of the project conclusively demonstrates that the well-defined bed and banks did not exist when the project site was in its natural state and had not been altered by human activity.

(aaa) “Stream obstruction” means any project or structure that is wholly or partially placed or constructed in a stream and that does not meet the definition of a dam in K.S.A. 82a-301 and amendments thereto.

(bbb) “Time of concentration” means the time required for runoff to flow from the hydraulically most distant point in the watershed to the watershed outlet once the soil has become saturated and minor depressions have been filled.

(ccc) “Trash rack” means a protective device installed on the inlet of a primary spillway to prevent trash and other debris from obstructing the primary spillway without obstructing the flow of water.

(ddd) "Watershed" means all of the area draining toward a selected point on a stream.

(eee) "Wing dike" means an earthen or rock structure below the toe of a dam that is constructed to protect the embankment from erosion.

(fff) "Zone," in an earthen dam, means a segment of earthen fill containing similar materials.

(ggg) "Zoned fill" means an embankment divided into two or more zones to make the best use of available materials. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 1, 1983; amended May 1, 1987; amended, T-5-12-30-91 Dec. 30, 1991; amended Feb. 17, 1992; amended Sept. 22, 2000; amended May 18, 2007.)

5-40-2. Dams; plans and specifications.

The plans required by K.S.A. 82a-302, and amendments thereto, to construct, repair, or modify a dam shall include sufficient views to show all features in three dimensions and in sufficient detail to instruct a competent contractor to construct, repair, or modify the dam by viewing the plans and specifications. All plans with multiple pages shall include an index describing the location of required views within the plans. The views and maps specified in this regulation shall be shown. Specific details shall be listed under the view that is typically most appropriate, but they may be displayed on another view to improve the legibility of the plans if sufficient detail is provided in the plans to describe each feature in three dimensions. The required plans shall include the following:

(a) Plan views of the dam and dam site, which shall include both abutments of the dam, the area downstream to the point where the auxiliary spillway or service spillway flows enter the receiving channel, and the area upstream of the upstream toe of the dam to where the borrow area will be permitted. All elevations shown on plans shall be referenced to the same datum as the benchmarks described on the plans. The following details shall be shown, if applicable:

- (1) The location of the axis of the dam, showing stationing and top width limits;
- (2) the toe of the upstream and downstream slopes;
- (3) the location of the centerline and the limits of each open-channel spillway;
- (4) the location of the primary spillway and any stilling basin;
- (5) the location of each berm;
- (6) the location of slope protection;

(7) the location of borings, test holes, and test pits;

(8) the location of intakes, outlets, valves, and valve wells;

(9) the location, description, and elevation of each benchmark;

(10) the location, description, and details of all foundation drains;

(11) the location and limits of each borrow area; and

(12) the location and topography of the area where the auxiliary spillway discharge returns to the receiving stream;

(b) a map of the drainage pattern above and below the dam site drawn to an appropriate scale. The map shall show the following:

(1) The location of the watercourse across which the dam is to be built and the point where the centerline of the dam crosses the centerline of the stream specified in latitude and longitude, or in feet north and west of the southeast corner of the section;

(2) the location of the dam and the outline of the reservoir;

(3) the boundary of the watershed, shown by a line enclosing the entire area that will drain into the reservoir;

(4) section lines, with sections properly identified; and

(5) the size of the drainage area in acres or square miles;

(c) a topographic map of the dam site and reservoir area, which shall be shown to a scale that provides sufficient detail to clearly show the required features and to locate them in the field, but in no case is less than 1 to 3,600. The elevation of each contour shall be clearly noted on the map. The following details shall be shown:

(1) The location of the dam; and

(2) the following topography:

(A) The contours at two-foot intervals. For dams more than 20 feet in height, contours may be spaced at greater intervals, but the interval shall not exceed four feet;

(B) the contour equivalent to the elevation of the lowest uncontrolled spillway inlet, not including any low-flow augmentation works;

(C) the contour equivalent to the maximum water surface reached during the design storm;

(D) the contour equivalent to the elevation of the top of the dam;

(E) construction ingress and egress routes to the dam and reservoir;

(F) the name and address of each person owning any of the following:

(i) The land on which the dam and its appurtenances, including the auxiliary spillway or service spillway, down to the location where the spillway discharges back to the receiving stream, will be constructed;

(ii) ingress and egress routes to the dam and reservoir;

(iii) the reservoir site up to the top of the dam elevation; and

(iv) the borrow areas if they are located outside the reservoir site;

(G) if the reservoir area is divided between more than one landowner, the property lines, which shall be shown on the topographic map of the reservoir;

(H) roads, railroads, pipeline crossings, and any other prominent features in the vicinity;

(I) the boundary line for each easement; and

(J) the limits of each borrow area;

(d) the cross-section view of the valley at the dam site, which shall be shown along the centerline of the dam with the same stationing as that used on the plan view. The following shall be shown:

(1) The elevation to which the top of the dam is to be maintained and the elevation to which the dam is to be initially constructed in order to provide an adequate settlement allowance;

(2) the location and elevation of the auxiliary spillway or service spillway at the centerline of the dam;

(3) the original surface of the ground, including the streambed, up to the elevation of the top of the dam;

(4) the proposed elevations of the bottom of the cutoff trench; and

(5) the location of all test holes and the materials encountered in the test holes;

(e) a cross-section view perpendicular to the centerline of the dam at the lowest point on the downstream toe extending to the limits of the fill being placed. If the cross section is variable, a typical section shall be shown for each reach of similar cross section with a proper description of the reach by stationing. Additional typical cross sections along the centerline of the primary spillway and the centerline of any other outlets shall be shown. Cross sections of the dam shall include the following:

(1) The elevations of the shoulders and centerline of the dam and the width of the top of the dam;

(2) the elevation of the top of any berm, the elevation of the outside shoulder of any berm, and the top width of any berm;

(3) the slopes of upstream and downstream faces of the dam;

(4) the elevation, location, and type of slope protection;

(5) the zones of the embankment;

(6) the dimensions to which the dam is to be constructed to provide an adequate allowance for settlement;

(7) the elevation, location, and dimensions of the planned cutoff trench; and

(8) the elevation of the downstream toe of the dam at its lowest point;

(f) the following information concerning each open-channel spillway:

(1) A plan view showing the location and stationing along the centerline of the spillway, together with the location of the control section;

(2) cross sections showing side slopes and dimensions of the spillway, and the original surface of the ground up to the point where the spillway sides intersect the original ground surface;

(3) a profile along the centerline of the spillway, extending from the point upstream where the profile of the spillway intersects natural ground through the control section to the streambed below the dam. The stationing on the profile shall correspond to that on the plan view. The station and elevation of the breaks in the grade of the spillway shall be shown. This profile shall show the existing ground elevation, proposed grade of the bottom of the spillway, elevation of slope protection on the side slopes, and geologic logs of the borings required in the auxiliary spillway or service spillway by K.A.R. 5-40-40, superimposed on the profile through which the spillway is excavated; and

(4) the data necessary to stake out any curves;

(g) the following information concerning the primary spillway:

(1) The profile along the centerline of the spillway, extending from the intake to the outlet, showing the size, dimensions, and locations of seepage control features. This profile shall show existing ground elevations and the proposed grade of the spillway;

(2) the plan, profile, and cross-section views of the stilling basin, primary spillway supports, and other features;

(3) the geologic logs of the borings done in the vicinity of the primary spillway shall be superimposed on the profile;

(4) the location and type of all bedding materials;

(5) a table of pipe grades for all concrete pipes; and

(6) conduit joint details;

(h) the number of acres enclosed by each contour within the reservoir area and the total storage capacity of the reservoir in acre-feet at the elevation of each contour, which shall be determined and tabulated on the plan. The data shall be compiled for all contours in the reservoir up to the elevation of the top of the dam. Computations of capacity shall be based on the natural topography of the reservoir basin but may include the volume of any excavation in the reservoir made during construction of the dam;

(i) a curve or table showing the discharge capacities, in cubic feet per second, of all spillways through a range of surface water elevations from the lowest spillway inlet elevation to the top of the dam elevation, which shall be developed and shown on the plans or in the design report;

(j) the following information, which shall be shown on the plans in plan view, profile, and cross section:

(1) Drain details, including foundation drains;

(2) permanent erosion control protection, including riprap; and

(3) details of stilling basins, outlets, and other appurtenant structures; and

(k) the following information, which shall be shown on either the plans or the specifications:

(1) A table of gradation for each drain; and

(2) a table of gradation of the bedding of the riprap. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended May 18, 2007.)

5-40-2a. Benchmarks. (a) At least two permanent benchmarks shall be installed for future reference at each dam. Each benchmark shall be located according to the following criteria:

(1) In an area where the benchmark will not be disturbed, destroyed, or inundated after the dam is complete; and

(2) along the centerline of the dam on either end of the dam, if practical, and in undisturbed soil.

(b) On high-impact dams, each permanent benchmark shall also meet the following criteria:

(1) Be installed in a hole that meets the following criteria:

(A) Is 12 inches in diameter; and

(B) is at least 42 inches deep or is drilled to bedrock, whichever is less;

(2) be constructed of one or more steel reinforcing bars at least $\frac{3}{8}$ inch in diameter and 36 inches in length or the length of the depth of the hole, whichever is less. The reinforcing bar or bars shall be placed in the hole and the hole backfilled with concrete rounded off flush with the ground;

(3) be capped by a metal survey marker; and

(4) be either marked by a witness post or survey marker sign or tied to at least two objects in the vicinity by distance and bearing.

(c) On low-impact dams, each permanent benchmark shall also meet the following minimum requirements:

(1) Be constructed of a reinforcing bar that is 36 inches long, one-half inch in diameter, and driven flush with the surface of the ground;

(2) be installed at a location protected from grazing animals and vehicular traffic; and

(3) be either marked by a witness post or survey marker sign or tied to at least two objects in the vicinity by distance and bearing.

(d)(1) The elevation and horizontal location of each permanent benchmark shall be shown on the as-built drawings or the construction inspection report. The location of each permanent benchmark shall be described in reference to centerline stationing and offset from the centerline. The elevation of each permanent benchmark for all of the following classes of dams shall be referenced to the national geodetic vertical datum of 1988, or other acceptable national vertical datum, to a tolerance of plus or minus 0.5 foot:

(A) Class size two, hazard classes B and C;

(B) class size three dams; and

(C) class size four dams.

(2) The elevation of each benchmark for class sizes one and two, hazard class A dams may be referenced to an assumed datum.

(e) Horizontal control shall be referenced to the Kansas state plane coordinate system as set forth in K.S.A. 58-20a01 et seq., and amendments thereto. The location of each benchmark shall be shown on the as-built drawings or the notice of completion by using either of the following:

(1) The plane coordinate values consisting of a northing and an easting from the appropriate monumented point according to K.S.A. 58-20a03, and amendments thereto; or

(2) the feet distances north or south, and east or west, from the nearest or most convenient sec-

tion corner. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-2b. Design reports. (a) The application for each permit to construct, repair, or modify a dam shall be accompanied by a design report prepared by the engineer who designed the new dam or the repair or modification of an existing dam. The design report shall document every major design element of the dam, the conditions that must be addressed in the construction of the project, and the manner in which those conditions will be addressed. The design report shall document the design process, including references to each design method and computer program utilized in the design, and shall include the following:

(1) The design of any slope protection for the embankment and the auxiliary or service spillway. If no slope protection is provided, the report shall provide justification for not having slope protection;

(2) documentation of the determination of the hazard class;

(3) a report of the geotechnical investigation, including the results of the testing required in K.A.R. 5-40-40 through K.A.R. 5-40-42, and all boring logs not shown on the plans;

(4) documentation of the embankment design based upon the geotechnical investigation;

(5) documentation of the hydrological evaluation, including the determination of the composite curve number and drainage area;

(6) if a proposed dam is part of a general plan, the report shall evaluate whether the proposed dam conforms to the general plan;

(7) the design of the foundations, including the proposed depth of the cutoff trench;

(8) the design of the drains, including size, material gradation, interface with soil, and outlets;

(9) the design of the pipe bedding, including documentation that the loading and deflection conditions are met;

(10) the stilling basin design;

(11) documentation of the flood routing or routings;

(12) the gradation of the material in the diaphragm and the design of the diaphragm; and

(13) any other relevant information required by the chief engineer.

(b) In addition to those items required in subsection (a), the design report for each high-impact dam shall include the following:

(1) The auxiliary spillway or service spillway analysis required by K.A.R. 5-40-56(c), if applicable, or K.A.R. 5-40-57(a);

(2) a slope stability analysis; and

(3) an embankment settlement analysis. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-3. Specifications. (a) Each applicant shall submit specifications with the application for a permit to construct a dam. The specifications shall address every major element in the construction of the dam and the materials used to construct the dam. The specifications shall be clear, legible, and sufficiently detailed to ensure that the dam and appurtenant works will be properly constructed and shall meet the requirements of sound engineering principles and commonly accepted engineering practices. The specifications shall state the minimum quality of materials and workmanship that is acceptable and the required materials tests and testing frequency. The specifications shall cover the following:

(1) The excavation procedures;

(2) the placement and compaction of earthen fill;

(3) the dewatering process;

(4) concrete and reinforcing steel requirements and placement;

(5) the materials for and placement of all conduits;

(6) the materials for and placement of permanent erosion control measures;

(7) drains and seepage control, including aggregate requirements; and

(8) seeding and fencing.

The specifications shall also include an index. The specifications may be submitted electronically in a form and manner prescribed by the chief engineer.

(b) A copy of the plans and specifications that have been approved by the chief engineer shall be accessible at the construction site at all times during construction. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1987; amended May 18, 2007.)

5-40-4. Preparer of maps, plans, profiles, reports, and specifications. In addition to the requirements of the Kansas state board of technical professions, the requirements in this regulation shall apply. (a) Each map, plan, profile, report, and specification submitted to the chief

engineer for approval shall be prepared by, or under the supervision of, a person who is competent in the design and construction of channel changes or stream obstructions, as appropriate.

(b) Maps, plans, profiles, reports, and specifications for any dam shall be prepared by, or under the supervision of, a licensed professional engineer who is competent in the design and construction of dams.

(c) Maps, plans, profiles, reports, and specifications for any channel change or stream obstruction project on a navigable stream or a stream having a mean annual flow of 100 cubic feet per second or more at the proposed location of the project shall be prepared by a licensed professional engineer who is competent in the design of that type of project.

(d) No provision of this regulation, and no decision made by the chief engineer pursuant to this regulation, shall alter the responsibilities or duties of any licensee of the Kansas state board of technical professions to comply with that board's requirements. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended Sept. 22, 2000; amended May 18, 2007.)

5-40-5. Determining the capacity of a reservoir. (a) The capacity of each proposed reservoir shall be determined as specified in K.A.R. 5-40-2(h).

(b) The capacity of each existing reservoir shall be determined by using the procedure specified in K.A.R. 5-40-2(h) for contours above the water surface. The engineer determining the reservoir capacity shall demonstrate the validity of the method that the engineer selects to extrapolate the data for contours below the water surface. The capacity of an existing reservoir shall not be reduced by including the accumulated sediment. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301 and 82a-303a; effective May 1, 1983; amended May 18, 2007.)

5-40-5a. Determining the height of a dam or barrier. To determine the height of a dam or barrier pursuant to K.S.A. 82a-301(b) and amendments thereto, that measurement shall be made as follows: (a) The height of a dam or barrier that extends across the natural bed of a stream or watercourse shall be the vertical distance mea-

sured from the bed of the stream or watercourse at the downstream toe of the dam or barrier to the lowest elevation on the top of the dam or barrier, excluding any open-channel spillway and any anomalous low points.

(b) The height of a dam or barrier that does not extend across the natural bed of a stream or watercourse shall be the vertical distance measured from the lowest elevation of the outside limit of the dam or barrier to the lowest elevation on the top of the dam or barrier, excluding any open-channel spillway and any anomalous low points.

(c) The height of a proposed barrier or dam shall be measured from the planned top of the dam, excluding any allowance for settlement. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301 and 82a-303a; effective May 18, 2007.)

5-40-6. Waiver and stricter requirements.

(a) The chief engineer may waive any of the regulations adopted under articles 40, 41, 42 and 43 if it is shown to the satisfaction of the chief engineer that the waiver of the regulation will not pose a hazard to the public safety and that the waiver is in the public interest.

(b) The chief engineer may also invoke any jurisdiction granted by statute and impose stricter requirements than required by rules and regulations where such jurisdiction or additional requirements are necessary to protect the public interest, protect the public safety or prevent damage to property. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1983; amended May 1, 1987.)

5-40-7. Other maps, plans, profiles, data and specifications. The applicant shall also submit any other maps, plans, profiles and specifications of the dam, channel change or obstruction and any other data which the chief engineer may require. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1983; amended May 1, 1987.)

5-40-8. Acceptable application. (a) To be acceptable for filing, each application for a permit to construct, modify, or repair a dam, other stream obstruction, or channel change shall be accompanied by the statutorily required filing fee and shall contain all of the following:

(1) One copy of the completed application on a form prescribed by the chief engineer and signed by the applicant;

(2) two copies of the maps, plans, specifications, and profiles for a proposed or existing dam that meet the requirements of these regulations or one copy of the maps, plans, specifications, and profiles for any other stream obstruction or channel change that meet the requirements of these regulations; and

(3) for a proposed or existing dam, one copy of the design report that meets the requirements of these regulations.

(b) If the applicant fails to meet the requirements of subsection (a), the applicant shall be notified by the chief engineer of the deficiencies in writing and given 60 days from the time the notice is postmarked to submit the required items. If the required items are not submitted within 30 days after the chief engineer's notice is postmarked, a reminder letter shall be sent to applicant again requesting the required items.

(c) Any applicant may submit a request for an extension of time to provide a complete application. The applicant shall submit the request for extension of time before the deadline to submit the items. The request shall also include a justification for the extension of time and an estimate of the time needed to submit the required items.

(d) If the required items are not submitted within 60 days after the chief engineer's notification of deficiency, or within any authorized extension of time, the application shall be dismissed and the application fee forfeited.

(e) If the dismissed application was for the construction, repair, or modification of an existing illegal, unpermitted dam, the removal of the dam shall be ordered by the chief engineer.

(f) If an application is dismissed pursuant to this regulation, within 30 days of the date of dismissal the applicant may apply to have the application reinstated. The application may be reinstated by the chief engineer for good cause shown by the applicant. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301, 82a-302, and 82a-303a and K.S.A. 82a-303c; effective May 1, 1983; amended May 18, 2007.)

5-40-9. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1983; amended May 1, 1985; amended May 1, 1986; revoked May 18, 2007.)

5-40-10. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked May 18, 2007.)

5-40-11. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302 and 82a-303; effective Sept. 22, 2000; revoked May 18, 2007.)

5-40-12. As-built drawings. (a) Each permit shall be conditioned by the chief engineer to require as-built drawings for each category listed in subsection (b) to be submitted within 90 days of the completion of the dam, repairs, or modifications, or any extension of time authorized by the chief engineer for good cause. The drawings shall be prepared by a person qualified to prepare the original plans and specifications pursuant to K.A.R. 5-40-4.

(b) As-built drawings shall be submitted for each of the following categories:

(1) All high-impact dams;

(2) any dam, if required by the chief engineer as a condition of the permit to build, repair, or modify the dam; and

(3) any dam, if required by the chief engineer as the result of an approval of a change in the approved plans requested by the applicant during construction.

(c) The as-built drawings shall show all the features of the structure included in the approved plans as those features were constructed. A legibly marked-up copy of the approved plans shall be acceptable as as-built drawings.

(d) A profile of the bottom of the cutoff trench as constructed shall be shown on the as-built drawings. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 82a-303 and 82a-303a; effective May 1, 1987; amended May 18, 2007.)

5-40-13. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987; revoked May 18, 2007.)

5-40-14. Testing a principal spillway pipe installation in a dam; applicability. (a) For the purpose of testing the leakage rate of principal spillway pipe installation in a dam, an applicant shall conduct a static pressure test of each principal spillway installation constructed of corrugated metal pipe.

(b) A static pressure test shall be required only of a principal spillway installation made of corrugated metal pipe, unless the chief engineer determines that testing principal spillway pipe made of other materials or testing other pipes used in the construction of dams is necessary to protect public safety, life, or property. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-15. Testing a principal spillway pipe installation in a dam; general procedures.

The following general procedures shall apply to all static pressure tests required by K.A.R. 5-40-14: (a) The applicant shall conduct the test before backfilling around and over the principal spillway pipe and after laying the pipe on the grade line and connecting the pipe according to the approved plans and the manufacturer's requirements.

(b) The applicant, the applicant's representative, or the contracting officer shall make arrangements for the chief engineer, or a person designated by the chief engineer, to be present during the test.

(c) The applicant shall place a watertight plug in the downstream end of the pipe. The plug shall be sufficient to withstand a pressure of three pounds per square inch for the duration of the test. The plug shall be equipped with an acceptable means of draining the water out of the pipe after completion of the test.

(d) The applicant shall fill the pipe with water up to an elevation of 10 feet above the flow line at the pipe outlet, or up to the principal spillway inlet elevation, whichever is less, unless a different elevation is required by the test method described in K.A.R. 5-40-16(b).

(e) The applicant shall note the exact elevation of the water surface at the time the test begins. At the end of the prescribed test duration, the applicant shall measure the water surface elevation.

(f) The applicant shall use one of the test methods described in K.A.R. 5-40-16 to determine whether the water leakage rate is acceptable.

(g) If the leakage rate determined by either of the methods described in K.A.R. 5-40-16 is not acceptable, the applicant shall determine the source of the leakage and correct the leakage. After correction, the applicant shall perform another test in accordance with K.A.R. 5-40-15 and K.A.R. 5-40-16.

(h) If the leakage rate determined by either of the methods described in K.A.R. 5-40-16 is acceptable, the applicant shall drain and backfill the pipe in the manner prescribed by the approved plans and specifications. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-16. Testing a principal spillway pipe installation in a dam; allowable leakage rate, test methods. The allowable leakage rate for a principal spillway pipe installation in a dam shall not exceed 1,000 gallons per inch diameter

of pipe per mile of pipe per day. The applicant shall use one of the following test methods in determining whether the allowable leakage rate has been exceeded:

(a) The applicant shall use the following test method procedure for a drop inlet structure if the starting and ending elevation of the water is within the vertical drop structure and above the top of the barrel:

(1) Calculate the allowable leakage rate in gallons per minute for the pipe being tested based on the following formula:

The allowable leakage rate in gallons per minute = $0.000132 \times d \times l$ where:

d = diameter of the tested pipe in inches

l = length of the tested pipe in feet

If the allowable leakage rate in gallons per minute is determined to be less than one, then it shall be assumed for the purposes of the test that the allowable leakage rate in gallons per minute is one.

(2) Conduct the test for 15 minutes.

(3) If the allowable leakage rate is one gallon per minute, the applicant may use the following table to determine the allowable drop in the elevation of the water in the riser.

Nominal diameter of riser (inches)	Allowable drop (feet)
18	1.13
20	0.83
24	0.64
30	0.41
36	0.28

(4) If the measured drop in the riser exceeds the corresponding allowable drop in paragraph (a)(1) above, the allowable leakage rate has been exceeded, which shall not be acceptable. If the measured drop in the riser is less than or equal to the corresponding allowable drop in paragraph (a)(1) above, the allowable leakage rate has not been exceeded and shall be acceptable.

(b) The applicant shall use the following test method procedure for all other types of installations, including canopy inlets:

(1) If filling the pipe with water up to an elevation of 10 feet above the outlet puts water within the vertical riser below the top of the barrel, the elevation shall be reduced below the bottom of the vertical riser before the test begins.

(2) The allowable drop in elevation is a function of the allowable leakage rate, test duration, and

the diameter and slope of the pipe. The allowable drop in the pipe in feet shall be calculated by use of the following formula:

$$\frac{\text{allowable rate (gallons per minute)} \times \text{test duration (minutes)} \times \text{slope (\%)}}{[\text{diameter (inches)}]^2 \times 4.08}$$

(3) The minimum test duration shall be 15 minutes. If the above formula results in an allowable drop of less than 0.1 foot in 15 minutes, the test duration shall be extended so that the allowable drop is greater than 0.1 feet.

(4) The water surface elevation drop shall be measured by means of a clear plastic tube installed in the plug at the downstream end of the principal spillway pipe. Any other means of measuring the drop in elevation shall be approved by the chief engineer in advance of the test.

(5) If the measured drop is greater than the allowable drop as calculated in paragraph (b)(2), the allowable leakage rate has been exceeded, which shall not be acceptable. If the allowable drop is less than or equal to the allowable drop as calculated in paragraph (b)(2), the allowable leakage rate has not been exceeded, which shall be acceptable. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303b; effective Sept. 22, 2000.)

5-40-20. Hazard classes of dams. (a) The hazard classes of dams shall be determined from the following based on the location of the dam, the hazards found within the inundation area, and the impact of a failure of a dam:

(1) A “hazard class A dam” shall mean a dam located in an area where failure could damage only farm or other uninhabited buildings, agricultural or undeveloped land including hiking trails, or traffic on low-volume roads that meet the requirements for hazard class A dams as specified in subsections (b) and (c).

(2) A “hazard class B dam” shall mean a dam located in an area where failure could endanger a few lives, damage an isolated home, damage traffic on moderate-volume roads that meet the requirements for hazard class B dams as specified in subsections (b) and (c), damage low-volume railroad tracks, interrupt the use or service of a utility serving a small number of customers, or inundate recreation facilities, including campground areas intermittently used for sleeping and serving a relatively small number of persons.

(3) A “hazard class C dam” shall mean a dam located in an area where failure could result in any of the following:

- (A) Extensive loss of life;
- (B) damage to more than one home;
- (C) damage to industrial or commercial facilities;
- (D) interruption of a public utility serving a large number of customers;
- (E) damage to traffic on high-volume roads that meet the requirements for hazard class C dams as specified in subsections (b) and (c) or a high-volume railroad line;
- (F) inundation of a frequently used recreation facility serving a relatively large number of persons; or
- (G) two or more individual hazards described in hazard class B.

(b) If there is a road across any part of the embankment or a spillway, including the auxiliary spillway or service spillway channel down to the receiving stream, the daily vehicular traffic shall be considered in determining the hazard classification, in addition to the criteria specified in subsection (a). The hazard classifications specified in this subsection shall be used if these classifications are more stringent than the hazard classifications required by subsection (a).

Hazard class	Vehicles per day
A	0 through 100
B	101 through 500
C	more than 500

(c) If any road in the inundation area does not meet the criteria of subsection (b), the daily vehicular traffic shall be considered in determining the hazard classification, in addition to the criteria specified in subsection (a). The hazard classifications specified in this subsection shall be used if these classifications are more stringent than the hazard classifications otherwise required by subsection (a).

Hazard class	Vehicles per day
A	0 through 500
B	501 through 1,500
C	more than 1,500

(Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-21. Class sizes of dams. (a) Each dam that the chief engineer has authority to regulate pursuant to K.S.A. 82a-301 et seq., and amendments thereto, with an effective height of less than 25 feet and an effective storage of less than 50 acre-feet shall be considered to be a class size

1 dam. The class size of all other dams shall be determined from the following table:

Class size	Size factor
2	less than 3,000
3	3,000 through 30,000
4	more than 30,000

(b) Each existing permitted dam and each dam for which an application was submitted before the effective date of this regulation shall continue to have the effective height measured from the flow line of the stream at the centerline of the dam. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-22. Design requirements for construction of a dam. Each dam constructed shall meet or exceed the design requirements specified in the table in this regulation. The minimum top of the dam elevation shall be the maximum water surface elevation determined by routing the design storm specified in the following table, using the methodology specified in K.A.R. 5-40-30 through K.A.R. 5-40-33, through the reservoir and the dam’s spillways, plus the minimum freeboard shown in the following table. The minimum floor width of the open-channel spillway shall be the minimum floor width shown in the following table.

Dam size class	Hazard class	Precipitation for design storm	Minimum freeboard in feet	Minimum floor width of open-channel spillway in feet
1	A	2% chance	1	20
	B	0.25 PMP	2	
	C	0.40 PMP	3	
2	A	1% chance	2	30
	B	0.25 PMP	2	
	C	0.40 PMP	3	
3	A	1% chance	3	40
	B	0.30 PMP	3	
	C	0.40 PMP	3	
4	A	0.25 PMP	3	40
	B	0.30 PMP	3	
	C	0.40 PMP	3	

(Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-23. Detention storage. (a) To determine the minimum required detention storage, the applicant shall show that the computed runoff from the detention storm can be stored in the reservoir and discharged through the primary spillway without any flow being discharged through the auxiliary spillway. The elevation of the auxiliary spillway control section shall be set so that the computed runoff from the detention storm specified in the following table and determined from the procedures in K.A.R. 5-40-30 through K.A.R. 5-40-33 does not result in discharge through the auxiliary spillway.

Hazard class	Size	Purpose	Minimum detention storm
A	1, 2	Flood control	4% chance
A	3	Flood control	4% chance
A	4	Flood control	2% chance
Hazard class	Size	Purpose	Minimum detention storm
B	All	Flood control	2% chance
C	All	Flood control	2% chance
A	1, 2	All uses other than flood control	50% chance
A	3	All uses other than flood control	50% chance
A	4	All uses other than flood control	20% chance
B	All	All uses other than flood control	20% chance
C	All	All uses other than flood control	20% chance

Each dam that has flood control as a purpose shall meet the detention storm requirements for a flood control structure. A dam that is not constructed for flood control purposes and whose auxiliary spillway meets the requirements for a service spillway in K.A.R. 5-40-57 shall not be required to meet any minimum detention storm requirement in the table in this subsection.

(b) Each dam shall have a primary spillway and an auxiliary spillway, unless a service spillway meeting the requirements of K.A.R. 5-40-57 is provided. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-24. Dam breach analysis. A dam breach analysis shall be conducted on each proposed dam as specified in this regulation. If a dam breach analysis is required for an existing dam, the analysis shall be conducted in the same manner as that specified in this regulation for a proposed dam. (a) To determine the appropriate water surface elevation in the reservoir when the breach begins, the breach analysis shall route the appropriate design duration one percent-chance storm determined by K.A.R. 5-40-31 through the

reservoir. The routing shall begin by assuming that the water surface elevation is at the elevation of the lowest uncontrolled spillway inlet, not including any low-flow augmentation works. The antecedent moisture condition (AMC) used to determine the runoff shall be determined according to K.A.R. 5-40-32. The minimum water surface elevation used to begin the breach analysis shall be the greater of the following:

(1) The water surface elevation determined by routing the required design duration one percent-chance storm through the reservoir; or

(2) the elevation of the crest of the auxiliary spillway.

Routing the storm through the reservoir may account for the discharge of the primary spillway and any open-channel spillways. If the dam does not have an open-channel spillway, the water surface elevation used shall be the elevation of the top of the dam or the elevation resulting from using PMP as the runoff event, whichever is lower.

(b) The breach discharge shall be determined by using the peak breach discharge criteria section on pages 1-1 through 1-2 in "earth dams and reservoirs," TR-60, dated July 2005, published by the conservation engineering division of the natural resources conservation service, and hereby adopted by reference, unless the applicant receives written approval of the chief engineer to use a model that is more appropriate for a particular dam. The breach discharge hydrograph shall be determined by methods in NRCS TR-66, third edition, "simplified dam-breach routing procedure," dated September 1985, which is hereby adopted by reference, including the appendices. If another model is used, the following breach modeling assumptions shall be used, unless the applicant demonstrates to the chief engineer that more appropriate assumptions should be used:

(1) The parameters shall support the assumption of a rapidly developing breach that is either an overtopping failure or a spillway failure caused by intense, localized erosion beginning at the downstream end of the auxiliary spillway or service spillway and working its way upstream.

(2) If the breach model has breach width as a variable, the minimum bottom width of the breach shall be twice the height of the dam. If there is a well-defined physical floodplain, the height of the dam may be measured from the top of the low bank of the stream to the top of the dam for the purpose of determining the minimum breach width.

(3) If the side slopes of the breach are a parameter of the model, vertical side slopes shall be used.

(4) If the breach model has breach time as a variable, the maximum breach time shall be one minute per foot of height of the dam.

(c) The breach discharge shall be routed downstream using a hydraulic flow model in accordance with sound engineering principles and commonly accepted engineering practices. An unsteady state hydraulic flow model shall be used if it is necessary to model existing hydraulic structures in the inundation area. In all other instances, a steady state hydraulic flow model may be used.

(d) The inundation area analyzed shall meet both of the following requirements:

(1) Be from the downstream toe of the dam and the control section of any open-channel section of any open-channel spillway, downstream to the point where the crest of the breach wave intersects the flood level of the peak discharge of the one percent-chance storm, assuming that the dam was not in place; and

(2) be analyzed to the point at which there are no more hazards downstream.

The peak discharge of the one percent-chance storm may be determined by any of the methods provided in K.A.R. 5-42-5 or the appropriate published flood insurance study for the stream receiving the discharge from the breach of the dam.

(e) If there is more than one dam on a stream, it shall be assumed that the most upstream dam is breached first and that the peak flow of that breach arrives at the next downstream dam at the same time the peak water surface elevation from the inflow of the one percent-chance storm from the uncontrolled portion of the lower dam's drainage area occurs. An appropriate model may be used to demonstrate when the peaks will occur for an entire system of dams, in which case the water surface elevation modeled shall be used.

(f) If there are dams on separate tributaries above the dam being analyzed, the modeling assumption specified in subsection (e) shall be applied only to the tributary that has the upstream dam whose breach results in the greatest computed breach discharge at the dam being analyzed.

(g) If digital elevation data is used in the analysis of the breach, the data used shall have a root mean square error of 2.5 meters or less.

(h) Cross sections for modeling purposes shall be taken at appropriate locations, but in no case shall the intervals be greater than 2,640 feet measured along the floodplain of the watercourse.

Cross sections shall be generally perpendicular to the direction of flow and the contour lines that the cross sections intersect. Cross sections may be broken into several connected segments as needed to meet the requirements of this subsection.

(i) Each bridge and any other hydraulic structure that has a significant hydraulic effect shall be included in the analysis.

(j)(1) The applicant shall submit a contour map of the valley with contour intervals of 10 feet or less and a scale of not less than 1:24,000, which shall show the following:

(A) The inundation area determined from the breach;

(B) the location of each existing hazard; and

(C) each cross section entered in the hydraulic flow model with a label identifying the cross section.

(2) The following items shall be shown on the contour map or on separate documentation:

(A) The elevation of each existing hazard;

(B) the water surface elevation at each existing hazard;

(C) the elevation of the streambed at the point nearest each existing hazard; and

(D) a tabular report including the following information for each cross section:

(i) The label identifying each cross section shown on the map;

(ii) the elevation of the maximum water surface attained during the breach;

(iii) the peak discharge; and

(iv) the computed width of the water surface.

(3) If there are more than 10 hazards in any 2,640-foot reach in the flood inundation area, the information required in paragraph (j)(2) may be noted only for the hazard in that reach that is closest to the maximum water surface elevation measured vertically and the hazard in that reach that is farthest from the maximum water surface elevation measured vertically.

(k) The applicant shall submit one copy of each data file used to perform each analysis in electronic form along with identification of the computer programs used to perform the analysis and any model documentation needed for the chief engineer to review the analysis. (Authorized by K.S.A. 2007 Supp. 82a-303a; implementing K.S.A. 2007 Supp. 82a-302 and 82a-303a; effective May 18, 2007; amended Oct. 3, 2008.)

5-40-26. Request to issue or reconsider hazard class determination. (a)(1) If an owner or applicant does not agree with the hazard classi-

fication determined for a dam, the owner or applicant may file a request for reconsideration of the hazard class determination.

(2) Each request for reconsideration shall be submitted in writing and shall indicate the following:

(A) The owner's or applicant's proposed hazard classification;

(B) the basis of that proposal; and

(C) an explanation of why the owner or applicant believes that the determination of the hazard classification by the chief engineer is incorrect. The request shall also contain documentation and analysis that support the request.

(3) Each request for reconsideration shall be filed with the chief engineer within 15 days after the owner or applicant is served with written notice of the hazard classification by the office of the chief engineer or within any extension of time authorized by the chief engineer in writing.

(b) Each request for reconsideration shall be reviewed by the chief engineer, and a final written determination of the hazard classification shall be made by the chief engineer.

(c) If the chief engineer has not issued a written notice of the hazard classification, the owner or applicant may request a written notice after the owner or applicant has been informed verbally of the proposed hazard classification by the chief engineer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-30. Time of concentration. (a) Except as specified in subsections (b) and (c), the time of concentration (T_c) shall be determined by using one of the methods specified in chapter 15, "travel time, time of concentration and lag," in the natural resources conservation service (NRCS) national engineering handbook, part 630, dated August 1972, which is hereby adopted by reference.

(b) For drainage areas of not more than three square miles, the time of concentration (T_c) may be determined by use of the Kirpich formula, which is as follows:

$$T_c = \left(\frac{11.9L^3}{H} \right)^{0.385}$$

Where

T_c = the time of concentration, in hours

L = the longest distance that water has to travel in the drainage basin, in miles

H = the maximum elevation difference in the drainage basin, in feet.

(c) In addition to the methods specified in subsections (a) and (b), the applicant may determine T_c based on sound engineering principles and commonly accepted engineering practices if the applicant obtains the prior written consent of the chief engineer. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-31. Design duration rainfall depth.

(a) If the time of concentration is six hours or less, a duration of six hours shall be used for all design storms. The appropriate six-hour storm depth, in inches, shall be selected from the following table.

County	Probability of occurrence in any year						PMP
	50%	20%	4%	2%	1%	PMP	
Allen	2.7	3.5	4.8	5.4	6.1	28.0	
Anderson	2.7	3.5	4.8	5.3	6.0	27.8	
Atchison	2.6	3.4	4.5	5.1	5.7	27.2	
Barber	2.4	3.2	4.4	5.0	5.7	27.3	
Barton	2.3	3.0	4.1	4.8	5.3	26.6	
Bourbon	2.7	3.5	4.8	5.4	6.0	28.1	
Brown	2.5	3.2	4.4	5.0	5.6	27.0	
Butler	2.6	3.4	4.7	5.3	6.0	27.7	
Chase	2.6	3.4	4.6	5.2	5.9	27.5	
Chautauqua	2.7	3.5	4.9	5.5	6.2	28.3	
Cherokee	2.8	3.6	5.0	5.5	6.2	28.5	
Cheyenne	1.8	2.4	3.4	3.8	4.3	24.7	
Clark	2.2	3.0	4.1	4.7	5.3	26.7	
Clay	2.5	3.2	4.3	5.0	5.5	26.8	
Cloud	2.4	3.1	4.2	4.8	5.4	26.6	
Coffey	2.7	3.5	4.7	5.3	6.0	27.8	
Comanche	2.3	3.1	4.2	4.9	5.5	27.0	
Cowley	2.6	3.4	4.8	5.4	6.1	28.0	
Crawford	2.8	3.6	4.9	5.4	6.1	28.3	
Decatur	1.9	2.6	3.6	4.2	4.6	25.3	
Dickinson	2.5	3.2	4.4	5.1	5.6	27.1	
Doniphan	2.5	3.2	4.5	5.0	5.6	27.0	
Douglas	2.6	3.4	4.6	5.2	5.8	27.5	
Edwards	2.2	2.9	4.1	4.7	5.3	26.7	
Elk	2.7	3.5	4.8	5.4	6.1	28.1	
Ellis	2.1	2.9	3.9	4.6	5.0	26.2	
Ellsworth	2.3	3.1	4.2	4.9	5.4	26.7	
Finney	2.0	2.6	3.8	4.3	4.8	26.8	
Ford	2.1	2.8	4.0	4.6	5.1	26.4	
Franklin	2.7	3.5	4.7	5.2	5.9	25.8	
Geary	2.5	3.2	4.4	5.1	5.7	27.1	
Gove	2.0	2.6	3.7	4.3	4.7	25.7	
Graham	2.0	2.7	3.8	4.4	4.8	25.8	
Grant	1.9	2.6	3.7	4.2	4.7	25.6	
Gray	2.0	2.7	3.9	4.4	4.9	26.1	
Greeley	1.8	2.5	3.4	3.9	4.4	25.0	
Greenwood	2.7	3.5	4.8	5.3	6.1	27.8	
Hamilton	1.8	2.5	3.5	4.0	4.5	25.2	
Harper	2.5	3.3	4.5	5.2	5.9	27.5	
Harvey	2.5	3.3	4.5	5.1	5.8	27.4	
Haskell	2.0	2.7	3.8	4.3	4.8	25.9	
Hodgeman	2.1	2.8	3.9	4.5	5.0	26.3	
Jackson	2.6	3.4	4.5	5.1	5.7	27.2	
Jefferson	2.6	3.4	4.6	5.1	5.8	27.3	
Jewell	2.3	2.9	4.0	4.7	5.1	26.3	
Johnson	2.6	3.4	4.6	5.2	5.8	27.5	
Kearny	1.9	2.6	3.6	4.1	4.6	25.5	
Kingman	2.4	3.2	4.4	5.1	5.7	27.3	
Kiowa	2.2	2.9	4.2	4.8	5.4	26.7	
Labette	2.8	3.6	5.0	5.5	6.2	28.4	
Lane	2.0	2.7	3.7	4.3	4.8	25.8	
Leavenworth	2.6	3.4	4.6	5.1	5.8	27.4	
Lincoln	2.3	3.0	4.2	4.8	5.3	26.6	
Linn	2.7	3.5	4.8	5.3	6.0	27.9	
Logan	1.9	2.5	3.6	4.1	4.6	25.3	
Lyon	2.6	3.4	4.6	5.2	6.0	27.5	
Marion	2.5	3.3	4.5	5.2	5.8	27.3	
Marshall	2.5	3.2	4.3	4.9	5.5	26.8	
McPherson	2.5	3.2	4.4	5.1	5.7	27.1	
Meade	2.1	2.8	4.0	4.6	5.1	26.3	
Miami	2.7	3.5	4.7	5.2	5.9	27.7	
Mitchell	2.3	3.0	4.1	4.7	5.2	26.4	
Montgomery	2.8	3.5	5.0	5.5	6.2	28.3	
Morris	2.6	3.4	4.5	5.1	5.8	27.3	
Morton	1.9	2.5	3.6	4.1	4.6	25.4	
Nemaha	2.5	3.2	4.4	5.0	5.6	26.9	
Neosho	2.7	3.5	4.9	5.5	6.1	28.2	
Ness	2.1	2.8	3.9	4.5	4.9	26.1	
Norton	2.0	2.6	3.7	4.3	4.7	25.6	
Osage	2.6	3.4	4.6	5.2	5.9	27.5	
Osborne	2.2	2.9	4.0	4.6	5.1	26.2	
Ottawa	2.4	3.1	4.3	4.9	5.4	26.8	
Pawnee	2.2	2.9	4.1	4.7	5.2	26.6	
Phillips	2.1	2.8	3.8	4.4	4.9	25.8	
Pottawatomie	2.5	3.2	4.4	5.0	5.6	27.0	
Pratt	2.3	3.1	4.3	4.9	5.5	27.0	
Rawlins	1.9	2.5	3.5	4.0	4.5	25.0	
Reno	2.4	3.2	4.4	5.0	5.7	27.2	
Republic	2.3	3.0	4.1	4.8	5.3	26.4	
Rice	2.4	3.1	4.3	4.9	5.5	26.9	
Riley	2.5	3.2	4.4	5.0	5.6	27.0	
Rooks	2.1	2.8	3.9	4.5	4.9	26.0	
Rush	2.2	2.9	4.0	4.6	5.1	26.4	
Russell	2.2	2.9	4.1	4.7	5.2	26.5	
Saline	2.4	3.1	4.3	5.0	5.5	26.9	
Scott	1.9	2.6	3.6	4.2	4.7	25.5	
Sedgwick	2.5	3.3	4.6	5.2	5.9	27.5	
Seward	2.0	2.7	3.8	4.4	4.9	26.0	
Shawnee	2.6	3.4	4.6	5.1	5.8	27.4	
Sheridan	2.0	2.6	3.7	4.2	4.7	25.5	
Sherman	1.8	2.4	3.4	3.9	4.4	24.8	

County	Probability of occurrence in any year					PMP
	50%	20%	4%	2%	1%	
Smith	2.2	2.9	3.9	4.6	5.0	26.1
Stafford	2.3	3.0	4.2	4.9	5.4	26.9
Stanton	1.9	2.5	3.6	4.1	4.5	25.3
Stevens	1.9	2.6	3.7	4.3	4.7	25.8
Sumner	2.6	3.4	4.7	5.3	6.0	27.8
Thomas	1.9	2.5	3.5	4.1	4.5	25.2
Trego	2.0	2.7	3.8	4.4	4.9	25.9
Wabaunsee	2.6	3.4	4.5	5.1	5.8	27.3
Wallace	1.8	2.4	3.4	3.9	4.4	24.9
Washington	2.4	3.1	4.2	4.9	5.4	26.6
Wichita	1.9	2.5	3.5	4.1	4.5	25.3
Wilson	2.7	3.5	4.9	5.4	6.1	28.1
Woodson	2.7	3.5	4.8	5.4	6.1	28.0
Wyandotte	2.6	3.4	4.6	5.1	5.8	27.4

(b) If the time of concentration of the watershed, or any subwatershed being used to develop the inflow hydrograph, is more than six hours, the ratio for the time equal to or greater than the computed time of concentration shall be selected from the following table. Linear interpolation shall be acceptable. That ratio shall be multiplied by the depth of the six-hour rainfall in the table in subsection (a). The resulting depth is the design duration rainfall depth.

Relative increase in rainfall amount for storm durations over six hours

Time (hours)	100-year ratio	PMP ration
6	1.000	1.000
6.5	1.019	1.013
7	1.035	1.025
7.5	1.051	1.037
8	1.066	1.048
8.5	1.081	1.058
9	1.094	1.068
9.5	1.108	1.078
10	1.120	1.087
10.5	1.132	1.096
11	1.144	1.104
11.5	1.155	1.112
12	1.166	1.120
13	1.187	1.134
14	1.207	1.148
15	1.225	1.161
16	1.243	1.173
17	1.259	1.185
18	1.275	1.196
20	1.305	1.217
22	1.333	1.236
24	1.359	1.254

(c) If the drainage area exceeds 10 square miles, the rainfall depth obtained from the table in sub-

section (a) may be reduced by the ratio shown in the table in this subsection. The ratio for the zone in which the dam is located and a drainage area less than or equal to the actual drainage area above the dam shall be selected. The use of linear interpolation shall be acceptable. That ratio shall be multiplied by the depth of rainfall from the table in subsection (a). The result is the design duration rainfall depth. The ratios in subsection (b) and this subsection may be used together, if subsections (b) and (c) both apply.

Drainage Area (sq. mi.)	Reduction Ratio		
	Zone 1	Zone 2	Zone 3
10	1.00	1.00	1.00
12	0.99	0.99	0.98
15	0.97	0.95	0.93
17	0.96	0.94	0.91
20	0.94	0.91	0.88
22	0.93	0.90	0.86
25	0.92	0.88	0.83
27	0.92	0.87	0.82
30	0.91	0.86	0.80
35	0.90	0.84	0.77
40	0.88	0.82	0.75
45	0.87	0.80	0.72
50	0.86	0.78	0.70
60	0.84	0.75	0.65
70	0.82	0.72	0.62
80	0.80	0.70	0.59
90	0.79	0.68	0.57
100	0.78	0.67	0.55

Zone 1, zone 2, and zone 3 shall have the meanings specified in K.A.R. 5-40-1 under the definition of a “stream.” (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-32. Determination of rainfall excess. (a) Rainfall excess shall be determined by using the natural resource conservation service (NRCS) runoff curve number method.

(b) The antecedent moisture condition (AMC) to be used when determining the curve number for the design storm shall be one of the following:

(1) For zone one, the curve number determined using AMC III;

(2) for zone two, the curve number determined by averaging the AMC II and AMC III curve numbers; or

(3) for zone three, the curve number determined using AMC II.

Zone one, zone two, and zone three shall have the meanings specified in K.A.R. 5-40-1 under the definition of a “stream.”

(c) If the drainage basin is in two zones, the curve number may be weighted based on the drainage area within each zone.

(d) AMC II shall be used in determining the rainfall-runoff relationship used to compute the required detention storage. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-33. Hydrographs. The rainfall excess determined in K.A.R. 5-40-32 shall be used to determine the time-discharge relationship of inflow to the reservoir for the detention storm and design storm using the techniques described in chapter 16, “hydrographs,” in the natural resource conservation service (NRCS) national engineering handbook, part 630, dated March 2007, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-40. Geotechnical investigation of all dams. (a) Each applicant shall ensure that a sufficient geotechnical investigation is performed on the proposed site for each dam to design the dam in accordance with the regulations of the chief engineer and with sound engineering principles and commonly accepted engineering practices. The materials under the proposed dam, open-channel spillway, and borrow area shall be investigated before design and submission of the application for a permit to construct a dam. If unusual or unexpected foundation conditions are encountered in the investigations required in this regulation, additional geotechnical investigation and soil mechanics testing shall be performed as necessary to design and construct the dam in accordance with the regulations of the chief engineer and with sound engineering principles and commonly accepted engineering practices.

(b) The geotechnical investigation specified in these regulations shall be designed by a licensed professional competent in geotechnical investigation and analysis for dams.

(c) The geotechnical information specified in these regulations shall be included in the engineering design report and submitted with the proposed construction plans. The report shall contain a general description of the geotechnical investigation, including the method used for sampling.

(d) The soils sampled in all of the geotechnical investigations shall be classified by using field

classification methods and the uniform soil classification system.

(e) The dam design shall make appropriate accommodations for the geology discovered in the investigation.

(f)(1) The foundation of the dam shall be investigated to a depth of not less than one-half the height of the dam at the location of the test hole plus five feet.

(2) If unweathered bedrock is encountered before reaching the sampling depth required in paragraph (f)(1), the sampling shall be done to the unweathered bedrock.

(g) The static water level in each test hole shall be recorded.

(h) A sufficient number of test holes shall be made in each open-channel spillway to determine the stability of the spillway crest and the outlet channel down to the streambed elevation.

(i) A sufficient number of test holes in the borrow area shall be made to determine the amount of suitable material available and to classify the soil to be used in the embankment. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-41. Geotechnical investigation of a low-impact dam. (a) In addition to meeting the requirements of K.A.R. 5-40-40, each low-impact dam shall have a sufficient number of properly placed test holes to be representative of the geology under the proposed dam embankment, with an average of at least one test hole each 200 feet along the centerline of the dam and at least three test holes.

(b) Except as specified in subsection (d) and K.A.R. 5-40-74, each existing unpermitted, illegal dam shall have the same level of geotechnical investigation as that required for a proposed new dam, except that testing the borrow area shall not be required, before a permit will be issued. In addition, the condition of the following shall be determined:

(1) All conduits passing through the embankment;

(2) the embankment in the vicinity of the conduits; and

(3) the rest of the embankment, including any slides, seeps, saturated areas, sloughs, and other visible anomalies in the embankment.

(c) If there are any signs of instability in the embankment, the stability of the slope of the existing embankment shall be analyzed according to the requirements of K.A.R. 5-40-46(c).

(d) An existing unpermitted, illegal low-hazard dam that is class size 1, 2, or 3, for which a qualified professional has conducted an inspection and submitted to the chief engineer a report of that investigation demonstrating that a geotechnical investigation is not necessary to protect the public safety and property, shall not be required to have the geotechnical investigation required by subsection (b). (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-42. Geotechnical investigation of a high-impact dam. (a) In addition to meeting the requirements of K.A.R. 5-40-40, each proposed high-impact dam shall have at least the following number of geotechnical test holes:

(1) A sufficient number of properly placed test holes to be representative of the geology under the proposed dam embankment, with an average of at least one test hole every 100 feet along and as close to the centerline of the dam as practical and a minimum of three test holes; and

(2) a test hole as close as practical to the anticipated location of the following:

- (A) The base of the drop inlet; and
- (B) the support of the outlet pipe.

(b) At least one representative sample of undisturbed soil shall be tested to determine shear strength parameters, permeability, and compressibility.

(c) The geotechnical investigation shall determine the following for at least one representative sample:

- (1) Atterberg limits;
- (2) the settlement characteristics of the proposed embankment materials and the foundation of the dam;
- (3) the Proctor compaction curves of soils;
- (4) gradation tests of foundation materials, especially where drain systems could be located; and
- (5) any other properties necessary to design a dam to meet the requirements of the regulations of the chief engineer, sound engineering principles, and commonly accepted engineering practices.

(d) Each existing unpermitted, illegal dam shall have the same level of geotechnical investigation as that required for a proposed dam, except that testing the borrow area shall not be required, before a permit may be issued. In addition, the following properties shall be determined:

- (1) The condition of all conduits passing

through the embankment and the condition of the embankment in the vicinity of the conduits;

(2) the in situ density of the existing embankment and its foundation;

(3) the condition of the embankment, including any slides, seeps, saturated areas, sloughs, and other visible anomalies in the embankment; and

(4) a slope stability analysis of the existing embankment, which shall be performed according to the requirements of K.A.R. 5-40-46. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-43. Cutoff trench. (a) Each dam shall have a cutoff trench. The cutoff trench shall meet all of the following requirements:

(1) Have side slopes no steeper than one horizontal unit to one vertical unit;

(2) have a bottom width of 10 or more feet as necessary to meet the compaction requirements of K.A.R. 5-40-44;

(3) be constructed to the depth justified in the design report based on the findings in the geotechnical report, unless observations by the inspecting engineer during construction justify a different depth;

(4) be backfilled with the most impervious material available at the site. If no impervious material is available at the site, then this material shall be procured off-site;

(5) be backfilled with material that is contiguous to and homogeneous with the most impervious zone within the dam, if the dam is designed as a zoned fill;

(6) be constructed in lifts that shall not exceed nine inches for each lift; and

(7) be constructed of a material that has been brought to acceptable moisture content.

(b) The material placed in the cutoff trench shall be placed according to the same specifications as those required for the embankment in K.A.R. 5-40-44. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-44. Embankment. (a) The minimum top width of an embankment shall be determined from the following table:

Height of dam (in feet)	Minimum top width (in feet)
less than 20	10
20 through 24.9	12

Height of dam (in feet)	Minimum top width (in feet)
25 through 39.9	14
40 or greater	15

(b) The top of the dam shall be sloped toward the reservoir, unless special measures are taken to adequately control erosion on the downstream side of the dam.

(c) The height of each lift in the embankment and cutoff trench shall be no more than nine inches, unless the dam is designed as a zoned fill. If the dam is designed as a zoned fill, the lifts outside the cutoff trench and most impermeable zone may be larger if geotechnical data is provided that shows that adequate compaction can be achieved using lifts in excess of nine inches.

(d) The material in each low-impact embankment and cutoff trench shall be brought to a moisture content that can be compacted in accordance with this subsection. Each application for a low-impact dam shall contain specifications requiring adequate compaction. The minimum compaction required shall be achieved by one of the following:

- (1) Using a sheepsfoot roller until the feet cease to push into the fill material and start to walk across the compacted surface;
- (2) using the controlled movement of rubber-tired earth-moving equipment so that every point on the surface of each lift is traversed by not less than one tread track of the equipment; or
- (3) using another method that achieves the compaction required by this subsection.

(e) Each high-impact dam shall include the following in its specifications for earth placement in the embankment and cutoff trench:

- (1) The minimum and maximum allowable levels of soil moisture;
- (2) the compaction standards;
- (3) a provision for testing the soils placed during construction; and
- (4) a means to ensure that the compaction standards approved by the chief engineer are met during construction.

(f) In addition to the requirements of subsections (d) and (e), the specifications for hand-compacted fill around each conduit in the embankment shall meet the following requirements:

- (1) Set a maximum lift of one-third the diameter of the outside of the conduit. However, no lift shall exceed four inches; and
- (2) specify a minimum distance around the conduit for hand compaction. (Authorized by and im-

plementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-45. Allowance for settlement of an earthen dam. (a) A detailed soil mechanics investigation report shall be submitted as part of the design report for each high-impact dam. An appropriate allowance for settlement shall be made based on the results in the soil mechanics report.

(b) If a detailed soil mechanics investigation report is not submitted for a low-impact dam, at least five percent of the height of the dam shall be allowed for settlement of the embankment.

(c) An allowance for settlement on each dam may be made by steepening the side slopes during construction and adding to the height of the embankment as needed to increase the height of the dam. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-46. Side slopes of an earthen dam.

(a) The side slopes of each earthen dam shall be designed and constructed to be stable and easily maintained.

(b) A slope stability analysis shall be required on each high-impact dam.

(c) If a slope stability analysis is required, the minimum factor of safety shall be based on the steady-state seepage load condition with the water level at the elevation of the lowest open-channel spillway or other uncontrolled spillway with a trash rack that meets the requirements of K.A.R. 5-40-51, as shown in the following table:

Class size	Hazard class	Factor of safety
4	A	1.4
3, 4	B	1.5
1, 2, 3, 4	C	1.5

(d) Each dam whose face is subject to prevailing winds shall be given additional protection from erosion caused by wave action, which may include a flatter side slope, the use of riprap, or the use of grass or vegetation adapted to fluctuating water levels. The design of any slope protection for the embankment and the auxiliary spillway or service spillway shall be shown on the plans. If no slope protection is provided, regardless of the orientation of the dam, the design report shall provide justification for not having slope protection.

(e) The steepest allowable design side slope shall be three horizontal units to one vertical unit on the upstream side of the dam, and two and

one-half horizontal units to one vertical unit on the downstream slope of the dam. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-50. Pipes. (a) Each pipe under or through an embankment shall meet the following requirements:

(1) Be capable of withstanding the external load without buckling, cracking, being damaged, or being deformed. The minimum internal diameter of the pipe shall not be reduced by more than the pipe manufacturer’s stated allowable, long-term pipe deflection limit and in no case by more than five percent;

(2) be designed to adequately resist flotation;

(3) be impervious to water, with watertight joints and seams;

(4) except for drawdown pipes, be installed with sufficient slope to provide adequate drainage, with a minimum average slope of one percent after settlement. No pipe shall have an adverse grade through any section of pipe;

(5) if the pipe is installed in conjunction with a riser on a high-impact dam, be placed to insure that the requirements of paragraph (a)(4) are met and that all pipe sections are properly aligned after settlement of the foundation and consolidation of the embankment;

(6) have the discharge end extended a sufficient distance beyond the downstream toe of the dam to avoid erosion to the dam;

(7) be adequately supported at the discharge end to prevent deflection when the pipe is flowing full; and

(8) if the pipe is a primary spillway, be sized to evacuate 95 percent of the detention storage in 14 or fewer days.

(b) Steel cylinder-reinforced concrete pipe shall be acceptable for use in any dam if the design computations, plans, and specifications related to the placement of the pipe meet the minimum requirements of the manufacturer.

(c) In applying the provisions of subsections (c), (e), and (f), the depth of fill over the top of each pipe shall be measured from the top of the embankment after settlement has occurred. Reinforced concrete pipe shall be acceptable for use in a low-impact dam if less than 30 feet of fill will be placed over the pipe and if the design computations, plans, and specifications related to the placement of the pipe meet the minimum requirements of the manufacturer.

(d) Each metal pipe shall be coated with a protective coating adequate to prevent corrosion for the planned life of the dam, or the design report shall include an estimate of the expected life of the pipe, the expected life of the dam, and a plan for replacement of the pipe when it no longer functions as designed.

(e) Corrugated metal pipe shall be acceptable for use in any hazard class A or B dam if no more than 25 feet of fill is placed over the pipe.

(f)(1) Polyvinyl chloride pipe shall be acceptable for use in any dam if the maximum fill over the pipe does not exceed the depth specified in the following table:

Standard dimension ratio (SDR)	Maximum fill over top of pipe (feet)
SDR 17 and thicker	35
SDR 18	31
SDR 21	23
SDR 25	18
SDR 26	16
SDR 28	14

A pipe with walls thinner than SDR 28 shall not be used.

(2) Polyvinyl chloride pipe shall not be placed in high-plasticity soils.

(3) Each portion of polyvinyl chloride pipe that will be exposed to sunlight shall be protected as recommended by the manufacturer of the pipe or shall be encased in a protective material.

(g) Pipe materials other than those described in subsections (b) through (f) may be used if the applicant demonstrates that all of the following criteria are met:

(1) The pipe material, accounting for any protective measures that will be taken, has a minimum expected life of 25 years if exposed to sunlight or buried in soil with the same characteristics of the soil to be used to construct the dam.

(2) All of the pipe manufacturer’s design recommendations are met by the plans and specifications for the dam and are documented in the design report.

(3) All of the pipe manufacturer’s recommendations for bedding, supporting, and installing the pipe are included in the specifications for construction of the dam, except those specifications that are demonstrated in the design report to be inapplicable in the construction of the proposed dam.

(4) The design report includes an estimate of the life of the pipe, the life of the dam, and a plan to replace the pipe when it no longer functions as designed if the design life of the pipe is less than that of the dam.

(5) The design report demonstrates that the proposed placement and use of the pipe will meet the requirements of sound engineering principles and commonly accepted engineering practices.

(h) If the estimated life of a pipe is less than the estimated life of the dam, the permit shall contain the condition that the pipe shall be replaced when the pipe no longer functions properly. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-51. Acceptable trash racks for primary spillways. (a) Except as specified in subsection (c), each new or modified primary spillway permitted on or after the effective date of this regulation shall be equipped with an acceptable trash rack, as specified in subsection (b).

(b) “Acceptable trash rack” shall mean a trash rack designed and constructed to prevent debris from clogging the inlet of the primary spillway or the primary spillway conduit. Each acceptable trash rack shall be constructed of material of sufficient strength to withstand the impact of the material that could strike the inlet.

(c)(1) Each primary spillway in a dam permitted before the effective date of this regulation shall be equipped with the acceptable trash rack required by the permit and approval of design. If no trash rack was required by the permit and approval of design, no trash rack shall be required unless the primary spillway fails to function properly.

(2) If the applicant demonstrates that there is not sufficient woody vegetation or other debris in the drainage area to justify the installation of an acceptable trash rack, the requirement to have an acceptable trash rack may be waived.

(d) If a fish screen is installed, the screen shall not impair the functioning of the primary spillway. If a fish screen is proposed, the design report shall demonstrate that the screen is designed in accordance with the standards of subsection (b) and will not impair the functioning of the primary spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-52. Stilling basins. (a) For each new dam, for each primary spillway conduit replacement, and for each existing dam for which the chief engineer determines that it is necessary to protect the integrity of the embankment, each primary spillway conduit with a cross-sectional area in excess of 1.75 square feet shall discharge into one of the following:

(1) A constructed stilling basin below the downstream toe of the dam; or

(2) any other constructed works designed to dissipate energy and prevent erosion.

(b) If a stilling basin is required or constructed, the stilling basin shall be designed to dissipate the energy of the water exiting the conduit so that the stilling basin discharges water to the receiving channel without causing excessive erosion and the stilling basin itself is not damaged by full conduit flow.

(c) The invert of the outlet conduit that discharges into a stilling basin shall be located at least one foot above the tailwater elevation in the stilling basin when water is flowing through the primary spillway at the maximum rate of discharge during the design storm. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-53. Drawdown pipes. (a) Except as specified in subsection (b), each dam shall be equipped with a drawdown pipe that meets the requirements for a pipe as specified in K.A.R. 5-40-50. A valve or gate shall be installed in the pipe so that the controls are accessible and damage from freezing is prevented. Drawdown pipes may be incorporated into the primary spillway.

(b) The installation of a drawdown pipe shall not be required for a low-impact dam if the chief engineer determines that both of the following criteria are met:

(1) The failure to install a drawdown pipe will not prejudicially and unreasonably affect the public interest and the public safety.

(2) The drawdown pipe is not necessary to administer water rights.

(c) Each drawdown pipe shall have the capacity to evacuate 90 percent of the volume of the permanent pool in 14 or fewer days assuming no inflow into the reservoir, but in no case shall the drawdown pipe have an internal diameter of less than four inches. The inlet of the drawdown pipe shall be constructed to reduce the likelihood of plugging. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-54. Control of seepage along a conduit. (a) Each conduit through any portion of a dam below the elevation of the permanent pool shall be constructed to protect the dam from seepage along the conduit by means of cutoff collars or a drainage diaphragm. Cutoff collars may be used only on hazard class A dams that are class sizes one and two.

(b) Each drainage diaphragm shall meet all of the following design criteria:

(1) Be installed so that the largest face is perpendicular to the conduit;

(2) be sized as follows:

(A) If the conduit is circular, the diaphragm shall extend a minimum of two feet or three times the outside diameter of the conduit, whichever is greater, from the outside surface of the conduit horizontally and vertically upward. The diaphragm shall extend vertically downward a minimum of two feet from the outside surface of the conduit;

(B) if the conduit is rectangular, the diaphragm shall extend minimum of two feet or three times the vertical dimension of the conduit, whichever is greater, from the outside surface of the conduit horizontally and vertically upward. The diaphragm shall extend vertically downward a minimum of two feet from the outside surface of the conduit;

(C) a drainage diaphragm shall not be required to penetrate unweathered bedrock; and

(D) the diaphragm shall not be required to extend vertically upward to an elevation higher than the crest of the auxiliary spillway;

(3) have a dimension parallel to the conduit that is at least three feet thick;

(4) except as specified in subsection (d), be located downstream of the centerline of the dam, downstream of the cutoff trench, and far enough upstream of the toe so that there is a minimum of two feet of fill, measured perpendicular to the surface of the embankment, over the top of the diaphragm after settlement of the embankment; and

(5) have an outlet that provides positive drainage of the diaphragm to the stilling basin or other point below the downstream toe of the dam. The flow line of the outlet shall be no lower than one-half foot above the elevation of the outlet of the stilling basin.

(c) Except as specified in subsection (d), each cutoff collar shall meet all of the following design criteria:

(1) Be constructed of the same or similar material as that of the conduit;

(2) be attached to the conduit with a watertight seal;

(3) be of sufficient size and number to increase the length of the seepage path by at least 15 percent;

(4) be spaced at intervals of at least twice the vertical dimension of the largest collar being used;

(5) be located along the conduit in that portion of the dam that will be saturated;

(6) project a minimum of two feet beyond the outside wall of the conduit; and

(7) be located no closer than two feet from any conduit joint.

(d) If cutoff collars or a drainage diaphragm is located in a zoned fill, the location shall be justified in the design report and established in accordance with sound engineering principles and commonly accepted engineering practices.

(e) If another drain included in the design meets the requirements for a diaphragm in subsection (b), that other drain may be considered to be the diaphragm required by subsection (a).

(f) If the applicant desires to use any other type of seepage control, the applicant shall demonstrate to the chief engineer that the proposed type of seepage control protects the dam from seepage along the conduit and meets the requirements of sound engineering principles and commonly accepted engineering practices. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-55. Earthen auxiliary spillways.

Each earthen auxiliary spillway shall meet all of the following requirements: (a) If the design discharge from the auxiliary spillway is directed so that the discharge impinges on the downstream toe of the dam, a wing dike shall be designed and constructed to direct spillway flows away from the downstream toe of the dam.

(b) If the auxiliary spillway is located on the embankment of the dam, adequate armor protection, including articulated blocks, concrete paving, gabion baskets underlain with properly designed bedding, or engineered riprap, shall be placed on the portion of the dam where the auxiliary spillway is located.

(c) The side slopes shall be no steeper than three horizontal units to one vertical unit, unless the spillway is constructed through competent sandstone or limestone.

(d) There shall be at least a 30-foot level section immediately upstream of the control sec-

tion. Immediately downstream of the control section, the slope of the spillway outlet shall be sufficient to ensure that flows at and above 50 percent of the design storm discharge will flow at a supercritical velocity.

(e) The auxiliary spillway shall be a minimum of three feet deep, as measured from the elevation of the control section to the design top of the dam.

(f) The entrance channel from the reservoir to the level section shall provide a smooth transition that prevents turbulent flow.

(g) The outlet channel shall convey flow to the receiving stream channel with a minimum of erosion.

(h) If a fish screen is installed, the screen shall not impair the functioning of the auxiliary spillway. If a fish screen is proposed, the design report shall demonstrate that the screen will not impair the functioning of the auxiliary spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-56. Maximum design velocity for an auxiliary spillway.

(a) The maximum velocity in feet per second during the design storm for water flowing in a vegetated earthen auxiliary spillway shall be determined from the following table:

Vegetation	Slope of the exit channel			
	Erosion-resistant soils		Easily erodible soils	
	0% to 5%	5% to 10%	0% to 5%	5% to 10%
Bermuda grass and Bahia grass	8	7	6	5
buffalo grass, Kentucky blue grass, smooth brome grass, tall fescue, and reed canary grass	7	6	5	4
sod-forming grass-legume mixtures	5	4	4	3
weeping love grass, yellow bluestem, and native grass mixtures	3.5	3.5	2.5	2.5

(b) The maximum design velocities specified in subsection (a) may be increased by not more than 10 percent if the design frequency of use of the auxiliary spillway is not more than two percent. The maximum design velocities may be increased

by not more than 25 percent if the design frequency of use of the auxiliary spillway is not more than one percent.

(c) For exit channel slopes greater than 10 percent, the applicant shall provide analyses showing both of the following:

(1) There is no more than 0.5 foot of erosion depth within 20 feet of the control section for the one-percent chance storm.

(2) The auxiliary spillway does not fail by breaching during the spillway stability design event indicated in the following table:

Hazard class	Size class	Spillway stability design event
A	1, 2, or 3	0.3 PMP
A	4	0.4 PMP
B	1, 2, 3, or 4	0.5 PMP
C	1, 2, 3, or 4	PMP

(d) The provisions of paragraphs (c)(1) and (2) may be used for slopes of 10 percent or less in lieu of the maximum values specified in the table in subsection (a).

(e) The maximum allowable design velocity for water flowing over the following types of materials shall be determined from the following table:

Material Maximum velocity allowed in feet per second

stratified rock	8.0
sound rock	13.0

(f) Channel lining materials not reliant on vegetation, including concrete, riprap, and grouted riprap, may be used if the applicant demonstrates that the lining will not fail during the spillway stability design event specified in paragraph (c) (2). (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-57. Service spillway design.

(a) If a dam will have a service spillway, the spillway shall be designed and constructed with a lining material that meets the following requirements:

(1) Covers the channel floor and walls up to the depth of flow required to bypass the flows of the storm specified as the detention requirement in K.A.R. 5-40-23(a), at a minimum; and

(2) will not fail during the spillway stability design event specified in K.A.R. 5-40-56(c)(2).

(b) Each design report required by K.A.R. 5-40-2b shall include all hydraulic, structural, and ge-

otechnical design information necessary to show that the criteria in subsection (a) are met.

(c) If a fish screen is installed, the screen shall not impair the functioning of the service spillway. If a fish screen is proposed, the design report shall demonstrate that the screen will not impair the functioning of the service spillway. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-70. Construction notification to the chief engineer. Each holder of a permit to construct, or an approval to repair or modify a dam, shall notify the chief engineer at least 48 hours before any of the following stages of construction and shall obtain the approval of the chief engineer before proceeding with each of these stages of construction: (a) Starting construction;

(b) placing backfill in the cutoff trench;

(c) placing backfill around the primary spillway conduit or any other conduit that extends through the dam embankment and exits the downstream slope; and

(d) starting any stage of construction not specified in this regulation for which the permit requires that the chief engineer shall be notified. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-71. Inspection during dam construction, repair, and modification. (a) Except as specified in subsection (d), each high-impact dam shall be inspected by an engineer competent in the design of dams, or that engineer's authorized representative, at all times during any construction activity.

(b) Each low-impact dam shall be inspected by an engineer qualified in the design of dams, or that engineer's authorized representative, whenever any of the following conditions is met:

(1) Backfill is being placed in the cutoff trench of a dam.

(2) Conduits and their appurtenances are being placed.

(3) Backfill is being placed around a conduit.

(4) Drain material and outlets are being installed.

(5) Concrete forms and reinforcing steel are being placed.

(6) Concrete is being placed.

(7) Any other stage of construction required by

the permit, approved plans, or approved specifications to be inspected occurs.

(c) Before the start of construction, the permit holder shall provide the chief engineer in writing with the name, address, and telephone number of the engineer responsible for the inspection.

(d) The inspecting engineer, or the engineer's authorized representative, shall not be required to be present during any of the following construction activities for a high-impact dam:

(1) The clearing and grubbing of the construction site;

(2) the removal of structures from the reservoir area other than the removal of a dam;

(3) the installation of pollution-control measures, unless required by other authorities;

(4) seeding;

(5) mulching; and

(6) the construction of a fence.

(e) If the inspecting engineer, or the engineer's authorized representative, observes construction activity that is not in compliance with the approved permit, plans, or specifications and the contractor fails to correct the item or items that are not in compliance with the approved permit, plans, or specifications after being notified by the inspector, the inspector shall notify the chief engineer of the noncompliant activity. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-72. Construction inspection reports. The engineer responsible for the inspection required by K.A.R. 5-40-71 shall, within 30 days of the completion of the construction, repair, or modification of the dam and its appurtenances, submit to the chief engineer an inspection report containing the following items: (a) A notice of completion showing the date on which construction, repair, or modification of the dam and its appurtenances was completed;

(b) a statement indicating one of the following:

(1) The dam and its appurtenances were constructed, repaired, or modified substantially in accordance with the permit and the approved plans and specifications; or

(2) the completed work varied from the permit and the approved plans and specifications. A description of each variation shall be provided;

(c) a final survey of the completed dam and its appurtenances, including the following:

(1) A profile of the top of the dam;

(2) a profile of the centerline of the auxiliary spillway or service spillway;

(3) a cross section at the control section of the auxiliary spillway or service spillway;

(4) a cross section of the dam at its deepest point;

(5) a cross section of the dam at the primary spillway if that section is not near the deepest section of the dam;

(6) the locations and elevations of the inlet and the outlet of the primary spillway;

(7) the location and elevation of each drain outlet; and

(8) the final elevation and coordinates of each permanent benchmark; and

(d) a summary or a copy of the daily inspection logs if required by the permit. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-73. Emergency action plan. (a) The owner of each hazard class B dam shall create an emergency action plan (EAP) on a form prescribed by the chief engineer. The owner shall keep the original EAP and submit a copy of the EAP to the chief engineer. The EAP shall address each of the following:

(1) A description of the dam, including the location of the dam and the access roads;

(2) the name, address, and telephone number of the person responsible for notifying local authorities of an emergency;

(3) a map or written description of the area that could be inundated by the type of breach described in K.A.R. 5-40-24;

(4) a list of persons who should be notified in case of an emergency, including the telephone numbers of those persons and their responsibilities; and

(5) the names, addresses, and telephone numbers of each owner of the dam and its appurtenances and those persons responsible for the operation and maintenance of the dam.

(b) Except as specified in subsection (d), the owner of a hazard class C dam shall create and maintain an emergency action plan that meets the recommendations of the “federal guidelines for dam safety: emergency action planning for dam owners,” prepared by the interagency committee on dam safety and published by the federal emergency management agency, dated October 1998 and reprinted January 2004, which is hereby adopted by reference. The owner shall submit a copy of the EAP to the chief engineer.

(c) The owner of any dam for which an EAP is required under these regulations shall annually review the EAP to determine if it is still accurate and applicable to the current condition of the dam and current downstream conditions, including the following:

(1) The contact names and related information;

(2) the breach inundation map or a description of the inundation area; and

(3) emergency procedures.

If any material changes are made when updating the EAP, a copy of the revised EAP shall be submitted to the chief engineer.

(d) Any owner of a hazard class C dam may request that the chief engineer allow the owner to submit an EAP that meets only the requirements of subsection (a) in lieu of meeting the requirements of subsection (b). To make this request, the owner shall submit written justification of why an EAP meeting the requirements of subsection (a) is sufficient to protect the public safety. If the chief engineer approves the request, the chief engineer shall reserve the right to later impose the requirements of subsection (b) if downstream conditions change, the condition of the dam deteriorates, or the EAP does not adequately protect the public safety.

(e) The owner of a hazard class B dam shall submit the required EAP within 180 days of written notification by the chief engineer of the requirement.

(f) The owner of a hazard class C dam shall submit the required EAP within 180 days of written notification by the chief engineer that an EAP is required and that an adequate EAP is not on file in the chief engineer’s office. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-73a. Discovery of an existing illegal, unpermitted dam. (a) Except when it is necessary to take additional actions to protect the public safety, when the chief engineer becomes aware of an existing illegal, unpermitted dam, the following actions shall be taken by the chief engineer:

(1) Determine the hazard classification and condition of the dam;

(2) notify the owner of the dam of the following, in writing:

(A) The fact that the dam is illegal and unpermitted;

(B) the hazard classification of the dam;

(C) the fact that if the owner desires to keep the dam in existence, the owner shall submit a com-

plete application for a permit for the dam pursuant to K.S.A. 82a-301 and K.S.A. 82a-302, and amendments thereto, within 120 days of the date of the chief engineer's notification;

(D) the condition that the application to obtain a permit for the dam shall meet the requirements of K.A.R. 5-40-8 and K.A.R. 5-40-74;

(E) the fact that failure to apply for a permit within 120 days shall result in the issuance of an order by the chief engineer requiring the owner to submit plans to breach or completely remove the dam; and

(F) the fact that the dam is subject to the provisions of this regulation.

(b)(1) If the owner submits an application for a permit within the time specified in paragraph (a)(2)(C), or within any extension of time authorized by the chief engineer in writing, the application shall meet the requirements of K.A.R. 5-40-8 and K.A.R. 5-40-74.

(2) If the owner fails to submit an application for a permit within the time specified in paragraph (a)(2)(C), or within any extension of time authorized by the chief engineer, an order requiring the owner to perform the following shall be issued by the chief engineer:

(A) Submit plans to breach or completely remove the dam; and

(B) bypass inflows and release water from storage so that no more than 15 acre-feet of water is kept in storage in the reservoir while the application for a permit to breach or completely remove the dam is being processed. The application for a permit shall contain all of the information required by K.A.R. 5-40-8 and any other information necessary to properly and safely design and complete the breach or removal. The application shall be submitted within 120 days of the date of the order, or within any extension of time authorized by the chief engineer. The owner shall be required to complete the breach or removal as permitted by the chief engineer within one year of the approval of a permit by the chief engineer, or any extension of time authorized by the chief engineer in writing.

(c) If the chief engineer dismisses an application for an existing illegal, unpermitted dam for any reason, the dismissal of the application shall be accompanied with an order requiring the dam to be breached or removed as provided in paragraph (b)(2).

(d) The order described in paragraph (b)(2) shall be filed by the chief engineer with the register of deeds for the county in which the dam is located.

(e) Each existing illegal, unpermitted dam of which the chief engineer becomes aware, either before or after the adoption of this regulation, shall be subject to this regulation. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301, 82a-302, and 82a-303a; effective May 18, 2007.)

5-40-74. Design criteria for an existing illegal, unpermitted dam. (a) Except as specified in subsection (b), the design criteria specified in this subsection (a) shall be met to obtain a permit from the chief engineer pursuant to K.S.A. 82a-301 et seq., and amendments thereto, for an existing illegal, unpermitted hazard class A dam constructed before May 1, 1984 that has not been modified on or after May 1, 1984. The applicant shall have an engineer who is qualified in dam design and construction conduct an inspection of the dam and prepare a report that includes all of the following:

(1) The date of the inspection and a list of the members of the inspection team;

(2) color photographs documenting the condition of the dam's appurtenances and embankment and any observed deficiencies in the appurtenances and embankment;

(3) a plan view sketch of the dam and its immediate vicinity showing the location from which each photograph was taken and the direction in which it was taken;

(4) a description of the physical condition of the dam and its appurtenances, a list of the deficiencies that were observed, and a description of the severity of each observed deficiency. All deficiencies that may threaten the structural integrity of the dam shall be shown; and

(5) a survey of the dam, documented by a plan view of the dam and cross section drawings, including the following:

(A) Cross sections of the embankment every 200 feet, with each cross section starting from the upstream toe of the dam or the water surface on the upstream side to the toe of the dam on the downstream side of the dam;

(B) a profile of each open-channel spillway from the water surface on the upstream side of the dam to the point where spillway flows enter the receiving stream;

(C) a cross section of each open-channel spillway every 200 feet and at each control section, with a minimum of two cross sections;

(D) the elevation of each primary spillway inlet and outlet;

(E) the elevation of the flow line of the outlet channel; and

(F) the dimensions, locations, and descriptions of materials, workmanship, condition, apparent purpose for, and any other relevant information about all visible appurtenances in sufficient detail to represent the appurtenances in three dimensions;

(6) the dimensions and location of each deficiency noted as required in paragraph (a)(4);

(7) the estimated rate and color of discharge from drain outlets and any seeps;

(8) a determination of the hazard classification of the dam as specified in K.A.R. 5-40-24;

(9)(A) A description of the drawdown valve, if any;

(B) specification of whether the valve was operated during the inspection; and

(C) if the valve could not be operated, an explanation of why it could not be operated;

(10) the name, mailing address, and telephone number of the engineer who conducted the inspection;

(11) the name, mailing address, and telephone number of each current owner of the dam; and

(12) any other information relevant to the safety and integrity of the dam, including any items requested by the chief engineer before the inspection.

(b) If the applicant provides construction plans prepared before construction that show how the dam was to be constructed or modified and that reflect the actual dimensions of the dam as it exists, those plans may be substituted for the survey required in paragraph (a)(5).

(c) If the chief engineer determines from the inspection report that the dam does not pose a threat to public safety or public or private property and that the condition of the dam is sound, an after-the-fact permit may be issued by the chief engineer pursuant to K.S.A. 82a-301 et seq., and amendments thereto.

(d)(1) In order for an existing illegal, unpermitted hazard class A dam constructed or modified on or after May 1, 1984 or an existing illegal, unpermitted hazard class B or C dam to receive a permit from the chief engineer pursuant to K.S.A. 82a-301 et seq. and amendments thereto, the applicant shall demonstrate that the dam meets all of the applicable statutory and regulatory requirements in effect when the application for the permit is filed. The applicant shall provide a survey meeting the requirements of paragraph (a)(5) and a design report that meets the requirements

of K.A.R. 5-40-2b. If plans are available that show how the dam was constructed or modified and those plans reflect the actual dimensions of the dam as it exists when the application is filed, the plans may be substituted for the required survey. If a geologic investigation was conducted before construction of the dam and the results of that investigation are available, that investigation may be substituted for the investigation and report required by K.A.R. 5-40-40 through K.A.R. 5-40-42.

(2) If the applicant cannot determine that the chief engineer's requirements for the following design or actual construction properties were met without significantly disturbing the embankment but the applicant demonstrates that the dam was built in a manner appropriate to the standards in effect when the dam was constructed, then a permit may be issued if the chief engineer determines that the dam does not pose a hazard to public safety:

(A) The location, dimensions, and composition of the backfill materials to fill the cutoff trench;

(B) the location, dimensions, and construction of cutoff collars, drains, or other seepage control;

(C) the allowance for settlement of an earthen dam;

(D) specification of whether the primary spillway pipe was tested;

(E) the specifications used; and

(F) documentation of any construction inspections. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a, 82a-302, and 82a-303a; effective May 18, 2007.)

5-40-75. Maintenance of dams. Each owner of a dam that the chief engineer has authority to regulate pursuant to K.S.A. 82a-301 et seq., and amendments thereto, shall operate and maintain the dam in a manner that protects the public safety, complies with the terms of any permit of the chief engineer, and ensures the integrity of the dam. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301a and 82a-303a; effective May 18, 2007.)

5-40-76. Repair or modification of a permitted or prejurisdictional dam. (a) The repair or modification of a permitted or prejurisdictional dam shall meet the requirements of both of the following:

(1) The statutes and the regulations in effect when the application for repair or modification is filed; and

(2) any additional criteria specified by the chief engineer that are necessary to ensure the integrity of the dam and its appurtenances.

(b) At the time of the repair or modification, the applicant shall bring the dam and all of its appurtenances into conformance with the requirements of the statutes and regulations in effect at the time of the application for repair or modification, unless both of the following conditions are met:

(1) The applicant demonstrates that bringing any feature of the dam and its appurtenances into compliance is not feasible or is unduly burdensome.

(2) The chief engineer determines that failing to bring any feature of the dam into compliance with one or more requirements applicable to that feature will not significantly affect the public safety.

(c) Each application to repair or modify a dam or its appurtenances shall include a design report on the repair or modification, including a section describing the condition of the dam at the time of the application. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-77. Easements for dams. (a) Each applicant that applies for a permit to construct a dam, modify a dam in a manner that will raise the top of the dam, or modify the dam in any other way that will increase the backwater effect of the dam or the flow of water from the dam to the receiving stream shall demonstrate either of the following to the chief engineer:

(1) The applicant owns the site of the dam and appurtenant works, the land that will be inundated, and the land over which discharge from the dam's spillways will flow.

(2) The applicant has easements or other legal authority to perform the following for the design life of the dam:

(A) Construct and maintain the dam;

(B) inundate all of the land upstream from the dam to the top of the dam elevation; and

(C) discharge water from the spillways to a stream channel and the associated floodplain adequate to convey the discharge from the design storm.

(b) For permitted dams for which a modification is proposed, an easement or other legal authority shall be required only for the effects caused by the modification. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302, K.S.A. 82a-303, and K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

5-40-90. Requirements for a dam safety inspection report. Each dam safety inspection report required by K.S.A. 82a-303b, and amendments thereto, shall document the observations made during the inspection and the engineer's opinion of the condition of the dam and shall include all of the following:

(a) An executive summary briefly describing the overall condition of the dam as found during the inspection;

(b) the date of the inspection and a list of the members of the inspection team;

(c) color photographs documenting the condition of the dam appurtenances and embankment and any observed deficiencies in the appurtenances and embankment;

(d) a plan view sketch of the dam and the vicinity, showing the location where each photograph was taken and the direction in which the photograph was taken;

(e) a description of the physical condition of the dam and its appurtenances, a list of any deficiencies that were observed, and a plan view sketch of the dam and its appurtenances showing the location of those deficiencies. The deficiencies that shall be shown shall include those that meet any of the following conditions:

(1) Violate the permit or approved plans or any approved modifications of the permit or approved plans;

(2) threaten the structural integrity of the dam; or

(3) threaten the safety of people or property above or below the dam;

(f) survey and other documenting data if the engineer observes any changes from previously documented conditions in the dam or its appurtenances that could jeopardize the integrity of the dam, including any changes in the profile or cross section of the dam, profile, or cross section of any open-channel spillway, and areas of settlement or erosion;

(g) a description of the severity of each observed deficiency and the engineer's opinion about the urgency of remedying each deficiency;

(h) a summary of the engineer's review of the adequacy of the emergency action plan, including a review of any updates since the last inspection;

(i) the estimated rate and color of discharge from drain outlets and any seeps;

(j) a statement indicating whether the engineer agrees or disagrees with the hazard classification of the dam, including the reasons why the engineer agrees or disagrees with that classification;

(k) a map drawn to a scale of 1:24,000 or larger showing the location of any hazards added, removed, or not previously shown downstream of the dam, in addition to those identified in previous reports, that would require a modification of the emergency action plan or might change the hazard classification of the dam;

(l) any significant changes in the capacity of the reservoir;

(m) any significant changes in the capacity of any spillway;

(n) a statement indicating whether there have been any significant changes in the watershed and an estimate of the impact of those changes on the design hydrology;

(o) the name, mailing address, and telephone number of the engineer;

(p) the name, mailing address, and telephone number of each current owner of the dam;

(q) observations or readings from all instrumentation required by the permit, the approved plans, the approved specifications, or the chief engineer;

(r)(1) A description of the drawdown valve, if any; and

(2) specification of whether the drawdown valve was operated during the inspection and, if the valve could not be operated, an explanation of why it could not be operated; and

(s) any other information relevant to the safety of the dam, including any items requested by the chief engineer before the inspection. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-91. Schedule for inspection of hazard class C dams. Each hazard class C dam shall be inspected every third inspection year after the inspection year in which the initial inspection was completed. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-92. Schedule for inspection of hazard class B dams. Each hazard class B dam shall be inspected every fifth inspection year after its initial inspection. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-93. Schedule for inspection of dams. The initial and follow-up dam safety inspections required by K.S.A. 82a-303b, and amendments thereto, for any dam completed on or after July

1, 2002, shall be conducted and a report shall be filed with the chief engineer in accordance with the following schedule: (a) Each permitted hazard class C dam shall be inspected in the third inspection year after the inspection year in which the dam is completed and every third inspection year thereafter.

(b) Each permitted hazard class B dam shall be inspected in the fifth inspection year after the inspection year in which the dam is completed and every fifth inspection year thereafter.

(c) Each unpermitted class B or class C hazard dam completed on or after July 1, 2002, shall be inspected in accordance with a schedule approved by the chief engineer as necessary to protect the public safety.

(d) Each dam that had its hazard class increased by the chief engineer on or after July 1, 2002, shall initially be inspected by the chief engineer in the inspection year in which the hazard class is increased.

(e) If the dam was reclassified as a hazard class B dam, the dam shall be inspected every fifth inspection year after the inspection year in which the hazard class was changed.

(f) If the dam was reclassified as a hazard C dam, the dam shall be inspected every third inspection year after the inspection year in which the hazard class was changed. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-94. Revision of schedule of inspections. For good cause shown, including a change in hazard class or repair or modification of a dam, the dam safety inspection schedule may be revised by the chief engineer and a new inspection cycle may be started. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-303a and 82a-303b; effective May 18, 2007.)

5-40-100. Request to be included on the list of independent engineers qualified to review applications. (a) Each licensed professional engineer who desires to be placed on the list of licensed professional engineers approved to review applications for the permit required by K.S.A. 82a-301 et seq., and amendments thereto, shall submit a request to the chief engineer on a form prescribed by the chief engineer.

(b) Any engineer may request approval in one or more of the following areas:

(1) Dam design;

(2) channel design; and

(3) the design of stream obstructions other than dams.

(c) A team of persons may be qualified to be a reviewer for a project. The qualifications of each team member shall be submitted, and one person shall be designated as the supervising reviewer. The supervising reviewer shall meet the minimum requirements for an individual reviewer. The other members of the review team shall not be required to meet the minimum requirements for an individual reviewer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-101. Information to be submitted with a request to be a reviewer. (a) Each engineer who wants to be included on the list of licensed professional engineers approved to review applications under the obstructions in streams act, as authorized by K.S.A. 82a-302, and amendments thereto, shall submit that request on a form prescribed by the chief engineer and shall designate each area of review for which the engineer or a team of engineers desires to be approved.

(b) All of the following information shall be included on each request for each area in which the engineer seeks to be approved:

(1) The type and license number of each current license from the Kansas state board of technical professions;

(2) relevant education, including graduate and postgraduate schools attended, degrees received, and professional development work; and

(3) work experience in the requested area of expertise, including the following:

(A) The number of years of experience as an engineering intern;

(B) the number of years of experience as an engineer; and

(C) the approximate number of projects for which the engineer met the following criteria:

(i) Was responsible for the project;

(ii) performed substantive design tasks;

(iii) had quality assurance, quality control, or project review responsibilities; and

(iv) performed construction supervision or inspection; and

(D) the project name, the location, a brief description of the project, and a brief description of the engineer's responsibilities for one or two projects for which the engineer met the following criteria:

(i) Had responsible charge or performed significant portions of the design; or

(ii) provided quality control, quality assurance, project review, construction supervision, or construction inspection duties. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-102. Minimum requirements to be an individual reviewer. To be an individual reviewer, each person shall meet both of the following qualifications: (a) Have a current professional engineer's license from the Kansas state board of technical professions; and

(b) have a minimum of five years of relevant work experience in the area for which approval is sought. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-103. Conflict of interest. A reviewer shall not be eligible to review any of the following:

(a) Any project in which the reviewer has participated in the project's design in any way;

(b) any project designed by any other employee of the reviewer's current employer; or

(c) any other project for which the reviewer has a conflict of interest with the owner of the dam, the designer of the dam, or the state of Kansas. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-104. Notification of approval or disapproval to be a reviewer. Within 60 days of the receipt in the office of the chief engineer of a completed request pursuant to K.A.R. 5-40-101, the requester shall be notified by the chief engineer of whether that individual has been approved in each requested area. If the chief engineer has not approved the request for each area of review requested, the requester shall be notified by the chief engineer of the reason or reasons that each request has been denied. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-105. Procedure for independent review of an application to construct a dam or other water obstruction. (a) When an applicant provides a copy of that individual's application to an approved reviewer pursuant to K.S.A. 82a-302

and amendments thereto, the applicant shall also submit the following to the chief engineer:

- (1) The original application;
- (2) all documentation required for an acceptable application as specified in K.A.R. 5-40-8;
- (3) the statutorily required filing fee; and
- (4) the name, address, and telephone number of the reviewer.

(b) The review required by the water projects environmental coordination act, K.S.A. 82a-325 et seq. and amendments thereto, shall be initiated by the chief engineer after the chief engineer receives the application.

(c) Within 37 days after the review specified in subsection (b) is initiated by the chief engineer, any comments received from the environmental review agencies shall be sent by the chief engineer to the reviewer. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

5-40-106. Report of findings of independent reviewer. (a) When a reviewer completes the review of an application pursuant to K.S.A. 82a-302 and amendments thereto, the reviewer shall submit a report of that review to the chief engineer. The report shall be properly sealed by the reviewing engineer as directed by the Kansas state board of technical professions.

(b) Each complete report shall include the following:

(1) An opinion as to whether the application meets the requirements of K.S.A. 82a-301 et seq., and amendments thereto, the regulations that implement these statutes, sound engineering principles, and commonly accepted engineering practices;

(2) the basis for that opinion, including any analyses that were performed, and the supporting data;

(3) an evaluation of the comments from the environmental review agencies that were furnished to the reviewer by the chief engineer and a recommendation about how to address all adverse comments;

(4) a recommendation about whether any request by the applicant to waive one or more regulations should be approved and the basis for approving or denying the waiver; and

(5) a recommendation about whether the chief engineer should approve or deny the permit and any conditions that the chief engineer should impose on the permit.

(c) The recommendations shall not be binding on the chief engineer. The chief engineer shall maintain the final authority to approve or deny all applications. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-302 and 82a-303a; effective May 18, 2007.)

Article 41.—DESIGN OF CHANNEL CHANGES

5-41-1. Channel changes; plans and specifications. Plans for a channel change shall include the following: (a) A general location map or aerial photograph, showing the present alignment of the stream, location of the proposed channel change, section lines, property lines with names and addresses of adjoining landowners, drainage area, a north arrow, a bar scale, and any other prominent features;

(b) a detailed plan view of the project with stationing shown, including as many other views as necessary to fully describe the project;

(c) a profile drawing along the centerline of the proposed new channel. This profile shall extend five times the channel width upstream and an equivalent distance downstream from each end of the new channel. The stationing shown on the plan view shall correspond to stationing on the profile drawing. This drawing shall show the present ground surface, the present stream bed, and the grade line of the proposed new channel;

(d) cross sections of the existing stream at locations immediately above and below the proposed channel change. The location of these cross sections shall be described and shown on the plans. The elevations of the top of the existing banks and bottom of the channel shall be shown;

(e) at least one permanent bench mark conveniently located for use after construction, except for grassed waterways constructed for the purpose of conveying runoff without causing erosion or flooding. The location, description, and elevation of the permanent bench mark, to which all elevations are referred, shall be shown on the plans. The designer shall reference the project bench mark to the current national geodetic vertical datum, to a tolerance of plus or minus ½ foot on all channel changes involving perennial streams and where detailed floodplain data are available. Project datum shall be acceptable on all other channel changes; and

(f) a cross-sectional drawing of the proposed new channel, including dimensions. (Authorized

by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1987; amended Sept. 22, 2000.)

5-41-2. Channel changes; water velocity. The new channel shall have a conveyance capacity equal to or greater than the old channel. The water velocity after the completion of the proposed channel change or stream obstruction shall not exceed a permissive velocity. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-41-3. Channel changes; side slopes. The side slopes of the proposed new channel shall not be steeper than one foot vertical to two feet horizontal unless the applicant submits data and analysis to show that a steeper slope will be stable. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-41-4. Channel changes; construction by erosion. New channels shall not be constructed by erosion. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-41-5. Channel changes; disposal of excavated material. (a) Material removed from the newly excavated channel shall be deposited at a location and in a form acceptable to the chief engineer. If the material is to be deposited so that it will have the effect of a levee, a separate prior written approval of the chief engineer is required pursuant to K.S.A. 24-126.

(b) Filling or plugging the original channel shall receive the prior written approval of the chief engineer. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-41-6. Channel changes; vegetative strips on new channels. On each new channel project, except a grassed waterway constructed for the purpose of conveying runoff without causing erosion or flooding, a vegetative strip shall be established and maintained for a width of 50 feet immediately adjoining the channel on each side of the stream if site conditions permit, unless an acceptable engineering design shows that a greater or lesser width of vegetative strip is preferable. The general type of vegetation shall be approved by the chief engineer. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987; amended Sept. 22, 2000.)

Article 42.—DESIGN OF STREAM OBSTRUCTIONS

5-42-1. Stream obstructions; plans and specifications. (a) The plans required for a permit for a stream obstruction pursuant to K.S.A. 82a-301, and amendments thereto, shall include the following:

(1) A general location map or aerial photograph showing the stream, location of the proposed obstruction, sufficient detail to locate the proposed construction site, section lines, a bar scale, a north arrow, property lines with the names and addresses of adjoining landowners and any other landowners whose land may be hydraulically affected by the proposed stream obstruction, drainage area, and any other prominent features;

(2) a detailed plan view fully describing the obstruction and the site;

(3) the following topographical information, which shall be provided from streambed elevation to the limits specified in subsection (b):

(A) A profile of the streambed and both banks;

(B) a contour map with a contour interval of no more than two feet; or

(C) cross sections perpendicular to the stream and at intervals of no more than five times the width of the channel;

(4) an elevation view showing the obstruction on a cross section of the stream and the valley up to the post project design flood elevation at the site;

(5) at least one permanent benchmark shall be conveniently located for use after construction. The location, description, and elevation of the permanent benchmark to which all elevations are referred shall be shown on the plans. Reference to the national geodetic vertical datum of 1988, or other acceptable national vertical datum, to a tolerance of plus or minus one-half foot shall be required for all stream obstructions on perennial streams and all other streams where base flood elevations have been determined and are shown on flood insurance rate maps. An assumed project datum shall be acceptable on all other stream obstruction projects;

(6) details of the manner in which the obstruction is to be tied into the bed and banks of the streams;

(7) the land for which easements or rights-of-way are to be acquired if the proposed obstruction affects land other than that owned by the applicant; and

(8) unless it is clear that the impact of the proposed project will be contained within the channel or limited to property under the control of the applicant, a hydraulic analysis determining the preproject and postproject water surface elevations for the 50 percent-chance flood and the one percent-chance flood shall be prepared and submitted to the chief engineer.

(b)(1) If it is clear that the impact of the proposed stream obstruction will be contained within the channel or limited to property under the control of the applicant, the topographical information upstream of the stream obstruction required in paragraph (a)(3) shall be required to either of the following, whichever is lower:

(A) The elevation of the highest point on the proposed obstruction; or

(B) the elevation of the one percent-chance flood water surface.

The applicant shall not be required to show topographical information for any property not under the control of the applicant.

(2) If it is not clear that the impact of the proposed project will be contained within the channel or limited to property under the control of the applicant, the topographical information upstream of the stream obstruction required in paragraph (a)(3) shall be provided from streambed elevation up to the elevation of the one percent-chance flood water surface upstream of the stream obstruction.

(3) The topographical information required in paragraph (a)(3) and subsection (b) shall be provided downstream of each proposed stream obstruction for a distance equal to five times the width of the channel at the proposed site of the stream obstruction or 50 feet downstream from the toe of the stream obstruction, whichever is greater.

(c) Each application for a permit to construct a stream obstruction shall include the following specifications:

(1) Each major element in the construction of the obstruction;

(2) the minimum quality of workmanship that is acceptable to construct the obstruction;

(3) the minimum quality of materials that is acceptable to construct the obstruction; and

(4) the materials proposed to be used to construct the obstruction.

(d) The specifications shall meet the following requirements:

(1) Be clear, legible, and shown in sufficient de-

tail to assure that the work can be properly constructed; and

(2) be shown on the plans, in the design report, or on a separate document.

(e) If the Kansas department of transportation (KDOT) standard construction specifications meet all of the requirements of this regulation and are to be enforced during construction, referencing those specifications on the plans shall be sufficient to comply with this regulation.

(f) If the standard construction specifications of a city or county in Kansas meet the following requirements, then referencing those specifications on the plans shall be sufficient to comply with this regulation:

(1) Meet all the requirements of this regulation;

(2) are to be enforced during construction; and

(3)(A) Have been provided to the chief engineer; or

(B) are readily available at no cost from the city or county that utilizes the specifications. (Authorized by K.S.A. 2006 Supp. 82a-303a; implementing K.S.A. 2006 Supp. 82a-301, 82a-302, and 82a-303a; effective May 1, 1987; amended, T-5-12-30-91, Dec. 30, 1991; amended April 27, 1992; amended May 18, 2007.)

5-42-2. Stream obstruction; minor. If a proposed stream obstruction will not decrease the cross sectional area of a stream channel at the location of the obstruction by more than 15 percent, the plans required by the chief engineer shall be equivalent to the type submitted to the United States corps of engineers with applications for a department of the army permit. Such obstructions shall include weirs, causeways, low-water crossings, low-head dams, intake structures, boat launching ramps, pipeline crossings, outfall structures, marinas, boat docks, jetties and revetments. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-42-3. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987; amended April 27, 1992; revoked Sept. 22, 2000.)

5-42-4. Stream obstruction; temporary structure. A temporary structure shall not require a stream obstruction permit from the chief engineer pursuant to K.S.A. 82a-301 et seq. and amendments thereto if it meets all of the following criteria:

(a) The structure is temporary in nature.

(b) The structure is constructed only of temporary materials, including local streambed materials, straw or hay bales, plastic, or plywood, that are likely to wash out during a bank-full storm event.

(c) The structure is actively maintained only during the duration of the temporary beneficial use.

(d) The structure is less than two feet in height above the natural bed of the stream, and alterations to the stream and alterations to the stream bank are no more than are necessary for permitting access to the site for operation and maintenance.

(e) The structure is below the natural low bank of the stream.

(f) Any water backed up by the structure is detained solely on property under the control of the landowner that constructed the temporary structure.

(g) The structure does not materially adversely affect the public interest, public safety, or environment. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective Sept. 22, 2000.)

5-42-5. Determining the peak discharge of a one percent-chance storm. In determining the flow magnitude of a design storm, the applicant shall use one of the following methods. (a) For drainage areas of less than 640 acres, use of the rational formula shall be acceptable.

The rational formula is $Q = CIA$

Where C = the runoff coefficient

I = the intensity of rainfall, in inches per hour

A = the drainage area, in acres.

(b) For any drainage area, the flow magnitude of a design storm may be determined by using one of the methods in the following:

(1) "Estimation of peak streamflows for unregulated rural streams in Kansas," water-resources investigations report 00-4079, published by the United States geological survey in 2000, which is hereby adopted by reference;

(2) "urban hydrology for small watersheds," technical release 55, published by the natural resources conservation service and dated June 1986, which is hereby adopted by reference; and

(3) "computer program for project formulation," technical release 20, published by the natural resources conservation service, United States department of agriculture, and dated October 2004, which is hereby adopted by reference.

(c) For streams for which sufficient stream gaging data is available, the applicant may use sound engineering principles and commonly accepted

engineering practices to estimate the peak one percent-chance discharge from the gage record.

(d) A method other than the methods specified in subsections (a), (b), and (c) may be used to determine the one percent-chance storm discharge if the method meets both of the following criteria:

(1) The method is based on sound engineering principles and commonly accepted engineering practices.

(2) The method has been previously approved, in writing, by the chief engineer. (Authorized by and implementing K.S.A. 2006 Supp. 82a-303a; effective May 18, 2007.)

Article 43.—SAND DREDGING PERMITS

5-43-1. Sand dredging operation; plans and specifications. Plans for a sand dredging operation from a stream shall include: (a) A general location map or aerial photograph showing the stream, location of the proposed sand dredging operation, section lines, property lines with names and addresses of adjoining landowners, local access roads, a bar scale, a north arrow and any other prominent features;

(b) a plat of the area within which the sand plant will be operated, prepared to a scale of 200 feet per inch, or less, if necessary to show in detail the features of the stream at the location. The plat shall include at least one permanent bench mark. The survey shall also include at least two permanent horizontal control points on a baseline running generally parallel to the stream. These permanent points shall be identified with substantial markers and shall be easily visible in the field. The plat shall show the location of the natural banks on both sides of the stream, all islands, sand bars, and the direction of the stream within the channel. Where county commissioners have established bank lines along a stream in accordance with the provisions of K.S.A. 82a-307a, the location of such established bank lines shall be shown. The plat shall also show the proposed location of the tipple, boundaries of areas from which material will be removed and the area to which rejected material will be returned;

(c) cross sections of the channel, measured along lines at right angles to the general direction of the stream and plotted to a horizontal scale of not more than 200 feet per inch and an appropriate vertical scale. Typical cross sections shall be shown for unobstructed portions of the channel as well as for portions in which islands, sand bars or

other obstructions may be located. The elevation of the top of both banks, the bed of the stream, and the surface of islands and bars shall be shown on the cross sections. The location of lines along which cross sections are measured shall be referred to the baseline and indicated on the plat. All elevations shall be referred to a permanent bench mark, which is referenced to the national geodetic vertical datum of 1929 to a tolerance of plus or minus one half foot; and

(d) a statement of plan of operation. A brief paragraph shall be included explaining the plants usual operating plans. The kind of equipment, pumping capacities, seasonal limitations and any other operational constrictions shall be included. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1987.)

5-43-2. Sand dredging; buffer zone. There shall be a buffer zone of not less than 500 feet between dredging operations, and between dredging operations and all bridges. There shall be a buffer zone of 300 feet between dredging operations and buried pipeline or cable crossings. There shall be a buffer zone of 200 feet between dredging operations and levees, or other features subject to damage by undercutting. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-43-3. Sand dredging; operation. In counties at locations where bank lines have been established on designated streams pursuant to K.S.A. 82a-307, materials shall be removed only between established bank lines. The chief engineer, for good cause, may allow excavation or removal of material landward from established bank lines if approval is also obtained from the board of county commissioners. On navigable streams materials shall be removed only from the channel and in such a manner so as not to degrade the banks. On all other streams, materials shall be removed only from areas and in a manner approved by the chief engineer. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

5-43-4. Sand dredging; operations conflicting. If more than one operator proposes to operate within a given reach of a private stream, then all conflicting applicants shall be required to submit proof of easements or other legal authority to operate. If more than one operator proposes to operate within a given reach of a navigable stream, the chief engineer shall determine which

operators shall be permitted, based on the following criteria: (a) The capability of the applicant's equipment to operate within the desired area;

(b) the applicant's need for the material;

(c) the applicant's existing operation, if any;

(d) the anticipated date the applicant will begin operation;

(e) the applicant's history of operation;

(f) the anticipated plant completion date;

(g) proof of the applicant's easements and right-of-ways necessary to operate;

(h) date of application; and

(i) any other relevant factor. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-302; effective May 1, 1987.)

5-43-5. Sand dredging; operation setback.

Sand dredging operations located outside the channel of a stream shall be set back a minimum of 50 feet from the bank of the channel. There shall be a minimum slope on the sand plant side of not greater than one foot vertical to four feet horizontal. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective May 1, 1987.)

Article 44.—FLOODPLAIN MANAGEMENT

5-44-1. Floodplain management; definitions. As used in these regulations, K.S.A. 12-766, and by the division of water resources in administering K.S.A. 12-766, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section: (a) "Basement" means any area of a building having its floor subgrade (below ground level) on all sides.

(b) "Chief engineer" means the chief engineer of the division of water resources, Kansas state board of agriculture.

(c) "Development" means any man-made change to real estate, including, but not limited to:

(1) buildings or other structures;

(2) mining;

(3) dredging;

(4) filling;

(5) grading;

(6) paving;

(7) excavation or drilling; or

(8) storage of equipment or materials.

(d) "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land from:

(1) the overflow of waters normally confined between the banks of a stream or other watercourse, or

(2) the unusual, rapid accumulation or runoff of surface waters from any source.

(e) "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(f) "Lowest floor" means the lowest enclosed area, including a basement, of a building. An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor.

(g) "Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as:

- (1) the site plan;
- (2) an elevation certificate; and
- (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

(h) "Structure" means a walled and roofed building, a manufactured house, or above ground gas or liquid storage tank.

(i) "Substantially improved" means any reconstruction, rehabilitation, addition to or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement.

(j) "Variance" means a grant of relief by a community from the terms of a floodplain management zoning regulation.

(k) "Flood hazard map" means the document adopted by the governing body showing the limits of:

- (1) the floodplain;
- (2) the floodway;
- (3) streets;
- (4) stream channel; and
- (5) other geographic features. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-2. Floodplain management; conditions for application for approval. Before formal adoption by the governing body of any zoning regulation that establishes a floodplain zone or district, or regulates the development within a floodplain zone or district, the governing body shall apply to the chief engineer for approval of the zoning regulations. The governing body shall also apply to the chief engineer for approval of its

zoning regulation when: (a) the governing body enters into, or alters its status under, the national flood insurance program;

(b) the governing body adopts a new or revised flood hazard map, base flood elevations, flood insurance study, or regulatory floodway;

(c) the governing body annexes areas containing floodplain;

(d) the governing body assumes administrative jurisdiction over the adjacent floodplain areas outside the governing body's boundaries; or

(e) the governing body changes variance procedures used in granting relief from floodplain regulations. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-3. Floodplain management; application for approval of zoning regulations; time limit.

(a) The application for approval of zoning regulations shall consist of:

(1) a letter which:

(A) requests approval by the chief engineer under K.S.A. 12-766 on a proposed effective date, which shall not be prior to the approval by the chief engineer;

(B) proposes the date of adoption by the governing body; and

(C) states the reason for application for approval as enumerated in K.A.R. 5-44-2;

(2) a copy of the full text of the zoning regulation including maps, plans, profiles and specifications adopted by the floodplain management zoning regulations which meet the requirements of K.A.R. 5-44-4.

(b) When all the data required by the chief engineer is received, the chief engineer shall notify the governing body in writing as to the beginning and ending dates of the 90 day statutory time period for review. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-4. Floodplain management; zoning regulations; minimum standards and criteria.

Any zoning regulation which regulates development of floodplains shall include the following minimum standards and criteria: (a) Flood hazard areas shall be identified as follows:

(1) The flood hazard area subject to floodplain management zoning regulation shall be identified by reference to a specific map used to identify the flood hazard. The identification of the map shall

include the preparer of the map and the date it was prepared.

(2) When the flood hazard map is revised and republished with a new effective date, the governing body's floodplain management zoning regulations shall amend the zoning regulations to adopt the new map by reference.

(b) The development standards shall meet or exceed the minimum requirements of the national flood insurance act of 1968, as amended, 42 U.S.C. Section 4001 *et seq.* and the regulations adopted pursuant to that act.

(c) Any development standards adopted by the governing body for which minimal requirements have been set by the chief engineer in K.A.R. 5-45-1 *et seq.* shall meet or exceed the requirements of the chief engineer.

(d) The governing body shall designate a local floodplain administrator by position or job title. The local floodplain administrator's responsibilities shall include:

(1) the review and issuance of floodplain development permits;

(2) the conduct or direction of appropriate inspections;

(3) the maintenance of any records necessary to document compliance with floodplain development permit conditions; and

(4) any other matters deemed appropriate by the governing body.

(e) The governing body shall designate by position or job title an enforcement officer who is responsible to enforce the actions of the local floodplain administrator.

(f) The local floodplain administrator and enforcement officer may be combined in a single position or job title.

(g) If any part of a proposed development is located within the floodplain, an application for floodplain development permit shall be made to the local floodplain administrator. The application for a floodplain development permit shall contain:

(1) Sufficient detail for the local floodplain administrator to determine the nature of proposed development and whether permits or approvals are needed from the governing body, state or federal authorities, especially any permits or approvals that may be required by K.S.A. 24-126 or K.S.A. 82a-301 *et seq.* and their respective regulations; and

(2) Written documentation of adequate protection from damages which could be caused by the base flood.

(h) If the proposed residential development will be located in an area designated as zone AO on a flood insurance rate map (FIRM), any new or substantially improved residential structure shall have the lowest floor (including the basement) elevated above the highest adjacent natural grade at least as high as the depth number specified in feet on the FIRM. If no depth number is specified on the FIRM, it shall be elevated at least two feet above the highest adjacent natural grade.

(i) If the proposed non-residential development will be located in an area designated as zone AO on a FIRM, any new or substantially improved non-residential structure shall be dry flood proofed or elevated to at least as high as the depth number specified in feet on the FIRM above the highest adjacent natural grade. If no depth number is specified on the FIRM, it shall be dry flood proofed or elevated at least two feet above the highest adjacent natural grade.

(j) If zone AO is not specified on the FIRM, or the proposed development will be located in the floodplain outside zone AO, then the lowest floor of any new or substantially improved residential structure shall be elevated at least one foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor.

(k) If zone AO is not specified on the FIRM, or the proposed development will be located in the floodplain outside zone AO, then any new or substantially improved non-residential structure shall be dry flood proofed or elevated to at least one foot above the base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor. If the structure is dry flood proofed, a licensed architect or a licensed professional engineer shall certify that the design and methods of construction of the dry flood proofing meet or exceed the minimum requirements of the national flood insurance act of 1968, as amended, 42 U.S.C. Section 4001 *et seq.* and the regulations adopted pursuant to that act. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-5. Floodplain management; variance procedures. Any floodplain management zoning regulations shall include procedures for the approval of a variance to the floodplain management zoning regulations. The procedures shall stipulate the criteria for a variance and specify when a variance may be granted by the local floodplain administrator, the enforcement officer

or board of zoning appeals. The procedures shall establish a board of zoning appeals for hearing appeals of decisions of the floodplain administrator or enforcement officer and establish the criteria for the appeals. Variances shall not be granted solely to avoid the requirements of a floodplain development permit. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-6. Floodplain management; waiver or stricter requirements. (a) The chief engineer may waive any of the regulations adopted under this article if it is shown to the satisfaction of the chief engineer that waiver of the regulation will not pose a hazard to the public safety and that such waiver is not adverse to the public interest.

(b) The chief engineer may invoke any jurisdiction granted by statute to impose stricter requirements than those required by rules and regulations where such jurisdiction or additional requirements are necessary to protect the public interest, protect the public safety or prevent damage to public or private property. (Authorized by and implementing K.S.A. 12-766; effective, T-5-12-30-91, Jan. 1, 1992; effective Feb. 17, 1992.)

5-44-7. Certification of elevations. Any elevation required to be certified to meet the requirements of this article of regulations may be certified by either a licensed land surveyor or a licensed professional engineer. (Authorized by and implementing K.S.A. 2006 Supp. 12-766; effective May 18, 2007.)

Article 45.—DESIGN OF LEVEES

5-45-1. Levees and floodplain fills; definitions. As used in K.S.A. 24-126 and amendments thereto, in the regulations adopted pursuant to that statute, and by the division of water resources in administering K.S.A. 24-126 and amendments thereto, unless the context clearly requires otherwise, the following words and phrases shall have the meanings specified in this regulation: (a) “Approval” means the written approval of plans and specifications by the chief engineer authorizing the applicant to proceed with the construction and maintenance of a levee or floodplain fill project.

(b) “Authorized representative” means any staff employee designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(c) “Base flood” means a flood having a one percent chance of being equaled or exceeded in any one year.

(d) “Benchmark” means a reference point or object of known elevation and location that is not expected to move horizontally or vertically during the life of the project.

(e) “Chief engineer” means the chief engineer, division of water resources, Kansas department of agriculture.

(f) “Design flood” means a flood having a selected probability of being equaled or exceeded in any one year for the degree of protection required.

(g) “Environmental mitigation” means any of the following:

- (1) Site-specific modification of a project;
- (2) implementation of a practice or management; or

(3) the reservation of a part of the project to protect or replace environmental values destroyed or adversely affected by the project.

(h) “Equal and opposite conveyance” means the location of development offsets from stream banks so that floodplain lands on each side of a stream outside the stream channel convey a share of the flood flows proportionate to the total conveyance available on each respective side of the stream.

(i) “Floodplain” means the land in and adjacent to a stream that is inundated by a base flood.

(j) “Floodplain fill” means material, usually soil, rock, or rubble, that is placed in a floodplain to an average height of greater than one foot above the existing ground and that has the effect of diverting, restricting, or raising the level of floodwaters on a stream.

(k) “Floodway” means the channel of a stream and adjacent land areas that have been determined as being necessary to convey the base flood, as calculated using the minimum requirements of the national flood insurance act of 1968, 42 U.S.C. 4001 et seq., as amended September 23, 1994, and 44 C.F.R. part 59, subpart A, sec. 59.1 and 44 C.F.R. part 60, subpart A, sec. 60.3, as amended October 1, 2007.

(l) “Floodway fill” means floodplain fills, other than a levee, placed wholly or partially within the boundaries of the floodway at locations where the floodway has been identified.

(m) “Floodway fringe” means those portions of a floodplain outside of the boundaries of a regulatory floodway within reaches of a stream where a floodway has been established.

(n) “Floodway fringe fill” means floodplain fills, other than a levee, placed wholly outside the floodway boundaries at locations where the floodway has been identified.

(o) “Geometric analysis” means a determination of the cross-sectional area of a valley below the base flood elevation that will be blocked by a proposed floodplain fill or levee. The resulting area is then divided by the width of the water surface of the base flood at that location. This value is an estimate of how much the proposed project will increase the base flood elevation.

(p) “Levee” means any floodplain fill with an average height of more than one foot above the surrounding terrain constructed generally parallel to a water course and whose purpose is to repel floodwaters.

(q) “Perennial stream” means a stream, or a part of a stream, that flows continuously during all of the calendar year, except during an extended drought.

(r) “Person” means a natural person, partnership, organization, or other similar entity.

(s) “Safety berm” means a linear soil mound, guardrail, or similar traffic barrier located on the bank of a traffic way to prevent a vehicle from overturning or endangering persons in the vehicle.

(t) “Stream” means any watercourse that has a well-defined bed and well-defined banks and that has a watershed above the point in question marking the site of the project that exceeds the following number of acres in the zones specified:

(1) Zone three: 640 acres for all geographic points within any county west of a line formed by the adjoining eastern boundaries of Phillips, Rooks, Ellis, Rush, Pawnee, Edwards, Kiowa, and Comanche counties;

(2) zone two: 320 acres for all geographic points within any county located east of zone three and west of a line formed by the adjoining eastern boundaries of Republic, Cloud, Ottawa, Saline, McPherson, Reno, Kingman, and Harper counties; and

(3) zone one: 240 acres for all geographic points within any county located east of zone two.

The flow of a stream is not necessarily continuous and can occur only briefly after a rain in the watershed. If the site of the project has been altered so that a determination of whether the well-defined bed and banks did exist is not possible, it shall be presumed that the bed and banks did exist if the watershed acreage criteria specified in this subsection have been met, unless the owner of the project conclusively demonstrates that the well-defined bed and banks did not exist

when the project site was in its natural state and had not yet been altered by human activity.

(u) “Unconsolidated material storage stockpile” and “UMSS” mean a collection of material that is placed in a floodplain to an average height of greater than one foot above the existing ground, has the potential to divert, restrict, or cause an unreasonable effect on a base flood, and is one of the following:

(1) A pile of sand or gravel that meets all of the following requirements:

(A) Is not mechanically compacted;

(B) is not cemented together;

(C) is not covered or coated with a substance increasing the structural integrity of the pile; and

(D) is not placed as fill for grading or a foundation; or

(2) a pile of nonsoil material consisting of discrete units meeting all of the following requirements:

(A) Are not fastened or cemented together;

(B) are not anchored to the ground;

(C) are not mechanically compacted; and

(D) are not dense enough or arranged in a manner to resist the hydraulic force of a base flood.

(v) “Unreasonable effect,” if caused by a levee or floodplain fill, means any of the following:

(1) An increase in the elevation of the design and base flood profiles of more than one foot at any location outside a floodway;

(2) any increase in the elevation of the design and base flood profiles within a floodway; or

(3) a cumulative increase of more than one foot in the elevation of the design and base flood profiles.

(w) “Watershed” means all of the area draining toward a selected point on a stream. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992; amended Sept. 22, 2000; amended Oct. 3, 2008.)

5-45-2. Levees and floodplain fills; plans and specifications. Plans for a levee or a floodplain fill must be submitted on clearly legible prints (maximum size 24 inches by 36 inches) of the original tracings which are capable of reproduction. Plans for a levee or a floodplain fill shall include: (a) A general location map or aerial photograph showing:

(1) the stream;

(2) location of the proposed levee or floodplain fill;

(3) floodway limits where available;

- (4) floodplain limits where available;
- (5) section lines;
- (6) property lines with names and addresses of adjoining landowners and any other landowners whose land may be hydraulically affected by the proposed levee or floodplain fill;
- (7) drainage area;
- (8) a bar scale;
- (9) a north arrow;
- (10) existing and proposed surface drainage flow patterns; and
- (11) any other prominent features;
- (b) a detailed plan view fully describing the levee or floodplain fill and the site, including:
 - (1) the design flood elevation and frequency;
 - (2) the base flood or floodplain limits where available;
 - (3) floodway limits where available;
 - (4) two-foot ground contours of the levee or floodplain fill and areas with local drainage problems; and
 - (5) the area reserved for environmental mitigation with a description of any necessary environmental mitigation measures to be implemented, if those measures may affect the hydraulics used to evaluate the project;
 - (c) a profile showing the proposed elevation of the top and base of the levee or floodplain fill, the design flood, the base flood, the stream bed and both banks;
 - (d) an elevation view at the most hydraulically restrictive location in the valley affected by the project, showing the levee or floodplain fill on a cross section of the stream and the valley up to the post project base flood elevation at the site. This cross section shall show:
 - (1) the stream;
 - (2) floodway limits where available;
 - (3) floodplain limits where available;
 - (4) base flood elevation; and
 - (5) design flood elevation;
 - (e) at least one permanent benchmark conveniently located for use after construction. The benchmark shall be placed where it is not likely to be destroyed. A three foot minimum length of pipe or steel driven flush with the ground in an area which is unlikely to be disturbed may be used. Wood or plastic stakes, nails or marks in trees shall not be considered as permanent benchmarks. The location and description of the benchmark shall be shown on the plans. They shall be properly referenced so they can be easily found in the field. The location, description

and elevation of the permanent benchmark shall be shown on the plans. The benchmark may be a benchmark identified in the community's flood insurance rate map if the benchmark is less than 500 feet from the fill. Reference to the national geodetic vertical datum of 1988, or other acceptable national vertical datum, to a tolerance of plus or minus one half foot is required for all levees and floodplain fills on perennial streams. Reference to a tolerance of 0.05 foot is required where detailed floodplain data are available. Project datum is acceptable on all other levee and floodplain fill projects; and

(f) the land for which easements or rights-of-way have been acquired when the proposed levee or floodplain fill will affect land other than that owned by the applicant. (Authorized by and implementing K.S.A. 1991 Supp. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992.)

5-45-3. Levees and floodplain fills; specifications. The specifications for levees and floodplain fills shall be prepared on 8½ by 11 inch sheets of a good grade of white bond paper. The specifications shall be in sufficient detail to assure that the works will be properly executed and shall comply with the currently accepted engineering practices. The specifications shall include provisions for: (a) adequate supervision during the period of construction by a person qualified to design the levee or floodplain fill;

(b) notification of the division of water resources of the status of construction; and

(c) inspection by a representative of the division of water resources. (Authorized by and implementing K.S.A. 24-126 as amended by L. 1991, ch. 56, sec. 27; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992.)

5-45-4. Levees and floodplain fills; preparer of maps, plans, profiles, and specifications. In addition to the requirements of the Kansas board of technical professions, the following requirements shall apply: (a) Each map, plan, profile, and specification submitted to the chief engineer for approval pursuant to K.S.A. 24-126 and amendments thereto shall be prepared by a person who is competent in levee or floodplain fill design and construction.

(b) Map, plans, profiles, and specifications for any of the following described levees and flood-

plain fills shall be prepared by a licensed professional engineer that is competent in levee or floodplain fill design and construction:

- (1) Class C levees;
- (2) floodplain fills located in whole or in part in identified floodways; and
- (3) floodplain fills, except safety berms and UMSSs, that meet the following criteria:
 - (A) Are located in areas without a designated floodway;
 - (B) are greater than 3,200 cubic yards in volume;
 - (C) are more than four feet in height; and
 - (D) are more than 100 feet from other floodplain fills.

(c) No provision of this regulation, and no decision made by the chief engineer pursuant to this regulation, shall alter the responsibilities or duties of any licensee of the Kansas board of technical professions to comply with that board's requirements. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992; amended Sept. 22, 2000; amended Oct. 3, 2008.)

5-45-5. Levees; waiver and stricter requirements. The chief engineer may waive any of the regulations adopted under this article if it is shown to the satisfaction of the chief engineer that the waiver of the regulation will not pose a hazard to the public safety and that the waiver is in the public interest. The chief engineer may also invoke any jurisdiction granted by statute to impose stricter requirements than those required by rules and regulations where such jurisdiction or additional requirements are necessary to protect the public interest, protect the public safety or prevent damage to property. (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987.)

5-45-6. Levees and floodplain fills; other maps, plans, profiles, data and specifications. The applicant shall also submit any other maps, plans, profiles and specifications of the levee or floodplain fill project and any other data which the chief engineer may require. (Authorized by and implementing K.S.A. 24-126 as amended by L. 1991, ch. 56, sec. 27; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992.)

5-45-7. Levees and floodplain fills; application. (a) The application for approval of plans to construct a levee or floodplain fill shall be filed

on the form(s) prescribed by the chief engineer, including application supplements, and shall be completed in proper form according to the instructions. To be complete, the application shall include:

- (1) application DWR No. 3-100.1;
- (2) the application supplement, DWR Form No. 2-102;
- (3) plans fully complying with requirements of K.A.R. 5-45-2;
- (4) specifications fully complying with requirements of K.A.R. 5-45-3; and
- (5) a copy of an application to the governing body for a floodplain development permit, if the proposed levee or floodplain fill will change the limits of the floodplain or floodway boundaries, or both.

(b) The statutory time limit on the chief engineer's deliberation for approval for floodway fringe fills shall not begin until the application is complete. When such a floodway fringe fill application is received by the chief engineer, it will be reviewed to determine whether or not it is complete. If the application is complete, the chief engineer will notify the applicant when the 90-day review period began and will end. If the application is not complete, the additional information will be requested and the applicant informed that the 90-day statutory review period has not yet begun. For a floodway fringe fill application, when comments are received as a result of the water projects environmental coordination act review under K.S.A. 82a-325, et seq., which require modification of the plans, the 90-day statutory time limit shall be suspended from the time the modifications are requested by the chief engineer until satisfactory modifications of the plans are received by the division of water resources. When the appropriate modifications have been received, the 90-day time limit will begin again with the same number of days remaining as were remaining at the time of the suspension. The applicant shall be notified in writing as to the dates of the suspension and restart of the 90-day time limit. (Authorized by and implementing K.S.A. 1991 Supp. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992.)

5-45-8. Levees; hazard classes. The following levee hazard classes are established: (a) Class A levee—failure of levee may allow damage to farm buildings, limited agricultural grounds or private roads.

(b) Class B levee—failure of levee may endanger extensive agricultural land, or damage isolated homes, secondary highways or minor railroads.

(c) Class C levee—failure of levee may cause loss of life, or cause serious damage to private, commercial or public property. (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987.)

5-45-9. Levees; design storm flow determination. (a) In determining design storm flow magnitude, the applicant shall use an accepted engineering method.

(b) For drainage areas of less than 2 square miles the following methods are acceptable, where appropriate: (1) The rational formula for flow magnitude determination when used according to the following formula:

$$Q = CIA$$

where C = the runoff coefficient
I = intensity of rainfall in inches per hour and
A = drainage area in acres

To determine the proper intensity of rainfall for use with the formula, first determine the appropriate total rainfall from “Technical Paper Number 40, Rainfall Frequency Atlas of the United States, *Department of Commerce*, May 1961,” and the time of concentration from the Kirpich nomograph and then obtain the intensity from the standard rainfall intensity-duration curves;

(2) The SCS method for estimating direct runoff, United States department of agriculture, soil conservation service;

(3) “Technical Release 55, Hydrology for Urban Areas, *United States Department of Agriculture, Soil Conservation Service*.”

(c) For drainage areas two square miles or greater, the following methods of determining flow magnitude shall be acceptable, where appropriate: (1) the publication “Magnitude and Frequency of Floods in Kansas, Unregulated Streams, Technical Report 11, *Kansas Water Resources Board*, February 1975”;

(2) “Technical Release 20, Computer Program for Project Formulation, Hydrology, *United States Department of Agriculture, Soil Conservation Service*”; or

(3) “HEC-1 Flood Hydrograph Package, *Corps of Engineers Hydrologic Engineering Center*.” (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987.)

5-45-10. Levees; design criteria. Design for levees shall meet or exceed the following criteria: (a) Class A levee—the levee shall safely repel the appropriate design storm.

(b) Class B levee—the levee shall safely repel at least the ten year design storm.

(c) Class C levee—the levee shall safely repel at least the 100 year design storm. For class C levees the applicant shall submit complete water surface water profiles of both the ten and 100 year events, both before and after construction. (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987.)

5-45-11. Levees; freeboard requirements. (a) Levees not within a floodway designated by the chief engineer are required to have the following freeboard:

Design flood frequency	Freeboard required
10 years	1 foot
25 years	2 feet
50 years or more	3 feet

(b) Levees constructed within a floodway designated by the chief engineer shall have a freeboard requirement designated on a site specific basis. (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987.)

5-45-12. Levees and floodplain fills; setback. Except for highway and road crossings of streams, the minimum setback distance from the top of the stream bank to the nearest toe of the levee or the edge of the floodplain fill shall be 100 feet, or twice the width of the stream measured from the top of one bank to the top of the opposite bank, whichever distance is less, unless the applicant demonstrates that adequate bank protection will be utilized. (Authorized by and implementing K.S.A. 1991 Supp. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992.)

5-45-13. Levees; floodplain fills; unreasonable effect. (a) Except as set forth in subsection (b), no plans for any levee or floodplain fill that has an unreasonable effect on another shall be approved by the chief engineer. An unreasonable effect caused by a levee or floodplain fill shall be deemed any of the following:

(1) An increase in the elevation of the design and base flood profiles of more than one foot at any location outside a floodway;

(2) any increase in the elevation of the design and base flood profiles within a floodway; or

(3) a cumulative increase of more than one foot in the elevation of the design and base flood profiles.

(b) A levee or floodplain fill that has an unreasonable effect on another may be approved by the chief engineer subject to any conditions necessary to protect the public interest if either of the following criteria is met:

(1) The applicant demonstrates to the chief engineer that the applicant has obtained legal authorization from any landowner whose land is unreasonably hydraulically affected by a greater increase in the elevation of the design and base flood profile.

(2) The following conditions are met:

(A) The owner of the undeveloped, unplatted land that will be hydraulically affected by an increase in the design and base flood profiles of more than one foot by a federal or state cost-shared roadfill, bridge, or culvert replacement project has been notified of the proposed hydraulic effects by the chief engineer.

(B) The owner has failed to object within the time limit set forth in the notice.

(C) The chief engineer determines that the increase will not be likely to materially damage the private or public property. (Authorized by and implementing K.S.A. 24-126; effective May 1, 1987; amended, T-5-12-30-91, Jan. 1, 1992; amended April 27, 1992; amended Sept. 22, 2000.)

5-45-14. Levees and floodplain fills; hydrologic and hydraulic analysis. (a) The applicant shall submit a hydrologic and hydraulic analysis for every levee and floodplain fill project except floodway fringe fill projects and those levee projects and floodplain fill projects not identified in K.A.R. 5-45-4(b). The hydrologic and hydraulic analysis shall include the design and base floods for main streams, tributary streams, and local drainage, describing the existing and proposed conditions with the application and plans.

(b) The effect of a proposed levee or floodplain fill shall be calculated by the technique of equal conveyance reduction, except as provided in subsections (c) and (d), unless it meets either of the following criteria:

(1) The applicant demonstrates that the applicant has obtained legal authorization from any landowner whose land is unreasonably hydraulically affected by a greater encroachment toward the channel.

(2) The following conditions are met:

(A) The owner of the undeveloped, unplatted land that will be hydraulically affected by an increase in the elevation of the base flood profile of more than one foot by a federal or state cost-shared roadfill, bridge, or culvert project has been notified of the proposed hydraulic effects by the chief engineer.

(B) The owner has failed to object within the time limit set forth in the notice.

(C) The chief engineer determines that the increase will not be likely to materially damage the private or public property.

(c) For a class A or class B levee, the effect of the proposed levee on the design flood profile shall be evaluated with the assumption that an equal setback levee is in place on the opposite side of the stream.

(d) For a class C levee, the effect of the proposed levee on the design flood profile shall be calculated by the technique of equal conveyance reduction from the outer floodplain limits outside the channel, unless the applicant demonstrates that the applicant has obtained legal authorization from all landowners whose land would be unreasonably hydraulically affected by a greater encroachment toward the channel. (Authorized by and implementing K.S.A. 24-126; effective, T-5-12-30-91, Jan. 1, 1992; effective April 27, 1992; amended Sept. 22, 2000.)

5-45-15. Floodplain fills; design criteria.

Floodplain fills shall meet or exceed the following design criteria: (a) The sideslopes shall not be steeper than one vertical to three horizontal, unless the applicant submits data and analysis to show that a steeper slope will be stable.

(b) Floodplain fills shall be adequately protected from erosion and undermining from floods up to the level of the base flood elevation and surface drainage by the use of vegetative cover, riprap or other means.

(c) Floodplain fills shall not unreasonably obstruct or divert the flow of surface water and other waters from the main stream and tributaries to the main stream to the detriment of adjacent or hydraulically affected property owners.

(d) Floodplain fills shall not obstruct utility or other easements without proper authorization.

(e) Floodplain fills shall not unreasonably affect the environment without adequate environmental mitigation.

(f) Floodplain fills, other than levees, for residential buildings, including manufactured hous-

ing, are required to be of adequate height to raise the lowest floor, including the basement, at least one foot above the base flood elevation, unless:

(1) an exception has been granted by the flood insurance administrator of the flood insurance administration within the FEMA for the allowance of a basement; or

(2) the chief engineer has approved a community standard at or above base flood elevation.

(g) Floodplain fills other than levees for sewage lagoons and sanitary landfills are required to have at least one foot of freeboard above the base flood.

(h) Except for fills for highways and roads, all other floodplain fills other than levees are required to have at least one foot of freeboard above the design flood.

(i) If subsequent to approval of the floodplain fill by the chief engineer, a letter of map revision or letter of amendment is obtained from FEMA removing an area of the approved or permitted fill from the floodplain, then any permit or approval issued by the chief engineer no longer applies to that area removed from the floodplain. (Authorized by and implementing K.S.A. 1991 Supp. 24-126; effective, T-5-12-30-91, Jan. 1, 1992; effective April 27, 1992.)

5-45-16. Floodplain fills; disapproval. (a) A levee or floodplain fill should not have an unreasonable effect on adjacent landowners, be adverse to the public interest and environmental concerns or lack required environmental mitigation.

(b) Within six months of the disapproval, the applicant may make a written request to the chief engineer to rescind the disapproval by providing information or modifications of the plans requested by the chief engineer. (Authorized by and implementing K.S.A. 24-126 as amended by L. 1991, ch. 56, sec. 27; effective, T-5-12-30-91, Jan. 1, 1992; effective April 27, 1992.)

5-45-17. Exemption—floodway fringe fills. Floodway fringe fills are exempt from applying for and obtaining approval from the chief engineer if: (a) they are:

- (1) up to 1600 cubic yards in size;
- (2) with a maximum height of two feet;
- (3) more than 100 feet away from other floodplain fills; and
- (4) constructed according to the design criteria in K.A.R. 5-45-15; or

(b) they are located in communities which have adopted local standards for floodway fringe fills

approved by the chief engineer which meet or exceed the standards adopted by the chief engineer for individual floodway fringe fills. The standards shall include an appeal process, an environmental assessment and a review of local drainage. (Authorized by and implementing K.S.A. 1991 Supp. 24-126; effective, T-5-12-30-91, Jan. 1, 1992; effective April 27, 1992.)

5-45-18. Floodplain fills; incidental to bridge and culvert replacement projects. Each floodplain fill constructed incidental to a bridge or culvert replacement project that otherwise meets the requirements of K.A.R. 5-46-1 shall be considered to have the necessary approval of plans pursuant to K.S.A. 24-126, and amendments thereto, and article 45 of the rules and regulations adopted by the Kansas department of agriculture, division of water resources. (Authorized by and implementing K.S.A. 24-126; effective Sept. 22, 2000.)

5-45-19. Unconsolidated material storage stockpiles and safety berms. Except as provided in K.A.R. 5-45-21 and K.A.R. 5-45-22, the prior written approval of the chief engineer shall be required before placing an unconsolidated material storage stockpile in a floodplain or constructing a safety berm in a floodplain. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective Oct. 3, 2008.)

5-45-20. Application to place an unconsolidated material storage stockpile or safety berm. (a) In lieu of the maps, plans, profiles, data, and specifications required for other floodplain fills, each request for approval to place an unconsolidated material storage stockpile (UMSS) or safety berm shall contain the following:

(1) A completed application filed on a form prescribed by the chief engineer; and

(2) the statutorily required filing fee.

(b) If the proposed UMSS or safety berm will be constructed wholly or partially within a floodway, the request for approval shall also contain a copy of the no-rise certification, hydraulic analysis, maps, cross sections, and other supporting information required for local governmental approval of a floodway fill pursuant to the following:

(1) 44 C.F.R. 60.3, dated October 1, 2007; and

(2) the "procedures for 'no-rise' certification for proposed development in the regulatory floodway," dated October 12, 1995, by the federal emergency management agency (FEMA), region VII.

(c) If the proposed UMSS or safety berm will be constructed completely outside a floodway, the request for approval shall also contain the following:

(1) A map or aerial photograph with a scale of not less than one to 3,600 showing the location and extent of the proposed UMSS or safety berm during the initial year of operation and the location and maximum aerial extent of the proposed UMSS or safety berm over the life of the project;

(2) a scale drawing of a cross section of the floodplain perpendicular to the stream showing the following:

(A) The streambed;

(B) the ground surface;

(C) levees and other features defining the edges of the floodplain;

(D) the base flood elevation; and

(E) the location of any other levees, floodplain fills, UMSSs, and safety berms at or below the base flood elevation and located within five times the width of the water surface during the base flood or 1,320 feet, whichever is less, of the proposed project both upstream and downstream from the boundaries of the proposed project superimposed on the cross section, using the centerline of the stream as the horizontal reference; and

(3) a geometric analysis, or a more accurate hydraulic analysis, showing that the proposed UMSS or safety berm will not cause an unreasonable effect. The geometric or more accurate analysis shall include the cumulative effects of all existing and proposed levees, floodplain fills, UMSSs, and safety berms located within five times the width of the water surface or 1,320 feet, whichever is less, of the proposed project both upstream and downstream from the boundaries of the proposed project. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective Oct. 3, 2008.)

5-45-21. Safety berm. A safety berm shall not be deemed a levee or any other such improvement subject to regulation pursuant to K.S.A. 24-126, and amendments thereto, if the safety berm meets one of the conditions in subsection (a) and all of the requirements in subsection (b). (a)(1) The safety berm is a guardrail that would not divert, restrict, or raise the floodwaters of a stream.

(2) The safety berm is at least six inches below the base flood elevation.

(3) The safety berm will contain gaps from the ground surface to the top of the berm spaced at intervals of 100 feet or less. The gaps shall be suf-

ficiently wide to allow floodwaters to breach the safety berm.

(b) The safety berm meets the following requirements:

(1) Does not obstruct normal streamflow;

(2) does not redirect normal streamflow;

(3) does not block culverts and drainage channels; and

(4) does not cause other hydraulic problems, including causing an unreasonable effect. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective Oct. 3, 2008.)

5-45-22. Unconsolidated material storage stockpile. An unconsolidated material storage stockpile (UMSS) may exist in a floodplain without the approval of the chief engineer if the UMSS meets one of the conditions in subsection (a) and all of the requirements of subsection (b).

(a)(1) The UMSS existed before 1929.

(2) In counties or cities with flood insurance rate maps, the UMSS existed before the creation of the most recent flood hazard map, and the UMSS's impact on flooding was analyzed in creating the map.

(3) The UMSS existed before January 1, 2006 at a sand and gravel mining site.

(4) The UMSS is located outside a floodway and meets both of the following conditions:

(A) The UMSS will be present at that location for less than 270 days.

(B) The site will be restored to its original condition within 90 days after the UMSS is removed.

(b) The UMSS meets the following requirements:

(1) Does not obstruct normal streamflow;

(2) does not redirect normal streamflow;

(3) does not block culverts and drainage channels; and

(4) does not cause other hydraulic problems, including an unreasonable effect.

(c) Each UMSS that is not a levee or any other such improvement subject to regulation pursuant to K.S.A. 24-126, and amendments thereto, except a temporary UMSS meeting the standards of paragraph (a)(4), shall become subject to regulation when the areal extent of the UMSS increases or the location changes in whole or in part. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective Oct. 3, 2008.)

5-45-23. Use of geometric analysis. (a)

(1) A geometric analysis shall not be used if any existing or proposed levees or floodplain fills are

located, or proposed to be located, within the lesser of the following distances measured from the boundaries of the proposed levee or floodplain fill:

(A) Five times the width of the water surface during a base flood, as measured both upstream and downstream; and

(B) 1,320 feet, as measured both upstream and downstream.

(2) The prohibition specified in paragraph (a) shall not apply if the applicant demonstrates that the effects of the existing or proposed levee or floodplain fill projects are included in the analysis in a technically valid manner.

(b) If the geometric analysis shows that the increase in the base flood elevation that will be caused by the proposed project will cause an unreasonable effect, the applicant shall meet one of the following requirements:

(1) Submit a hydrologic analysis meeting the requirements of K.A.R. 5-45-14 and demonstrating that the proposed project will not cause an unreasonable effect, as determined by the geometric analysis; or

(2) modify the design of the proposed floodplain fill or levee so that the proposed project will not cause an unreasonable effect, as determined by the applicant's geometric or hydrologic analysis. If the project cannot be modified so that it will not cause an unreasonable effect, the application for the approval shall be denied. (Authorized by and implementing K.S.A. 2007 Supp. 24-126; effective Oct. 3, 2008.)

Article 46.—GENERAL PERMITS

5-46-1. General permits; bridge and culvert replacement projects. (a) Except as provided in subsection (e), the construction of any bridge or culvert replacement project with a watershed of 2,560 or more acres in zone one, 3,840 or more acres in zone two, and 5,120 or more acres in zone three shall meet the criteria in subsection (c) of this regulation. Before construction, the applicant shall apply for and obtain a general permit from the chief engineer. The application shall be filed on a form prescribed by the chief engineer and shall be accompanied by plans or sketches meeting the requirements of K.A.R. 5-42-2.

(b) Except as provided in subsection (e), the construction of any bridge or culvert replacement project with a watershed of fewer than 2,560 acres in zone one, 3,840 acres in zone two, and 5,120

acres in zone three shall meet the criteria in subsection (c) of this regulation. Before construction, the applicant shall properly complete an application for, and receive the consent of, the chief engineer. The application shall be filed on a form prescribed by the chief engineer.

(c) Each bridge replacement and culvert replacement project shall meet all of the following criteria:

(1) The project shall not be a change either in alignment or in the cross section of a stream of more than 200 feet in length on minor streams, and not more than 400 feet in length on moderate or major streams as measured along the original channel. A minor stream is defined as a stream or watercourse that has a mean annual flow of less than five cubic feet per second (cfs). The major streams are the Kansas River, the Arkansas River, and the Missouri River. A moderate stream is defined as a stream or watercourse with a mean annual flow equal to or greater than five cfs, but is not a major stream.

(2) The proposed culvert or bridge replacement shall have the following:

(A) A cross-sectional area at least equivalent to that of the original bridge or culvert for water to flow over, through or around; and

(B) a road grade across the floodplain and approaching the bridge or culvert that is not raised by more than an average of one foot. The average rise of the road grade shall be calculated by measuring the difference between the proposed grade and the existing grade at the beginning and end of each interval of 100 or fewer feet, dividing the sum of the two differences by two and multiplying the mean by the number of feet in the interval. The sum of these calculations from each interval shall then be added together and the total sum divided by the length, in feet, of the road alteration. The average road grade shall not increase by a cumulative amount of more than one foot since April 11, 1978.

(3) A vegetative strip measuring 50 feet from the bank and outward on each side of a channel change shall be maintained in a manner consistent with the existing riparian vegetation and other design criteria.

(4) The project shall not alter the channel's cross-sectional area by more than 15 percent, nor shall it alter the channel length by more than 10 percent.

(d) If any bridge or culvert replacement project does not meet the requirements of this regulation,

the applicant may apply for a nongeneral permit pursuant to K.S.A. 82a-301 et seq., and amendment thereto, before construction.

(e) If any bridge or culvert replacement project does not meet the requirements of this regulation or the chief engineer determines that the project may have an unreasonable effect on the public interest, public safety, or environmental interests, the right to perform the following shall be reserved by the chief engineer:

(1) Require a general permit meeting the requirements of this regulation or a nongeneral permit meeting the requirements of K.S.A. 82a-301 et seq., and amendment thereto, before construction; and

(2) amend, modify, or revoke the prior general permit or consent issued in accordance with this regulation. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective Sept. 22, 2000.)

5-46-3. General permits; sand and gravel removal operations. (a) Before the commencement or continuation of any sand or gravel removal from a site with a drainage area of 50 or more square miles above the site, the removal operation shall meet the criteria in subsection (c) of this regulation. Before the removal of any sand and gravel, the owner shall apply for and obtain a general permit from the chief engineer. The application shall be filed on a form prescribed by the chief engineer and shall be accompanied by plans meeting the requirements of K.A.R. 5-42-2.

(b) If the proposed sand or gravel removal operation meets the criteria set forth in subsection (c) of this regulation and there are fewer than 50 square miles of drainage area above the proposed sand or gravel removal site, a permit shall not be required unless the chief engineer determines that a permit is necessary to protect the public interest, public safety, or environmental interests.

(c) All sand and gravel operations covered by this regulation shall meet the following criteria:

(1) The sand and gravel removal operation shall be limited to removing a maximum of 100 cubic yards per year from each sand and gravel removal site. Other than bridge maintenance sites, all sand and gravel removal operations on the same stream and its tributaries shall be separated by at least 1,320 feet.

(2) A sand and gravel removal operation shall not be located within the following distances of a bridge, pipeline, cable crossing, levee, or other feature, except when the written permission or easement of the owner of the bridge, pipeline, ca-

ble crossing, levee, or other feature is obtained by the applicant, and a written waiver is granted by the chief engineer:

(A) 50 feet of the banks, or in the channels of the Missouri, Kansas, or Arkansas rivers, and 50 feet of the banks, or in the channels of their tributaries, for ½ mile upstream from the mouth of the tributaries;

(B) one mile of a public water supply intake;

(C) 500 feet of a bridge;

(D) 300 feet of a buried pipeline or cable crossing; and

(E) 200 feet of a levee or other feature subject to damage.

(3) Stockpiles of material shall be located in a manner that does not affect the flow of water on the property of any other landowner.

(d) If any sand or gravel removal operation covered by this regulation does not meet the requirements of this regulation, or if the chief engineer determines that the operation may have an unreasonable effect on the public interest, public safety, or environmental interests, the right to perform the following shall be reserved by the chief engineer:

(1) Require a nongeneral permit pursuant to K.S.A. 82a-301 et seq., and amendments thereto; and

(2) amend, modify, or revoke the general permit issued in accordance with this regulation. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective Sept. 22, 2000.)

5-46-4. General permits; pipeline crossings. (a) Before the construction of any pipeline or buried cable crossing of a stream having 50 or more square miles of drainage area above the proposed project site, the project shall meet the requirements of subsection (c) of this regulation. Before construction, the owner shall apply for and obtain a general permit from the chief engineer. The application shall be filed on a form prescribed by the chief engineer.

(b) Any pipeline or buried cable crossings of streams that have fewer than 50 square miles of drainage area above the proposed project site and that meet the requirements of subsection (c) of this regulation shall not be required to have a permit pursuant to K.S.A. 82a-301 et seq., and amendments thereto.

(c) All pipeline or buried cable crossings covered by this regulation shall meet the following requirements:

(1) Underground pipelines and cables shall be buried at a depth below the stream bed sufficient to prevent exposure. For navigable streams, underground pipelines and cables shall be buried at a minimum depth of seven feet beneath the stream bed. For all other streams, underground pipelines and cables shall be buried at a minimum depth of five feet beneath the stream bed. Pipelines and cables shall be buried sufficiently into the banks to allow for a moderate amount of stream meander without exposure. The minimum depth may be waived if the owner or applicant demonstrates that the underground pipeline or cable is adequately protected against erosion.

(2) After installation, the channel and banks shall be restored to the natural elevations and configurations as nearly as possible. Armoring devices shall be installed when necessary to ensure bank stability. Surplus excavated material shall be disposed of in a manner that will not obstruct the channel or act as a levee.

(d) If any pipeline or buried cable crossing covered by this regulation does not meet the requirements of this regulation, or if the chief engineer determines that a pipeline or cable crossing may have an unreasonable effect on the public interest, public safety, or environmental interests, the right to perform the following shall be reserved by the chief engineer:

(1) Require a nongeneral permit pursuant to K.S.A. 82a-301 et seq., and amendments thereto; and

(2) amend, modify, or revoke the general permit issued in accordance with this regulation. (Authorized by K.S.A. 82a-303a; implementing K.S.A. 82a-303; effective Sept. 22, 2000.)

Article 50.—WATER TRANSFERS

5-50-1. Definitions. As used in these rules and regulations, unless the context clearly requires otherwise: (a) “Application” means the document, made on the prescribed form furnished by the chief engineer, to request a permit to transfer water. The application shall be filed in the office of the chief engineer as provided in K.S.A. 82a-1501 et seq., as amended.

(b) “Approval of application” means issuance of a permit to transfer water as defined in K.S.A. 82a-1501(a)(1), as amended. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1501; effective May 1, 1984; amended Dec. 27, 1996.)

5-50-2. Requirements for application. To be complete, a water transfer application shall show the following: (a) the name and mailing address of the applicant;

(b) the maximum quantity of water proposed to be transferred in a calendar year and the proposed maximum diversion rate;

(c) the location of the proposed point or points of diversion;

(d) the location of the proposed point or points of use;

(e) the proposed use made of the water;

(f) any economically and technologically feasible alternative source or sources of supply available to the applicant and to any other present or future users of the water proposed to be transferred. The water transfer application shall specify why this source of supply was selected over the alternative sources available;

(g) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point or points of diversion to the proposed point or points of use. The proposed plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer;

(h) the estimated date for completion of the infrastructure and initial operation thereof;

(i) that the benefits to the state if the transfer is approved outweigh the benefits to the state if the transfer is not approved;

(j) that the proposed transfer will not impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water;

(k) any current beneficial use of the water that is proposed to be transferred, including minimum desirable streamflow requirements;

(l) any reasonably foreseeable future beneficial use of the water;

(m) the economic, environmental, public health and welfare, and other impacts of approving or denying the transfer of water;

(n) any and all measures the applicant has taken to preserve the quality and remediate any contamination of water currently available for use by the applicant;

(o) the provisions of a revised management program adopted by a groundwater management district that are applicable to the proposed transfer whenever any of the proposed points of diversion are located within a groundwater management district;

(p) whether or not the applicant, and any entity to be supplied water by the applicant, have adopted and implemented conservation plans and practices that fulfill the following requirements:

(1) are consistent with guidelines developed and maintained by the Kansas water office, pursuant to K.S.A. 74-2608 and its amendments;

(2) have been in effect for not less than 12 consecutive months immediately before the filing of this water transfer application; and

(3) provide for a rate structure that encourages efficient use of water and results in conservation and wise, responsible use of water, if the transfer is for use by a public water supply system;

(q) the effectiveness of conservation plans and practices that have been adopted and implemented by the applicant and any other entities to be supplied water by the applicant;

(r) if applicable, population projections for any public water supply system that will be supplied by the water transfer, and the basis for those projections;

(s) the projected water needs of the applicant and of any other entities to be supplied water by the applicant, and the basis for those projections;

(t) plans for any environmental mitigation made necessary by the proposed water transfer;

(u) a list of other federal, state and local permits necessary to complete the proposed water transfer and the projected dates they will be obtained;

(v) the current per capita per day usage of any public water supply user to be supplied water by the applicant, and the current average per capita per day usage of other similar users in a region of the state that is climatically similar. If the applicant's per capita per day usage exceeds the regional average, the applicant shall show why its per capita per day usage is reasonable.

(w) the projected per capita per day usage of any public water supply user to be supplied water by the applicant;

(x) a copy of the following contingently approved documents:

(1) a permit to appropriate water;

(2) an application for change in any or all of the following:

(A) the place of use;

(B) the type of use;

(C) point of diversion; or

(3) a contract to purchase water pursuant to the state water plan storage act;

(y) pursuant to K.A.R. 28-16-28b and K.A.R. 28-16-28d, the impacts of the proposed transfer on the water quality and designated uses of any stream that may be affected by the proposed transfer; and

(z) any additional factors that may be required by the chief engineer. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1503; effective May 1, 1984; amended Dec. 27, 1996.)

5-50-3. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1503; effective May 1, 1984; revoked Dec. 27, 1996.)

5-50-4. Emergency use. When a temporary emergency transfer of water has been approved, the chief engineer shall: (a) Require the applicant to compile and submit records, as necessary, regarding the daily rate and quantity of water transferred and any other information pertinent to the continued need for emergency transfer; and

(b) require the person requesting the transfer to consider alternate sources of water so the continued transfer will not be necessary. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1502; effective May 1, 1984; amended Dec. 27, 1996.)

5-50-5. Emergency transfer of water. If the emergency causing the necessity for the transfer of water continues beyond one year, the person requesting the transfer may only file another new application for transfer for emergency use. This new application shall state the need for the water and the reasons why the need for transfer of water still exists and cannot be supplied by an alternate source. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1502; effective May 1, 1984; amended Dec. 27, 1996.)

5-50-6. Authority of the chief engineer. All emergency transfers of water shall be reviewed by the chief engineer to determine whether the applicant complied with the terms, conditions, and limitations of the emergency transfer approval. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1503; effective May 1, 1984; amended Dec. 27, 1996.)

5-50-7. Filing an application. Unless this requirement is waived by the chief engineer for

good cause, a water transfer application shall not be considered complete until one of the following has been approved contingent upon receiving a permit to transfer water: (a) a new application to appropriate water pursuant to the Kansas water appropriation act (KWAA), K.S.A. 82a-701 *et seq.*;

(b) an application for a change in any or all of the following:

- (1) point of diversion;
- (2) place of use; or
- (3) use made of water filed pursuant to the

KWAA; or

(c) a contract for the purchase of water pursuant to the state water plan storage act, K.S.A. 82a-1301, *et seq.* (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1503; effective Dec. 27, 1996.)

5-50-8. Selection of hearing officer. (a)

The panel shall mail notices to, and request nominations for a hearing officer from:

- (1) the applicant;
- (2) entities in the area or basin where the potential point or points of diversion are located; and
- (3) the commenting agencies.

(b) The panel shall also publish one notice in the Kansas register requesting nominations for a hearing officer. The panel shall allow 30 days following the notice for the nominations to be submitted.

(c) After the 30-day notice period has expired, the panel shall meet to consider the nominations and select an independent hearing officer. (Authorized by K.S.A. 82a-1506; implementing K.S.A. 1995 Supp. 82a-1501a; effective Dec. 27, 1996.)

Agency 6

State Election Board

Articles

6-1. APPORTIONMENT OF ELECTION EXPENSES.

Article 1.—APPORTIONMENT OF ELECTION EXPENSES

6-1-1. Direct expenses. (a) The direct expenses which shall be apportioned by the county election officer among the subdivisions of government for which elections are conducted shall be those which would not have been incurred but for the conduct of such election, and shall include:

- (1) Publication of legal notices.
- (2) Printing of ballots and preparation of voting machines.
- (3) Transportation of voting machines.
- (4) Postage.
- (5) Rental of polling places, clean-up and similar expenses incurred in the provision of voting places.
- (6) Cost of poll books, summary sheets, clerical supplies used at polling places.
- (7) Transportation of ballots, delivery of supplies to voting places.
- (8) Election judges and clerks.

(b) The cost of printing of ballots shall be apportioned equally among the subdivisions of govern-

ment for which ballots are printed, without regard to the length of such respective ballots.

(c) The costs of voting places and election board members shall be borne equally by the subdivisions of government for which elections are conducted at such voting places.

(1) Where voting places are required for one or more, but less than all subdivisions of government, because the geographical areas of all subdivisions are not coextensive, the direct costs of such voting places shall be apportioned only among the subdivisions for which elections are conducted thereat. (Authorized by K.S.A. 25-2203; effective, E-73-18, July 1, 1973; effective Jan. 1, 1974.)

6-1-2. Indirect costs. Indirect costs which shall not be reimbursed nor apportioned shall include the following:

- (a) Costs of regular and temporary county election office employees.
- (b) Charges for the use of voting machines.
- (c) Preparation and/or furnishing of maps.
- (d) Costs of rental of office equipment for use in election offices. (Authorized by K.S.A. 25-2203; effective, E-73-18, July 1, 1973; effective Jan. 1, 1974.)

Agency 7

Secretary of State

Articles

- 7-16. FEES.
- 7-17. UNIFORM COMMERCIAL CODE.
- 7-18. KANSAS ATHLETE AGENT ACT. (*Not in active use.*)
- 7-19. ELECTRONIC FILING. (*Not in active use.*)
- 7-20. CHANGING HOURS OF ELECTIONS.
- 7-21. VOTING EQUIPMENT.
- 7-22. SCHOOL ELECTIONS. (*Not in active use.*)
- 7-23. VOTER REGISTRATION.
- 7-24. SUPPLIES FOR VOTING PLACES.
- 7-25. ABSTRACTS OF VOTES CAST.
- 7-26. CERTIFICATES OF NOMINATION AND ELECTION.
- 7-27. PARTY AFFILIATION.
- 7-28. SUFFICIENCY OF PETITIONS.
- 7-29. BALLOTS.
- 7-30. SESSION LAWS.
- 7-31. LAND SURVEYS. (*Not in active use.*)
- 7-32. LAW BOOKS.
- 7-33. INFORMATION FEES.
- 7-34. CORPORATION FILING FEES.
- 7-35. CENSUS ADJUSTMENT.
- 7-36. ABSENTEE AND ADVANCE VOTING.
- 7-37. MOTOR VOTER.
- 7-38. NATIONAL VOTER REGISTRATION ACT.
- 7-39. UNIFORM PARTNERSHIP ACT.
- 7-40. REVISED KANSAS TRADEMARK ACT.
- 7-41. KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT.
- 7-42. CHARITABLE ORGANIZATIONS.
- 7-43. NOTARIES PUBLIC.
- 7-44. ADDRESS CONFIDENTIALITY PROGRAM.
- 7-45. ELECTION BOARD WORKERS.
- 7-46. PHOTOGRAPHIC IDENTIFICATION REQUIREMENTS.
- 7-47. ELECTION AUDITS.
- 7-48. VOTE CENTERS.

Article 16.—FEES

7-16-1. Information and services fee. In addition to any other fees specified in regulation or statute, the fees prescribed in the secretary of state's "schedule of information and services fees," dated May 27, 2010 and hereby adopted by reference, shall be charged by the secretary of state. (Authorized by and implementing K.S.A. 2009

Supp. 75-438 and L. 2009, ch. 47, sec. 35; effective, T-7-7-1-03, July 1, 2003; effective Oct. 10, 2003; amended Oct. 31, 2008; amended, T-7-7-1-10, July 1, 2010; amended Sept. 10, 2010.)

7-16-2. Technology communication fee. In addition to any other fees specified in regulation or statute, the fees prescribed in the secretary of state's "schedule of technology com-

munication fees,” dated October 1, 2008 and hereby adopted by reference, shall be charged by the secretary of state. (Authorized by and implementing K.S.A. 2007 Supp. 75-444; effective, T-7-7-1-03, July 1, 2003; effective Oct. 10, 2003; amended Oct. 31, 2008.)

Article 17.—UNIFORM COMMERCIAL CODE

7-17-1. Definitions. (a) “Address,” as used on a UCC record, means at least a city and state or a city and country.

(b) “Amendment” means a UCC record that changes the information contained in a financing statement. This term shall include assignments, continuation statements, and termination statements.

(c) “Assignment” means an amendment that assigns all or a part of a secured party’s power to authorize an amendment to a financing statement.

(d) “Continuation statement” shall have the meaning prescribed by K.S.A. 84-9-102(a)(27) and amendments thereto.

(e) “Correction statement” means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(f) “File number” shall have the meaning prescribed by K.S.A. 84-9-519(b) and amendments thereto.

(g) “Filing office” means the office of the secretary of state or county register of deeds.

(h) “Filing officer” means the secretary of state or one of the county registers of deeds.

(i) “Filing officer statement” means a statement of correction entered into the filing office’s information system to correct an error by the filing office.

(j) “Financing statement” shall have the meaning prescribed by K.S.A. 84-9-102(a)(39) and amendments thereto.

(k) “Individual” means a human being, or a decedent in the case of a debtor that is a decedent’s estate.

(l) “Initial financing statement” means a UCC record that causes the filing office to establish the initial record in the filing office’s UCC information management system.

(m) “Organization” means a legal person who is not an individual.

(n) “Remitter” means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. “Remitter”

shall not include a person responsible merely for the delivery of the record to the filing office, including the postal service or a courier service, but shall include a service provider who acts as a filer’s representative in the filing process.

(o) “Secured party of record” shall have the meaning prescribed by K.S.A. 84-9-511 and amendments thereto.

(p) “Termination statement” shall have the meaning prescribed by K.S.A. 84-9-102(a)(79) and amendments thereto.

(q) “UCC” means the uniform commercial code as adopted in this state.

(r) “UCC record” means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings. (Authorized by and implementing K.S.A. 2007 Supp. 84-9-526; effective Oct. 12, 2001; amended July 7, 2008.)

7-17-2. Delivery of records. (a) UCC records may be tendered for filing at the filing office as follows:

(1) Personal delivery, at the filing office’s street address;

(2) courier delivery, at the filing office’s street address;

(3) postal service delivery, to the filing office’s mailing address; and

(4) electronic delivery, to the secretary of state via the secretary of state’s web site.

(b) The filing date for any UCC record delivered to the filing office shall be the date of receipt by the filing office. UCC records tendered by personal delivery and electronic delivery shall be processed and assigned a file time upon receipt. UCC records tendered by courier or postal service shall be processed and assigned a filing time in the order they are received.

(c) UCC search requests may be delivered by any means by which UCC records may be delivered to the filing office. Search requests on a debtor named in an initial financing statement may be made by an appropriate indication on the initial financing statement, if the search fee is included. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §87; effective Oct. 12, 2001.)

7-17-3. Forms. The forms prescribed in L. 2000, Ch. 142, Sec. 92, to be codified as K.S.A. 84-9-521 and amendments thereto, and forms

prescribed by the filing officer shall be the only forms accepted by the filing office. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §92; effective, T-7-7-2-01, July 2, 2001; effective Oct. 12, 2001.)

7-17-4. Fees. (a) The fee for filing and indexing a paper UCC record of one to 10 pages shall be \$15.00. The fee for filing and indexing additional pages beyond the 10th page of a UCC record shall be charged at the rate of \$1.00 per page. The fee for filing and indexing an electronic UCC record, excluding a termination statement, shall be \$5.00. The fee for filing and indexing a termination statement electronically shall be \$1.00.

(b) The fee for a paper UCC search request shall be \$15.00 per debtor name. The fee for an electronic UCC search request shall be \$8.00.

(c) The fee for copies of UCC documents shall be \$1.00 per page, or page equivalent for electronically transmitted responses.

(d) The fee for a certified copy shall be \$7.50 in addition to any copying expenses.

(e) The fee for customers to receive information by telefacsimile communication from the filing office shall be \$1.00 for each page.

(f) No fee shall be collected for filing a court's findings of fact and conclusion of law pursuant to K.S.A. 58-4301 and amendments thereto. (Authorized by K.S.A. 2006 Supp. 84-9-526; implementing K.S.A. 58-4301, K.S.A. 2006 Supp. 84-9-526 and 84-9-801; effective, T-7-7-2-01, July 2, 2001; effective Oct. 12, 2001; amended July 7, 2008.)

7-17-5. Methods of payment. (a) Payment in cash shall be accepted if paid in person at the filing office.

(b) Personal checks, cashier's checks, and money orders made payable to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, shall be accepted for payment if they are drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

(c) A prepaid account may be used for payment to the secretary of state's office, except for electronic filing. An account shall be opened by submitting an application and prepaying an amount prescribed by the secretary of state. An account number to be used by the remitter shall be issued by the secretary of state. Filing fees shall be deducted from the remitter's prepaid account by the secretary of state when authorized to do so by the remitter.

(d) Payment by debit cards and credit cards issued by approved issuers shall be accepted by the secretary of state. Remitters shall provide the secretary of state with the following information:

- (1) The card number;
- (2) the expiration date of the card;
- (3) the name of the approved card issuer;
- (4) the name of the person or entity to whom the card was issued; and
- (5) the billing address for the card.

Payment shall not be deemed tendered until the issuer or its agent has confirmed payment to the filing office. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §87; effective Oct. 12, 2001.)

7-17-6. Overpayment and underpayment of fees. (a) Each overpayment exceeding five dollars shall be refunded to the remitter by the filing officer. Each overpayment of five dollars or less shall be refunded to the remitter by the filing officer only upon the written request of the remitter.

(b) Upon receipt of a record with an insufficient fee, one of the following actions shall be performed by the filing officer:

(1) Sending a notice of the deficiency to the remitter and holding the record for 10 days from the date of the notice for receipt of the fee. The time and date of receipt of the full filing fee shall be deemed to be the filing time and date. If the fee is not received within 10 days of the date of the notice, the record shall be returned to the remitter with a written explanation for the refusal to accept the record; or

(2) returning the record to the remitter. A refund may be included with the record or delivered under separate cover. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §87; effective Oct. 12, 2001.)

7-17-7. Filing officer's duties deemed ministerial. The duties and responsibilities of the filing officer with respect to the administration of the UCC shall be deemed ministerial. In accepting for filing or refusing to file a UCC record according to these regulations, none of the following shall be deemed to be performed by the filing officer: (a) Determination of the legal sufficiency or insufficiency of a record;

(b) determination that a security interest in collateral exists or does not exist;

(c) determination that information in the record is correct or incorrect, in whole or in part; or

(d) creation of a presumption that the information in the record is correct or incorrect, in whole or in part. (Authorized by and implementing L. 2000, Ch. 142, §97; effective Oct. 12, 2001.)

7-17-8. Notification of defects. Nothing in these regulations shall be deemed to prevent a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not the record was filed or refused for filing. However, the filing office shall be under no obligation to communicate this information to a filer or remitter. The responsibility for the legal effectiveness of the filing shall rest with each filer and remitter, and the filing office shall bear none of this responsibility. (Authorized by and implementing L. 2000, Ch. 142, §97; effective Oct. 12, 2001.)

7-17-9. Defects in filing. (a) The following reasons shall not constitute grounds for the filing officer to refuse a record:

(1) The UCC record contains or appears to contain a misspelling or other erroneous information.

(2) The UCC record appears to identify a debtor incorrectly.

(3) The UCC record appears to identify a secured party or a secured party of record incorrectly.

(4) The UCC record contains additional or extraneous information of any kind.

(5) The UCC record contains less than the information required by Kansas law except for information allowing rejection pursuant to L. 2000, Ch. 142, Sec. 87(b), to be codified as K.S.A. 84-9-516(b) and amendments thereto.

(6) The UCC record incorrectly identifies collateral, contains an illegible or unintelligible description of collateral, or appears to contain no such description.

(b) If the record contains more than one debtor name or address and any names or addresses are missing or illegible, the legible name and address pairings shall be indexed by the filing officer. A notice shall be provided by the filing officer to the remitter containing the following information:

(1) The file number of the record;

(2) identification of the debtor name that was indexed; and

(3) a statement that debtors with illegible or missing names or addresses were not indexed.

(c) If the record contains more than one secured party or assignee name or address and any names or addresses are missing or illegible, the legible

name and address pairings shall be indexed by the filing officer. A notice containing the following information shall be provided by the filing officer to the remitter:

(1) The file number of the record;

(2) the secured party name that was indexed; and

(3) a statement that the secured parties with illegible or missing names or addresses were not indexed.

(d) If an amendment requests more actions than can be accommodated on the form, the information shall be filed and indexed by the filing officer in accordance with the first requested action. All other actions requested shall be disregarded by the filing officer.

(e) If, within 30 days of the date that the record is rejected, a secured party or a remitter demonstrates to the filing officer that the UCC record that was refused for filing should not have been refused, the UCC record shall be filed by the filing officer with a filing date and time reflecting the date and time the document would have received, if it had been accepted when originally tendered for filing. A filing officer statement shall also be filed by the filing officer indicating that the effective date and time of filing are the date and time the UCC record was originally tendered for filing, and setting forth the date and time. If the filing officer's procedures do not include recording the filing time, the filing time shall be deemed to be 5:00 p.m. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §87; effective Oct. 12, 2001.)

7-17-10. Deadline to refuse filing. (a) Whether reason exists to refuse a UCC record for filing shall be determined by the secretary of state not later than the second business day after receipt. An accepted UCC record shall be indexed by the secretary of state within the same time period.

(b) If the secretary of state finds grounds under K.S.A. 84-9-516, and amendments thereto, to refuse a UCC record, the record, if written, shall be returned by the secretary of state to the remitter, and the filing fee may be refunded. A notice that contains the date and time the record would have been filed had it been accepted for filing shall be sent by the secretary of state, unless the date and time are stamped on the record. This notice shall include a brief description of the reason for refusal to accept the record. The notice shall be sent to a secured party or the remitter no later than the sec-

ond business day after the determination to refuse acceptance of the record. A refund may be delivered with the notice or under separate cover. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §§87, 91; effective Oct. 12, 2001.)

7-17-11. Filing office data entry. (a) Information from a UCC record presented for filing shall be entered into the filing system database by the filing office exactly as it appears on the record and in accordance with the designations given by the filer, except that social security numbers and other personally identifiable information not required by law may be omitted from the database by the filing office.

(b) If a UCC record is tendered that provides characters not on the standard QWERTY keyboard, the filing officer shall substitute a space for each such character. If the character appears on the standard QWERTY keyboard but includes an additional mark, the character shall be entered into the filing system without the additional mark.

(c) Each name that exceeds the fixed length of the name field in the UCC database shall be entered as presented to the filing office, up to the maximum length allowed by the name field.

(d) An initial financing statement shall be filed as relating to a manufactured home transaction, public finance transaction, or a transmitting utility by the filing officer only if the appropriate box on the addendum form is checked. (Authorized by K.S.A. 2007 Supp. 84-9-526; implementing K.S.A. 2007 Supp. 84-9-519; effective Oct. 12, 2001; amended July 7, 2008.)

7-17-12. Status of parties upon filing initial financing statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows. (a) Each secured party named in an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the assignor shall not be a secured party of record, and the assignee shall be the secured party of record.

(b) The status of a debtor named on the record shall be active and shall continue as active for one year after the financing statement lapses.

(c) The status of the financing statement shall be active and shall continue as active for one year after its lapse date.

(d) If the initial financing statement is filed with respect to a transmitting utility, there shall be no

lapse date, and the financing statement shall remain active for one year after the financing statement is terminated with respect to all secured parties of record. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §§82, 86, 93; effective Oct. 12, 2001.)

7-17-13. Status of parties upon filing an amendment. Upon the filing of an amendment, the status of the parties and the status of the financing statement shall be as follows. (a) An amendment that amends only the collateral description or one or more addresses shall not affect the status of any debtor or secured party. If an amendment is authorized by less than all of the secured parties, or in the case of an amendment that adds collateral, less than all of the debtors, the statement shall affect the interests only of each authorizing secured party or debtor.

(b) An amendment that changes a debtor's name shall not affect the status of any debtor or secured party, except that the related initial financing statement and all UCC records that identify the initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal the initial financing statement and related UCC records. This amendment shall affect the rights only of its authorizing secured party.

(c) An amendment that changes the name of a secured party shall not affect the status of any debtor or any secured party, but the new name shall be added to the index as if it were a new secured party of record.

(d) An amendment that adds a new debtor name shall not affect the status of any party to the financing statement, except that the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect the rights only of the secured party authorizing the amendment.

(e) An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

(f) An amendment that deletes a debtor shall not affect the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) An amendment that deletes a secured party of record shall not affect the status of any party to the financing statement, even if the

amendment purports to delete all secured parties of record.

(h) An amendment shall not affect the status of the financing statement, except that a continuation statement may extend the period of effectiveness of a financing statement. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §83; effective Oct. 12, 2001.)

7-17-14. Status of party upon filing an assignment. An assignment shall not affect the status of the financing statement or the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §85; effective Oct. 12, 2001.)

7-17-15. Status of party upon filing a continuation statement. (a) Upon the timely filing of one or more continuation statements, the lapse date of the financing statement shall be postponed for five years.

(b) The filing of a continuation statement shall not affect the status of any party to the financing statement.

(c) Upon the filing of a continuation statement, the status of the financing statement shall remain active and unexpired.

(d) If there is no timely filing of a continuation statement with respect to a financing statement, the financing statement shall lapse on its lapse date, but no action shall be taken by the filing office. One year after the lapse date, the financing statement shall be rendered inactive, and the financing statement shall no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §86; effective Oct. 12, 2001.)

7-17-16. Status of parties upon filing a termination statement. (a) The filing of a termination statement shall not affect the status of any party to the financing statement.

(b) A termination statement shall not affect the status of the financing statement, and the financing statement shall remain active in the information management system for one year after it lapses. If the termination statement relates to a financing statement against a transmitting utility, the financing statement shall become inactive one

year after it is terminated with respect to all secured parties of record.

(c) A termination statement may be filed in the filing office in which the financing statement was filed before the effective date of L. 2000, Ch. 142, unless an initial financing statement has been filed pursuant to L. 2000, Ch. 142, Sec. 131(c), to be codified as K.S.A. 84-9-706(c), in the office specified by law. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §84; effective Oct. 12, 2001.)

7-17-17. Status of parties upon filing a correction statement. (a) The filing of a correction statement shall not affect the status of any party to the financing statement.

(b) A correction statement shall not affect the status of the financing statement. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §89; effective Oct. 12, 2001.)

7-17-18. Deadline for filing a continuation statement. (a) The first day on which a continuation statement may be filed shall be six months preceding the month in which the financing statement would lapse and corresponding to the date upon which the financing statement would lapse. If there is no such corresponding day, the first day on which a continuation statement may be filed shall be the last day of the sixth month preceding the month in which the financing statement would lapse.

(b) The last day on which a continuation statement may be filed shall be the date upon which the financing statement lapses. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §86; effective Oct. 12, 2001.)

7-17-19. Errors in filing. (a) Any errors of the filing office in the UCC information management system may be corrected by the filing officer. A filing officer statement shall be filed by the filing officer in the UCC information management system identifying the record to which the correction relates, the date of the correction, and an explanation of the corrective action taken. The record shall be preserved as long as the record is preserved in the UCC information management system.

(b) Each error by a filer shall be the responsibility of the filer. The filer may correct the error by filing an amendment or a correction statement. (Authorized by and implementing K.S.A. 2006 Supp. 84-9-519; effective Oct. 12, 2001; amended July 7, 2008.)

7-17-20. Notice of bankruptcy. No action shall be taken by the filing officer upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. (Authorized by and implementing L. 2000, Ch. 142, §97; effective Oct. 12, 2001.)

7-17-21. Searches. (a) A searchable index of all UCC records shall be maintained for inspection by the filing officer. The index shall allow the retrieval of a record by the name of the debtor and by the file number of the initial financing statement, and each filed UCC record relating to the initial financing statement.

(b) Each search request shall contain the following information:

(1) The name of the debtor to be searched, using designated fields for the organization name and individual first, middle, and last names and specifying whether the debtor is an individual or an organization. Each search request shall be processed using the name and the designated fields in the exact form submitted;

(2) the name and address of the person to whom the search report is to be sent; and

(3) the appropriate fee, payable by any permissible method specified in K.A.R. 7-17-5.

(c) A search request may contain any of the following information:

(1) A request that copies of records found in the search be included with the search report;

(2) a request to limit the copies of records by restricting the search to a city, a filing date or a range of filing dates, or the identity of the secured party of record;

(3) a request to include lapsed, active records; or

(4) instructions on the mode of delivery desired, if other than by ordinary mail. This request shall be honored if the requested mode is available to the filing office.

(d) Before providing a copy of any UCC record, the filing officer shall redact any information in accordance with laws applicable to privacy rights and identity theft protection. (Authorized by K.S.A. 2006 Supp. 84-9-526; implementing K.S.A. 2006 Supp. 84-9-519; effective Oct. 12, 2001; amended July 7, 2008.)

7-17-22. Search logic. (a) Search results shall be produced by applying only standardized search logic to each name presented to the filing officer. Human judgment shall not play a role in

determining the results of the search. The standardized search logic used shall meet the following criteria:

(1) There is no limit to the number of matches that may be returned in response to the search criteria.

(2) The characters searched are letters “a” through “z” and numbers 0 through 9.

(3) No distinction is made between uppercase and lowercase letters, and all letters are converted to uppercase in the filing office database.

(4) Punctuation marks, accents, and suffixes are disregarded. Punctuation marks and accents shall mean all characters other than the letters “a” through “z” and the numbers 0 through 9.

(5) Words and abbreviations at the end of a name that indicate the existence or nature of an organization are disregarded. These words and abbreviations shall include the following:

(A) Association;

(B) bank;

(C) church;

(D) college;

(E) company;

(F) corporation;

(G) club;

(H) foundation;

(I) fund;

(J) incorporated;

(K) institute;

(L) limited;

(M) society;

(N) syndicate;

(O) trust;

(P) union;

(Q) university;

(R) limited partnership;

(S) LP;

(T) limited liability company;

(U) LLC;

(V) limited liability partnership;

(W) LLP;

(X) professional association;

(Y) chartered; and

(Z) the following abbreviations: co., corp., inc., ltd., and P.A.

(6) The word “the” at the beginning of the search criteria is disregarded.

(7) All spaces are disregarded.

(8) For middle names of individuals, initials are equated with all names that begin with these initials, and the absence of a middle name or initial is equated with all middle names and initials.

(9) The word “and” and the symbol “&” are equated with each other.

(b) After using the criteria in subsection (a) to modify the name of the debtor requested to be searched, the search shall reveal only names of debtors that are contained in unexpired financing statements and exactly match the name requested, as modified. (Authorized by K.S.A. 2006 Supp. 84-9-526; implementing K.S.A. 2006 Supp. 84-9-519; effective Oct. 12, 2001; amended, T-7-9-6-06, Sept. 6, 2006; amended March 23, 2007; amended July 7, 2008.)

7-17-23. Search reports. Reports created in response to a search request shall include the following:

(a) The identification of the filing officer and the certification of the filing officer;

(b) the date the report was generated;

(c) the name searched;

(d) the certification date and time for which the search is effective;

(e) the identification of each unexpired financing statement filed on or before the certification date and time corresponding to the search criteria, by name of debtor, by financing statement file number, and by file date and file time;

(f) for each unexpired initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or before the certification date; and

(g) copies of all UCC records revealed by the search and requested by the searcher. (Authorized by L. 2000, Ch. 142, §97; implementing L. 2000, Ch. 142, §90; effective Oct. 12, 2001.)

7-17-24. Unofficial searches. Public access to a database that produces search results beyond exact name matches may be provided by the secretary of state. The supplemental database shall not be considered part of the standard search logic and shall not constitute an official search by the secretary of state. (Authorized by K.S.A. 2006 Supp. 84-9-526; implementing K.S.A. 2006 Supp. 84-9-519; effective Oct. 12, 2001; amended July 7, 2008.)

Article 18.—KANSAS ATHLETE AGENT ACT

7-18-1. (Authorized by and implementing L. 1996, Ch. 178, Sec. 3(d); effective, T-7-7-1-96, July 1, 1996; effective Oct. 18, 1996; revoked Oct. 1, 2004.)

7-18-2. (Authorized by and implementing L. 1996, Ch. 178, Sec. 3(l); effective, T-7-7-1-96, July 1, 1996; effective Oct. 18, 1996; revoked Oct. 1, 2004.)

7-18-3. (Authorized by L. 1996, Ch. 178, Sec. 15; implementing L. 1996, Ch. 178, Sec. 7; effective, T-7-7-1-96, July 1, 1996; effective Oct. 18, 1996; revoked Oct. 1, 2004.)

Article 19.—ELECTRONIC FILING

7-19-1. (Authorized by and implementing K.S.A. 1995 Supp. 84-9-402, and L. 1996, ch. 157, § 1; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; amended June 6, 1997; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-2. (Authorized by and implementing K.S.A. 1995 Supp. 84-9-402, and L. 1996, ch. 157, § 1; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; amended June 6, 1997; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-3. (Authorized by and implementing K.S.A. 1995 Supp. 84-9-402, and L. 1996, ch. 157, § 1; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; amended June 6, 1997; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-4. (Authorized by and implementing K.S.A. 1995 Supp. 84-9-402, and L. 1996, ch. 157, § 1; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; amended Sept. 8, 1995; amended June 6, 1997; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-5. (Authorized by and implementing K.S.A. 1993 Supp. 84-9-402, as amended by 1994 H.B. 2693, section 2; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-6. (Authorized by and implementing K.S.A. 1993 Supp. 84-9-402, as amended by 1994 H.B. 2693, section 2; effective, T-7-7-1-94, July 1, 1994; effective Oct. 24, 1994; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

7-19-7. (Authorized by and implementing K.S.A. 84-9-402; effective June 6, 1997; revoked, T-7-7-2-01, July 2, 2001; revoked Oct. 12, 2001.)

Article 20.—CHANGING HOURS OF ELECTIONS

7-20-1. Changing hours of elections. The hours that polls will be open shall be specified in the regular publication notice as provided in K.S.A. 25-105, K.S.A. 1971 Supp. 25-209, 25-2018 (d), (e), (f) and 25-2112, and in any election notice wherein such times are required by law to be stated. If the voting hours are different from 7:00 a.m. until 7:00 p.m., and no publication notice is required by law to be made, then a special notice shall be published not less than seven (7) and not more than twenty-one (21) days prior to such election stating the hours the polls will be open. (Authorized by K.S.A. 1971 Supp. 25-106, 25-2111; effective Jan. 1, 1972.)

Article 21.—VOTING EQUIPMENT

7-21-1. Storage of voting equipment. (a) As used in this article, “voting equipment” shall mean an electronic or electromechanical voting system, as defined in K.S.A. 25-4401 and amendments thereto, and optical scanning equipment, as defined in K.S.A. 25-4601 and amendments thereto, including all electronic media used with the system and equipment.

(b) County election officers shall store voting equipment in only the following places:

- (1) Public buildings; and
- (2) business and commercial buildings.

(c) Voting equipment in storage shall be locked and secured in such a manner that the equipment cannot be tampered with or damaged. The storage shall be in a place accessible only to election officials or persons authorized by election officials. (Authorized by and implementing L. 2007, Ch. 125, Secs. 22 and 34; effective Jan. 1, 1972; amended July 7, 2008.)

7-21-2. Voting equipment security. Each county election officer shall adopt written procedures to secure the voting equipment. These procedures shall include the following requirements:

(a) A computer used to prepare ballots or to program elections and voting equipment used for voting shall not be connected to the internet. Each networking device on or in the computer shall be disabled.

(b) Each computer used to prepare ballots or to program elections shall be equipped with software, firmware, or an operating system used only for preparing ballots and programming elections.

The software, firmware, or operating system shall be certified by the secretary of state. Each computer used to prepare ballots or to program elections shall also contain software relating to system security, including virus protection.

(c) Each computer used to prepare ballots or to program elections shall be accessible only to authorized county election personnel and shall require a password for access.

(d) For each user-initiated event that occurs on a computer used to prepare ballots or to program elections, a record shall be made of the nature of the event, the time of the event, and the person initiating the event.

(e) The election results reported from polling places to the county election office, and the election results reported from the county election office to the secretary of state, shall be sent only by fax, phone, hand-delivery, or encrypted electronic transfer. (Authorized by and implementing L. 2007, Ch. 125, Secs. 22 and 34; effective Jan. 1, 1972; amended July 7, 2008.)

7-21-3. (Authorized by K.S.A. 25-1312; effective Jan. 1, 1974; revoked July 7, 2008.)

7-21-4. Manual count of damaged or defective paper ballots. (a) If any paper ballot is damaged or defective so that the ballot cannot be counted properly by optical scanning equipment or automatic tabulating equipment, the county election officer shall establish a special counting board of two or more persons for the purpose of manually counting the damaged or defective paper ballot.

(b)(1) The special counting board shall consist of election board workers at a polling place or other persons at a central location. To the extent practicable, the special counting board members shall not all be affiliated with the same political party.

(2) No person serving on the special counting board shall be a candidate for an office on the ballot or a member of a group supporting or opposing passage of a question submitted on the ballot.

(3) One person on the special counting board shall be designated the supervising judge.

(c) The special counting board shall manually count any ballot that is damaged or defective and that cannot be counted properly by optical scanning equipment or automatic tabulating equipment, using the following procedures:

(1) Each ballot shall be separated from any advance voting envelope or provisional ballot envelope that identifies the voter who cast the ballot.

(2) If more than one damaged or defective ballot is to be counted, the supervising judge shall collect and enumerate the ballots and shall announce the total number of ballots to the board.

(3) A member of the special counting board shall read and announce the contents of each ballot and shall hand each ballot to another member of the board to verify the contents of the ballot. A member of the board other than the member reading the ballots shall tally the votes cast on the ballot on a tally sheet provided by the county election officer.

(4) The county election officer may require the special counting board to maintain two separate sets of tally sheets. If the board is required to maintain these tally sheets, the board shall compare the tally sheets and reconcile any differences to the satisfaction of a majority of the board. The tally sheets shall be compared at the end of the counting process.

(d) If the special counting board is unable to determine the voter's intent for any ballot or portion of a ballot, the ballot shall be challenged and referred to the county board of canvassers for resolution pursuant to K.S.A. 25-3002(b)(1) and amendments thereto.

(e) At the conclusion of the special counting board's duties, the special counting board shall provide all ballots and records to the county election officer. The county election officer shall preserve the ballots and records in accordance with state law and shall include the results tabulated from the ballots in the official results of the election. (Authorized by L. 2007, Ch. 125, Secs. 22 and 34; implementing K.S.A. 25-4412, as amended by L. 2007, Ch. 125, Sec. 19, and K.S.A. 25-4611, as amended by L. 2007, Ch. 125, Sec. 31; effective July 7, 2008.)

Article 22.—SCHOOL ELECTIONS

7-22-1. (Authorized by K.S.A. 1971 Supp. 25-2013; effective Jan. 1, 1972; revoked Jan. 1, 1974.)

Article 23.—VOTER REGISTRATION

7-23-1. (Authorized by K.S.A. 1971 Supp. 25-2302b; effective Jan. 1, 1972; revoked Jan. 1, 1974.)

7-23-2. Registration records. (a) The county election officer shall keep the records of registration at all times.

(b) To ensure the reliability of all voters' registration, the county election officer shall keep

a separate registration list for each precinct and township in the county and shall update each list before each election.

(c) The county election officer shall keep each application for registration in the office of the county election officer. Registrars at voter registration outposts shall transmit completed registration application forms to the county election officer regularly as specified by the county election officer.

(d) For purposes of requesting an official application for voter registration, a request "in writing" means any written request, including a single written request or a request accompanied by other requests on the same paper. (Authorized by K.S.A. 25-2304; implementing K.S.A. 25-2309, as amended by L. 1996, ch. 187, § 7; effective Jan. 1, 1972; amended Feb. 21, 1994; amended Jan. 3, 1997.)

7-23-3. (Authorized by K.S.A. 1971 Supp. 25-2308; effective Jan. 1, 1972; revoked, L. 1981, ch. 417, May 1, 1981.)

7-23-4. Notice of places and dates of registration. The notice regarding registration required by K.S.A. 25-2310, and amendments thereto, shall be published one time, at least 10 days before the date the registration books will be open additional hours as provided in K.S.A. 25-2311, and amendments thereto. If late hours are not required, the notice shall be published one time, at least 10 days before the date the registration books will be closed. The publication notice shall be made in the following form:

"NOTICE OF PLACES AND DATES OF REGISTRATION

In compliance with the provisions of K.S.A. 25-2310, notice is hereby given that the books for registration of voters will be open at the following places during regular business hours:

Persons who apply for services at voter registration agencies may register at the following places during regular business hours:

* Beginning on the _____ day of _____, _____, additional hours of registration will be provided at the following places:

At _____ p.m. on the _____ day of _____, _____, the books for registration of voters will close and will remain closed until the _____ day of _____, _____.

A citizen of the United States who is 18 years of age or older, or will have attained the age of 18 years at the next election, must register before he or she can vote. Registration is open until the close of business on the 21st day before the election.

When a voter has been registered according to law, the voter shall remain registered until the voter changes name by marriage, divorce or other legal proceeding or changes residence. The voter may reregister in person, by mail or other delivery when registration is open or the voter may reregister on election day.

Application forms shall be provided by the county election officer or the Secretary of State upon request. The application shall be signed by the applicant under penalty of perjury.

In Witness Whereof I have hereunto set my hand and seal this _____ day of _____, _____.

County Election Officer

(SEAL)

* If late hours are not required, omit this paragraph."

(Authorized by K.S.A. 25-2310; implementing K.S.A. 25-2310 and K.S.A. 25-2311, as amended by L. 2011, ch. 112, § 19; effective Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 24, 1990; amended Jan. 3, 1997; amended Feb. 24, 2012.)

7-23-5. (Authorized by K.S.A. 1971 Supp. 25-2321; effective Jan. 1, 1972; revoked Jan. 1, 1974.)

7-23-6. Special election, additional hours not required; publication. Additional hours for registration as provided in K.S.A. 25-2311 (d) are not required prior to a special election held on any day other than a primary or general election. Publication of closing of registration for a special election shall be made at least ten days prior to the closing of the registration books. (Authorized by K.S.A. 25-2310; effective Jan. 1, 1974.)

7-23-7. Publication of additional places of registration. Whenever county election officers provide additional places of registration during periods when it is anticipated a large number of persons may wish to register as provided by K.S.A. 25-2313, a notice shall be published in a newspaper having general circulation within the area, or the officially designated newspaper, at least five days prior to the date such outposts will be open. The notice shall state the location of the outpost and the hours and days such outposts will be open. (Authorized by K.S.A. 25-2310; effective Jan. 1, 1974.)

7-23-8. (Authorized by and implementing K.S.A. 1991 Supp. 25-2316c, as amended by L. 1992, Chapter 281, section 1; effective May 28, 1992; effective, T-7-8-3-92, Aug. 3, 1992; effective Oct. 5, 1992; revoked Jan. 3, 1997.)

7-23-11. (Authorized by K.S.A. 25-2316; effective, E-73-26, Aug. 17, 1973; effective Jan. 1, 1974; revoked May 1, 1978.)

7-23-12. Sufficiency of address for registration. An election official shall register any person who is otherwise qualified to vote and is able to provide a residence address in enough detail to enable the election official to assign the applicant to the correct precinct. (Authorized by and implementing K.S.A. 1992 Supp. 25-2304; effective Feb. 21, 1994.)

7-23-13. (Authorized by K.S.A. 2001 Supp. 25-2304; implementing K.S.A. 2001 Supp. 25-2304 and 25-2309; effective April 18, 1994; amended Nov. 28, 1994; amended July 5, 2002; revoked July 7, 2008.)

7-23-14. Assessing documents submitted as evidence of United States citizenship. (a) In assessing documents submitted as evidence of United States citizenship, each election officer shall consider the following factors: first name, middle name or initial, surname, date of birth, place of birth, and sex.

(1) The first name and the middle name or initial, if provided, shall be consistent with the information provided on the person's application for voter registration. Hyphenated names shall be permitted if not inconsistent with the information provided on the person's application for voter registration.

(2) If the name on the document is inconsistent with the applicant's name as it appears on the application for voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's current name;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309 and amendments thereto, stating the inconsistency related to the applicant's name and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is either unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(3) The date of birth indicated on the document submitted as evidence of United States citizenship shall match the date of birth provided on the application for voter registration. If the dates of

birth are inconsistent, the election officer shall inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(4) If the place of birth is indicated on the document submitted as proof of United States citizenship, the place of birth may be used to assess the applicant's status as a United States citizen. If the document does not contain a place of birth, this fact shall not result in an unsatisfactory assessment.

(5) If the sex indicated on the document does not match the sex indicated on the application for the voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's sex;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309 and amendments thereto, stating the inconsistency related to the applicant's sex and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309 and amendments thereto.

(6) If a document submitted as evidence of United States citizenship contains an expiration date and this date has passed when the document is submitted for purposes of voter registration, the document shall nonetheless be considered in assessing qualifications to register to vote.

(b) If an applicant for voter registration fails to submit evidence of United States citizenship before the deadline to register to vote before an election, the applicant may submit a valid citizenship document by mail or personal delivery to the county election office by the close of business on the day before the election or a valid citizenship document by electronic means before midnight on the day before the election. "Electronic means" shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state. For each document received in accordance with this subsection, the county election officer shall perform the following:

- (1) Accept and assess the citizenship document;
- (2) add the applicant's name to the voter registration list as a registered voter; and

(3) if practicable, include the registrant's name in the poll book for the upcoming election. If poll books have already been printed, the county election officer shall, if practicable, communicate the registrant's name to the appropriate polling place with instructions to allow the registrant to vote a regular ballot. If the registrant's name is not communicated to the election board at the appropriate polling place by the county election officer before the opening of the polls on election day, the registrant shall be allowed to cast a provisional ballot. If any applicant to whom this subsection applies fails to submit satisfactory evidence of United States citizenship in accordance with this subsection and the applicant casts a provisional ballot, the ballot shall not be counted.

(c) A registered voter who has previously provided sufficient evidence of United States citizenship with a voter registration application in this state shall not be required to resubmit evidence of United States citizenship with any subsequent voter registration application. (Authorized by and implementing K.S.A. 2014 Supp. 25-2309; effective Jan. 1, 2013; amended Oct. 2, 2015.)

7-23-15. Incomplete applications for voter registration. (a) If the county election officer assessing an application for voter registration determines that the application does not contain the information required by law, including satisfactory evidence of United States citizenship, the county election officer shall designate the application as incomplete. Each county election office shall maintain a list of incomplete applications for voter registration.

(b) Any voter registration applicant whose voter registration application has been designated as incomplete under subsection (a) may complete the voter registration application, without submitting a new voter registration application, by providing the required information that was not provided with the original voter registration application within 90 days after the voter registration application was received by the county election office.

(c) If a voter registration application was designated as incomplete under subsection (a) and the application is not completed by the applicant under subsection (b), the voter registration application shall be deemed insufficient by the county election officer and the county election officer shall designate the voter registration application as canceled. Each voter registration applicant whose voter registration application was deemed insuf-

efficient under this subsection shall be required to submit a new voter registration application in order to become registered to vote. (Authorized by and implementing K.S.A. 2014 Supp. 25-2309; effective Oct. 2, 2015.)

Article 24.—SUPPLIES FOR VOTING PLACES

7-24-1. Number of ballot boxes required.

County election officers shall provide, at each voting place where voting machines are not in use, a separate ballot box for each of the types of ballots as provided by K.S.A. 25-2704. Whenever an election board of seven (7) or more members is divided by the county election officer into a receiving board and a counting board or boards, the county election officer shall provide one or more additional ballot boxes for each counting board in order to perform their duties efficiently. (Authorized by K.S.A. 25-2704; effective Jan. 1, 1972; amended May 1, 1978.)

7-24-2. Receipts and records. Receipts and records for election supplies, including ballots and poll books, shall be made and given in

the following manner: (a) All receipts for election supplies, including ballots and poll books, shall be on forms provided by the county election officer so that photocopies are clearly legible. The county election officer shall make provisions for each of the kinds and types of election supplies received by the supervising judge. The forms shall clearly state the township, precinct, and ward on them. Forms used in nonpartisan elections shall clearly state the voting place.

(b) At the time the supervising judge receives election supplies, including ballots and poll books, a receipt shall be made and signed by the supervising judge.

(c) Upon the return of the election supplies required by law to be returned to the county election officer, a receipt shall be made and signed by the county election officer, or the duly authorized deputy, for the supplies returned.

(d) Voting machine keys shall be accounted for as provided in K.S.A. 25-1326 and amendments thereto.

(e) Receipts for election supplies submitted substantially in the following form shall be considered sufficient:

RECEIPT FOR ELECTION SUPPLIES SENT OUT

County _____ Voting Place _____ Date of Election _____

All of the ballots and other election supplies required by law for the above described voting place were received by the supervising judge on the date indicated.

Ballots			Other Supplies	
No. pkgs.	Kind	Total	No.	Kind
	National and state.....			Poll books
	County—township			Registration books
	State question			Party affiliation lists
	Judicial			Abstracts of votes
	Question submitted.....			Oaths for challenges
	City.....			Miscellaneous supplies
	School			
	Voting machine(s)			Keys for voting machines

Received _____ (Date) By _____ Signature of supervising judge

RECEIPT FOR ELECTION SUPPLIES RETURNED

County _____ Voting Place _____ Date of Election _____

All of the ballots and other election supplies furnished for the above described voting place were received by the county election officer on the date indicated.

Ballots returned					Total sent out	Difference
	Voted	Unvoted	Void, objected to, challenged	Total		
National and state.....						
County—township						
State question						
Judicial						
Question submitted.....						
City.....						
School						
Other supplies returned						
Poll books.....						
Registration books.....						
Party affiliation lists.....						
Abstracts of votes.....						
Oaths for challenges.....						
Miscellaneous supplies.....						
Keys for voting machines.....						

Received _____ (Date) By _____ County Election Officer

(Authorized by and implementing K.S.A. 25-2707; effective Jan. 1, 1972; amended March 23, 2001.)

Article 25.—ABSTRACTS OF VOTES CAST

7-25-1. Certification. A certificate of validity shall be made for each copy of the three abstracts of votes cast at each voting place for every election. This certificate shall be printed upon or permanently appended to each abstract. The certificate shall be as follows:

CERTIFICATE FOR ABSTRACT
OF VOTES CAST

We, the undersigned, who are all the judges and clerks of the election board of _____ on the _____
(Voting Place)
day of _____, 20____, do hereby certify that the candidates whose names appear in the appended abstracts received the number of votes cast as written opposite their names, and that the votes cast on questions submitted are as therein indicated.

Judges

Clerks

NOTE: Provide as many signature lines as there are judges and clerks. Voting place must be shown by township or precinct and ward for partisan elections.

(Authorized by and implementing K.S.A. 25-3006; effective Jan. 1, 1972; amended March 23, 2001.)

Article 26.—CERTIFICATES OF NOMINATION AND ELECTION

7-26-1. Certificate of nomination. Every certificate of nomination issued by a county election officer shall be in the following form:

CERTIFICATE OF NOMINATION

I, _____, County Election Officer of _____ County, Kansas, do hereby certify that at the Primary Election in said county on the ___ day of ___, A.D. 20____, _____ received the highest number of votes cast by the _____ party for the office of _____ as appears from the official canvass made by the County Board of Canvassers, at its meeting held on the _____ day of _____, 20____, and is therefore entitled to a place on the official ballot as such candidate of said party at the General Election to be held on _____, 20____.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed my official seal, this _____ day of _____, A.D. 20____.

SEAL

County Election Officer

The above certificate may be adapted for city and school elections by omitting any reference to party nomination. (Authorized by and implementing K.S.A. 25-3110; effective Jan. 1, 1972; amended March 23, 2001.)

7-26-2. Certificate of election. Every certificate of election issued by a county election officer shall be in the following form:

CERTIFICATE OF ELECTION
State of Kansas
County of _____

I, _____, County Election Officer of _____ County, Kansas, do hereby certify that at the General Election held on the _____ day of _____, 20____, _____ was duly elected to the office of _____ as appears from the official canvass by the County Board of Canvassers made on the _____ day of _____, 20____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed my official seal, this _____ day of _____, A.D. 20____.

SEAL

County Election Officer

(Authorized by and implementing K.S.A. 25-3110; effective Jan. 1, 1972; amended March 23, 2001.)

Article 27.—PARTY AFFILIATION

7-27-1. Maintenance of party affiliation lists. Party affiliation lists shall be maintained according to the following requirements:

(a) (1) Before each primary and general election, and in August of odd-numbered years, each county election officer shall certify to the secretary of state the number of members of each party in each precinct of the election officer's county as shown by the party affiliation list and a total number for each party for the county. Before each primary election, the county election officer shall prepare an alphabetical list of electors by surname for each precinct, showing each elector's name, address, and party affiliation.

(2) After each primary election at which national, state, county, township, and, where applicable, city candidates are nominated, the county election officer shall prepare a new party affiliation list for each precinct. The party affiliation list shall include the names of all electors who voted in the primary election, and the names of all electors who have declared their party affiliation as provided by statute.

(b) If at any time a registered voter declares or changes that voter's party affiliation, that declaration or change shall be made on the party affiliation lists. Whenever a voter's name is removed from the registration list as provided by K.S.A. 25-2316c, and amendments thereto, that voter's name shall also be removed from the party affiliation list.

(c) The party affiliation list shall be maintained by using a computer or data processing system. (Authorized by and implementing K.S.A. 25-3302; effective Jan. 1, 1972; amended Jan. 1, 1974; modified, L. 1978, ch. 451, May 1, 1978; amended Oct. 18, 1993; amended Oct. 1, 2004.)

Article 28.—SUFFICIENCY OF PETITIONS

7-28-1. Determination. In determining the sufficiency of signatures or names on a petition if the specific statute governing the petition does not provide guidance in determining the validity of signatures, the following requirements shall apply:

(a) If the last name in the signature on the petition is not spelled identically to the last name in the registration books, the signature shall be considered improper and insufficient.

(b) If a signature contains initials that are consistent with the names or initials as they appear in the registration books and if the last name in the signature on the petition is identical to the last name in the registration books and the address is identical, the signature shall be considered proper and sufficient.

(c) If a signature contains a nickname or abbreviation that is commonly accepted for a given name as it appears in the registration books, including “Wm.” or “Bill” for William, and if the last name is identical and the address is identical, the signature shall be considered proper and sufficient.

(d) Prefixes to names including “Mr.,” “Mrs.,” “Miss,” and “Dr.,” shall be disregarded.

(e) Notwithstanding any of the requirements in subsections (a) through (d) of this regulation, if there is evidence leading the election officer to believe that any signature is not genuine, the signature shall be considered improper and insufficient.

(f) In all cases not provided for by these requirements, a signature shall be considered proper and sufficient if it bears such a similarity that it reasonably appears to be the same signature as that contained in the registration books. (Authorized by and implementing K.S.A. 25-3604; effective Jan. 1, 1972; amended May 1, 1978; amended March 23, 2001.)

Article 29.—BALLOTS

7-29-1. (Authorized by and implementing K.S.A. 25-604, as amended by L. 1993, ch. 74, section 1; effective, T-85-5, Feb. 15, 1984; effective

May 1, 1986; amended, T-7-7-2-90, July 2, 1990; amended Aug. 6, 1990; amended, T-7-8-26-92, Aug. 26, 1992; amended Oct. 26, 1992; revoked Oct. 18, 1993.)

7-29-2. Official ballot colors. (a) All official ballots shall be printed in black ink on paper through which the printing or writing cannot be read.

(b) If only one ballot is required for an election, the ballot shall be white.

(c) Whenever a colored ballot is used, the same color shall be used for that ballot throughout the county.

(d) Colored ballots may be used in any election to distinguish between political parties and election districts. (Authorized by and implementing K.S.A. 25-601; effective May 1, 1982; amended Oct. 18, 1993; amended March 23, 2001; amended Oct. 1, 2004.)

Article 30.—SESSION LAWS

7-30-1. Session Laws. The price for the bound Session Laws of Kansas shall be \$17.00. (Authorized by and implementing K.S.A. 1990 Supp. 45-107; effective May 1, 1982; amended May 1, 1987; amended July 1, 1991.)

Article 31.—LAND SURVEYS

7-31-1. (Authorized by K.S.A. 58-2009; implementing K.S.A. 1984 Supp. 58-2011; effective May 1, 1984; amended, T-85-25, Sept. 18, 1984; effective May 1, 1985; revoked June 4, 1999.)

7-31-2. (Authorized by K.S.A. 1983 Supp. 58-2009; implementing K.S.A. 1983 Supp. 58-2011; effective May 1, 1984; revoked June 4, 1999.)

7-31-3. (Authorized by K.S.A. 58-2009; implementing K.S.A. 1984 Supp. 58-2011; effective May 1, 1984; amended, T-85-25, Sept. 18, 1984; effective May 1, 1985; revoked June 4, 1999.)

7-31-4. (Authorized by K.S.A. 58-2009; implementing K.S.A. 1986 Supp. 58-2011; effective May 1, 1984; amended, T-85-25, Sept. 18, 1984; effective May 1, 1985; amended, T-88-49, Dec. 16, 1987; amended May 1, 1988; revoked June 4, 1999.)

Article 32.—LAW BOOKS

7-32-1. Delivery fees. The fees for delivery of law books, including shipping and handling, shall be as follows:

- (a) Kansas statutes annotated, complete set\$15.00
- (b) Kansas statutes annotated, per hardbound volume\$6.50
- (c) Supplements to the Kansas statutes annotated, complete set.....\$7.50
- (d) Supplement to the Kansas statutes annotated, per volume.....\$6.25
- (e) Session laws of Kansas, per volume.....\$6.75
- (f) Permanent journal of the house or senate, per volume.....\$6.75
- (g) Kansas administrative regulations, complete set\$7.50
- (h) Kansas administrative regulations, per volume or supplement.....\$6.25

(Authorized by and implementing K.S.A. 75-436; effective May 1, 1984; amended July 1, 1991; amended, T-7-7-1-92, July 1, 1992; amended Aug. 31, 1992; amended Aug. 18, 2000.)

7-32-2. Kansas administrative regulations. The prices for volumes of the Kansas administrative regulations shall be as follows:

- (a) Complete set (vols. 1-5 and index)\$105.00
- (b) Per volume or supplement\$20.00
- (c) Index\$5.00

(Authorized by and implementing K.S.A. 77-430; effective July 1, 1991; amended Aug. 18, 2000.)

Article 33.—INFORMATION FEES

7-33-1. Information fees. Each register of deeds, when providing information concerning filings under article 9 of chapter 84 Kansas Statutes Annotated to persons by telecopier, shall charge \$10.00 for each statement of filings and two dollars per page for copies of financing statements or related statements. For each request, the register of deeds shall remit to the county treasurer five dollars for deposit in the county general fund. (Authorized and implementing L. 1988, Ch. 399, Sec. 1; effective, T-7-7-29-88, July 29, 1988; effective Nov. 8, 1988.)

7-33-2. Computer access fees. When providing information about filings made under K.S.A. 84-9-101 through 84-9-508 by direct computer access, each register of deeds shall charge eight dollars for each debtor name searched, four dollars of which shall be remitted to the county treasurer for deposit in the county general fund. (Authorized by and implementing K.S.A. 1989 Supp. 84-9-411; effective Dec. 31, 1990.)

Article 34.—CORPORATION FILING FEES

7-34-1. (Authorized by 1989 SB 243; implementing K.S.A. 17-7505(a)(11) and K.S.A. 17-

7503(a)(8); effective, T-7-7-27-89, July 27, 1989; effective Sept. 11, 1989; revoked Nov. 20, 1998.)

7-34-2. Corporation filing fees. The fees for filing and issuing corporate documents shall be as follows:

- (a) Articles of incorporation
 - (1) For-profit corporation \$ 75.00
 - (2) Nonprofit corporation \$ 20.00
- (b) Foreign corporation application \$100.00
- (c) Restated articles of incorporation \$ 20.00
- (d) Certificate of amendment, correction, dissolution, merger, restoration, revocation of dissolution, or withdrawal, or any other certificate filed \$ 20.00
- (e) Name reservation \$ 20.00
- (f) Letter of good standing \$ 5.00
- (g) Certificate of good standing
 - (1) Short version..... \$ 7.50
 - (2) Long version..... \$ 7.50 per fact
- (h) Certificate of fact..... \$ 7.50
- (i) Any other certificate issued by the secretary of state \$ 20.00
- (j) Certified copy of corporate filing..... \$ 7.50
- (k) Corrected instrument.....a fee equal to the amount of the filing fee for the original instrument

(Authorized by and implementing K.S.A. 2004 Supp. 17-7506; effective, T-7-12-29-04, Jan. 1, 2005; effective April 1, 2005.)

Article 35.—CENSUS ADJUSTMENT

7-35-1. Adjustment of federal census data. Before July 31 of the year following the federal decennial census, responses from student and military questionnaires shall be used by the secretary of state to compute the number of persons to be added to or subtracted from each election precinct's population totals from the decennial census conducted by the U.S. bureau of the census. (Authorized by K.S.A. 11-305; implementing Article 10, Section 1 of the Kansas Constitution and K.S.A. 11-303; effective Dec. 11, 1989; amended, T-7-9-13-99, Sept. 13, 1999; amended Jan. 7, 2000.)

7-35-2. Questionnaires. Questionnaires for all students enrolled at a college or university in the state of Kansas and for military personnel stationed and located in the state of Kansas during the decennial census year shall be provided by the secretary of state. Completed questionnaires shall be returned by college and university officials and military officers to the

secretary of state before June 1 of the decennial census year. (a) The questionnaires shall require each college or university student and each military person to provide all information deemed necessary by the secretary of state to determine the person's residency for the purpose of conducting the census adjustment. The questionnaires shall also provide for racial and ethnic information similar to that provided on the federal census questionnaire.

(b) If the military person has already completed a decennial census adjustment questionnaire as a student at a Kansas college or university, the person shall state the name of that college or university.

(c) Each college or university in Kansas shall provide to the secretary of state a list of names and addresses of all students enrolled during the spring semester of the decennial census year. Every military officer in charge of more than 50 persons in the military service shall provide to the secretary of state a list of names and addresses of all military personnel under that officer's command on April 1 of the decennial census year. The lists shall not be used to determine the permanent residence of any individual.

(d) Questionnaires shall be distributed to all college and university students enrolled for the spring semester of the decennial census year by officials at each institution who shall be designated by their respective administrators. Questionnaires shall be distributed to all military personnel by officers who shall be designated by their respective administrators. The questionnaires shall be completed on or after April 1 whenever possible, to coincide with the official census date of the U.S. bureau of the census, or at another time that is administratively expedient but not later than May 1. In cases in which individual military personnel are unavailable to fill out their questionnaires on April 1 because their military duties require them to be temporarily absent from the installation to which they are assigned, the military officer responsible for providing census adjustment data to the secretary of state may provide these persons with an opportunity to complete their questionnaires at some time after April 1 but not later than May 1. (Authorized by K.S.A. 11-305; implementing Article 10, Section 1 of the Kansas Constitution and K.S.A. 11-303; effective Dec. 11, 1989; amended, T-7-9-13-99, Sept. 13, 1999; amended Jan. 7, 2000.)

Article 36.—ABSENTEE AND ADVANCE VOTING

7-36-1. Absentee and advance voting ballot envelopes. (a) Each absentee and advance voting ballot envelope to be signed by a voter shall contain the following statement: "NOTICE TO VOTER: Your (absentee/advance voting) ballot will be separated from this signed (absentee/advance voting) ballot envelope in order to guarantee the confidentiality of your vote."

(b) Absentee and advance voting ballot envelopes shall be preserved in accordance with K.S.A. 25-2708. The envelopes shall be placed in separate envelopes or sacks, appropriately labeled and sealed. Access to the envelopes shall be subject to the provisions of K.S.A. 25-2708 and K.S.A. 25-3107. (Authorized by K.S.A. 25-1131, as amended by 1995 SB 232, section 34, and K.S.A. 25-1225; implementing K.S.A. 25-1120, as amended by 1995 SB 232, section 18, and K.S.A. 25-1219; effective Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995.)

7-36-2. Advance voting voter; classification as permanent. A voter shall not be classified as a permanent advance voting voter by the county election officer unless the voter, or a person on the voter's behalf, has completed in its entirety an application for permanent advance voting voter status. The completed application shall specify the character of the voter's permanent disability or illness. (Authorized by K.S.A. 25-1131, as amended by 1995 SB 232, section 34; implementing K.S.A. 25-1122, as amended by 1995 SB 232, section 20; effective Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995.)

7-36-3. Advance voting voter; assistance. For purposes of assisting an elector pursuant to K.S.A. 25-1124(b) and (c), as amended by 1995 SB 232, section 23, the phrase "marking and transmitting an advance voting ballot" shall include, but not be limited to, the following acts: (a) transmitting an unmarked advance voting ballot to an elector;

(b) assisting the elector in marking the advance voting ballot;

(c) transmitting the marked ballot to the county election officer; or

(d) any combination of the above acts. (Authorized by K.S.A. 25-1131, as amended by 1995 SB 232, section 34; implementing K.S.A. 25-1124, as amended by 1995 SB 232, section 23; effective

Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995.)

7-36-4. Advance voting voter lists. Advance voting voter lists shall be subject to the provisions of K.S.A. 21-3914 and K.S.A. 25-2320a and amendments thereto. (Authorized by K.S.A. 25-1131; implementing K.S.A. 21-3914 and 25-2320a; effective Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995; amended March 23, 2001.)

7-36-5. Advance voting ballots; counting. Each county election officer shall adopt procedures to ensure that ballots received after the time the polls close on election day shall not be counted. (Authorized by K.S.A. 25-1131, as amended by 1995 SB 232, section 34; implementing K.S.A. 25-1132, as amended by 1995 SB 232, section 35; effective Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995.)

7-36-6. Advance voting list with voting place. (a) Each county election officer shall adopt procedures to prevent a voter from casting both an advance voting ballot and a regular ballot at the voter's polling place.

(b) The procedures shall include, but not be limited to, updating the poll books by adding the names of voters who returned advance voting ballots after the poll books were prepared to the list of names of all advance voting voters from whom advance voting ballots were received by the time the poll books were prepared. (Authorized by K.S.A. 25-1131, as amended by 1995 SB 232, section 34; implementing K.S.A. 25-1126, as amended by 1995 SB 232, section 30; effective Feb. 21, 1994; amended, T-7-7-3-95, July 3, 1995; amended Aug. 25, 1995.)

7-36-7. Processing advance voting ballot applications. This regulation shall govern the processing of each application for an advance voting ballot received by a county election officer if the applicant is registered to vote in that election officer's county and wants to receive the ballot by mail.

(a) If the application does not contain sufficient information or if the information is illegible, the county election officer shall contact the applicant to obtain the information before election day, if practicable.

(b) If the application is not signed or the signature on the application is not consistent with the applicant's signature on the official voter registra-

tion list, the election officer shall attempt to contact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain an updated signature.

(c) If the application does not contain the number of the applicant's Kansas driver's license or Kansas nondriver's identification card or if the number is illegible, the county election officer shall attempt to contact the applicant by any means to obtain the information. The county election officer shall provide the applicant with the information required by K.S.A. 25-1122(e)(2), and amendments thereto.

(d) The county election officer may collect an applicant's Kansas driver's license number or Kansas nondriver's identification card number by any legal means. If the applicant provides the necessary number and the number is consistent with the number on the voter registration list, the county election officer shall issue a regular advance voting ballot.

(e) If an applicant submits a photocopy of the qualifying photographic identification document and the document contains information that is illegible or inconsistent with the information on the voter registration list, the county election officer shall attempt to contact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain a satisfactory photocopy of the qualifying photographic identification document.

(f) If it is not practicable to contact the applicant before the election or if the information, signature, or photocopy provided is incomplete or inconsistent with the voter registration list, the county election officer shall issue a provisional advance voting ballot.

(g) The county election officer shall present each provisional advance voting ballot to the county board of canvassers for a determination of validity. If the voter provided additional information, an updated signature, or an additional photocopy upon request by the county election officer and if the information, signature, or photocopy is consistent with the voter registration list, the ballot shall be counted unless the ballot is determined to be invalid for another reason. If the voter did not provide additional information, an updated signature, or an additional photocopy upon request by the county election officer or if the information, signature, or photocopy is inconsistent with the information on the voter registration list,

the ballot shall not be counted. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2; effective Feb. 24, 2012.)

7-36-8. Uniformed and overseas citizens absentee voting act; ballot distribution deadline in local mail ballot elections. When conducting a local mail ballot election pursuant to K.S.A. 25-431 et seq. and amendments thereto, the county election officer shall transmit a ballot to any person who is qualified to vote under the uniformed and overseas citizens absentee voting act and who has submitted an application for a federal services ballot 45 or more days before the date of the election. If a person submits an application for a federal services ballot less than 45 days before the date of the election, the county election officer shall transmit a ballot to the person within two business days after receipt of the application. (Authorized by K.S.A. 25-440 and 25-1225; implementing K.S.A. 25-435, K.S.A. 25-438, and K.S.A. 2011 Supp. 25-1218; effective Feb. 24, 2012.)

Article 37.—MOTOR VOTER

7-37-1. Voter registration; department of revenue; division of vehicles. (a) The voter registration portion of the application for each motor vehicle driver’s license and nondriver identification card shall be either part of the division of vehicles application or a separate form given to each applicant simultaneously with the division of vehicles application.

(b) The voter registration portion of the application for each motor vehicle driver’s license and nondriver identification card shall be approved by the secretary of state, and shall comply with the requirements of K.S.A. 25-2309, as amended.

(c) Each division of vehicles office shall deliver within five days of receipt each voter registration and change of address form received by the office to the county election officer in the county where the division of vehicles office is located. The county election officer shall forward each voter registration and change of address form from a nonresident of the county to the appropriate county election officer within five days of the county election officer’s receipt. (Authorized by and implementing K.S.A. 25-2351; effective July 5, 1994.)

7-37-2. (Authorized by and implementing K.S.A. 25-2352; effective July 5, 1994; amended July 5, 2002; revoked July 7, 2008.)

Article 38.—NATIONAL VOTER REGISTRATION ACT

7-38-1. National voter registration act; systematic list maintenance; national change of address files. (a) In April of each year, the chief state election official shall complete a check of the United States postal service national change of address files using the list of registered voters maintained in the state’s central voter registration voter database.

(b) If the county election officer chooses to participate in the national change of address program instead of conducting mass or targeted mailings, the chief state election official shall send the name of each registered voter for whom records from the national change of address files indicate a change of address to the county election officer of the county where the voter is registered, as indicated on the central voter registration database.

(c) A county election officer shall send a confirmation mailing as prescribed by K.S.A. 25-2316c and amendments thereto to any registered voter for whom records from the national change of address files indicate a change of address. The confirmation mailing shall be sent when the county election officer receives the information described in subsection (b). If the records indicate a change of address within the county where the voter is registered, the county election officer shall change the voter’s address to the new address before sending the confirmation mailing. (Authorized by and implementing K.S.A. 25-2354; effective Jan. 3, 1997; amended March 23, 2001.)

7-38-2. (Authorized by and implementing L. 1996, Ch. 187, Sec. 20; effective Jan. 3, 1997; revoked July 7, 2008.)

Article 39.—UNIFORM PARTNERSHIP ACT

7-39-1. Uniform partnership act; filing fees. (a) The filing fees for documents filed with the secretary of state pursuant to the uniform partnership act shall be as follows:

- (1) Statement of partnership authority \$ 20
- (2) Statement of denial \$ 20
- (3) Statement of dissociation \$ 20
- (4) Statement of dissolution \$ 20
- (5) Statement of merger \$ 20
- (6) Statement of limited liability partnership qualification \$150

- (7) Statement of foreign limited liability partnership qualification \$150
- (8) Amendment to statement \$ 20
- (9) Cancellation of statement \$ 20
- (10) Any other statement for which a fee is not prescribed..... \$ 20

(b) A certified copy shall be \$7.50 plus \$.50 per page.

(c) If a certified copy of a statement that is filed in another state is filed instead of an original statement, the filing fee charged shall be the fee prescribed for an original statement. (Authorized by and implementing K.S.A. 2000 Supp. 56a-105(g); effective Nov. 20, 1998; amended Oct. 19, 2001.)

Article 40.—REVISED KANSAS TRADEMARK ACT

7-40-1. Classification of goods and services under the revised Kansas trademark act. The schedule of classes of goods and services for registration of trademarks and service marks with the secretary of state, pursuant to the revised Kansas trademark act, shall be the “international schedule of classes of goods and services,” as published in 37 C.F.R. 6.1 on July 1, 1997, which is hereby adopted by reference. (Authorized by and implementing L. 1999, ch. 85, § 11; effective Aug. 20, 1999.)

Article 41.—KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT

7-41-1. Definitions. (a) “Certificate” means a computer-based record or electronic message that at a minimum meets the following conditions:

- (1) Identifies the registered certification authority issuing the certificate;
- (2) names or identifies a subscriber;
- (3) contains the public key of the subscriber;
- (4) identifies the period of time during which the certificate is effective; and
- (5) is digitally signed by the registered certification authority.

(b) “Certificate policy” means the policy that identifies the applicability of a certificate to particular communities and classes of applications with common security requirements. This term is also known as “CP.”

(c) “Certificate revocation list” means a list maintained by a registered certification authority of the certificates the registered certification authority has issued that are revoked before their

stated expiration dates. This term is also known as “CRL.”

(d) “Certification practice statement” means a statement published by a registered certification authority that specifies the policies or practices that the registered certification authority employs in issuing, publishing, suspending, revoking, and renewing certificates. This term is also known as “CPS.”

(e) “Compliance review” means documentation in the form of an information systems audit report verifying that the applicant or registered certification authority has the use of a trustworthy system as defined in subsection (r).

(f) “Identification and authentication” means the process of ascertaining and confirming through appropriate inquiry and investigation the identity of a certificate applicant in compliance with the requirements for certificate security levels specified in the ITEC certificate policy or the CP. This term is also known as “I and A.”

(g) “Information technology executive council” means the Kansas information technology executive council, pursuant to K.S.A. 75-7201 et seq. and amendments thereto, and is also known as “ITEC.”

(h) “Information technology executive council policy 9200” means the “certificate policy for the state of Kansas public key infrastructure,” version 2, including the appendices, approved by the ITEC, amended on April 24, 2008, and hereby adopted by reference. This document applies to state agencies offering or providing the option of using a digital signature to persons with whom the state agencies do business. This term is also known as “ITEC certificate policy.”

(i) “Information technology identity management group” means the group that has been delegated authority by the ITEC and is authorized by the ITEC to make day-to-day administrative and fiscal decisions for the public key infrastructure program. This term is also known as “ITIMG.”

(j) “Local registration authority” means a person operating under the ITEC certificate policy that has a relationship of trust with a community of potential subscribers and, for that reason, has a contractual relationship with a registration authority to perform duties including accepting applications and conducting identification and authentication for certificate applicants in accordance with the law, the ITEC certificate policy, and the appended agreements. This term is also known as “LRA.”

(k) “Local registration authority’s trusted partner” means a person operating under the ITEC

certificate policy that has a relationship of trust with an LRA and that executes a trusted partner agreement with an LRA, as contained in the appendices to the ITEC certificate policy, in order to secure LRA services for the community of potential subscribers of the local registration authority's trusted partner. This term is also known as "LRA's trusted partner."

(l) "Private key" means the key in a subscriber's key pair that is kept secret and is used to create digital signatures and to decrypt messages or files that were encrypted with the subscriber's corresponding public key.

(m) "Public key" means the key in a subscriber's key pair that can be used by another person to verify digital signatures created by a subscriber's corresponding private key or to encrypt messages or files that the person sends to the subscriber.

(n) "Public key infrastructure" means the architecture, organization, techniques, practices, policy, and procedures that collectively support the implementation and operation of a certificate-based, public key cryptography system. This term is also known as "PKI."

(o) "Registered certification authority" has the meaning specified in K.S.A. 16-1602, and amendments thereto. This term is also known as "registered CA."

(p) "Registration authority" means a person operating under the ITEC certificate policy who has been authenticated by a registered CA, issued a registration authority certificate by the registered CA, approved by the ITEC to process subscriber applications for certificates and, if required by the ITEC certificate policy, to conduct I and A of certificate applicants in accordance with the law, the ITEC certificate policy, and the appended agreements. This term is also known as "RA."

(q) "Subscriber" means a person operating under the ITEC certificate policy who meets the following criteria:

- (1) Is the subject of a certificate;
- (2) accepts the certificate from a registered certification authority; and
- (3) holds the private key that corresponds to the public key listed in that certificate.

(r) "Trustworthy system" means a secure computer system that materially satisfies the most recent common criteria protection profile for commercial security, known as "CSPP—guidance for COTS security protection profiles," published by the U.S. department of commerce in December 1999 and hereby adopted by reference.

(s) "X.509" means the standard published by the international telecommunication union-T (ITU-T) in March 2000 that establishes a model for certificates. This X.509 standard, including annexes A and B, is hereby adopted by reference. (Authorized by K.S.A. 16-1605 and 16-1618; implementing K.S.A. 16-1605, 16-1617, and 16-1619; effective July 6, 2001; amended Aug. 19, 2005; amended March 6, 2009.)

7-41-2. Original registration; renewal; expiration. (a) Each original registration or renewal registration for a registered certification authority shall expire one year from the date of issuance.

(b) Each renewal application for registration shall be deemed timely if the registered certification authority files a renewal application with the secretary of state within 60 days before the date the original application or renewal application otherwise will expire. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-3. Registration forms. (a) Each person, before performing the duties of a registered certification authority, shall register with the secretary of state on forms prescribed by the secretary of state.

(b) Original applications, renewal applications, and other information may be allowed by the secretary of state to be filed electronically.

(c) Each applicant for registered certification authority shall file the following with the original application or renewal application:

(1) A compliance review with a report date within 90 days of the original application or renewal application date;

(2) a copy of the applicant's certification practice statement and CP;

(3) a nonrefundable original application or renewal application fee of \$1,000; and

(4) a good and sufficient surety bond, certificate of insurance, or other evidence of financial security in the amount of \$100,000. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-4. Evidence of financial security.

The evidence of financial security shall include, in addition to the requirements of K.S.A. 16-1617 and amendments thereto, the following: (a) The identity of the insurer or the financial institution issuing the surety bond, certificate of insurance, or irrevocable letter of credit, including the following information:

(1) The name;
 (2) the mailing address;
 (3) the physical address; and
 (4) the identification, by number or copy of appropriate documentation, of the licensure or approval as a financial institution or as an insurer in this state;

(b) the identity of the registered certification authority on behalf of which the evidence of financial security is issued;

(c) a statement that the evidence of financial security is issued payable to the secretary of state for the benefit of persons holding qualified rights of payment against the registered certification authority named as principal of the surety bond, certificate of insurance, or irrevocable letter of credit;

(d) a statement that the evidence of financial security is issued for filing pursuant to the Kansas uniform electronic transactions act and amendments thereto; and

(e) a statement of term that extends at least as long as the term of the registration to be issued to the registered certification authority. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-5. Certification practice statement.

Each registered certification authority shall file with the secretary of state a certification practice statement as required by K.A.R. 7-41-3. The statement shall declare the practices that the registered certification authority uses in issuing, suspending, revoking, and renewing certificates. The statement shall also include the following information: (a) If certificates are issued by security levels, the necessary criteria for each certificate security level, including the methods of certificate applicant identification applicable to each security level;

(b) disclosure of any warnings, liability limitations, warranty disclaimers, and indemnity and hold harmless provisions, if any, upon which the registered certification authority intends to rely;

(c) disclosure of any and all disclaimers and limitations on obligations, losses, or damages, if any, to be asserted by the registered certification authority;

(d) a written description of all representations from the certificate applicant required by the registered certification authority relating to the certificate applicant's responsibility to protect the private key; and

(e) disclosure of any mandatory dispute resolution process, if any, including any choice of forum and choice of law provisions. (Authorized

by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-6. Changes to information. Each original applicant or renewal applicant for a registered certification authority shall notify the secretary of state about any change to its CP, CPS, or information contained in its original application or renewal application, as the CP, CPS, or information appears in the secretary of state's files, within 30 days of the effective date of the change. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-7. Recordkeeping and retention of registered certification authority documents.

Each registered certification authority shall maintain documentation of compliance with the Kansas uniform electronic transactions act and this article. The documentation shall include evidence demonstrating that the registered certification authority has met the following requirements:

(a) Each registered certification authority shall retain its records of the issuance, acceptance, and any suspension or revocation of a certificate for a period of at least 10 years after the certificate is revoked or expires. The registered certification authority shall retain custody of the records unless it ceases to act as a registered certification authority.

(b) All records subject to this article shall be in the English language. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-8 and 7-41-9. (Authorized by K.S.A. 2000 Supp. 16-1618; implementing K.S.A. 2000 Supp. 16-1617; effective July 6, 2001; revoked March 6, 2009.)

7-41-10. Procedure upon discontinuance of registered certification authority business.

Each registered certification authority that discontinues providing registered certification authority services without making other arrangements for the preservation of the registered certification authority's records shall notify the secretary of state and the subscribers, in writing, of its discontinuance of business. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-11. Recovery against financial security. (a) In order to recover against a registered certification authority's surety bond, certificate of in-

surance, or other evidence of financial security, the claimant shall meet the following requirements:

(1) File a signed notice of the claim with the secretary of state, providing the following information:

- (A) The name and address of the claimant;
- (B) the amount claimed;
- (C) the grounds for the qualified right to payment; and
- (D) the date of the occurrence forming the basis of the claim; and

(2) attach to the notice a certified copy of the judgment upon which the qualified right to payment is based, except as provided in subsection (b).

(b) If the notice specified in this regulation is filed before entry of judgment, the notice shall be held on file by the secretary of state, without further action, until the claimant files a copy of the judgment. If the secretary of state determines that the action identified in the notice finally has been resolved without a judgment awarding the claimant a qualified right to payment, the notice may be expunged by the secretary of state from the secretary of state's records. A notice shall not be expunged by the secretary of state until two years have elapsed since the notice first was filed.

(c) A notice for filing shall be rejected by the secretary of state if the date of the occurrence forming the basis for the complaint is more than two years before the filing of the notice.

(d) If the notice and judgment are filed pursuant to paragraphs (a)(1) and (2), a copy of the notice and judgment shall be provided by the secretary of state to the surety, insurer, or issuer of the financial security for qualified right of payment to the claimant. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-12. Reciprocity. (a) Any registered certification authority that is licensed, registered, or otherwise under the statutory oversight of a governmental agency, as defined by the Kansas uniform electronic transactions act and amendments thereto, may be registered as a registered certification authority in Kansas if all of the following conditions are met:

(1) The oversight of the governmental agency is equal to or greater than the oversight required pursuant to the Kansas uniform electronic transactions act and amendments thereto and this article.

(2) The registered certification authority submits to the secretary of state a written request for

registration and a copy of the license or registration issued by the governmental agency.

(3) The registered certification authority pays the \$1,000 application fee.

(b) Each registered certification authority registered pursuant to this regulation shall be exempt from the provisions of K.A.R. 7-41-3(c)(1).

(c) If the information filed pursuant to this regulation is satisfactory to the secretary of state, a registered certification authority may be issued a Kansas reciprocal registration by the secretary of state. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1619; effective July 6, 2001; amended March 6, 2009.)

7-41-13. Use of subscriber information. Each registered certification authority shall use subscriber and certificate applicant information only for the purpose of performing the identification and authentication process. (Authorized by K.S.A. 16-1618; implementing K.S.A. 16-1617; effective July 6, 2001; amended March 6, 2009.)

7-41-14. State agency; compliance. Each state agency offering or providing the option of using a digital signature to persons doing business with the state agency shall meet either of the following requirements:

(a)(1) Become an LRA by executing an agreement with the RA, as contained in the appendices to the ITEC certificate policy; and

(2) perform the duties of an LRA in accordance with the ITEC policy and these regulations; or

(b)(1) Become an LRA's trusted partner by executing a trusted partner agreement with an LRA, as contained in the appendices to the ITEC certificate policy; and

(2) perform the duties of an LRA's trusted partner in accordance with the ITEC certificate policy and these regulations. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-15. Registration authority, local registration authority, and local registration authority's trusted partner; compliance. Each RA, LRA, and LRA's trusted partner shall meet the following requirements:

(a) Comply with these regulations and the ITEC certificate policy when administering any certificate or the associated keys; and

(b) ensure that I and A procedures are implemented in compliance with the requirements for certificate security levels specified in the ITEC

certificate policy. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-16. Registration authority, local registration authority, and local registration authority's trusted partner; general responsibilities. (a) Each RA, LRA, and LRA's trusted partner shall perform that party's duties in a manner that meets the following requirements:

(1) Complies with the ITEC certificate policy;

(2) promotes a cooperative relationship with registered CAs; and

(3) uses keys and certificates issued by a registered CA only for authorized purposes.

(b) The primary duties of each RA, LRA, or LRA's trusted partner shall be the following:

(1) The establishment of a trustworthy environment and procedure for certificate applicants to submit applications;

(2) the I and A of each person applying for a certificate or requesting a certificate renewal or a certificate update in compliance with the requirements for certificate security levels specified in the ITEC certificate policy;

(3) the approval or rejection of certificate applications; and

(4) the revocation of certificates at the request of the subscriber or other authorized persons or upon the initiative of the RA, LRA, or LRA's trusted partner. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-17. Registration authority, local registration authority, and local registration authority's trusted partner; certification.

Each RA, LRA, and LRA's trusted partner shall certify on a form prescribed by the ITIMG that the RA, LRA, or LRA's trusted partner has secured an individual subscriber application from a certificate applicant and authenticated the certificate applicant's identity in compliance with the requirements for certificate security levels specified in the ITEC certificate policy when submitting certificate applicant information to an LRA, the RA, or a registered CA. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-18 through 7-41-29. (Authorized by and implementing K.S.A. 2004 Supp. 16-1605; effective Aug. 19, 2005; revoked March 6, 2009.)

7-41-30. Identification and authentication; certificate security levels. Each RA, LRA, and LRA's trusted partner shall ensure that the applicable requirements for certificate security levels specified in the ITEC certificate policy are met when conducting the I and A of a certificate applicant. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-31. (Authorized by and implementing K.S.A. 2004 Supp. 16-1605; effective Aug. 19, 2005; revoked March 6, 2009.)

7-41-32. Agreements; registration authority; local registration authority; local registration authority's trusted partner; certificate applicant. Each RA, LRA, LRA's trusted partner, and certificate applicant shall execute the agreements contained in the appendices of the ITEC certificate policy when contracting for certificate services. The agreements shall be executed before the issuance, administration, or use of the certificates. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-33. Picture identification credentials. Each facial image identification required by an RA, LRA, or LRA's trusted partner for the purpose of I and A shall meet the minimum acceptable standards used in the identification credentials specified in the ITEC certificate policy for certificate security levels. (Authorized by and implementing K.S.A. 16-1605; effective Aug. 19, 2005; amended March 6, 2009.)

7-41-34. Certificate; format and name. Each certificate issued by a registered CA for use by a state agency pursuant to K.S.A. 16-1605, and amendments thereto, shall be in the X.509 format and contain a distinguished name in compliance with the ITEC certificate policy. (Authorized by and implementing K.S.A. 16-1605; effective March 6, 2009.)

7-41-35. Registered certification authority; ITEC certificate policy. Each person who performs the duties of a registered certification authority and issues certificates used by a state agency pursuant to K.S.A. 16-1605, and amendments thereto, shall comply with the ITEC certificate policy. (Authorized by K.S.A. 16-1605 and 16-1618; implementing K.S.A. 16-1605 and 16-1617; effective March 6, 2009.)

**Article 42.—CHARITABLE
ORGANIZATIONS**

7-42-1. Charitable organizations; registration. (a) Any charitable organization required to register with the secretary of state may use the unified registration statement (URS) prescribed by the multi-state filer project in lieu of the secretary of state's registration form. The URS shall include all information required by K.S.A. 17-1763, and amendments thereto.

(b) Each charitable organization that provides copies of its income tax returns to the secretary of state shall include only those sections of the returns that are open for public inspection and shall not include any list of contributor names. (Authorized by and implementing K.S.A. 17-1763; effective Sept. 30, 2005.)

7-42-2. Professional fund raisers; registration. (a) Each professional fund raiser that purposefully directs its fund raising efforts to citizens of this state shall register with the secretary of state. The application for registration shall include the following information:

- (1) The legal name and any other names used by the professional fund raiser;
- (2) the address of the professional fund raiser's principal place of business;
- (3) the address, if any, of the professional fund raiser's office or location in the state of Kansas;
- (4) the type of organization: sole proprietorship, corporation, partnership, or other business entity;
- (5) the names and addresses of the officers, directors, partners, members, or other persons holding management positions; and
- (6) the names of any other states where the professional fund raiser is registered for charitable solicitations.

(b) The professional fund raiser shall attach an operating statement for each charitable organization for which the fund raiser solicits. The operating statement shall provide the name and address of the charitable organization and specify the actual or expected dates on which fund raising activity will be conducted for the charitable organization.

(c) If the professional fund raiser is employed or otherwise engaged by a charitable organization for fund raising after the professional fund raiser has filed its annual registration, the professional fund raiser shall file an operating statement for that charitable organization before beginning its fund raising activity for that charitable organization.

(d) The professional fund raiser shall sign the application under penalty of perjury. (Authorized by K.S.A. 17-1763; implementing K.S.A. 2004 Supp. 17-1764; effective Sept. 30, 2005.)

7-42-3. Professional fund raisers; annual report. (a) Each professional fund raiser shall file an annual report with the secretary of state on or before July 31 each year, reflecting the professional fund raiser's solicitation activities that occurred on and after July 1 of the previous year through the following June 30. The annual report of each professional fund raiser shall provide the following information:

- (1) The legal name and any other names used by the professional fund raiser;
- (2) the address of the professional fund raiser's principal place of business;
- (3) the name and address of each charitable organization for which the professional fund raiser solicited funds;
- (4) a description of the fund raising methods used by the professional fund raiser;
- (5) the name, address, and registration number of each professional solicitor employed by the professional fund raiser and the name of each charitable organization for which the professional solicitor solicited; and
- (6) financial information on each charitable organization for which the professional fund raiser solicited, including the following:
 - (A) The gross receipts received for each charitable organization;
 - (B) the itemized expenses of the professional fund raiser;
 - (C) the net proceeds or revenue received by the fund raiser for each charitable organization;
 - (D) the net proceeds given to the charitable organization; and
 - (E) the fees or profits given to the professional fund raiser.

(b) An authorized agent of the professional fund raiser shall sign the annual report under penalty of perjury. (Authorized by K.S.A. 17-1763; implementing K.S.A. 2004 Supp. 17-1764; effective Sept. 30, 2005.)

7-42-4. Professional solicitors; registration. (a) Each application for registration as a professional solicitor shall provide the following information:

- (1) The name and address of the professional solicitor;

(2) the name and address of the employing professional fund raiser; and

(3) a statement that the professional solicitor agrees to abide by the disclosure requirements of K.S.A. 17-1766, and amendments thereto.

(b) The professional solicitor and the professional fund raiser shall sign the application under penalty of perjury. (Authorized by K.S.A. 17-1763; implementing K.S.A. 17-1765; effective Sept. 30, 2005.)

7-42-5. Changes to registration. Each registered charitable organization, professional fund raiser, and professional solicitor shall notify the secretary of state in writing of any material change in the registration that occurs after filing the registration. Each notice of change shall be filed within 30 days after the change occurs. (Authorized by K.S.A. 17-1763; implementing K.S.A. 17-1763, K.S.A. 2004 Supp. 17-1764, and K.S.A. 17-1765; effective Sept. 30, 2005.)

Article 43.—NOTARIES PUBLIC

7-43-1. Definitions. As used in this article, the following terms shall have the meanings specified in this regulation:

(a) “Digital signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(b) “Electronic” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(c) “Electronic notary public,” “electronic notary,” and “e-notary” mean a notary public who has registered with the secretary of state and who provides electronic notarial acts using a digital certificate authorized by the secretary of state.

(d) “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

(e) “Electronic notarial act” and “electronic notarization” mean any act involving electronic documents that an electronic notary public is authorized to perform under Kansas law.

(f) “Electronic notary seal” means the information within a notarized electronic document that includes the notary’s name, jurisdiction of appointment, and expiration date of the appointment.

(g) “Electronic signature” has the meaning specified in K.S.A. 16-1602, and amendments thereto.

(h) “Notarial act” and “notarization” mean any act that a notary public is authorized to perform under Kansas law.

(i) “Notarial certificate” means the portion of a notarized document that is completed by the

notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

(j) “Notary public” and “notary” mean any person appointed by the secretary of state to perform notarial acts.

(k) “Principal” means the person for whom an electronic notary is providing a notarial act. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-2. Registration requirements. Each individual who wants to become an electronic notary shall meet the following requirements:

(a) Complete a course of instruction approved by the secretary of state;

(b) pass an examination approved by the secretary of state on the course of instruction specified in subsection (a);

(c) obtain a digital certificate authorized by the secretary of state;

(d) register with the secretary of state on a form prescribed by the secretary of state, which shall include providing proof of compliance with subsections (a), (b), and (c); and

(e) pay an information and services fee of \$20. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611 and 75-438; effective Dec. 30, 2005.)

7-43-3. Notarization requirements. (a) Each electronic notary shall use a digital signature when performing any electronic notarization. Before performing any electronic notarization, each electronic notary shall take reasonable steps to ensure that the digital certificate used to create the digital signature is valid and has not expired, been revoked, or been terminated by its registered certification authority.

(b) When performing any electronic notarization, each electronic notary shall complete a notarial certificate, which shall be attached to, or logically associated with, the electronic document. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-4. Personal appearance requirement. Notwithstanding any security measures used in performing any electronic notarization, an electronic notary public shall not perform any electronic notarial act if the principal does not appear in person before the electronic notary at the time of notarization. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-5. Form of evidence of authenticity of electronic notarial act. If electronic evidence of the authenticity of the official signature and seal of an electronic notary of this state is required on any notarized electronic document transmitted to another state or nation, the electronic evidence shall be attached to, or logically associated with, the document and shall be in a form prescribed by the secretary of state in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

7-43-6. Applicability of statutes. Except as otherwise provided in these regulations, the provisions of K.S.A. 53-101 et seq., and amendments thereto, governing notaries public and K.S.A. 16-1601 et seq., and amendments thereto, governing electronic transactions shall apply to each electronic notary public. (Authorized by and implementing K.S.A. 2004 Supp. 16-1611; effective Dec. 30, 2005.)

Article 44.—ADDRESS CONFIDENTIALITY PROGRAM

7-44-1. Definitions. As used in this article, the following terms shall have the meanings specified in this regulation:

(a) “Chief law enforcement officer” means the official head of a federal, state, or local law enforcement agency.

(b) “Commercial package” means a box or other container shipped from a merchant to a program participant.

(c) “Enrolling assistant” means an individual who processes address confidentiality program applications on behalf of an enrolling agent.

(d) “Law enforcement agency” means the federal bureau of investigation, the office of the Kansas attorney general, the Kansas bureau of investigation, or any Kansas police department or sheriff’s department.

(e) “Local agency” means any department, board, commission, officer, court, or authority of a county, city, township, school district, or other tax-supported governmental subdivision of the state.

(f) “Official government mail” means mail sent from the federal government, a state or local agency or court, or any other tax-supported governmental subdivision.

(g) “State agency” means any state district court or any department, board, commission, or authority of the executive branch of state government. (Authorized by and implementing K.S.A. 2006 Supp. 75-456; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-2. Enrolling agent registration. (a) Each enrolling agent, as defined in K.S.A. 75-452(f) and amendments thereto, shall register with the secretary of state by providing the following information on a form prescribed by the secretary of state:

(1) The name of the state agency or local agency, law enforcement office, nonprofit agency, or other person that will serve as the enrolling agent;

(2) the names of the enrolling assistants who work or volunteer for the enrolling agent;

(3) the address and other contact information for the enrolling agent and, if different, for each enrolling assistant;

(4) a statement that program applications and copies of these applications will not be kept by the enrolling agent;

(5) a statement that any information collected, maintained, or shared in the address confidentiality program will remain confidential; and

(6) the signature of the enrolling agent under penalty of perjury asserting that all information on the registration form is true.

(b) If any information on the registration form changes, the enrolling agent shall provide the corrected information to the secretary of state within 30 days of the change.

(c) The registration of any enrolling agent may be revoked by the secretary of state for failure to meet the requirements of any statute or regulation pertaining to the address confidentiality program. (Authorized by K.S.A. 2006 Supp. 75-456; implementing K.S.A. 2006 Supp. 75-458; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-3. Enrolling assistant training. Each enrolling assistant identified on an enrolling agent’s registration shall complete the training provided by the secretary of state within 60 days of the filing date of the enrolling agent’s registration. Any enrolling assistant may be required to obtain additional training as prescribed by the secretary of state to administer the address confidentiality program. (Authorized by K.S.A. 2006 Supp. 75-456; implementing K.S.A. 2006 Supp. 75-458; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-4. Information released to law enforcement agencies. (a) Each law enforcement agency seeking the release of any record or information in a program participant's file shall submit a written request on the agency's letterhead. Each request shall include the following:

- (1) The date of the request;
- (2) the specific record or information requested;
- (3) the name of the program participant; and
- (4) the signature of the agency's chief law enforcement officer.

(b) After verification by the secretary of state with the agency's chief law enforcement officer that the request received is a bona fide request from the chief law enforcement officer, the record or information requested shall be released by the secretary of state to the chief law enforcement officer or that person's designee. (Authorized by K.S.A. 2006 Supp. 75-456 and 75-457; implementing K.S.A. 2006 Supp. 75-457; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-5. Forwardable mail. The mail forwarded by the secretary of state to each program participant, as defined in K.S.A. 75-452(e) and amendments thereto, shall be forwarded to the program participant at a Kansas address and shall include first-class mail pursuant to K.S.A. 75-455(c), and amendments thereto, and all official government mail. Commercial packages shall not be forwarded by the secretary of state to any program participant, unless the secretary of state approves the forwarding of this mail for good cause. (Authorized by K.S.A. 2006 Supp. 75-455 and 75-456; implementing K.S.A. 2006 Supp. 75-455; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-6. Renewal and cancellation of certification. (a) Any program participant may renew the participant's program certification for an additional four years by filing an application with the secretary of state through an enrolling agent pursuant to K.S.A. 75-453, and amendments thereto, within 30 days before the date on which the participant's program certification will expire.

(b) Any program participant may cancel the participant's program certification by filing a letter of cancellation with the secretary of state through an enrolling agent. (Authorized by and implementing K.S.A. 2006 Supp. 75-453 and 75-456; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

7-44-7. Voting process. (a) When initially processing an application for participation in the address confidentiality program, each enrolling assistant shall offer a voter registration form to the applicant. If the applicant chooses to complete the voter registration form, the enrolling agent shall forward the form to the secretary of state with the address confidentiality program application.

(b) Each voter registration form shall be reviewed by the secretary of state. If the applicant is approved as a program participant and the applicant's voter registration is approved, the applicant shall be added as a permanent advance voter to a database that is separate from the centralized voter registration system. If the applicant is not approved as a program participant, the applicant shall be contacted by the secretary of state in order to determine whether the applicant's voter registration should be processed and entered into the centralized voter registration database.

(c) Advance ballots for all elections in which any program participant may lawfully participate shall be sent from the secretary of state to the program participant. County election officials shall provide the correct ballot to the secretary of state for program participants.

(d) Each program participant shall return that participant's voted ballot to the secretary of state, who shall determine whether the ballot was lawfully cast and entitled to be canvassed. The ballot shall be forwarded by the secretary of state to the county election official with notice as to whether the ballot is legally entitled to be canvassed.

(e) Each program participant's confidential address and right to a secret ballot shall be preserved throughout the voting process.

(f) If the program participant's certification in the program expires and the participant does not renew the certification, the participant shall be notified by the secretary of state that the participant's voter registration record will be moved to the centralized voter registration database on the thirty-first day after the program certification expires. If a program participant cancels that participant's voter registration before the deadline specified in this subsection, the participant's voter registration shall not be transferred to the centralized voter registration database. (Authorized by and implementing K.S.A. 2006 Supp. 75-456; effective, T-7-1-1-07, Jan. 1, 2007; effective May 4, 2007.)

**Article 45.—ELECTION
BOARD WORKERS**

7-45-1. Modified shifts for election board workers. If a county election officer chooses to allow the election board workers at a specified polling place to work at the polling place for less than the entire number of hours designated as polling hours, the county election officer shall assign the election board workers according to the following requirements:

(a) The hours each election board worker is assigned to work shall be continuous, with one starting time and one stopping time, and shall, to the extent practicable, constitute one-half the total number of hours the polls are open.

(b) The election board workers working together at any one time shall not all be affiliated with the same political party, to the extent practicable.

(c) No election board worker shall discuss the voting procedure, election results, or any voter's ballot. (Authorized by and implementing K.S.A. 2007 Supp. 25-2810; effective July 7, 2008.)

7-45-2. Oversight of authorized poll agents. (a) The supervising judge shall instruct each authorized poll agent appointed to the polling place of all requirements pertaining to authorized poll agents that are issued by the county election officer or given in Kansas law.

(b) If a poll agent does not comply with the requirements, any election board worker may ask the poll agent to correct or cease the improper or illegal activity or to leave the polling place. This activity shall be reported to the county election officer.

(c) The election board workers shall ensure that the poll agents do not engage in any activities that would constitute election crimes, including the following:

(1) Electioneering, as defined in K.S.A. 25-2430 and amendments thereto;

(2) voter intimidation, as defined in K.S.A. 25-2415 and amendments thereto;

(3) disorderly election conduct, as defined in K.S.A. 25-2413 and amendments thereto;

(4) unauthorized voting disclosure, as defined in K.S.A. 25-2422 and amendments thereto; and

(5) voting machine fraud, as defined in K.S.A. 25-2425 and amendments thereto.

(d) The election board workers shall prevent the poll agents from performing the following:

(1) Touching or handling any voter's ballot during the voting process;

(2) distributing ballots or counting ballots;

(3) hindering or obstructing any voter from voting or from entering and leaving the polling place; and

(4) hindering or obstructing any election board worker from performing election duties. (Authorized by and implementing K.S.A. 25-3005; effective July 7, 2008.)

**Article 46.—PHOTOGRAPHIC
IDENTIFICATION REQUIREMENTS**

7-46-1. Postelection submission of photographic identification by provisional voter. (a) Any voter who has cast a provisional ballot due to a failure or refusal to provide a valid photographic identification document at the time of voting may submit a valid photographic identification document by mail, in person, or by electronic means to the county election office in the county where the voter is registered to vote. "Electronic means" shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state.

(b) If the voter submits a valid photographic identification document to the county election office before the county board of canvassers convenes, the county election officer shall present the document to the board of canvassers to determine the validity of the provisional ballot. If the board of canvassers determines the photographic identification document to be valid and the provisional ballot is not determined to be invalid for any other reason, the ballot shall be counted. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2, and K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

7-46-2. Election board worker assessment of validity of photographic identification documents. (a) Each election board worker to whom a photographic identification document is presented by a voter shall assess the sufficiency and validity of that document as follows:

(1) The election board worker shall perform the following:

(A) Verify that the name on the photographic identification document is consistent with the name on the poll book;

(B) allow for abbreviations and nicknames, including "Wm." or "Bill" for "William";

(C) if the name of the voter is consistent with the name in the poll book, proceed to paragraph (a)(2); and

(D) if the voter's name is different from the name in the poll book or the name as stated by the voter due to marriage, divorce, hyphenation, or legal action, issue the voter a provisional ballot on the condition that the voter first completes an application for voter registration.

(2) The election board worker shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury to the voter, and other physical characteristics.

(A) If the election board worker is satisfied that the voter is the person depicted in the photographic identification document and the voter's name is consistent with the name in the poll book, then the election board worker shall issue the voter a regular ballot.

(B) If the election board worker is unable to determine whether the voter is the person depicted in the photographic identification document because of degradation or insufficient photograph quality, then the election board worker shall issue a regular ballot to the voter if one of the following conditions is met:

(i) The voter's date of birth on the presented photographic identification document matches the voter's date of birth in the poll book.

(ii) The voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(iii) An election board worker at the polling place possesses knowledge that the person depicted in the photographic identification document is the voter.

(3) If the election board worker determines that the photographic identification document does not depict the voter, then the election board worker shall issue a provisional ballot unless the voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(b) The photographic identification document shall not be used to verify the address of the voter if the document contains an address. The photographic identification document shall be used to verify only the name and appearance of the voter. The poll book shall be used to verify the address of the voter by comparing the voter's address in the poll book to the address stated by the voter.

(c) If there is a dispute regarding the application of this regulation to a voter or if the election board

worker is unable to determine a voter's eligibility, the supervising judge shall make a decision regarding whether a regular ballot or a provisional ballot shall be issued.

(d)(1) The county election officer shall present all provisional ballots to the county board of canvassers for a determination of validity.

(2) Each provisional ballot issued under this regulation shall be counted if both of the following conditions are met, unless the provisional ballot is determined to be invalid for another reason:

(A) Before the county board of canvassers convenes, the voter provides information to the county officer that remedies each deficiency or inconsistency that led to the issuance of the provisional ballot.

(B) The county board of canvassers determines that the voter's provisional ballot is valid.

(e) Nothing in this regulation shall require an election board worker to issue a regular ballot if the election board worker determines that a voter is attempting to circumvent the photographic identification requirement. Except as specified in K.S.A. 25-2908(i) and amendments thereto, nothing in this regulation shall exempt the voter from providing a photographic identification document. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

7-46-3. Declarations of religious objection. (a) Each person who is otherwise entitled to vote and who seeks an exemption from the photographic identification requirement pursuant to K.S.A. 25-2908(i)(5), and amendments thereto, shall sign and submit a declaration form concerning the person's religious beliefs before receiving a ballot in each election in which the person intends to vote. The person may sign and submit the declaration form to the secretary of state or the county election officer before each election or when applying for a ballot.

(b) A voter shall not submit a declaration of religious objection in place of a valid photographic identification document after casting a ballot. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

Article 47.—ELECTION AUDITS

7-47-1. Audit implementation. The requirements of this regulation shall not apply to

local question elections, mail-ballot elections pursuant to K.S.A. 25-431 through 25-441 and amendments thereto, or statewide constitutional amendments.

(a) As used in K.S.A. 25-3009 and amendments thereto, the term “unofficial election night returns” shall include ballots cast and counted on election day, ballots cast in advance and counted on election day, and ballots cast by means of the uniformed and overseas citizens absentee voting act (UOCAVA) procedures and counted on election day. This term shall not include any ballots cast that are challenged or marked as provisional or any ballots that are cast in advance and received after election day.

(b) Training shall be provided by the secretary of state to each county election officer. Each county election officer shall provide training to the election board, as specified in K.S.A. 25-3009 and amendments thereto, conducting the postelection audit. The training shall include the identification of voter intent specific to the vote-casting technologies in use across Kansas.

(c)(1) An auditable race and precinct shall be a race and precinct meeting the requirements in K.S.A. 25-3009, and amendments thereto, for an audit to be conducted. The random selection of races and precincts shall take place in a public setting, and the procedure to randomize the selection of races and precincts shall be determined solely by each county election officer and the secretary of state. Upon completion of the audit, each election board shall transmit to the secretary of state and the county election office the results of the audit no later than 48 hours before the meeting of the county board of canvassers.

(2) In even-year elections, within 24 hours of the closing of the final polling location in Kansas, the list of randomly selected races to be audited shall be transmitted by the secretary of state to each county election officer. Each county election officer shall examine each race in the order specified until an auditable race is determined. Each county election officer shall then randomly select one percent of the total county precincts from the subset of auditable precincts. If no contested race exists, the election board shall audit the first race listed.

(3) In odd-year elections, each county election officer shall randomly select the races and then each precinct to be audited.

(d) Ballot images may be used for the manual audit if imaging technology exists during the tab-

ulation process on election night. (Authorized by and implementing K.S.A. 2018 Supp. 25-3009; effective, T-7-6-26-19, June 26, 2019; effective Sept. 27, 2019.)

Article 48.—VOTE CENTERS

7-48-1. Vote centers; plans; report. (a) For purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) “Election day” means the day for casting ballots for any national, state, county, township, city, and school primary and general election, question-submitted election, or other election authorized by law and conducted by the county election officer.

(2) “Electronic poll book” means the electronic version of the poll book, as described in K.S.A. 25-2507 and amendments thereto, used at a vote center or voting place.

(3) “Vote center” means a voting place where any registered voter in a county with a vote center plan implemented may cast a ballot on election day.

(4) “Voting place” has the meaning specified in K.S.A. 25-2506, and amendments thereto.

(b) Pursuant to K.S.A. 25-2701 and amendments thereto, any county election officer may authorize the use of vote centers allowing all voters within the county to vote at any polling location on election day following submittal of a plan and receipt of approval by the Kansas secretary of state. Once a vote center plan is in effect, each polling location under the jurisdiction of the county election officer shall be a vote center.

(c) The plan specified in subsection (b), which shall be signed by the chairman of the county commission and the county election officer and received by the Kansas secretary of state at least six months before implementation, shall provide the following:

(1) The implementation date of the first election in which vote centers are to be used. A county election official shall not utilize vote centers for the first time in a general or primary election in an even-numbered year;

(2) the number of vote centers that will be established and the number of polling places that will be reduced;

(3) the location of each vote center. For each location identified, the plan shall provide the following:

(A) Certification that each location complies with the Americans with disabilities act (ADA) accessibility requirements;

(B) a description of each vote center. The description of each vote center shall include at least the number of voting machines, tables, chairs, and board workers for that vote center location and the number of parking spaces and designated handicap parking spaces available for that vote center location;

(C) a detailed description of all hardware, firmware, and software for all voting equipment and electronic poll books that will be used in the vote center;

(D) a statement that each piece of voting equipment has been certified by the United States election assistance commission and the Kansas secretary of state's office;

(E) a statement acknowledging that each electronic poll book to be used has been successfully used in at least one jurisdiction in the United States before using the poll book at a vote center location;

(F) a detailed testing plan that provides an estimate of the highest volume of voters at each vote center and certifies that testing has been done to ensure that the vote center can accommodate at least that volume; and

(G) a contingency plan designed to both prevent a disruption of the vote center process and ensure that the election is properly conducted if a disruption occurs. At a minimum, the contingency plan shall address likely impediments that could cause issues at vote centers, including the following:

(i) Inclement weather;

(ii) complete loss of connectivity for any length of time to electronic poll books or voting machines that includes a plan of preventing voters from voting at multiple locations;

(iii) higher than anticipated volumes of voters; and

(iv) unavailability of a vote center;

(4) a description of the methods and standards that the county election official will use to ensure the security of voting conducted at vote centers. As part of these security methods, an electronic poll book shall not be connected in any way to a voting system. The county election official shall also certify that each vote center will have a secure connection that has real-time access to an electronic poll book and prevents any voter from voting more than once at that vote center or at any other vote center during the same election; and

(5) a public outreach plan that involves a local working group designed to inform county citizens of the change to vote centers. This public outreach plan shall include the names of local officials, county residents, and any other individuals that are part of the local working group developing and implementing the plan. The public outreach plan shall also describe the activities that the local working group will utilize to educate the public on vote centers.

(d)(1) If a county election officer intends to implement a change to the vote center plan involving the requirements in paragraph (c)(3)(C), the county election officer shall notify the secretary of state no later than 90 days before implementing the change. The notice shall be accompanied by the statements required by paragraphs (c)(3)(D) and (E) and the testing plan and the contingency plan required by paragraphs (c)(3)(F) and (G).

(2) If a county election officer intends to change or close a vote center location, the county election officer shall notify the secretary of state upon the determination being made and any new vote center location being selected. This notice shall be submitted no later than 90 days before the first election in which the vote center location closing or change is to occur. If the 90-day advance notice is impracticable, the county election officer may seek approval from the secretary of state to waive the 90-day requirement, but notice shall still be provided before implementing the changes identified in this paragraph.

(3) If a county election officer intends to change the vote center plan involving the security methods and standards required in paragraph (c)(4), the county election officer shall notify the secretary of state no later than 90 days before implementation of the change. If the 90-day advance notice is impracticable, the county election officer may seek approval from the secretary of state to waive the 90-day requirement.

(e) Following the first year that a vote center plan is implemented, the county election officer shall submit the county's vote center plan, which shall include any updates or changes since last submission to the secretary of state, six months before the next August primary election occurring in the year identified in K.S.A. 25-101(a)(1), and amendments thereto. The county election officer shall then resubmit the plan at the same time every four years.

(f) The process for casting a ballot at each vote center shall comply with all statutory require-

ments in Kansas, including the provisions in K.S.A. 25-2901 et seq., and amendments thereto.

(g) Following the first election in which a county utilizes vote centers, the county election officer shall submit to the secretary of state a report that includes the following:

(1) The number of voters and provisional voters who utilized each vote center;

(2) the estimated time that a voter waited during peak voting hours at each vote center; and

(3) any logistical, voting machine, or network problems encountered at any vote center.

(h) If a county election officer in consultation with the county commissioners wants to return to a precinct model of voting rather than the vote center model, the county election officer and the county commissioners shall submit a plan to the Kansas secretary of state. The plan, which shall be signed by the chairman of the county commission and the county election officer and received by the Kansas secretary of state at least six months before implementation, shall provide the following:

(1) The implementation date of the first election in which precinct model voting will be used;

(2) the number of polling places that will be used;

(3) the location of each polling place. For each location identified, the plan shall be accompanied by the following:

(A) Statement of compliance with ADA accessibility requirements;

(B) a description of each polling place. The description of each polling place shall include at least the number of voting machines, tables, chairs, and board workers expected to be used at that polling place and the number of parking spaces and designated handicap parking spaces available for that polling place;

(C) a detailed description of all hardware, firmware, and software for all voting equipment and electronic poll books that will be used in the polling places;

(D) a statement that each piece of voting equipment has been certified by the United States election assistance commission and the Kansas secretary of state's office; and

(E) a statement acknowledging that each electronic poll book to be used has been successfully used in at least one jurisdiction in the United States before being used in a polling place; and

(4) a public outreach plan that involves a local working group designed to inform county citizens of the change back to precinct voting. This public outreach plan shall include the names of local officials, county residents, and any other individuals that are part of the local working group developing and implementing the plan. The public outreach plan shall also describe the activities that the local working group will utilize to educate the public on the change back to precinct voting. (Authorized by and implementing K.S.A. 2020 Supp. 25-2701; effective March 12, 2021.)

Agency 8

Livestock Brand Commissioner

Editor's Note:

Regulations transferred to Agency 9, Articles 15 and 16.

Articles

- 8-1. *BRANDS. (Not in active use.)*
- 8-2. *ESTRAY NOTICES. (Not in active use.)*

Article 1.—BRANDS

8-1-1. (Authorized by K.S.A. 47-418, 47-426; effective Jan. 1, 1966; transferred Aug. 19, 1970 to K.A.R. 9-15-1.)

8-1-2. (Authorized by K.S.A. 47-418, 47-426; effective Jan. 1, 1966; transferred Aug. 19, 1970 to K.A.R. 9-15-2.)

8-1-3. (Authorized by K.S.A. 47-418, 47-426; effective Jan. 1, 1966; transferred Aug. 19, 1970 to K.A.R. 9-15-3.)

Article 2.—ESTRAY NOTICES

8-2-1. (Authorized by K.S.A. 1965 Supp. 47-230; effective Jan. 1, 1966; transferred Aug. 19, 1970 to K.A.R. 9-16-1.)

8-2-2. (Authorized by K.S.A. 1965 Supp. 47-230; effective Jan. 1, 1966; transferred Aug. 19, 1970 to K.A.R. 9-16-2.)

Agency 9
Kansas Department of Agriculture—
Division of Animal Health

Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 40, the Kansas Animal Health Department was abolished on July 1, 2011. Powers, duties and functions were transferred to the Kansas Department of Agriculture, Division of Animal Health. See L. 2011, Ch. 135.

Articles

- 9-1. ANTHRAX VACCINE.
- 9-2. BOVINE BRUCELLOSIS.
- 9-3. SWINE BRUCELLOSIS AND CERVIDS.
- 9-4. DISPOSAL PLANTS.
- 9-5. GARBAGE FEEDING.
- 9-6. HOG CHOLERA.
- 9-7. MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS.
- 9-8. LIVESTOCK FEED LOTS.
- 9-9. POULTRY AND HATCHING EGGS.
- 9-10. PUBLIC LIVESTOCK MARKETS.
- 9-11. TUBERCULOSIS.
- 9-12. SWINE, SPECIFIC PATHOGEN FREE REGULATIONS.
- 9-13. *ANIMAL WELFARE. (Not in active use.)*
- 9-14. LIVESTOCK DEALERS REGISTRATION.
- 9-15. LIVESTOCK BRANDS.
- 9-16. *ESTRAY NOTICES. (Not in active use.)*
- 9-17. PSEUDORABIES IN SWINE.
- 9-18. ANIMAL FACILITY INSPECTION PROGRAM LICENSE AND REGISTRATION FEES.
- 9-19. *ANIMAL BREEDERS AND DISTRIBUTORS; FACILITY STANDARDS, ANIMAL HEALTH, HUSBANDRY, AND OPERATIONAL STANDARDS. (Not in active use.)*
- 9-20. *PET SHOPS. (Not in active use.)*
- 9-21. *ANIMAL RESEARCH FACILITY. (Not in active use.)*
- 9-22. *ANIMAL POUNDS AND SHELTERS. (Not in active use.)*
- 9-23. *HOBBY KENNEL OPERATORS. (Not in active use.)*
- 9-24. *KENNEL OPERATORS. (Not in active use.)*
- 9-25. *RETAIL BREEDERS FACILITY STANDARDS; ANIMAL HEALTH, HUSBANDRY AND OPERATIONAL STANDARDS. (Not in active use.)*
- 9-26. *EUTHANASIA. (Not in active use.)*
- 9-27. REPORTABLE DISEASES.
- 9-28. BRUCELLA OVIS.
- 9-29. *CERVIDAE. (Not in active use.)*
- 9-30. EQUINE INFECTIOUS ANEMIA.
- 9-32. SCRAPIE IN SHEEP AND GOATS.

Article 1.—ANTHRAX VACCINE

9-1-1. Sale or distribution. It shall be unlawful for any person to sell or distribute any anthrax spore vaccine, any Sterns' non-encapsulated spore vaccine, or any anthrax bacterin in the state of Kansas, without first having obtained, from the livestock sanitary commissioner of Kansas, a permit therefor; which permit shall limit sale and distribution of such products to veterinarians holding specific authority from the livestock sanitary commissioner of Kansas to use such products. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-1-2. Use. It shall be unlawful for any person to inject or use anthrax spore vaccine, Sterns' non-encapsulated spore vaccine, or anthrax bacterin, except veterinarians having authority for such purpose from the livestock sanitary commissioner of Kansas, and injecting and using such products under the supervision of the livestock sanitary commissioner of Kansas.

It shall be unlawful for any person to inject or use anthrax spore vaccine, except at locations or on premises where the existence of anthrax has been determined and confirmed by a laboratory diagnosis.

It shall be unlawful for any person to inject or use Sterns' non-encapsulated spore vaccine or anthrax bacterin, except (1) At locations or on premises where a field diagnosis of the existence of anthrax has been made by a veterinarian authorized by the livestock sanitary commissioner of Kansas, or (2) where such location or premises as have been specifically designated by the livestock sanitary commissioner of Kansas as authorized for the injection or use of such products. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

Article 2.—BOVINE BRUCELLOSIS

9-2-1. Official vaccinate. (a) "Official calfhood vaccinate" means any heifer calf that is permanently identified and that has been officially vaccinated for brucellosis with a vaccine approved by the livestock commissioner and produced and approved under license of the United States department of agriculture (USDA) for injection into cattle and bison to enhance resistance to brucellosis. Each official calfhood vaccinate shall be vaccinated in accordance with subsection (b).

(b)(1) Female cattle of any breed and female bison shall be vaccinated with a USDA-approved brucella abortus vaccine. The vaccine shall be administered in accordance with the vaccine label-

ing for cattle when the calf is at least four months of age but less than 12 months of age, or at least 120 days of age but less than 360 days of age and for bison when the calf is at least four months of age but less than 10 months of age, or at least 120 days of age but less than 300 days of age.

(2) The vaccination shall be given by a veterinarian employed by the USDA, a veterinarian employed by the Kansas animal health department, or a veterinarian licensed to practice in the state of Kansas and accredited by the USDA. The veterinarian shall send to the livestock commissioner, within 10 days after the date of the vaccination, one copy of an official brucellosis vaccination record reflecting the calfhood vaccination. One copy of the official brucellosis vaccination record shall be given to the owner, and one copy shall be retained by the veterinarian. (Authorized by K.S.A. 47-610 and 47-657; implementing K.S.A. 47-608 and 47-622; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended Jan. 1, 1974; amended T-84-23, Aug. 30, 1983; amended May 1, 1984; amended, T-86-11, May 1, 1985; amended May 1, 1986; amended April 23, 1990; amended Jan. 23, 1998.)

9-2-2. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; amended T-84-23, Aug. 30, 1983; amended May 1, 1984; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-2-3 and 9-2-4. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-5. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; implementing K.S.A. 47-658a and 47-658b; effective Jan. 1, 1966; amended May 1, 1982; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-6. Reports. All activities, conducted either privately or as a part of the official brucellosis eradication program, such as results of agglutination tests and vaccinations, shall be reported promptly to the state livestock sanitary commissioner. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966.)

9-2-7 and 9-2-8. (Authorized by K.S.A. 47-608, 47-622, 47-624 and 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-9. (Authorized by K.S.A. 47-608, 47-622, 47-624 and 47-657; effective Jan. 1, 1966; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-10. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-11 to 9-2-13. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-14 and 9-2-15. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-16. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-17. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-18 and 9-2-19. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-20 and 9-2-21. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-22. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

9-2-23 to 9-2-26. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-27. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

9-2-28 to 9-2-30. (Authorized by K.S.A. 47-608, 47-622, 47-624, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-31. (Authorized by K.S.A. 47-608, 47-610, 47-622, 47-624, 47-657; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked, T-84-23, Aug. 30, 1983; revoked May 1, 1984.)

9-2-32. Brucellosis: uniform methods and rules. The provisions of “brucellosis eradication: uniform methods and rules,” approved by the United States department of agriculture, animal and plant health inspection service, veterinary services, as the minimum standards for achieving and maintaining certified and validated herds and certified and validated area status, effective February 1, 1998, are hereby adopted by reference, except for the definition of “official vaccinate (adult)” in chapter 1, part 1. (Authorized by K.S.A. 47-610 and 47-657; implementing K.S.A. 47-608, 47-610, and 47-657; effective, T-85-10, April 11, 1984; effective, T-86-11, May 1, 1985; effective May 1, 1986; amended Jan. 23, 1998; amended, T-9-2-18-05, Feb. 18, 2005; amended June 10, 2005.)

9-2-33. Change of ownership requirements for intrastate movement. “Test eligible cattle,” as defined in the uniform methods and rules, that are offered for sale or sold shall be tested for brucellosis on the date of sale. The seller shall be responsible for brucellosis testing. (Authorized by and implementing K.S.A. 47-608, 47-610, 47-657; effective, T-84-23, Aug. 30, 1983; effective May 1, 1984.)

9-2-34. “F” branding of heifers. (a) All sexually intact female feeder cattle, 18 months of age or younger, originating in “b” and “c” states, must be branded with the letter “F” on the left jaw or the left tail head. All female feeder cattle shall be branded at the farm of origin or first point of concentration except those going to a licensed Kansas feedlot. The letter “F” shall be at least three inches by two inches in size. All female feeder cattle moving direct to Kansas licensed feedlots shall be exempt.

(b) All spayed female cattle from “b” and “c” states shall be individually identified with a metal eartag or be branded with an open spade brand on the left jaw.

(c) Replacement female cattle from “b” and “c” states must originate from a certified brucellosis free herd or enter the state upon approval from the Kansas livestock commissioner.

(d) All livestock from “b” and “c” states moving into Kansas shall have: (1) A valid certificate of veterinary inspection; and

(2) a permit from the animal health department. (Authorized by and implementing K.S.A. 47-608; 47-610; 47-623; 47-624; 47-657; effective May 1, 1987.)

9-2-35. Movement of sexually intact cattle and bison from designated surveillance areas. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) “Designated surveillance area” and “DSA” mean any area identified by the USDA with an elevated risk for brucellosis infection due to serological evidence of brucella exposure in wild elk sampled in that area.

(2) “Official identification” means a unique and permanent form of individual animal identification approved by the USDA’s animal and plant health inspection service or the animal health commissioner. This term shall not include breed registration tattoos, brands, or any registered brand even if the registered brand is accompanied by a brand inspection certificate.

(3) “Official test” means a USDA-approved test for brucellosis conducted at a USDA-approved lab pursuant to “brucellosis eradication: uniform methods and rules,” which is adopted by reference in K.A.R. 9-2-32.

(4) “USDA” means United States department of agriculture.

(b) All sexually intact cattle or bison, regardless of age and sex, moving from a DSA into Kansas shall have official identification for each animal, shall obtain a movement permit number from the Kansas animal health commissioner, and shall be accompanied by a certificate of veterinary inspection issued by a state-licensed and federally accredited veterinarian in the state of origin. The certificate of veterinary inspection shall include the movement permit number and a statement verifying that each animal has official identification.

(c) In addition to the requirements of subsection (b), the certificate of veterinary inspection for all sexually intact cattle and bison aged 12 months or older moving from a DSA into Kansas and all sexually intact cattle and bison moving from a DSA into Kansas for breeding or exhibition purposes, regardless of age, shall also include official identification for each animal and a statement that each animal being moved meets one of the following requirements:

(1) Originates and moves directly from a USDA-certified brucellosis-free herd in the state of origin;

(2) originates and moves directly from a herd that has had a negative whole-herd test for brucellosis conducted within the previous 12 months, including the date of the last qualifying whole-herd test; or

(3) has tested negative in response to an official test for brucellosis within the 30 days before movement to Kansas, including the date of the last qualifying test for the animal.

(d) One copy of the certificate of veterinary inspection shall accompany the cattle or bison shipment, one copy shall be retained by the official state agency in the state of origin, and one copy shall be sent by the inspecting veterinarian in the state of origin to the office of the Kansas animal health commissioner. (Authorized by K.S.A. 2019 Supp. 47-610 and 47-657; implementing K.S.A. 2019 Supp. 47-607, K.S.A. 2019 Supp. 47-608, K.S.A. 2019 Supp. 47-610, K.S.A. 2019 Supp. 47-657, K.S.A. 47-661, K.S.A. 47-663 and K.S.A. 47-664; effective Nov. 13, 2020.)

Article 3.—SWINE BRUCELLOSIS AND CERVIDS

9-3-1. Definitions. (1) Herd. A herd of swine shall include all swine on the premises of any owner of swine, or other person in possession, which swine are 6 months of age and over, exclusive of feeder swine maintained separate and apart from the swine kept for breeding purposes, and production therefrom.

(2) Negative herd test. A negative herd test means a test in which no agglutination titre exceeds a reaction of incomplete in the 1-100 dilution on the plate test or when no animal in the herd reacts on the brucella card test.

(3) Negative animal test. A negative animal test means a test in which the agglutination titre is negative in the 1-25 dilution on the plate test or negative on the brucella card test.

(4) Swine reactor. A swine reactor means any porcine animal showing a complete reaction in the 1-100 dilution of the blood agglutination test or complete agglutination on the brucella card test.

(5) Infected herd. An infected herd means any herd for which the herd test discloses one or more animals reacting completely in the dilution of 1-100 or higher on the plate test, then any animal in the herd showing a reaction of complete in dilution of 1-25, or higher shall be considered a reactor. Any animal in the herd reacting in the brucella card test. (Authorized by K.S.A. 47-608,

47-610, and 47-657; effective Jan. 1, 1966; amended Jan. 1, 1969.)

9-3-2. Validated brucellosis-free swine herd. (1) Validation: A herd may be validated when the swine therein have passed one negative herd test. This includes all animals 6 months of age and over, with no agglutination tests being positive in the dilution of 1:100, or higher, on the plate test or no reactors on the brucella card test.

(2) Requirements for maintaining validated brucellosis-free herd: Annual herd blood test of all animals 6 months of age and over and herd additions limited to: (a) Swine from validated herds, without a test, and

(b) Swine from herds where clinical evidence, or history, does not indicate infection, and which shall have passed a negative test within 30 days prior to herd addition. Such swine shall be held in isolation from herd to which they are intended as additions, until found to be negative to a retest 60 to 90 days from date of first test.

(3) Revalidation: Herd. A negative herd test of all eligible swine conducted within 10 to 14 months of the last validation date or establish that at least 20 percent of adult breeding swine were tested under a market swine identification program during the year and that at least one-half of sampling occurred during the last 6 months of the validation period.

(4) Revalidation: Area. Market swine identification coverage of at least 30 percent (10 percent per year) of the breeding swine 6 months of age or over from each herd, during the 3-year validation period. (Authorized by K.S.A. 47-608, 47-610, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1974.)

9-3-3. Plans for eradicating brucellosis from infected swine herds. If infection is disclosed in swine herds, one of the following plans should be selected for eradicating the disease and for subsequent qualifying the herd for validated brucellosis-free status, if desired. Infected herds under test for area validation status should also choose one of these plans to eradicate brucellosis from the herd: A. Plan 1—This plan is recommended for commercial herds found infected. The following procedures should be carried out:

(a) Market the entire herd for slaughter as soon as practicable.

(b) Clean and disinfect houses and equipment.

(c) Restock premises with animals (from validat-

ed brucellosis-free herds), placing them on ground that has been free of swine for at least 60 days.

(d) After 2 consecutive negative tests, not less than 60 nor more than 90 days apart, the herd is eligible for validated brucellosis-free herd status.

B. Plan 2—This plan is recommended for use in infected purebred herds only where it is desired to retain valuable blood lines. The following procedures should be carried out:

(a) Separate pigs from sows at 42 days of age or younger and isolate.

(b) Market infected herd for slaughter as soon as practicable. Infected sows should not be rebred and should be slaughtered as soon as possible. Complete isolation of infected animals is essential. The separated weaning pigs form the nucleus for establishment of the infection-free herd.

(c) Test the gilts to be used for the following breeding season about 30 days before breeding. Save only the gilts that are negative. Breed only to negative boars.

(d) Retest the gilts after farrowing and before removing them from individual farrowing pens. Should reactors be found, they should be segregated from the remainder of the herd and slaughtered as soon as possible. Select only pigs from negative sows for breeding gilts.

(e) If reactors are found in step (d), the process is repeated.

(f) Following 2 consecutive negative tests, not less than 90 days apart, the herd is eligible for validated brucellosis-free herd status.

C. Plan 3—This plan is not recommended in general, but it has been found useful in herds where only a few reactors are found and where no clinical symptoms of brucellosis have been noted. Carry out the following procedures:

(a) Market reactors for slaughter.

(b) Retest herd at 30-day intervals, removing reactors for slaughter until the entire herd is negative.

(c) If the herd is not readily freed of infection, abandon this plan in favor of plan 1 or plan 2.

(d) Following 2 consecutive negative tests, not less than 90 days apart, the herd is eligible for validated brucellosis-free herd status. (Authorized by K.S.A. 47-608, 47-610, 47-657; effective Jan. 1, 1966; amended Jan. 1, 1974.)

9-3-4. Official program work and reports.

All official work shall be conducted by an authorized licensed, accredited veterinarian and the work shall be at the expense and liability of the

swine owners, except fee-basis testing of swine is authorized in areas not validated brucellosis free and the testing shall be limited to suspicious and infected herds and area validation. Blood samples shall be tested at a state-federal cooperative laboratory. All testing shall be reported to the livestock commissioner on official brucellosis test charts and the reports shall show the date, name and address of the owner, the positive identification of the animal tested, and test results. (Authorized by K.S.A. 47-608, 47-610, 47-657; implementing K.S.A. 47-610; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1982.)

9-3-5. Quarantine. When brucellosis is found in a herd, all swine on the premises where such disease is found, shall be under quarantine until released by the livestock sanitary commissioner of Kansas.

Shipments to slaughter may be authorized by a shipping permit issued by the livestock sanitary commissioner of Kansas.

All swine moved to slaughter on a permit shall be identified in a manner approved by the livestock sanitary commissioner of Kansas. (Authorized by K.S.A. 47-608, 47-610, 47-657; effective Jan. 1, 1968.)

9-3-6. Definitions. As used in K.A.R. 9-3-6 through 9-3-17, each of the following terms shall have the meaning specified in this regulation:

(a) "Adult domesticated cervid" means any domesticated cervid that is 12 months of age or older.

(b) "Affected herd" means any domesticated cervid herd in which tissues or fluids collected from a live animal or carcass of an animal tested positive for any infectious or contagious disease for which the herd may be quarantined, including chronic wasting disease (CWD), bovine tuberculosis (TB), or *Brucella abortus* (brucellosis), using an approved test conducted at an approved laboratory.

(c) "Animal" means a member of the family Cervidae, unless otherwise stated.

(d) "APHIS" means the animal and plant health inspection service of the United States department of agriculture.

(e) "Approved laboratory" means any laboratory approved by APHIS to conduct brucellosis, TB, and CWD testing.

(f) "Approved test" means any test for brucellosis, TB, or CWD conducted under protocols established by APHIS.

(g) "Cervid" means any member of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

(h) "Chronic wasting disease" and "CWD" mean a nonfebrile, transmissible spongiform encephalopathy that is insidious and degenerative and that affects the central nervous system of cervids.

(i) "Commingle" means grouping animals in a manner in which physical contact among animals could occur, including maintaining animals in the same pasture or enclosure. This term shall not include holding animals at a sale, during transportation, during artificial insemination, or in other situations in which only limited contact is involved.

(j) "Commissioner" means Kansas animal health commissioner.

(k) "CWD-clean herd" means a herd that has been a participating herd for at least 10 years in Kansas or in a state with a CWD monitoring program of equivalent status.

(l) "CWD-exposed animal" means an animal that is part of a CWD-positive herd or that has been exposed to a CWD-positive animal or contaminated premises within the previous five years.

(m) "CWD-exposed herd" means a herd in which a CWD-positive animal has resided within five years before that animal's diagnosis as CWD-positive, as determined by an APHIS employee or representative of the commissioner.

(n) "CWD-infected herd" means any herd with a confirmed CWD-positive animal that has not completed a herd plan.

(o) "CWD-positive animal" means any cervid that tests positive on an approved test at an approved laboratory.

(p) "CWD-source herd" means a herd that is identified through testing or epidemiological investigations to be the source of CWD-positive animals identified in other herds.

(q) "CWD-suspect animal" means any cervid that showed clinical signs of the disease before death, but whose results on an approved test are inconclusive or have not yet been reported.

(r) "CWD-suspect herd" means a herd for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, as determined by an APHIS employee or state representative, but for which confirmatory laboratory results have been inconclusive or not yet reported.

(s) "Depopulate" means to remove, from a premises, animals that are determined to be in-

fectured or exposed to a specific disease by means of euthanizing the animals or by moving the animals to an approved slaughter facility for slaughter.

(t) “Domesticated cervid” means “domesticated deer,” as defined in K.S.A. 47-2101 and amendments thereto.

(u) “Domesticated cervid permit” means the permit required by K.S.A. 47-2101, and amendments thereto, to sell or raise any cervid.

(v) “Herd” means a group of animals maintained on the same premises or two or more groups of animals maintained in a manner that results in commingling.

(w) “Herd inventory” means an accounting that lists each adult domesticated cervid by its sex, age, breed or species, official identification and any other identification and that is confirmed by an accredited veterinarian or by a representative of the commissioner.

(x) “Herd plan” means a signed written agreement between the herd owner, the commissioner, and the APHIS administrator, detailing any testing requirements and allowable movements into and out of an affected herd. The herd plan may also include requirements on fencing, decontamination, and cleanup of premises.

(y) “Herd status” means the number of years during which a herd owner’s participating herd has been in an approved CWD monitoring program, indicating the probability that the herd is not affected by the disease. Herd status is determined by the length of time the herd has been monitored for CWD and by the herd owner’s full compliance with the program.

(z) “Official identification” means the identification required by K.S.A. 47-2101, and amendments thereto, which for any animal in a participating herd shall be in the form of a unique means of identification approved by APHIS and the commissioner. Acceptable forms of official identification shall include electronic implants, which are also known as microchips, radio frequency identification (RFID) tags, tamper-resistant tags, and national uniform eartagging system tags but shall exclude ear tattoos and flank tattoos.

(aa) “Participating herd” means any herd enrolled in the CWD monitoring program.

(bb) “Premises” means the grounds and buildings occupied by a herd and equipment used in the husbandry of the herd.

(cc) “Program” means the CWD monitoring program or the APHIS herd certification program, whichever is applicable.

(dd) “TB” means bovine tuberculosis. (Authorized by and implementing K.S.A. 2013 Supp. 47-607d, 47-610, and 47-2101; effective Sept. 19, 2014.)

9-3-7. Fees. (a) Each applicant for an annual domesticated cervid permit issued pursuant to K.S.A. 47-2101 et seq., and amendments thereto, shall pay one of the following application fees:

- (1) For 1-19 domesticated cervids, \$75.00;
- (2) for 20-49 domesticated cervids, \$125.00; or
- (3) for 50 or more domesticated cervids, \$175.00.

(b) Only those individuals with a current domesticated cervid permit may possess domesticated cervids.

(c) Each applicant shall submit the application for a domesticated cervid permit at least 30 days before taking possession of any domesticated cervid. (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

9-3-8. Records. Each holder of a domesticated cervid permit shall maintain records for each domesticated cervid purchased, acquired, held, transported, sold, or disposed of in any other manner. Each cervid, regardless of age, that enters a herd or leaves a herd alive for any purpose other than for direct movement to slaughter shall have official identification before change of ownership. The records shall be held for at least five years after the animal dies or leaves the premises and shall include the following information:

(a)(1) The name and either the residential or business address of the person from whom each domesticated cervid was acquired; and

(2) the geographic location from which each domesticated cervid was acquired, if this location is different from the residential or business address in paragraph (a)(1);

(b) the date each domesticated cervid was acquired or, if born on the premises, the year of birth of the domesticated cervid;

(c) a description of each domesticated cervid, including the following characteristics:

- (1) The species or breed;
- (2) the age;
- (3) all official identification numbers;
- (4) the sex; and
- (5) any other significant identification for that animal, including any of the following types of identification:

(A) An ear tag;

(B) an ear tattoo;

(C) an ear notch; or

(D) any brands, scars, or other permanent markings that help identify the animal;

(d)(1) The name and either the residential or business address of the person to whom any domesticated cervid is sold, given, or bartered or to whom the domesticated cervid is otherwise delivered;

(2) the geographic location to which the domesticated cervid is delivered, if this location is different from the residential or business address in paragraph (d)(1); and

(3) the date and method of disposition; and

(e) if the domesticated cervid dies, is euthanized, or is slaughtered, the following additional information:

(1) The date of the death of the animal;

(2) the cause of death of the animal; and

(3) the method of disposition of the animal. (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

9-3-9. Certificate of veterinary inspection; importation and intrastate movement requirements and permits. (a) Each cervid imported into Kansas shall be identified with official identification and shall be accompanied by a certificate of veterinary inspection.

(b) Each individual importing a cervid into Kansas shall obtain an import permit from the Kansas department of agriculture, division of animal health before the cervid enters Kansas. The cervid shall not be allowed entry into Kansas without this permit.

(c) Each animal of the genera *Odocoileus*, *Cervus*, and *Alces*, including whitetail deer, mule deer, black-tailed deer and associated subspecies, North American elk (wapiti), red deer, sika deer, moose, and any hybrids of these species, and the genera *Rangifer*, including reindeer and caribou, regardless of age, not moving directly to a licensed slaughter establishment within Kansas shall originate and move directly from a herd with at least five years of herd status in the APHIS herd certification program or an equivalent program administered by the office of the state veterinarian in the state of origin.

Muntjacs, Père David's deer, fallow deer, and axis deer shall be exempt from the monitoring requirements for CWD in K.A.R. 9-3-15 and 9-3-16. Other cervid species may be exempted by the commissioner if the species are determined by APHIS to be nonsusceptible to CWD.

(d) All cervids originating from an area identi-

fied by APHIS as a designated surveillance area shall be prohibited entry into Kansas.

(e) Each domesticated cervid, except nursing young under four months of age and accompanied by their dam, that is entering Kansas, is not from a herd accredited by APHIS to be TB-free, and is not moving directly to a licensed slaughter establishment in Kansas shall be required to test negative for TB, using an approved test administered twice at least 90 days apart. The first test shall be administered no more than 180 days before entry into Kansas, and the second test shall be administered no more than 90 days before entry.

(f) Any imported cervid may be quarantined for a retest for TB by order of the commissioner.

(g) Each domesticated cervid, alive or dead, transported within the state of Kansas shall be accompanied by a completed transportation notice signed by the shipper on a form provided by the Kansas department of agriculture, division of animal health. One copy of the notice shall be mailed to the commissioner, one copy shall accompany the shipment, and one copy shall be retained by the shipper. The shipper shall possess a current domesticated cervid permit. (Authorized by K.S.A. 2019 Supp. 47-607, 47-607d, and 47-2101; implementing K.S.A. 2019 Supp. 47-607, 47-607a, and 47-2101; effective Sept. 19, 2014; amended March 10, 2017; amended Nov. 13, 2020.)

9-3-10. Brucellosis. (a) Any adult domesticated cervid known or suspected to have been exposed to brucellosis may be quarantined for a test or retest for brucellosis by order of the commissioner.

(b) The owner of any domesticated cervid herd infected with brucellosis shall take either of the following steps:

(1) Quarantine and depopulate the herd; or

(2) quarantine the herd until a herd plan to eradicate brucellosis from the infected herd has been completed. (Authorized by K.S.A. 2016 Supp. 47-610; implementing K.S.A. 2016 Supp. 47-610 and K.S.A. 47-614; effective Sept. 19, 2014; amended March 10, 2017.)

9-3-11. Tuberculosis. (a) The following portions of the document titled "bovine tuberculosis eradication: uniform methods and rules, effective January 22, 1999," published by APHIS, are hereby adopted by reference:

(1) Part I, except the definitions of "affected herd," "approved laboratory," "herd," and "individual herd plan";

- (2) part II, except II.A and II.K.3;
- (3) part IV;
- (4) part VI; and
- (5) appendix 1.

(b) All testing and sample collection for the testing of TB in cervids shall be conducted by a licensed and accredited veterinarian in the state of origin who has been certified by APHIS to conduct TB testing in cervids.

(c) Each adult domesticated cervid that is changing ownership within Kansas, is not intended for immediate slaughter, and has not originated and moved directly from a herd accredited by APHIS to be TB-free shall be required to test negative for TB by an approved test conducted within 90 days before change of ownership.

(d) The owner of each herd infected with TB shall take one of the following steps:

- (1) Quarantine and depopulate the herd; or
- (2) quarantine the herd until a herd plan to eradicate TB from the infected herd has been completed.

(e) Any imported cervid may be quarantined for a test for TB by order of the commissioner. The test shall be at the owner's expense. (Authorized by K.S.A. 2013 Supp. 47-607d and 47-610; implementing K.S.A. 2013 Supp. 47-607, 47-610, 47-631, and 47-634; effective Sept. 19, 2014.)

9-3-12. Confinement, handling, and health. (a) Perimeter fencing. Each owner shall confine domesticated cervids with perimeter fencing, which shall meet the following requirements:

(1) Provide a barrier that prevents the escape of the domesticated cervids confined within and prevents the entry of wild cervids from outside the fenced area;

(2) be structurally sound;

(3) be in good repair; and

(4) be of sufficient height to prevent escape, but not less than eight feet for elk, red deer, whitetail deer, moose, and mule deer and not less than six feet for all other types of domesticated cervid. Any perimeter fencing constructed before January 23, 1998 that does not meet the height requirements in this paragraph may be utilized subject to written approval of the commissioner. All new fencing constructed on these premises shall meet the requirements of this paragraph.

(b) Facilities.

(1) Each owner shall provide handling facilities, which shall be adequate to allow each domesticated cervid to be physically handled

without undue harm to the domesticated cervid or the handler.

(2) Each access lane and catch pen shall be constructed of materials and shall be of a design adequate to safely contain domesticated cervids for any inspection, identification, testing, quarantine, or other action required by the commissioner.

(c) Herd management. The owner shall provide each domesticated cervid with free access to the following:

(1) Clean water;

(2) adequate feed;

(3) appropriate shelter, natural or otherwise; and

(4) protection from predators.

(d) Health. Each owner or handler of domesticated cervids shall meet the requirements of all federal and state regulations for contagious and communicable diseases. (Authorized by and implementing K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

9-3-13. Escaped domesticated cervids. (a) The owner of any domesticated cervid that has escaped confinement shall report the animal as missing to the commissioner within 48 hours of noticing the animal missing. This report shall include the following information:

(1) The breed or species of cervid that has escaped;

(2) the sex of the escaped animal;

(3) the date the animal was found to be missing;

(4) the official identification of the animal; and

(5) any secondary identification on the animal, including plastic tags and brands.

(b) The owner of an escaped domesticated cervid shall bear the cost of recovering that animal.

(c) The following types of domesticated cervids shall be immediately destroyed without compensation to the owner upon the order of the commissioner:

(1) Any escaped domesticated cervid from a herd that is quarantined because the herd is infected with or has been exposed to any infectious or contagious disease; or

(2) any escaped domesticated cervid that is deemed by the commissioner to constitute a hazard to livestock or wildlife through the spread of disease. (Authorized by K.S.A. 2013 Supp. 47-610 and 47-2101; implementing K.S.A. 2013 Supp. 47-610, K.S.A. 47-614, and K.S.A. 2013 Supp. 47-2101; effective Sept. 19, 2014.)

9-3-14. Handling, care, treatment, and transportation. The following portions of 9 C.F.R. part 3, as in effect on January 1, 2013, as applied to cervids, are hereby adopted by reference:

(a) Secs. 3.125 through 3.133, except sec. 3.127(d); and

(b) secs. 3.136 through 3.142, except that in sec. 3.136(c), “a veterinarian accredited by this Department” shall be replaced by “a veterinarian accredited by APHIS,” and “part 160 of this title” shall be replaced by “9 C.F.R. Part 160.” (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

9-3-15. Participation in the chronic wasting disease monitoring program. (a) Each participating herd shall be maintained or held only on premises for which a current domesticated cervid permit has been issued by the commissioner. If a herd owner wishes to maintain separate herds, the herd owner shall maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. There shall be a buffer zone of at least 30 feet between the perimeter fencing around each separate herd, and no commingling may occur. Movement between herds shall be recorded as if the herds were separately owned.

(b) Each application for enrollment of a herd in the chronic wasting disease program shall be submitted on a form provided by the commissioner and shall include the following:

(1) Documentation that a current domesticated cervid permit has been issued to the owner of the premises on which the herd is held or maintained;

(2) a copy of an initial herd inventory, including documentation of at least one form of official identification for each animal and one form of other visible identification, including ear tags, brands, and any other means that are unique to that animal in the herd; and

(3) adequate herd records and documentation of the history of the herd since it originated or over at least the previous 60 months, whichever is less, including the following:

(A) For each animal added to the herd, any available records documenting the herd status of the herd from which the animal was transferred; and

(B) records establishing that no animal has displayed any clinical signs of CWD and that the herd has not had any CWD-positive animals.

(c) The date of the initial application into the CWD monitoring program shall be the anniver-

sary date. On initial application, a herd inventory, including all official identification and any other identification, shall be completed and confirmed by means of visual inspection by an accredited veterinarian or a representative of the commissioner.

An application accompanied by a herd inventory, including all official identification and any other identification, shall be completed annually and confirmed by an accredited veterinarian or by a representative of the commissioner. Each herd inventory shall be filed at least 11 months and no more than 13 months after the last anniversary date of the participating herd’s enrollment in the program. A visual inspection of the identification listed on the herd inventory shall be conducted and confirmed by an accredited veterinarian or by a representative of the commissioner at least once every three years.

An approved test for CWD shall be administered to the carcass of each animal that is 12 months of age or older at the time the animal dies or is slaughtered, unless an exception is granted by the commissioner.

(d) Failure to comply with this regulation shall result in a reduction or loss of herd status. (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

9-3-16. Program levels. (a) Each participating herd shall be assigned herd status based on the following:

(1) The number of years that the participating herd has been under surveillance with no evidence of CWD; and

(2) the herd owner’s compliance with K.A.R. 9-3-15.

Herd status shall be reassigned based on the herd status of each herd from which the participating herd has received any animal.

(b)(1) Each of the following shall start at the entry level of year one:

(A) Each herd that has not received any animal from a herd with previous herd status;

(B) each herd that has received any animal of unknown herd status; and

(C) each herd that is not currently a participating herd.

(2) Application for renewal and advancement within the CWD monitoring program shall be yearly as described in K.A.R. 9-3-15. Each herd meeting the requirements of K.A.R. 9-3-15 shall advance one year in herd status for every year during which these requirements are met. Each

participating herd with at least 10 years with no evidence of CWD shall be considered a CWD-clean herd. To maintain herd status as a CWD-clean herd, a herd shall receive animals only from other CWD-clean herds.

(c) Any owner of a herd in which all animals received have been moved directly from herds of a designated herd status within Kansas, or from a state with a CWD monitoring program equivalent to the Kansas program, may apply for the same level of herd status. However, the participating herd shall be assigned the herd status of the herd with the lowest herd status from which the participating herd has obtained any animal.

(d) Each herd that receives any animals from a herd of lesser herd status shall drop to the lowest level of herd status of the animals received. If a participating herd receives any animals of unknown or no herd status, then the herd status of the participating herd shall be reduced to year one. (Authorized by and implementing K.S.A. 2013 Supp. 47-610 and 47-2101; effective Sept. 19, 2014.)

9-3-17. CWD-infected herds. Each CWD-infected herd shall be subject to the following requirements:

(a) A herd quarantine shall be issued by the commissioner immediately after receiving a report from an approved laboratory of a positive test for CWD in an animal from a herd.

(b) A herd plan shall be developed by a representative of the commissioner and the owner within 21 days of the date the herd quarantine is issued. This herd plan shall be approved by the owner, the state APHIS representative, and the commissioner and shall detail how animal movement into and from the CWD-infected herd may occur.

(c) Each domesticated cervid permittee shall notify the commissioner of the death of any animal in a CWD-infected herd. The notice shall be given to the commissioner within 24 hours of the discovery of the animal's death. An approved test shall be administered by a designee of the commissioner to the carcass of each animal in the CWD-infected herd that dies.

(d) If an animal in a CWD-infected herd shows symptomatic or clinical signs of CWD, the domesticated cervid permittee shall notify the commissioner. The animal shall be euthanized and administered an approved test by a designee of the commissioner.

(e) The carcass of each CWD-positive animal shall be disposed of only by a method and at a site approved by the commissioner and the secretary of the Kansas department of health and environment or the secretary's designee.

(f) The quarantine on the CWD-infected herd shall be removed after five consecutive years in which there are no animals in the CWD-infected herd with any clinical signs of CWD and no positive results on an approved test. The owner of a CWD-infected herd may apply to reenroll the herd in the program with a year-five herd status. (Authorized by K.S.A. 2013 Supp. 47-610 and 47-2101; implementing K.S.A. 2013 Supp. 47-610, K.S.A. 47-614, K.S.A. 2013 Supp. 47-622 and 47-2101; effective Sept. 19, 2014.)

Article 4.—DISPOSAL PLANTS

9-4-1. Definitions. (a) “Commissioner” means the livestock sanitary commissioner of the state of Kansas.

(b) “Inedible meat” means meat and meat products derived from dead, dying, disabled, diseased, or condemned animals, or animals whose meat or meat products are otherwise unsuitable for human consumption, and shall include meat or meat products regardless of origin which have deteriorated so far as to be unfit for human consumption.

(c) “Decharacterization” means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, acid or any other agent approved by the commissioner, upon and into freshly slashed flesh, or inedible meat, so as to unequivocally preclude its use in human food. (Authorized by K.S.A. 47-610, 47-1215; effective Jan. 1, 1968.)

9-4-2. Inedible meats. Inedible meats, (except hides, meat meal, or bone meal, being shipped from a disposal plant) shall be packed in type of container approved by the commissioner. The container so used, shall be clearly marked or stamped with the legend “unfit for human consumption.” Lettering used in the legend shall be at least as large as any other lettering on the container, and in no event shall the lettering in the legend, be smaller than one-half inch in height or less than one-half inch in width. Master containers or cartons shall not exceed 100 pounds. (Authorized by K.S.A. 47-610 and 47-1215; effective Jan. 1, 1968.)

9-4-3. Handling of inedible meats; identification and decharacterization. Inedible meats, placed into overnight cooler storage, shall

be readily identified as an inedible product, by the direct application of green ink, or by the direct application of charcoal, to the exposed exterior surfaces of the carcasses, or major parts, in sufficient amounts to clearly identify it as an inedible product.

Boned meat shall be ground, or shall be in small pieces not more than four inches in diameter. Boned meat may be processed in pieces larger than four inches in diameter if such pieces are promptly slashed at no more than two-inch intervals, and if an approved denaturing agent is promptly and freely applied to all outside and slashed surfaces.

Application of any denaturing agent to the outside surface of molds, or to outside of blocks, of boned inedible meats shall not be adequate. The denaturing agent shall be mixed intimately with all inedible meats sought to be denatured. Sufficient denaturant shall be used to give the inedible meats, so distinctive a color, odor, or taste, that it is not susceptible of being confused with any article for human food. (Authorized by K.S.A. 47-610 and 47-1215; effective Jan. 1, 1968.)

9-4-4. Records. Each disposal plant operator shall maintain complete and accurate records as to amount of inedible meats denatured, the amount sold, to whom sold, the address of the consignee, and how and by whom hauled. Such records shall be open to inspection by the commissioner, or his authorized agent, at all times during the normal working hours at such establishment.

Copies of invoices of all sales shall be forwarded to the commissioner, not later than the 10th of each month, covering the previous month's transactions. (Authorized by K.S.A. 47-610 and 47-1215; effective Jan. 1, 1968.)

9-4-5. Sales of inedible meats; registration. Inedible meat products (1) may be sold, when properly decharacterized, for shipment directly to a plant producing dog food, or (2) may be sold to a person for use in feeding dogs, pets, mink or other animals, as allowed by the commissioner. A disposal operator shall register with the commissioner, before he engages in the business of selling inedible meats. This registration shall be in writing. After the disposal plant operator (1) has made application for registration to engage in such activity, and (2) has informed the commissioner where the inedible meats are to be sold, and (3) has had his disposal plant inspected, and

(4) such plant has been determined to be adequate to process and handle inedible meats, the commissioner may issue a registration certificate to the applicant. (Authorized by K.S.A. 47-610 and 47-1215; effective Jan. 1, 1968.)

9-4-6. Exemptions. Disposal plants operating under federal inspection are exempt from the application of these regulations. (Authorized by K.S.A. 47-610 and 47-1215; effective Jan. 1, 1968.)

Article 5.—GARBAGE FEEDING

9-5-1. Movement or sale of garbage fed hogs. All swine fed garbage or slaughter house refuse shall be so fed and handled under quarantine. It shall be unlawful to move or sell any animals which have been fed garbage or slaughter house refuse, unless such garbage or slaughter house refuse has been adequately cooked. Such animals, so fed, only may be lawfully moved or lawfully sold, if accompanied by an official inspection certificate and permit, authorizing such movement or sale and a quarantine release. Such certificate and permit shall be executed by the livestock sanitary commissioner, or by his approved representative. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-2. Receiving, purchasing or slaughtering, animals fed garbage or slaughter house refuse. It shall be unlawful for any person, knowingly, to receive or to purchase from another, or to slaughter any animal which has been fed garbage or slaughter house refuse; unless such animal has been fed garbage or cooked slaughter house refuse which has been adequately cooked and is accompanied by health certificate, permit, and quarantine release. Animals so fed may be lawfully received, if accompanied by an inspection certificate, permit, and quarantine release issued by the livestock sanitary commissioner, or by his approved representative, within 48 hours, prior to the delivery of such animals. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-3. Destruction of diseased swine: indemnity. Swine that develop the disease of vesicular exanthema shall be slaughtered under directive of the livestock sanitary commissioner, or shall be otherwise disposed of under supervision of the federal agricultural research service (ARS) and processed in a manner determined and approved by such agency. Such animals shall be appraised, and

indemnity shall be paid as provided by law, insofar as funds for the purpose are available. Swine fed uncooked garbage or uncooked slaughter house refuse shall not be eligible for indemnity payments. Any owner of swine who had failed to comply with any or all laws and regulations in regard to feeding cooked garbage, any person who has violated any quarantine or other regulation invoked to control and eradicate vesicular exanthema, shall not be eligible for indemnity payments. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-4. Feeding platforms and other feeding equipment. It shall be unlawful for any person to feed cooked garbage or cooked slaughter house refuse to animals, except on a feeding platform constructed of concrete or other approved impervious material. Curbs or feeding troughs shall be provided to confine all refuse to the platform. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-5. Disposal of materials removed from feeding platforms. Feeding platforms and troughs shall be cleaned daily, or frequently enough to maintain sanitary conditions as required by the livestock sanitary commissioner. It shall be unlawful for anyone to dispose of materials cleaned or removed from a feeding platform, used for feeding cooked garbage or cooked slaughter house refuse, except into a place and in a manner approved by the livestock sanitary commissioner. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-6. Veterinarian inspectors to supervise garbage and refuse feeding operations. It shall be unlawful for anyone to feed cooked garbage or cooked slaughter house refuse to animals which will be offered for sale or for slaughter, without first having obtained the approval of the livestock sanitary commissioner, or a veterinarian employed by the owner of such animals, for purposes of supervising the health and release for sale or for slaughter of animals being so fed. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-7. Heating requirements. All garbage and packing house refuse which is cooked for feeding to animals shall be cooked in a mixture with water, with the water to be added in such quantity as to equal one-third the depth of the garbage and refuse at the time the cooking process is started. This mixture shall be heated to the

boiling point, and shall be held at the boiling point for 30 minutes. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

9-5-8. Records. All persons feeding cooked garbage or cooked slaughter house refuse shall keep a record, showing the number of all animals added to the herd; the date of such additions; number of all animals removed; the destination of all animals removed; and the date of such removal. A copy of the approved inspector's certificate, and permit for removal and quarantine release shall be kept with and as a part of such records. All such records shall be available to the livestock sanitary commissioner, or his representative, for inspection at all times. (Authorized by K.S.A. 47-610 and 47-1304; effective Jan. 1, 1966.)

Article 6.—HOG CHOLERA

9-6-1. Reportable disease. Hog cholera is hereby recognized as an infectious and contagious disease which shall be reported to the state livestock sanitary commissioner when diagnosed or suspected. (Authorized by K.S.A. 47-610, 47-629; effective Jan. 1, 1966.)

9-6-2. Quarantine requirements. All swine in herds where hog cholera is diagnosed by any veterinarian shall be placed under herd quarantine. (Authorized by K.S.A. 47-610, 47-629; effective Jan. 1, 1966.)

9-6-3. Supervision of quarantined herds. All swine, which have been quarantined for hog cholera in herds or otherwise, shall be under the supervision of the state livestock commissioner, or his authorized representative, until released from such quarantine. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966; amended Jan. 1, 1970.)

9-6-4. Disinfection of premises. Buildings, pens and enclosures, in which swine have been held under quarantine for hog cholera, shall be cleaned and disinfected with an approved disinfectant, after evidence that hog cholera has been eliminated. (Authorized by K.S.A. 47-610, 47-629; effective Jan. 1, 1966.)

9-6-5. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

9-6-6. Movement to slaughter. All swine moved to slaughter from hog cholera quarantined herds shall be moved in a manner approved by the

livestock commissioner of Kansas. (Authorized by K.S.A. 47-610; effective Jan. 1, 1968; amended Jan. 1, 1970.)

9-6-7. Hog cholera modified live virus. The sale or use of hog cholera modified live virus vaccines is prohibited in the state of Kansas. (Authorized by K.S.A. 47-629, 47-653b; effective, E-68-25, Aug. 9, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1974.)

9-6-8. Inactivated hog cholera vaccines. The sale of or the use of inactivated hog cholera virus vaccine in the state of Kansas is prohibited. (Authorized by K.S.A. 47-610, 47-629, K.S.A. 1968 Supp. 47-653b; effective, E-68-25, Aug. 9, 1968; effective Jan. 1, 1969.)

9-6-9. Vaccination with serum alone. When serum alone is used for prophylaxis, swine vaccinated at public livestock markets in Kansas, and swine vaccinated in Kansas for interstate shipment, or swine vaccinated for shipment into the state of Kansas, shall be injected with the amount of anti hog cholera serum or the amount of antibody concentrate as hereinafter stated.

Weight of swine in pounds	Minimum dose of serum	Minimum dose of antibody concentrate
Under 60 pounds	20cc	10cc
60-120 pounds	30cc	15cc
Over 120 pounds	40cc	20cc

Provided, Each animal weighing under 20 pounds shall be injected with a dosage of serum of not to exceed 1 cubic centimeter per pound of body weight or with a dosage of antibody concentrate of not to exceed ½ cubic centimeter per pound of body weight. (Authorized by K.S.A. 47-610, 47-629, K.S.A. 1968 Supp. 47-653b; effective, E-68-25, Aug. 9, 1968; effective Jan. 1, 1969.)

Article 7.—MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS

9-7-1. General. (a) Livestock shall not be imported into Kansas except in accordance with the laws and rules and regulations of the state of Kansas, and of the animal and plant health inspection service, veterinary services, United States department of agriculture.

(b) Livestock shall not be imported into Kansas without an official health certificate issued by a licensed, accredited veterinarian. When a permit is required, the permit number shall be shown on

the health certificate. Livestock may be imported without a health certificate directly to:

- (1) A state or federally-approved slaughter establishment for immediate slaughter;
- (2) A state or federally-approved public livestock market for sale; or
- (3) A Kansas farm, without change of ownership, from a farm owned or leased by the owner of the livestock within the trade territory.

(c) A copy of the health certificate, showing the permit number when required, authorizing movement into Kansas, shall accompany the livestock. If movement of livestock be by railroad, a copy of the health certificate, showing the required permit number, shall be attached to the bill of lading.

(d) Livestock entering Kansas on a public highway or road shall clear through a Kansas motor carrier inspection station. (Authorized by K.S.A. 47-607d, 47-610, 47-620; implementing K.S.A. 47-607; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1980; amended May 1, 1982.)

9-7-2. Health certificates. (a) Livestock moved into Kansas, except as specifically exempted, shall be accompanied by an official interstate health certificate and completed in a manner approved by the livestock commissioner of Kansas.

(b) A copy of the health certificate, required for livestock imported into Kansas, shall be submitted to the livestock official of the state of origin for his or her approval, and shall be forwarded to the livestock commissioner of Kansas.

(c) Livestock imported into Kansas, other than by railroad, shall clear through a Kansas motor carrier inspection station. Health certificates are required for motor carrier inspection station clearance. Two copies of the certificates shall be supplied, one copy for the motor carrier inspection station attendant and one copy for the owner of the livestock. (Authorized by K.S.A. 47-607d, 47-610, 47-620; implementing K.S.A. 47-607; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1982.)

9-7-3. Livestock permits required. (a) Before any of the following types of livestock are imported into the state of Kansas, the veterinarian in the state of origin who issues the health certificate shall obtain a permit from the Kansas livestock commissioner:

- (1) all cattle originating from Mexico;

(2) calves under 60 days of age that are not accompanied by their dams;

(3) all swine;

(4) all rodeo stock, as defined by K.A.R. 9-7-18(e);

(5) all cattle, bison, or elk originating from within Yellowstone national park or from within a 20-mile zone surrounding Yellowstone national park;

(6) all live, owned cervidae; and

(7) livestock imported from areas where a specific disease exists.

(b) The permit shall be issued to the veterinarian in the state of origin who issues the health certificate. The permit number shall be shown on the health certificate.

(c) Each permit shall be void 15 days after date of issuance. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 1996 Supp. 47-607; effective Jan. 1, 1966; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1982; amended Jan. 23, 1998.)

9-7-4. Tuberculosis and brucellosis in cattle. (a) Tuberculosis.

(1) Breeding cattle six months of age and over shall not be imported into Kansas unless accompanied by an official health certificate showing that the cattle meet the following requirements:

(A) Originated in a herd accredited to be tuberculosis-free;

(B) originated in a tuberculosis-free state; or

(C) have been tested and were found negative for tuberculosis within 60 days before date of entry.

(2) Dairy cattle that are used for breeding and are six months of age or older shall originate from a herd accredited to be tuberculosis-free or shall be tested negative for tuberculosis within 60 days before entry.

(b) Brucellosis.

(1) Brucellosis tests, regardless of method, shall be conducted at a laboratory approved by the United States department of agriculture, animal and plant health inspection service (APHIS).

(2) Breeding cattle six months of age or over imported into Kansas shall meet interstate requirements according to state certification, as outlined in chapter 2 of the United States department of agriculture's document titled "brucellosis eradication: uniform methods and rules, effective October 1, 2003," APHIS publication 91-45-013. The following portions of this document, which shall apply to only this subsection, are hereby adopted by reference:

(A) In chapter 1, part I; and

(B) chapter 2. (Authorized by K.S.A. 2015 Supp. 47-607d, 47-610, and 47-657; implementing K.S.A. 2015 Supp. 47-607, 47-610, and 47-657; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1982; amended, T-9-5-12-10, May 12, 2010; amended Sept. 24, 2010; amended Oct. 4, 2013; amended May 27, 2016.)

9-7-4a. Trichomoniasis in cattle. (a) Definitions. For the purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Approved laboratory" means any laboratory designated and approved by the commissioner for performing official *Tritrichomonas foetus* PCR tests.

(2) "Certified negative *Tritrichomonas foetus* bull" means a bull that is individually identified by an official identification method approved by the commissioner and meets one of the following requirements:

(A) Originates from a herd that is not known to be infected and, following at least 14 days of sexual rest before sampling and testing, has had a negative official *Tritrichomonas foetus* PCR test result within the last 60 days, with no subsequent exposure to female bovine; or

(B) originates from a positive *Tritrichomonas foetus* herd but, following at least 14 days of sexual rest before sampling and testing, has had a series of two negative official *Tritrichomonas foetus* PCR test results at intervals of at least 14 days, with the second test occurring within the last 60 days, with no subsequent exposure to female bovine.

(3) "Commissioner" means the animal health commissioner of the Kansas department of agriculture.

(4) "Herd" means a group of both sexually intact male animals and sexually intact female animals under common ownership or control and consisting of all bovines over 12 months of age at the time of commingling that have commingled for any period of time during the last 12 months.

(5) "Official positive trichomoniasis infection identification tag" means an individual identification tag approved by the commissioner and signifying that an animal is trichomoniasis-infected.

(6) "Official *Tritrichomonas foetus* PCR test" means a polymerase chain reaction test method approved by the commissioner that detects, through in vitro amplification, the presence of

Tritrichomonas foetus deoxyribonucleic acid (DNA). Each official *Tritrichomonas foetus* PCR test shall be performed only on an animal that is individually identified by an official identification method approved by the commissioner. Each sample shall be collected using a test kit system approved by the commissioner, packaged and transported according to the approved laboratory's protocol for the transport of specimens, and collected by a veterinarian who has completed trichomoniasis training. This training shall be approved by the commissioner; include preputial sampling, sample handling and shipping, appropriate recordkeeping, and official animal identification; and be repeated every five years.

(7) "Positive *Tritrichomonas foetus* bull" means a bull that has had a positive official *Tritrichomonas foetus* PCR test.

(8) "Positive *Tritrichomonas foetus* herd" means either of the following:

(A) A herd in which any male or female animal has had a positive diagnosis for *Tritrichomonas foetus*; or

(B) a herd that has commingled for any period of time during the last 12 months with another herd, or portion thereof, from which an animal has had a positive diagnosis for *Tritrichomonas foetus*. The herd, or a portion thereof, shall no longer be classified as a positive *Tritrichomonas foetus* herd once any trichomoniasis quarantine has been lifted for the herd or that portion of the herd.

(9) "Trichomoniasis-infected bovine" means a bovine that has tested positive on an official *Tritrichomonas foetus* PCR test.

(10) "Trichomoniasis quarantine" means a movement restriction issued by the commissioner and placed on all cattle in a positive *Tritrichomonas foetus* herd. This restriction shall specify the identity of the animals and the premises to which the animals shall be confined.

(b) Importation of male bovines into Kansas.

(1) Bulls shall not be imported into Kansas from another state unless they go directly to a licensed slaughter plant or an approved Kansas livestock market to be sold for slaughter, or for feeding purposes and then to slaughter, or are accompanied by a completed certificate of veterinary inspection. The certificate of veterinary inspection shall meet the following requirements:

(A) Have been issued within the past 30 days;

(B) state whether, to the veterinarian's knowledge, trichomoniasis has or has not occurred in the herd of origin within the past two years; and

(C) for virgin bulls 18 months of age or younger, have attached to the certificate a statement signed by the veterinarian or owner or owner's representative and indicating that the bulls have not been sexually exposed to breeding-aged females.

(2) With the exception of bulls exempted in paragraph (b)(3), non-virgin bulls, bulls older than 18 months of age, and bulls of unknown virginity status shall not be imported into Kansas from another state for breeding purposes unless these bulls are certified negative *Tritrichomonas foetus* bulls. The inspecting veterinarian shall either attach a copy of the official *Tritrichomonas foetus* PCR test results to the certificate of veterinary inspection or provide the following information on the certificate: type of test, results of the test, accession number, and name and address of the testing laboratory.

(3) Each imported bull going to a sanctioned rodeo event or to a livestock show where the bull will be shown and then returned to the state of origin without being sexually exposed to any breeding-aged females shall be exempt from the requirements of paragraph (b)(2).

(c) Importation of female bovines into Kansas. Cows and heifers shall not be imported into Kansas from another state unless the cows and heifers go directly to a licensed slaughter plant or an approved Kansas livestock market to be sold for slaughter, or for feeding purposes and then to slaughter, or are accompanied by a completed certificate of veterinary inspection. The certificate of veterinary inspection shall meet the following requirements:

(1) Have been issued within the past 30 days; and

(2) except for cows or heifers imported into Kansas for a sanctioned rodeo event or a livestock show that will be shown and then returned to the state of origin without being sexually exposed to any bull while in Kansas, document that the cows and heifers meet at least one of the following conditions:

(A) Have a calf at side and no exposure since parturition to bulls other than certified negative *Tritrichomonas foetus* bulls;

(B) are at least 120 days pregnant;

(C) are virgin heifers with no sexual exposure to bulls since weaning;

(D) are documented to have had at least 120 days of sexual isolation;

(E) are heifers or cows exposed only to bulls that are certified negative *Tritrichomonas foetus* bulls;

(F) are purchased for feeding purposes only, with no exposure to bulls after entering Kansas; or

(G) are moving for the purpose of embryo transfer or other artificial reproduction procedure, with no exposure to bulls after entering Kansas.

(d) Intrastate movement of bulls.

(1) Except as provided in paragraphs (d)(2) and (d)(3), if any non-virgin bull, bull older than 18 months of age, or bull of unknown virginity status changes possession or ownership in Kansas by private sale, public sale, lease, trade, barter, or other method, that animal shall be a certified negative *Tritrichomonas foetus* bull at the time of the movement accompanying the change of ownership or possession.

(2) If an individual has a herd management plan to reduce risk of trichomoniasis that has been approved by the commissioner, virgin bulls 24 months of age or younger included within the approved herd management plan shall not be required to be certified negative *Tritrichomonas foetus* bulls when changing ownership in Kansas. However, non-virgin bulls, virgin bulls older than 24 months of age, and bulls of unknown virginity status shall be certified negative *Tritrichomonas foetus* bulls before movement with a change in possession or ownership in Kansas even if these bulls originate from a herd with an approved herd management plan.

(3) Each non-virgin bull, bull older than 18 months of age, and bull of unknown virginity status sold at a livestock market shall be a certified negative *Tritrichomonas foetus* bull, go directly to slaughter, or be purchased for feeding purposes only and then to slaughter.

(e) Trichomoniasis-infected bovines and herds.

(1) The sale, lease, or movement of a bovine from a positive *Tritrichomonas foetus* herd for reproductive purposes shall be prohibited while the bovine is under trichomoniasis quarantine.

(2) The owner or manager of a positive *Tritrichomonas foetus* herd shall inform the commissioner of the total number of bulls and the total number of sexually intact female cattle in the herd.

(3) Each trichomoniasis-infected bovine, and the entire positive *Tritrichomonas foetus* herd from which the bovine originates, shall be placed under trichomoniasis quarantine at the time of positive lab confirmation.

(4) Bulls from a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine as follows:

(A) Each positive *Tritrichomonas foetus* bull shall be identified with an official positive trichomoniasis infection identification tag by a licensed veterinarian within seven days of the positive official *Tritrichomonas foetus* PCR test.

(B) Positive *Tritrichomonas foetus* bulls shall be sent directly to slaughter or to public livestock market to be sold for slaughter. Each bull shall have an official positive trichomoniasis infection identification tag before the bull is moved to slaughter or public livestock market.

(C) All other bulls in a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine until one of the following conditions is met:

(i) The bulls have been declared certified negative *Tritrichomonas foetus* bulls.

(ii) The bulls are identified with an official positive trichomoniasis infection identification tag and sent directly to slaughter or to public livestock market to be sold for slaughter.

(D) The owner or manager of a positive *Tritrichomonas foetus* herd shall assist the commissioner in determining the destination of all non-virgin bulls and bulls of unknown virginity status sold during the 12 months before the diagnosis of trichomoniasis in the herd.

(5) Each reproductive bovine female from a positive *Tritrichomonas foetus* herd shall remain under trichomoniasis quarantine until one of the following conditions is met:

(A) The female is sold directly to slaughter.

(B) The female is sold or transferred directly to a feedyard for feeding purposes and then to slaughter.

(C) The female is sold through an approved livestock market to be sold for slaughter or for feeding purposes and then to slaughter.

(D) Each bull from the female's herd has been declared a certified negative *Tritrichomonas foetus* bull or has been identified with an official positive trichomoniasis infection identification tag and sent directly to slaughter or to public livestock market to be sold for slaughter, and the female meets one of the following conditions:

(i) Has a calf at side and has had no exposure since parturition to bulls other than bulls that are certified negative *Tritrichomonas foetus* bulls;

(ii) has documented 120 days of sexual isolation, except that breeding by artificial insemination with semen from a certified negative *Tritrichomonas foetus* bull shall be allowed during the isolation period; or

(iii) is determined by a licensed veterinarian to be at least 120 days pregnant.

(E) Regardless of the status of bulls from the positive *Tritrichomonas foetus* herd, the owner or manager of the female obtains a release from trichomoniasis quarantine from the commissioner by providing adequate information and assurances, to the satisfaction of the commissioner, that despite being part of the positive *Tritrichomonas foetus* herd, the female has had no exposure to trichomoniasis.

(6) Unless otherwise allowed by the commissioner, all quarantined bovine females moved from the original premises of trichomoniasis quarantine during the trichomoniasis quarantine period shall be identified with an official positive trichomoniasis infection identification tag.

(7) The owner or manager of a positive *Tritrichomonas foetus* herd shall assist the commissioner in determining the destination of all non-virgin female bovines sold during the 12 months before the diagnosis of trichomoniasis in the herd.

(f) Approved laboratory responsibilities. Each approved laboratory shall immediately report any *Tritrichomonas foetus*-positive specimen to the commissioner. Each report shall include the official identification device; brand; owner's name, address, and telephone number; and the submitting veterinarian's name, address, and telephone number.

(g) Self-reporting. The owner or manager of cattle who has reason to believe that at least one of those cattle is affected with trichomoniasis shall report this belief to the commissioner as required by K.S.A. 47-622, and amendments thereto, and K.A.R. 9-27-1.

(h) Stray bulls. Any stray bull found on public or private land, from a known or unknown herd of origin, may be confined and placed under a hold order until the bull has one or more official *Tritrichomonas foetus* PCR tests. Each test and the cost of holding the bull shall be the responsibility of the bull's owner. The conditions of the hold or trichomoniasis quarantine order and the number of tests shall be determined by the commissioner.

(i) Neighbor notification. The owner or manager, or both, of a positive *Tritrichomonas foetus* herd shall, within 14 days after lab confirmation of the diagnosis, submit to the commissioner a list of the names and contact information of all known adjacent landowners or land managers. For purposes of this subsection, "adjacent landowners or land managers" shall include all owners and man-

agers of land capable of maintaining livestock susceptible to trichomoniasis whose land is located within the perimeter of the epidemiological study established by the commissioner.

If an owner or manager does not comply with this subsection, the commissioner may assess all administrative costs associated with the notification process against the owner or manager, or both. (Authorized by K.S.A. 2015 Supp. 47-607d and 47-610; implementing K.S.A. 2015 Supp. 47-607 and 47-610; effective May 27, 2016.)

9-7-5. Heifers for feeding and grazing.

Beef heifers, under test-eligible age, may be imported into Kansas for feeding and grazing, without a permit, if accompanied by an official health certificate. Heifers consigned to any location other than a licensed feed lot will be quarantined upon arrival and shall be held for feeding purposes only. A permit for import movement may be required when a specific disease condition exists. (Authorized by K.S.A. 47-607d, 47-610, 47-620; implementing K.S.A. 47-607 and 47-610; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1982.)

9-7-6. Cattle; calves (heifers or bulls), and steers.

Calves (heifers or bulls), over 2 and under 6 months of age, and steers, may be imported into Kansas, accompanied by an official health certificate, except when a specific disease condition exists in a state and special requirements are made by the Kansas livestock commissioner.

Calves under 2 months of age shall not be moved into the state of Kansas and shall not be sold therein, unless and until a purchaser of the same, located in Kansas, has first obtained from the Kansas animal health department a special permit, authorizing such movement into Kansas with delivery at a Kansas destination. Any movement of such calves into the state of Kansas, under such a special permit, shall be accompanied by an official health certificate, issued by authorized personnel within the state from which the movement of such calves originated. Any such calves, being moved into the state of Kansas under authority of a special permit, shall be quarantined upon the premises of the Kansas purchaser at the Kansas delivery destination for a period of 60 days following the date of delivery: *Provided*, That this regulation shall not apply to any movement of calves under the age of two months, when such calves are accompanied by their respec-

tive dams and when such dams are accompanied by a health certificate which has been issued by authorized personnel at the point of origin. (Authorized by K.S.A. 47-607d, 47-610 and 47-620; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-72-14, May 26, 1972; amended Jan. 1, 1973; amended Jan. 1, 1974.)

9-7-6a. (Authorized by K.S.A. 47-607d, 47-610 and 47-620; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked, E-76-28, Aug. 15, 1975; revoked May 1, 1976.)

9-7-7. Swine. (a) All swine imported into Kansas shall be identified to the farm of origin.

(b) All swine importers of feeding, breeding and feral swine shall produce a certificate of veterinary inspection and a permit issued by the Kansas animal health department upon entry to the state of Kansas. All classes of swine from herds of origin consigned to slaughter in Kansas or consigned to an approved Kansas market are exempt. "Herd of origin" as defined in subpart A general provision 78.1 of code of federal regulations in effect on January 1, 1988 is hereby adopted by reference.

(c) All imported swine shall originate from herds free of pseudorabies. Any herd may be classified free by the monitoring system approved by the state of origin. Swine that have been pseudorabies vaccinated shall not enter Kansas, except on special permission of the livestock commissioner.

(d) All breeding swine, regardless of age, shall be tested and found negative for brucellosis and pseudorabies within 30 days of entry, or shall be from a validated brucellosis-free and qualified pseudorabies-free herd as defined in subpart A, general provision of 78.1 and part 85, pseudorabies, sec. 85.1 of the code of federal regulations, as in effect on Jan. 1, 1988, which is hereby adopted by reference. All breeding swine shall be quarantined for 21 to 45 days and shall be retested for brucellosis and pseudorabies.

(e) All feeder swine imported into Kansas shall be held under quarantine until fed out and delivered for slaughter.

(f) Swine importers may prefile a written modified quarantine and/or test requirement plan for approval from the livestock commissioner. (Authorized by K.S.A. 47-607, implementing 47-607 and 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1982; amended Feb. 5, 1990.)

9-7-8. Sheep. Sheep shall not be imported into Kansas, except for immediate slaughter, unless accompanied by an official health certificate, showing: (1) that they are from a state-federal approved scab free area, or (2) that they have been dipped in an approved dip under veterinary supervision, within thirty (30) days prior to movement into Kansas. (Authorized by K.S.A. 47-607d, 47-610 and 47-620; effective Jan. 1, 1966.)

9-7-9. Dogs. Dogs shall not be imported into Kansas, unless accompanied by a certificate of health issued by an approved veterinarian, stating

(a) that such dogs are free from symptoms of any communicable disease;

(b) that such dogs have not been exposed to rabies, and

(c) that such dogs have been vaccinated against rabies with a product licensed by the U.S.D.A. and the duration of immunity and method of administration be in accordance with manufacturer's guidelines.

Dogs under three (3) months of age need not be vaccinated against rabies. (Authorized by K.S.A. 47-607d, 47-610, 47-620; effective Jan. 1, 1966; amended, E-76-28, Aug. 15, 1975; amended May 1, 1976; amended May 1, 1980.)

9-7-9a. Cats. Cats shall not be imported into Kansas, unless accompanied by a certificate of health issued by an approved veterinarian, stating:

(a) that such cats are free from symptoms of any communicable disease;

(b) that such cats have not been exposed to rabies, and

(c) that such cats have been vaccinated against rabies with a product licensed by the U.S.D.A. and the duration of immunity and method of administration be in accordance with manufacturer's guidelines.

Cats under three (3) months of age need not be vaccinated against rabies. (Authorized by K.S.A. 47-607d, 47-610, 47-620; effective, E-76-28, Aug. 15, 1975; effective May 1, 1976; amended May 1, 1980.)

9-7-10. Livestock for exhibition purposes. Except for rodeo stock, livestock may be moved into Kansas for exhibition purposes, if accompanied by a health certificate or a certificate of veterinary inspection signed by a licensed veterinarian. The certificate shall be on a form approved by the livestock commissioner and shall show that such livestock met regular Kansas interstate health re-

quirements, as established for the particular species, before the date of entry into Kansas. (Authorized by K.S.A. 47-607d, 47-610; implementing K.S.A. 47-610; effective Jan. 1, 1966; amended April 3, 1998.)

9-7-11. Zoo animals, fur-bearing animals and other domesticated wild animals. Zoo animals, fur-bearing animals and other domesticated wild animals shall be accompanied by an official health certificate. (Authorized by K.S.A. 47-607d, 47-610 and 47-620; effective Jan. 1, 1971.)

9-7-12. Buffalo or bison. (a) Except as provided in subsection (b), each buffalo or bison that enters the state of Kansas shall be accompanied by an official health certificate and shall have tested negative for brucellosis within the preceding 30 days, if the buffalo or bison meets one of the following criteria.

(1) It is a non-vaccinated female that is 18 months of age or older.

(2) It is a vaccinated female that is 24 months of age or older.

(3) It is a bull that is 12 months of age or older.

(b)(1) Before any buffalo or bison from the greater Yellowstone area is imported into the state of Kansas, the veterinarian in the state of origin who issues the health certificate shall obtain a permit from the Kansas animal health department. "Greater Yellowstone area" means Yellowstone national park and a 20-mile zone surrounding Yellowstone national park.

(2) Buffalo or bison originating from free-roaming herds located in the greater Yellowstone area shall be prohibited from entering the state of Kansas.

(3) Each buffalo and bison entering the state from the greater Yellowstone area that is owned, that is eligible for brucellosis testing, and that did not originate from a free-roaming herd shall test negative within 30 days before entry into Kansas and shall be quarantined at the destination for a re-test at the owner's expense no sooner than 45 days and no later than 150 days from the date of entry. (Authorized by K.S.A. 47-607d, 47-610, and 47-620; implementing K.S.A. 47-610 and 47-620; effective Jan. 1, 1971; amended Jan. 23, 1998.)

9-7-13. Goats. Goats shall not be imported into Kansas, unless accompanied by an official health certificate, identifying the animals and showing that the animals have had negative tuberculosis and brucellosis tests within 30 days prior to date of entry. (Authorized by K.S.A. 47-607d,

47-610, 47-620; effective, E-76-28, Aug. 15, 1975; effective May 1, 1976.)

9-7-14. Equidae. (a) Each equidae entering the state of Kansas shall be identified individually on and accompanied by a USDA veterinary services form 10-11 and an official health certificate or certificate of veterinary inspection by one of the following methods:

(1) brand;

(2) lip tattoo;

(3) microchip;

(4) registration number;

(5) description; or

(6) any other method approved by the livestock commissioner.

(b) Each equidae entering the state of Kansas, except a nursing foal that is six months of age or under and that is accompanied by its dam, shall test negative for equine infectious anemia within 12 months prior to entry, using an industry-approved test conducted in a laboratory approved by the livestock commissioner. If the equidae has been tested more than one time during the 12 months immediately preceding entry into the state of Kansas, only the last test shall be considered valid. The following information shall appear on the official health certificate or certificate of veterinary inspection:

(1) the date of the test;

(2) the type of test utilized;

(3) the test results; and

(4) the name of the testing laboratory.

(c) For the purposes of this regulation, the term "equidae" shall include the following:

(1) horses;

(2) asses;

(3) zebras; and

(4) equidae hybrids. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-610; effective, E-76-28, Aug. 15, 1975; effective May 1, 1976; amended Jan. 23, 1998.)

9-7-15. Ratites. (a) Each ratite imported into Kansas shall be accompanied by an official health certificate or a certificate of veterinary inspection signed by a licensed veterinarian on a form approved by the livestock commissioner, unless the ratite is moved directly to one of the following locations:

(1) to an approved state or federally inspected livestock market;

(2) to an approved state or federally inspected slaughter establishment; or

(3) to property in the state of Kansas from property located not more than 20 miles outside of the state of Kansas, if both properties are owned by the same person or entity.

(b) Each ratite that the owner intends to sell or to use for the purpose of breeding or exhibition shall be identified individually by an implanted microchip or some other method approved by the livestock commissioner. The following information shall be written on the health certificate or the certificate of veterinary inspection:

- (1) the microchip manufacturer's name;
- (2) the microchip number; and
- (3) the location of the microchip.

(c) Each ratite imported for the purpose of slaughter or feeding that has a microchip implant shall be identified individually by the following information on an official health certificate:

- (1) the microchip manufacturer's name;
- (2) the microchip number; and
- (3) the implant location.

(d) For the purposes of this regulation, the term "ratite" shall include the following:

- (1) ostriches;
- (2) emus;
- (3) rheas;

(4) cassowaries; and

(5) kiwis. (Authorized by K.S.A. 1996 Supp. 47-607 and 47-607d; implementing K.S.A. 1996 Supp. 47-607 and K.S.A. 47-610; effective Jan. 23, 1998.)

9-7-16. Cervidae. The owner of each live cervidae imported into Kansas shall comply with importation and testing requirements set out in K.A.R. 9-29-4, K.A.R. 9-29-5, and K.A.R. 9-29-6. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-610; effective Jan. 23, 1998.)

9-7-17. Camelidae. (a) Each camelidae imported into the state of Kansas shall be identified by one of the methods stated in subsection (b) and shall be accompanied by an official health certificate or a certificate of veterinary inspection signed by a licensed veterinarian. The certificate shall be on a form approved by the livestock commissioner.

(b) For identification purposes, the following information shall be written on the health certificate or the certificate of veterinary inspection:

(1) A description of each camelidae, including the following characteristics:

- (A) the age;
- (B) the size;
- (C) the color marking;

(D) the sex;

(E) the breed; and

(F) any information available regarding vaccinations and testing; and

(2) Any other significant identification for each camelidae, which may include these types of identification:

(A) An official microchip identification that includes the microchip number, the microchip manufacturer's name, and the location of the microchip;

(B) an ear tag;

(C) a tattoo number and the location of the tattoo; or

(D) any other permanent identification approved by the livestock commissioner.

(c) Brucellosis. Each camelidae imported into the state of Kansas that is six months of age or older shall test negative for brucellosis, using an official test, within 30 days before entry.

(d) Tuberculosis. Each camelidae imported into the state of Kansas that is six months of age or older shall test negative for tuberculosis, using an official test, within 60 days before entry.

(e) For the purposes of this regulation, the term "camelidae" shall include the following:

(1) camels;

(2) llamas; and

(3) alpacas. (Authorized by K.S.A. 47-607d; implementing K.S.A. 47-610; effective Jan. 23, 1998.)

9-7-18. Rodeo stock. (a) Each owner of rodeo stock shall obtain a permit from the livestock commissioner authorizing importation of the rodeo stock.

(b) All rodeo stock shall be accompanied by a health certificate or a certificate of veterinary inspection signed by a licensed veterinarian. The certificate shall be on a form approved by the livestock commissioner and shall include the permit number issued by the Kansas animal health department.

(c) Bulls that are 12 months of age and older shall test negative for brucellosis, using an official test, within 12 months before entry.

(d) Horses that are six months of age and older shall test negative for equine infectious anemia (EIA) within 12 months before entry.

(e) For purposes of this regulation, "rodeo stock" means livestock participating, working, or being used in connection with competition. "Competition" may include bull riding, bronco riding, barrel racing, team penning, or other similar events. (Authorized by K.S.A. 47-607d and 47-

610; implementing K.S.A. 47-610; effective Jan. 23, 1998.)

9-7-19. Equine passport. (a)(1) For the purposes of these regulations, the term “equidae” shall have the meaning in K.A.R. 9-7-14.

(2) “Equine passport” means a document issued by a veterinarian licensed and accredited in the state of origin and written on a form approved by and bearing a certificate number issued by the animal health regulatory agency in the state of origin. This passport shall individually identify an equidae, show the date of a negative EIA test conducted on that equidae at an approved laboratory within the preceding six months, and provide the information specified below in subsections (b) and (c).

(3) “EIA test” means an equine infectious anemia test.

(b) Each equidae entering Kansas on an equine passport shall be identified by name and shall be further identified on the passport by the designation of one of the following:

- (1) A description of any brands;
- (2) a description of a lip tattoo;

(3) a statement that a microchip is present, with the brand name and location of the microchip written on the passport; or

(4) any alternate method of designation approved by the livestock commissioner.

(c) The following information shall appear on the equine passport:

(1) A description of the equidae that includes its age, breed, color, and sex, as well as any marks that help identify the equidae;

- (2) the date of the EIA test used for validation;
- (3) the type of test utilized;
- (4) the test results;
- (5) the name of the testing laboratory; and
- (6) the laboratory accession number.

(d) Each equine passport shall be accompanied by a valid, completed “equine infectious anemia laboratory test” report on USDA veterinary services form VS 10-11T. The equidae shall be identified on the report in the same manner as on the equine passport.

(e) In order for an equidae passport to be valid in Kansas, the veterinarian who issued the equidae passport in another state shall have verified the following:

(1) That the equidae listed on the VS 10-11T form is the same equidae listed on the equine passport, based on one of the methods of identification described in subsection (b); and

(2) that the equidae listed on the equine passport was examined on the date of issuance and found to be free from evidence of contagious, infectious, or communicable disease.

(f)(1) Each inspecting veterinarian who determines that an equidae originating in Kansas is eligible for an equine passport shall complete the passport form, including the EIA test results. The inspecting veterinarian then shall contact the department to obtain a passport certification number, validation date, and expiration date, which shall all be recorded by the veterinarian on the equine passport.

(2) The white copy of the completed equine passport form and the related EIA test information for equidae originating from Kansas shall be submitted to the department within 48 hours of issuance of the passport certification number and validation date.

(3) The equidae owner shall be provided by the inspecting veterinarian with itinerary forms at the time the equine passport is issued. The itinerary forms shall be completed and returned to the department with the next application for an equine passport for that equidae. Additional equine passports shall not be issued for the identified equidae until the completed itinerary forms have been received by the department.

(g)(1) Except as provided in paragraph (g)(2), each equine passport shall remain in effect for six months from the date of the EIA test listed on the passport.

(2) Any equine passport issued in the state of Kansas may be suspended or revoked at any time due to a disease outbreak or another similar factor by the livestock commissioner. Any equidae with an equine passport issued in another state may be prohibited by the livestock commissioner from entering the state if the livestock commissioner determines that a disease outbreak or similar factor in the equidae’s state of origin warrants such an action.

(h) Equine passports shall not apply to equidae imported into the state of Kansas for the purpose of parimutuel racing. (Authorized by K.S.A. 47-607, K.S.A. 47-607d, and K.S.A. 47-610; implementing K.S.A. 47-607 and K.S.A. 47-610; effective, T-9-5-31-01, May 31, 2001; effective March 15, 2002.)

Article 8.—LIVESTOCK FEED LOTS

9-8-1. Cleaning of premises. (1) Feed lots shall be thoroughly scraped and cleaned, and all

manure removed, at least two times each calendar year, and more frequently if necessary to maintain proper standards of cleanliness and sanitation.

(2) Manure removed from a feed lot shall be disposed of in one of the following manners: (a) Hauling to and placing upon farm land, where same shall be spread out and plowed under the soil surface; (b) dehydrating by a mechanical dehydrating process; (c) depositing in lagoons or settling tanks, having such construction and size to effectuate substantial reduction by bacterial action; (d) using any other method specifically approved by the livestock sanitary commissioner. Manure removed from a feed lot may be stockpiled, and shall be moved for final disposal when conditions permit.

(3) Locations at a feed lot which might be the source of insect breeding, (a) shall be cleaned, or (b) shall be treated with approved chemicals, or (c) shall be both cleaned and treated with approved chemicals. The procedure followed shall be in such manner as to eliminate or substantially reduce the breeding of flies. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

9-8-2. Control of insects, rodents, and pests. (1) Effective chemicals, approved by the livestock sanitary commissioner, shall be used for killing of flies on and about the feed lot premises. Such chemicals shall be applied with such frequency, and with such coverage, as will eliminate or reasonably control the fly population on such premises.

(2) Effective methods, approved by the livestock sanitary commissioner, shall be used for the eradication of the rodent population. Approved formulas of gas and poisons, may be used. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

9-8-3. Location and construction of facilities. (1) Feed bunks, hay feeders, water tanks, and other permanent installations, shall be located and constructed in such a manner as to permit adequate cleaning of premises adjacent to such permanent facilities.

(2) Weather resistant platform aprons shall be provided adjacent to all feed bunks, feeders, water tanks and other permanently affixed facilities. Such aprons shall be of concrete, blacktop, compacted gravel, crushed rock, or other approved materials. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

9-8-4. Drainage of feed lot. (1) Surfaces of feed lot pens shall be prepared and maintained at a grade or slope, and in a manner which will prevent future and eliminate present accumulations of surface waters, and which will permit and facilitate the immediate runoff of surface waters, from the feeding area.

(2) The surface waters running off, or being discharged from, the feeding area, shall be directed into storage reservoirs or settling basins, where practical and recommended, or shall be diverted and spread over fields, thus preventing the direct drainage and movement of solids being carried by water into draws, ravines, streams, and rivers. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

9-8-5. Veterinarian. A licensed veterinarian shall be available at the feed lot, or subject to call at any time. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

9-8-6. Mechanical equipment. The operator of a feed lot shall have available at his feed lot, either by ownership or by lease arrangement, necessary equipment, in good repair, which shall include the following: a bulldozer, a road grader, and a scoop or other mechanically operated equipment capable of scraping pens and loading manure. (Authorized by K.S.A. 47-1505 and 47-1506; effective Jan. 1, 1966.)

Article 9.—POULTRY AND HATCHING EGGS

9-9-1. Poultry affected with, or exposed to, disease; importation prohibited. Poultry which is infected with, or which has been exposed to, pullorum disease, typhoid disease, newcastle disease, fowl plague, chronic respiratory disease, fowl cholera, infectious bronchitis, laryngotracheitis, infectious sinusitis, fowl pox, coccidiosis, ornithosis, tuberculosis, or any other infectious or contagious disease, shall not be brought, shipped, or imported into the state of Kansas for any purpose whatsoever. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-9-2. Poultry for immediate slaughter; importation. Turkeys, chickens, waterfowl, and other domesticated fowl which are apparently healthy may be brought, shipped, or imported into the state of Kansas, for immediate slaughter only, without health certificates, when consigned by common carrier, or by other approved transpor-

tation, to a destination approved by the livestock sanitary commissioner of Kansas. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-9-3. Turkeys under four (4) months; other poultry under five (5) months; poultry hatching eggs. Turkey poults under four (4) months of age, and other poultry under five (5) months of age, and poultry hatching eggs, may be brought, shipped, or imported into Kansas, without health certificates, if such poults and poultry and eggs originate in flocks, or are distributed from hatcheries or premises, (a) where the flock owner or hatchery owner is participating in the national turkey improvement plan and the national poultry improvement plan, whichever is applicable, or (b) where the flock owner or hatchery owner is operating under supervision of a disease control agency of the state of origin and has been and is classified as U.S. pullorum-typhoid clean.

Waterfowl and waterfowl hatching eggs may be brought, shipped, or imported into Kansas, without meeting the above requirements, (a) if not consigned to, or if not delivered to, an approved national plan hatchery, or (b) if not consigned to, or if not delivered to, a hatchery handling domesticated fowl and hatching eggs. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-9-4. Poultry importation permits. Any person desiring to import poultry, or poultry hatching eggs, into Kansas shall not be entitled to do so, unless and until he shall have first obtained a poultry importation permit from the livestock sanitary commissioner of Kansas. Such a permit shall not be required for waterfowl or for waterfowl hatching eggs imported under provision of regulation 9-9-3. An application for such a permit shall be submitted to the livestock sanitary commissioner and shall be made only on a form approved and supplied by the livestock sanitary commissioner. Such a permit shall be issued to the applicant, by the livestock sanitary commissioner of Kansas, or his duly authorized representative, when it has been determined: (a) That the official disease control agency of the state of origin of proposed poultry and poultry hatching egg imports, has verified the pullorum-typhoid classification of the flock, hatchery or premises, from which the birds or eggs originate; and (b) when such classification is acceptable to such Kansas official; and (c) when such additional conditions and provisions, as the livestock sanitary commissioner had deemed

essential for the protection of poultry in Kansas from infectious or contagious disease, have been satisfied. Each such permit shall state a date of expiration, as of June 30 following date of issuance.

Each container in which poultry or poultry hatching eggs are transported or shipped into Kansas shall bear an official label stating: (a) The name and address of the consignor; (b) the name and address of consignee; (c) the pullorum-typhoid classification of the poultry and poultry eggs; and (d) the number of Kansas poultry import permit. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-9-5. Health certificates; turkeys over four (4) months and other poultry over five (5) months of age. Turkeys over four (4) months of age, and other poultry over five (5) months of age, may be brought, shipped, or imported into the state of Kansas, for purposes other than immediate slaughter: Provided, they are accompanied by an official health certificate, or a permit acceptable to livestock sanitary commissioner of Kansas, issued by the chief livestock health official of the state of origin certifying: (a) that such turkeys, and such other poultry are free from any evidence of any infectious or contagious disease;

(b) that such turkeys and such other poultry have not been exposed to any such disease; and

(c) that such poultry are classified as U.S. pullorum-typhoid clean. Such turkeys and other poultry may be permitted to move into the state of Kansas under quarantine. Upon arrival at the point of destination such turkeys and poultry shall be held under such quarantine, separate and apart from other poultry, until they have been tested for pullorum and typhoid diseases, and have been found negative to such diseases, and until the elapse of thirty (30) days after such importation and after such negative tests. Such turkeys and other poultry, so imported, which are tested and found to be positive to any of such diseases, shall be immediately moved under quarantine to a destination, acceptable to the livestock sanitary commissioner, for purposes of immediate slaughter. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

Article 10.—PUBLIC LIVESTOCK MARKETS

9-10-1. Requirement for sale. (a) The consignor, at the time of unloading of livestock, shall

indicate to the public livestock market operator, or his representative in charge at the unloading dock, any and all known disease conditions, injuries or physical defects and the information shall be recorded on the drive-in ticket.

(b) Brucellosis reactor animals may be sold at a public livestock market, for slaughter only, and other animals approved by the veterinary inspector, may be permitted to sell within limitations otherwise authorized.

(c) Consigned livestock delivered at a public livestock market shall be inspected by the authorized veterinary inspector, and the livestock shall be tested, and shall be otherwise treated, as required by law and regulations. (Authorized by K.S.A. 47-610, 47-1009, 47-1010; implementing K.S.A. 47-607, 47-658b and 47-1008; effective Jan. 1, 1966; amended May 1, 1982.)

9-10-2. Special sales at irregular intervals. The public livestock market operator shall be responsible for the sale, purchase, or exchange of livestock at regular or irregular intervals at the public livestock market premises, including private sales, consignment sales, and breed association sales. Livestock shall be released from the market premises, only in accordance with the Kansas laws and regulations. Laws and regulations hold the market operator responsible for sale and release of livestock even though the facilities may be rented. Veterinary inspector's presence is required. (Authorized by K.S.A. 47-610, 47-1010; implementing K.S.A. 47-607 and 47-1008; effective Jan. 1, 1966; amended May 1, 1982.)

9-10-3. Health certificates. Health certificates covering all livestock consigned to, or sold through a public livestock market shall be issued to the purchasers. Said certificates shall show the kind of inspection made, any treatment administered, the kind of vaccination administered, and the general description of the animals. Except for interstate shipments, such certificates may be incorporated in the account of sale. Acceptance of livestock by purchaser of the animals covered by such certificates, shall complete the sale.

In handling livestock for interstate movement, the veterinary inspector is directed to make inspection and tests necessary, and to issue a health certificate which meets the requirements of the state of destination.

Two copies of the health certificate, covering all interstate shipments, shall be sent to the livestock

sanitary commissioner, Topeka, Kansas. (Authorized by K.S.A. 47-610; effective Jan. 1, 1966.)

9-10-4. General inspection. All livestock, including poultry, when delivered to a public livestock market, whether held in outside pens, yards, sheds, barns, vehicles, crates or coops (whether loaded on vehicles or unloaded) or other places on such market premises, shall be inspected, and shall not be offered for sale, sold or exchanged until inspected, passed and released by the veterinary inspector.

Public livestock market operators may be required to report weekly to the livestock sanitary commissioner the number and kind of livestock received from out of state, the name and address of each consignor, and the number or location of the port of entry through which the livestock entered this state. (Authorized by K.S.A. 47-607a, 47-610, K.S.A. 1965 Supp. 47-607; effective Jan. 1, 1966.)

9-10-5. Inspection of cattle. (1) General: All cattle and calves shall be given an inspection for detection of any communicable, infectious and contagious disease. Cattle showing evidence of lump jaw (actinomycosis) or cancer-eye (carcinoma) in the advanced stages, that in the judgment of the veterinary inspector will not respond to treatment, shall not be sold at any public livestock market, except for immediate slaughter, and then only to an establishment where federal inspection is maintained.

(2) Scabies: Veterinary inspectors shall use particular care in making examination to detect scabies infestation. If cattle are found to be infested with scabies, the veterinary inspector shall quarantine the animals, and shall promptly notify the livestock commissioner of such quarantine. (Authorized by K.S.A. 47-610, 47-1009, K.S.A. 1970 Supp. 47-1010; effective Jan. 1, 1966; amended, E-70-40, Aug. 19, 1970; amended Jan. 1, 1971.)

9-10-6. (Authorized by K.S.A. 47-610, K.S.A. 1970 Supp. 47-1010; effective Jan. 1, 1966; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-7. Inspection of sheep and goats. All sheep and goats shall be given an inspection for communicable, contagious or infectious diseases. Veterinary inspectors shall use particular care in making examination to detect scabies infestation. If sheep or goats are found to be infested with scabies, the veterinary inspector shall quarantine the animals, and shall promptly notify the livestock sanitary commissioner.

The livestock sanitary commissioner may direct operators of public livestock markets to dip, with approved solution, all sheep and goats which are offered for sale or sold. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-8. Inspection of swine. (a) Feeder swine, of Kansas origin, shall not be eligible to sell at a public livestock market, unless they have been maintained on Kansas premises for at least thirty (30) days, and

(1) have been held separately and apart from other swine, or

(2) have been raised on that farm.

(b) Out-of-state swine are not eligible to sell except as otherwise provided by regulations. If, after swine are unloaded at the public livestock market premises, it is determined that such swine

(1) are from another livestock market, or

(2) are from another state, or

(3) are for any other reason not eligible to sell, then neither the consignor, nor the person in charge of such livestock, shall be permitted to reload such livestock, or to move such swine from the public livestock market premises. All such swine shall be placed under quarantine by the veterinary inspector and shall be held in the quarantine pens at the public livestock market premises until officially released. The livestock commissioner, or his representative, shall be notified of issuance of any such quarantine.

(c) The drive-in ticket, which shall be completed at the unloading dock at each public livestock market, shall contain the following information:

(1) The name and address of the consignor; the name and address of the driver of the vehicle (the sale operator shall be responsible for the accuracy of such names and addresses; he shall check the driver's license, record the number of such driver's license);

(2) the place of origin of the swine; this shall be specific as to the address where the swine were originally loaded. If the consignor, or his agent, refuses to give complete information as to the origin of the swine, and as otherwise required, the swine shall not be eligible to sell, and shall be quarantined on the premises of the public livestock market;

(3) the make or manufacturer of the delivering vehicle;

(4) the registration or license number of delivering vehicle; the state of issuance, and year of issuance, of the registration or license tag shall be shown;

(5) the consignor of swine, or his agent, shall sign the drive-in or dock record.

(d) Sows, boars and stags sold for slaughter shall be tattooed on the shoulder with the national market swine identification coded tattoo or identified by eartag and such tattoo number or eartag number shall be recorded on the drive-in ticket or scale ticket. (Authorized by K.S.A. 47-610, 47-1009, 47-1010; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1980.)

9-10-9. Restrictions on sale of swine. (1) Out-of-state swine are not eligible to sell at a public livestock market except for slaughter, unless such swine are consigned direct by a producer in a recognized trade territory.

(2) Feeder swine are not eligible to sell in Kansas at any public livestock market or other sale, unless such swine shall have been produced and moved directly from a healthy herd, from a Kansas farm, or unless such swine shall have been maintained on a Kansas farm, or on Kansas premises, for at least 30 days, and shall have been held separately and apart from other swine. Swine originating on said Kansas premises, shall have a history and record of being free from any and all diseases, and free from exposure to disease, and meet other requirements, before such swine shall be salable.

Feeder swine shall not be offered for sale, sold or exchanged, at a public livestock market, until they have been inspected and passed by the veterinary inspector; nor may such swine be released from such market premises except as provided by law and regulations, and then only under quarantine to be held at a destination on Kansas premises, giving detailed location, with provision for such swine to be checked by Kansas officials, until subsequently released.

Feeder swine shall not be offered for sale, sold or exchanged, until all drive-in and dock records, and other required information, are secured by the public livestock market operator. Such operator shall not permit any such swine to be sold under name of a consignor using an alias name. (Authorized by K.S.A. 47-610, 47-1009, 47-1010; effective Jan. 1, 1966; amended, E-70-40, Aug. 19, 1970; amended Jan. 1, 1971; amended Jan. 1, 1974.)

9-10-10. Swine. Release and quarantine of feeding and breeding swine from a public livestock market shall be in accordance with the following:

(1) Identification of swine. Swine shall be identified by the market veterinary inspector, at

the time of inspection, by paint, paint stick or a permanent-type dye mark applied on top of shoulders, before such swine are released from such market premises.

(2) Removal from public livestock market premises. Breeding and feeding swine shall not be sold or removed from public livestock market premises, until inspected and marked by the veterinary inspector; swine shall be released to purchaser's premises under quarantine for 30 days. Owners shall be furnished a buyer's sheet by the market operator, which shall be stamped with the official quarantine notice.

(3) Interstate movement of swine. Swine being moved from public livestock market premises, to an out-of-state destination, shall meet the federal interstate requirements and the requirements of the state of destination. (Authorized by K.S.A. 47-610, K.S.A. 1971 Supp. 47-1010; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-19, July 1, 1971; amended Jan. 1, 1972.)

9-10-11 to 9-10-13. (Authorized by K.S.A. 47-610, K.S.A. 1969 Supp. 47-1010; effective Jan. 1, 1966; revoked Jan. 1, 1970.)

9-10-14. Poultry. Chickens, turkeys, ducks, geese, pigeons, and other poultry shall be given an inspection for communicable, infectious, or contagious diseases, before being offered for sale, sold, or exchanged at a public livestock market.

When poultry is sold as "chicks" this regulation shall mean any domestic fowl under the age of six weeks.

Each box, crate, coop or other container, holding chicks, shall be plainly labeled with the name of seller and description of contents. Such description of contents shall include name of the breed and of the variety. Additional labeling requirements shall include a guarantee of sex on sexed chicks, the date of the hatch, the number of chicks in the container, and the pullorum classification of such chicks.

An inspection fee of one cent per bird shall be collected from the consignor, by the public livestock market operator, which fee shall be paid to the veterinary inspector for inspections made on poultry. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-15. Quarantine of diseased and exposed animals. When livestock, including poultry, is offered for sale, and the veterinary inspector

finds evidence of such animals being infected with any contagious or infectious disease, by temperature or other clinical symptoms, or finds same evidence of such animals being exposed to any such disease, the veterinary inspector shall place the entire consignment of such livestock under quarantine, and shall promptly notify the public livestock market operator, of his action. The public livestock market shall then notify the consignor of such livestock of the infected or exposed animals, which have been placed under such quarantine.

When the veterinary inspector is satisfied that such consignor is prepared to, and is agreeable to holding such animals under quarantine on his own premises, he may permit same to be moved to said premises. When the veterinary inspector is not satisfied that such consignor can comply with the requirements of the quarantine, then the infected or exposed animals shall be placed in quarantine pens provided by the public livestock market operator. If a veterinary inspector finds that livestock consigned to his public livestock market, originated outside the state of Kansas and had not entered the state in line with Kansas requirements, he shall hold such livestock under quarantine in the quarantine pens provided by the public livestock market operator. It shall be the duty of the public livestock market operator to feed, water, and shelter all animals placed under official quarantine on his public livestock market premises.

After the veterinary inspector has diagnosed the disease, with which the animals, including poultry, are infected, or to which they have been exposed, he shall prescribe and administer the necessary medicine, vaccine or serum, and shall submit a statement of the cost of such service, together with the cost of feed, water and care, and such amount shall be charged to the owner or consignor. When livestock is rejected for sale purposes, as provided in this regulation, the veterinary inspector shall issue an official quarantine notice to the consignor covering all livestock in the consignment. The quarantine notice shall be made in triplicate, and the original shall be given to the consignor, the first copy shall be forwarded to the livestock sanitary commissioner at Topeka, Kansas, and the second copy shall be retained by the veterinary inspector. Said quarantine shall be effective for twenty-one days, or until released by the livestock sanitary commissioner, or his authorized representative. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-16. Limitation on sale of injured or physically defective livestock. The veterinary inspector shall have authority to prevent the sale of livestock which are found to have physical defects, produced by injury or disease. In the event that such animals are permitted to be sold, the veterinary inspector's certificate shall state such physical defects or injuries, and the public livestock market operator, or his representative, shall announce such conditions as are shown on the veterinarian's certificate to the prospective purchasers, before such animals are offered for sale. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-17. Yard facilities. Facilities used for handling, penning or loading livestock shall be constructed in such a manner as will prevent physical injury to persons and livestock.

Floors of pens in which swine are held, floors of alleyways used in the moving of swine, and the floors of pens used for holding small calves, shall be of concrete or of some approved impervious material. Such floors shall be so constructed that they may be properly washed, cleaned, drained and disinfected. This requirement does not apply to pens in which fat hogs are held after being sold for slaughter purposes. Cattle pens shall be so constructed, and of such material, as will permit proper drainage, and such pens shall be cleaned and disinfected within 24 hours after each sale day. Facilities for handling livestock on public livestock market premises shall be kept clean at all times. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-18. Limitation on use of public livestock market premises. The pens, yards, alleys and sale ring shall not be used for feeding, holding, trading, or assembling livestock, except twenty-four hours before or twenty-four hours after any sale day: *Provided*, This regulation shall not apply to quarantine pens. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-19. Disinfection of public livestock market premises and vehicles. Pens, and other public livestock market facilities, and trucks and other vehicles used to transport or confine livestock, found to be infected with or exposed to a contagious or infectious disease, shall be washed, cleaned, and disinfected with an approved disinfectant after each sale day, the same to be performed

under the supervision of the veterinary inspector. Expenses incurred in the cleaning and disinfecting of pens and other public livestock market facilities shall be paid by the public livestock market operator. Expenses incurred in the cleaning and disinfecting of trucks, cars, or other vehicles used to transport or confine diseased or exposed livestock shall be paid by owner or operator of such equipment. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-20. (Authorized by K.S.A. 47-610, K.S.A. 1971 Supp. 47-1010; effective Jan. 1, 1966; revoked, E-71-19, July 1, 1971; revoked Jan. 1, 1972.)

9-10-21. Quarantine pens and facilities. Each operator of a public livestock market shall provide and maintain adequate quarantine pens, separate and apart from such market pens as are regularly used to pen livestock consigned for sale. These quarantine pens shall be of ample size, and have sufficient shed coverage and room to provide shelter for any diseased livestock. Proper feeding and watering facilities shall be provided for, and in such pens. Designated quarantine pens shall be under the direct supervision of the veterinary inspector, and such pens shall be locked at all times, except for authorized movement of livestock into and out of same. (Authorized by K.S.A. 47-610, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-22. (Authorized by K.S.A. 47-610, 47-1009, K.S.A. 1970 Supp. 47-1010; effective Jan. 1, 1966; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-22a. Veterinary testing fees. (a) Fees shall be collected by the public livestock market operator for blood testing of livestock for brucellosis detection. Brucellosis testing shall include the following services:

- (1) Collecting the blood sample from the animal;
- (2) Making the agglutination test;
- (3) Recording of tests on official test chart and on official health certificate when such certificate is required;
- (4) Issuing of public livestock market shipping permits; and
- (5) Issuing test cards on tested animals released for a Kansas destination.

(b) Charges for swine identification with eartag: Charges may be made by the veterinary inspector for the identification of swine with eartags when

such identification is required to meet state regulations or federal interstate regulations.

Charges for such required eartag identification shall be collected by the market operator and paid to the veterinary inspector.

The charges shall be collected from the buyer, except on swine being returned home under quarantine, as required in K.A.R. 9-10-30, and then the charge shall be collected from the consignor. (Authorized by K.S.A. 47-610, 47-1008, 47-1009, 47-1010; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended, E-71-19, July 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1980.)

9-10-23. Regulatory fees. A regulatory fee of one cent per bird on all poultry over ten days old, and twenty-five cents per hundred, or a fraction thereof, on all poultry ten days old or under shall be collected by the operator of a public livestock market, from the consignor of all consigned poultry, which amounts shall be paid to the livestock sanitary commissioner.

When sow and suckling pigs, cow and suckling calf, mare and suckling colt, or ewe and suckling lamb, are offered for sale and sold as a unit, only one inspection fee, and one regulatory fee, shall be collected from the consignor for each such unit.

Inspection fees and regulatory fees shall be shown on the consignor's invoice as separate items, and such items shall not be included with charges made by the operator for yardage, insurance, or other items. (Authorized by K.S.A. 47-610, 47-1011, K.S.A. 1965 Supp. 47-1010; effective Jan. 1, 1966.)

9-10-24. (Authorized by K.S.A. 47-657, 47-658a, 47-610 and 47-1004; effective Jan. 1, 1969; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-24a. Backtagging procedures at public livestock markets. (a) Heifers, cows, and bulls over test-eligible age shall be tagged with the uniform backtag. This includes animals from other states, as well as from Kansas origin. The owner's name, at the point of origin (farm location), shall be shown on the record sheet for the animals which are backtagged. If the owner's name, as defined here, cannot be determined, then the seller's name may be shown.

(b) The backtags, glue, and other adhesives shall be furnished to the public livestock market operators at federal or state expense. Backtags shall be applied by personnel of the public livestock mar-

ket operator under the supervision of the market veterinarian or the market manager. The public livestock market operator shall be reimbursed for personnel services in applying the backtags on the basis of fifteen cents (15¢) per head for each animal backtagged when authorized by the livestock commissioner.

(c) The person doing the backtagging shall keep a record showing the tag number used, the name and address of the owner of the animal, and the county of origin for the animal backtagged. A copy of this record shall be forwarded to the Kansas animal health department when a sheet covering the listed backtag number is completed.

(d) A backtag shall be applied on each animal, just behind the shoulder and below the mid line of the back; not on hip.

(e) The backtag on animals sold for slaughter without a test shall not be removed until time of slaughter.

(f) Backtagged animals which are bled at markets shall have the backtag sprayed with yellow transparent lacquer. This lacquer will be furnished by the Kansas animal health department. The backtag shall remain on the animal and will help serve as rapid identification should the animal be moved to another market or should there be any reason for trace back.

(g) Any unauthorized removal of a backtag from cows, which are moved for slaughter, shall be reported to the livestock commissioner of Kansas or his authorized representative. The buyer of the animals may be denied a release of backtagged cattle for any purpose, unless the backtagged animal has been tested before removal from the market. (Authorized by K.S.A. 47-610, 47-657, 47-658a, 47-1004; implementing K.S.A. 47-658a and 47-1008; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1982.)

9-10-25. (Authorized by K.S.A. 47-657, 47-658a, 47-610 and 47-1004; effective Jan. 1, 1969; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-25a. Procedures for use of testing forms, blood samples; payment to market veterinarian for testing. (a) The special market brucellosis test chart shall be used at all markets. When completed, all copies, together with blood samples, shall be forwarded immediately to the state-federal laboratory.

(b) The market veterinarian shall show on the test chart the ear tag number, the back tag number, the age, the sex, and the breed of each animal, together with the test results, and the name and address of the seller (NOT the buyer), and the county from which the animal was moved to the market. (This can be obtained from the backtag record sheet.)

(c) The brucellosis testing service of the veterinary inspector shall include the collection of the blood sample; the completion of the agglutination test; the completion of the forms supplied; the forwarding of blood samples and test charts to the state-federal laboratory; the tagging and branding of reactors; the issuing of shipping permits on reactors and suspects; and the issuing of test cards on tested animals released to be moved to a Kansas destination.

(d) Fees for brucellosis testing by the market veterinary inspector shall be collected by the public livestock market operator and shall be paid by him to the veterinary inspector. (Authorized by K.S.A. 47-610, 47-657, 47-658a, 47-1004, 47-1008; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974.)

9-10-26. (Authorized by K.S.A. 47-657, 47-658a, 47-610 and 47-1004; effective Jan. 1, 1969; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-26a. Brucellosis testing procedures and status determination for cattle; handling of exposed cattle. (a) Testing procedures. (1) Backtagged animals, cows, heifers, and bulls of test-eligible age and from non-quarantined herds shall be tested for brucellosis before being released from the market, unless they:

(A) Have a negative brucellosis test within thirty (30) days of sale;

(B) Are from a certified brucellosis-free herd;

(C) Are "S" branded because they originated from a quarantined herd or a licensed feed lot; or

(D) Originated from a Class C state or a state designated by the livestock commissioner as having a high incidence of brucellosis.

(2) Animals shall be tested for brucellosis before the sale, or shall be sold subject to test when they are received at the market too late to be tested before being sold.

(3) Brucellosis reactors found at the market and all brucellosis exposed animals in the consignment shall revert back to the consignor of the cattle. All

reactors shall be tagged and branded and sold for slaughter.

(b) Handling of exposed cattle. When brucellosis reactors are found in tested cattle, the remainder of any consignment of cattle, classified as exposed, shall be:

(1) Quarantined by the market veterinarian to the original owner until the cattle have passed two (2) clean tests—the first not earlier than thirty (30) days from date reactors were removed, the second test not earlier than ninety (90) days from date of first test;

(2) Sold for slaughter by being "S" branded and identified on an official shipping permit issued by the market veterinarian; or

(3) Moved to a Kansas licensed feed lot, "S" branded and identified on an official shipping permit. (Authorized by K.S.A. 47-610, 47-657, 47-658a, 47-1004; implementing K.S.A. 47-658a and 47-1007; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1982.)

9-10-27. (Authorized by K.S.A. 47-657, 47-658a, 47-610, 47-1004; effective Jan. 1, 1969, revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-27a. Procedures for handling brucellosis reactors and suspects. 1. Reactors. When reactors are found in animals tested, the reactor animals shall be tagged and branded, and indemnity papers shall be completed by the market veterinarian. The owner (seller or consignor) shall be eligible to collect indemnity (1) if subsequent testing procedures are followed for the remainder of the herd of origin, and (2) if all other requirements are met.

2. Suspects. When one or more suspects are found in the brucellosis test and no reactors are found, the suspects may be (1) quarantined to the owner for a 30 to 60 day brucellosis test at the owner's expense, or (2) sold for slaughter and released on a shipping permit. (Authorized by K.S.A. 47-610, 47-657, 47-658a, 47-1004; effective, E-70-40, Aug. 19, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974.)

9-10-28. (Authorized by K.S.A. 47-657, 47-658a, 47-610 and 47-1004; effective Jan. 1, 1969; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

9-10-29. (Authorized by K.S.A. 47-610, K.S.A. 1971 Supp. 47-1010; effective Jan. 1, 1970;

revoked, E-71-19, July 1, 1971; revoked Jan. 1, 1972.)

9-10-30. Swine rejected by the veterinary inspector. Swine rejected by the veterinary inspector for regular sale purposes may be released to be (1) returned to the farm of origin under quarantine, until released by the livestock commissioner or sold for slaughter; or (2) shipped direct to slaughter on an official shipping permit. Such swine must be identified by the veterinary inspector by an eartag and with a paint mark applied on top of the shoulders. The eartag number shall be shown on the quarantine or shipping permit issued by the veterinary inspector.

Any inspection and release of these swine by the livestock commissioner, or his authorized representative, shall be only upon request by the owner and, in no case, shall they be released in less than thirty (30) days following the return of the swine to the farm of origin. (Authorized by K.S.A. 47-610, K.S.A. 1971 Supp. 47-1010; effective, E-71-19, July 1, 1971; effective Jan. 1, 1972.)

9-10-31. Occasional livestock sale fees. The annual fee for an occasional livestock sales license shall be as follows:

- (a) 1-2 sales per year \$25.00
- (b) 3-5 sales per year..... \$50.00
- (c) 6-9 sales per year \$75.00
- (d) 10-12 sales per year..... \$100.00

(Authorized by and implementing K.S.A. 47-1001d, as amended by 1996 S.B. 659, § 2; effective T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996.)

9-10-32. Exemption from occasional livestock sale requirements. Occasional livestock sales held in conjunction with a county, district, regional, or state exhibition for junior exhibitors shall not be required to apply for or obtain an occasional livestock sale license. (Authorized by and implementing K.S.A. 47-1001d, as amended by 1996 S.B. 659, § 2; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996.)

9-10-33. Livestock injured, disabled or unfit for sale. Definitions. As used in this act, these definitions shall apply.

(a) “Actinomycosis” means the disease commonly known as lump jaw.

(b) “Livestock” or “animal” means animals as defined by K.S.A. 1996 Supp. 47-1001(b), and amendments thereto.

(c) “Commissioner” means the Kansas livestock commissioner or a designated employee of the Kansas animal health department, or a designated employee of the United States department of agriculture veterinary services.

(d) “Department” means the Kansas animal health department.

(e) “Euthanasia” or “euthanize” refers to accomplishing the humane death of an animal by a method appropriate for the species and the location.

(f) “Metastatic” or “metastasis” means the invasion or infiltration of other structures or tissue by a neoplasm.

(g) “Neoplasia,” “neoplasm,” or “neoplastic” means new, abnormal tissue growth deleterious to the animal’s health. Tumors and cancer are neoplasias.

(h) “Nonambulatory” means that the animal is unable to rise to its feet and walk with minimal stimulus.

(i) “Owner” means the actual owner of the livestock or the person who consigned the livestock for sale, or the owner’s or consignor’s agent.

(j) “Urinary calculi” means the condition commonly known as water belly.

(k) “Market veterinarian” means an accredited veterinarian licensed to practice in Kansas and appointed by the commissioner to perform the duties of a veterinarian at a specific livestock market. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 19, Sec. 2; effective April 3, 1998.)

9-10-33a. Electronic auctions; health certificates. For each electronic auction, the costs associated with issuance of the health certificate required under K.S.A. 47-1008, and amendments thereto, shall be paid by the consignor. Each of these health certificates shall meet the requirements of K.A.R. 9-10-3. (Authorized by and implementing K.S.A. 2016 Supp. 47-1008; effective, T-9-8-29-00, Aug. 29, 2000; effective Dec. 29, 2000; amended Sept. 22, 2017.)

9-10-34. Notice. (a) Every operator of a public livestock market in Kansas shall post and maintain signs at the livestock market that state the following notice specified in subsection (b). Such signs shall be placed in a clearly visible location at the check-in dock, in the sale ring, and in the market office area available for public access. The notice specified in subsection (b) shall appear

on the sign in black letters, and each letter shall be a minimum of one inch in height.

(b) The signs required in subsection (a) shall contain the following notice:

NOTICE

To: All livestock owners, consignors, or agents. Any animal that is injured, disabled, or deemed unfit for sale shall be examined by the market veterinarian. After examination of the animal, the market veterinarian has sole discretion to determine whether the animal will be sold, removed from the livestock market, or euthanized in accordance with K.S.A. 1996 Supp. 47-1008, and amendments thereto.

A copy of the statute and its regulations is available at the market office or from the Kansas Animal Health Department, 708 S.W. Jackson, Topeka, Kansas 66603. The statute and regulations are enforced by the Kansas livestock commissioner and not the livestock market.

(c) By consigning the animal to a public livestock market, the owner, consignor or agent consents to the following:

- (1) to have the animal examined;
- (2) to abide by the market veterinarian's determination of the disposition of the animal;
- (3) to pay any cost incurred for the removal of the animal from the livestock market; and
- (4) to pay any costs incurred for euthanasia and disposal of the animal. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-35. Procedures. (a) Each animal presented to the livestock market for public sale shall be inspected by the market veterinarian.

(b) Veterinary inspection shall occur before sale, with a determination made by the market veterinarian as to whether or not the animal presented possesses any of the diseases or injuries specified in K.A.R. 9-10-36 or K.A.R. 9-10-37.

(c) After examination of the animal, the market veterinarian shall have sole discretion to determine whether the animal will be sold, removed from the livestock market, or euthanized in accordance with K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2 and amendments thereto.

(d) If the market veterinarian determines that a disease or injury identified in K.A.R. 9-10-36 or K.A.R. 9-10-37 exists, the market veterinarian shall make a reasonable effort to contact the own-

er by phone or in person to discuss the disposition of the animal.

(e) Within 12 hours after notification, the owner may remove from the livestock market any animal identified by the market veterinarian pursuant to K.A.R. 9-10-36 and K.A.R. 9-10-37 or may direct the market veterinarian to euthanize this animal.

(f) Animals deemed not fit for sale and removed live from the market shall be accompanied by a United States department of agriculture VS1-27 form.

(g) If the market veterinarian is unsuccessful in contacting the owner, the market veterinarian shall have sole discretion in determining whether or not the animal identified pursuant to K.A.R. 9-10-36 and K.A.R. 9-10-37 should be euthanized to prevent further pain or suffering.

(h) Any animal identified by the market veterinarian pursuant to K.A.R. 9-10-36 and K.A.R. 9-10-37 that is not removed from the livestock market 14 hours after the initial veterinary inspection may be euthanized, at the sole discretion of the market veterinarian.

(i) All costs associated with removal or euthanasia of the animal shall be paid by the owner. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-36. Diseases or conditions that shall render livestock unfit for sale at public livestock markets. The following diseases or conditions shall render an animal unfit for sale at a public livestock market:

(a) Ocular neoplasia, which is commonly known as "cancer eye," unless the neoplastic lesions show no signs of metastasis and have not destroyed the eye or the eyelid. Livestock with cancer eye will be deemed unfit for sale if any of these conditions is met:

(1) the neoplastic lesions affect the eye, eyelids, or both and have destroyed the affected organ to the point that the affected area cannot be surgically removed;

(2) the neoplastic lesions show signs of local metastatic invasion from the primary site to the bone of the orbit; or

(3) there are marked signs of swelling, discoloration, draining necrotic lesions, deformation of tissue, or odor;

(b) any animal displaying other forms of neoplasia, regardless of tissue origin, which exhibit

significant involvement, including swelling, discoloration, draining necrotic lesions, tissue deformation, or odor;

(c) any disease process, including actinomycosis, pneumonia, and urinary calculi, that, in the judgment of the market veterinarian, is unlikely to respond to treatment and has resulted in emaciation of the animal; and

(d) any disease process that has resulted in the presentation of a nonambulatory animal. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-37. Injuries that shall render livestock unfit for sale at public livestock markets. Injuries rendering livestock unfit for sale at public markets shall include any of the following:

(a) A fracture of the long bone, open fractures, or other fractures or dislocations of a joint that render the animal unable to bear weight on the affected limb without that limb collapsing;

(b) any injury that has not responded to treatment and has resulted in emaciation of the animal; or

(c) any injury resulting in the presentation of a nonambulatory animal. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-38. Euthanasia. (a) Euthanasia shall be accomplished by or under the direction of the public market veterinarian.

(b) The cost of the euthanasia shall be posted at the livestock market and the commissioner notified of the cost at each market. The cost of euthanasia shall be paid by the owner.

(c) For each animal euthanized in accordance with K.A.R. 9-10-34 through K.A.R. 9-10-38, the market veterinarian shall provide written notice to the owner of the animal, indicating the reason for the euthanasia and the cost of the euthanasia. A copy of this notice shall be sent to the commissioner. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-39. Disposal of euthanized carcasses. (a) The owner may request the return of the carcass and may retrieve the carcass within six hours after euthanasia occurs.

(b) If the owner does not retrieve the carcass within six hours after euthanasia, the carcass shall

be disposed of pursuant to K.S.A. 1996 Supp. 47-1219, and amendments thereto. Any disposal fee shall be paid by the owner. (Authorized by and implementing K.S.A. 1996 Supp. 47-1008, as amended by L. 1997, Ch. 129, Sec. 2; effective April 3, 1998.)

9-10-40. License fees and renewals. (a) As part of the application for a public livestock market license, each owner or operator shall pay a license application fee of \$375 to the commissioner.

(b)(1) Each owner or operator of a public livestock market shall pay an annual license fee of \$250 on or before June 30.

(2) Each owner or operator of an electronic auction shall pay an annual license fee of \$250 on or before June 30, except as specified in this paragraph. If the owner or operator of an electronic auction is also the owner or operator of a public livestock market, the annual fee for the electronic auction license shall be \$125.

(c) Each license shall expire annually on June 30, pursuant to K.S.A. 47-1001e and amendments thereto.

(d) It shall be illegal to operate a public livestock market or conduct an electronic auction without a valid license, pursuant to K.S.A. 47-1001e and amendments thereto. (Authorized by and implementing K.S.A. 47-1001a and K.S.A. 2016 Supp. 47-1001e; effective Sept. 22, 2017.)

Article 11.—TUBERCULOSIS

9-11-1 and 9-11-2. (Authorized by K.S.A. 47-608, 47-610, and 47-631; effective Jan. 1, 1966; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-11-3. (Authorized by K.S.A. 47-608, 47-610, 47-631; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-11-4. (Authorized by K.S.A. 47-608, 47-610, 47-631; effective Jan. 1, 1966; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-11-5. (Authorized by K.S.A. 47-608, 47-610, 47-631; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-11-6 to 9-11-9. (Authorized by K.S.A. 47-608, 47-610, 47-631; effective Jan. 1, 1966; revoked, T-86-11, May 1, 1985; revoked May 1, 1986.)

9-11-10. Tuberculosis: uniform methods and rules. “Bovine tuberculosis eradication: uniform methods and rules,” adopted and approved by the United States department of agriculture, animal and plant health inspection service, veterinary services, effective January 1, 2005, is hereby adopted by reference. (Authorized by K.S.A. 47-610 and 47-631; implementing K.S.A. 47-608, 47-610, and 47-631; effective, T-86-11, May 1, 1985; effective May 1, 1986; amended Jan. 23, 1998; amended, T-9-2-18-05, Feb. 18, 2005; amended June 10, 2005.)

Article 12.—SWINE, SPECIFIC PATHOGEN FREE REGULATIONS

9-12-1. Definitions. (a) SPF—Specific Pathogen Free—Means swine which are free of certain specific diseases. SPF swine shall be free from virus pig pneumonia, infectious atrophic rhinitis, external parasites, vibrio coli dysentery, and any other disease or condition spread by direct contact.

(b) Licensed laboratory. A licensed laboratory shall be licensed under a patent held by the university of Minnesota and shall be in good standing with the national swine repopulation association.

(c) Primary SPF herd. A primary herd means a closed swine herd that originates solely from a licensed laboratory. Any additions to this herd must be laboratory swine from a licensed laboratory. The exchange of male stock between primary herds may be permitted, if completed under the supervision of a licensed veterinarian.

(d) Secondary SPF herd. A secondary SPF herd means a closed swine herd which originates from a licensed laboratory, primary SPF herd, or a secondary SPF herd. Any additions to a secondary herd must be from an accredited SPF herd. All swine added to the herd must be accompanied by individual SPF accreditation certificates issued by the national SPF swine accrediting agency, incorporated.

(e) Accredited SPF herd. An accredited SPF herd means a swine herd which has met all the standards for health, as determined by records, observation on the farm, and inspection at slaughter. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-2. Laboratory SPF swine. Laboratory SPF pigs shall be derived only as follows:

- (a) By the conventional hysterectomy procedure;
- (b) By laparotomy or caesarian section, in which:

(1) There is accepted practice of strict surgical asepsis; and

(2) This pig’s first breath is taken in an area protected from the expired area of the non-SPF dam. The latter may be accomplished by:

(A) Passing the pig from the uterus into a separate room with a separate air supply;

(B) Passing the pig from the uterus through a disinfectant water lock into a receptacle; or

(C) The closed method which is the removal of the uterus and placing same in a sterile receptacle, where the pigs are removed. (Authorized by K.S.A. 47-670; implementing K.S.A. 47-669; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969; amended May 1, 1982.)

9-12-3. Licensed laboratory approval. A licensed laboratory for the production of SPF pigs shall be inspected and approved periodically by the national SPF advisory committee, and shall be on record with the national swine repopulation association as having been so approved. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-4. Slaughter examinations. A minimum of two examinations each year, showing negative results for virus pig pneumonia and atrophic rhinitis, shall be required for pigs farrowed on a farm, in order to maintain SPF accreditation status. The examinations shall be conducted by a pathologist designated by the livestock sanitary commissioner.

Permission may be granted by the livestock sanitary commissioner or his authorized representative for an annual slaughter examination when the owner is farrowing only once each year. The slaughter examination shall consist of a minimum of seven animals per inspection; provided, that in small herds, a lesser number may be submitted for slaughter examination. Specific permission for slaughter examination for a lesser number shall be required from the livestock sanitary commissioner of Kansas, or his authorized representative.

One slaughter inspection showing negative results, shall be considered as a qualifying inspection for SPF accreditation; provided such pigs are those actually farrowed on the farm. Slaughter inspection dates and locations shall be designated by the livestock sanitary commissioner of Kansas, or his authorized representative. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-5. Health inspections. All health and disease inspections shall be made by a licensed accredited veterinarian before accreditation for the swine herd, is issued. If, after this inspection, gross evidence of disease is established, further laboratory analysis shall be made before the swine herd can be accredited.

Health and disease inspection reports shall be filed in the office of the livestock sanitary commissioner of Kansas, or his representative, on a quarterly basis.

All veterinarian visits and contacts with swine herds on the farm, during the quarterly periods, between required reports, shall be reported in the current quarterly report, including complete diagnostic reports. Due date for the required quarterly reports shall be for the period ending on January 10, April 10, July 10, or October 10, of each year. A producer member delinquent in his reports or inspections, for longer than three months after report due date, shall have his accreditation suspended by the livestock sanitary commissioner of Kansas; provided, he shall have been first duly notified by such commissioner, or his authorized representative. He may have his accreditation renewed when his required reports and inspections are brought to date. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-6. Parasites. External parasites in a Specific Pathogen Free swine herd will be cause for suspending accreditation status until the parasitic condition is eliminated. Reinstatement shall be subject to regulation 9-12-8. (Authorized by K.S.A. 47-670; implementing K.S.A. 47-669; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969; amended May 1, 1982.)

9-12-7. Herd validation. The SPF swine herd shall be validated as brucellosis-free, according to existing state-federal brucellosis regulations. (Authorized by K.S.A. 1968 Supp. 47-670; effective Jan. 1, 1969.)

9-12-8. Accreditation suspension or termination. A positive diagnosis or atrophic rhinitis, virus pig pneumonia, or vibrio coli dysentery, shall be cause for disqualification of SPF swine herd accreditation. The presence of any other disease may cause temporary suspension of such accreditation, for a minimum of 30 days after the disease is eliminated, and until the livestock sanitary commissioner of Kansas has passed favorably on the herd. (Au-

thorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-9. Accreditation status. The status of SPF swine herd accreditation or reaccreditation shall be determined by the livestock sanitary commissioner of Kansas or his authorized representative. In instances of problems, a committee made up of one state veterinarian, one extension veterinarian, and one veterinarian from the Kansas state university diagnostic laboratory, shall determine favorably the health of the swine herd for accreditation. A copy of the committee determination and recommendation shall be submitted to the livestock sanitary commissioner of Kansas and to the national association. The livestock sanitary commissioner shall then rule on the accreditation status of the herd. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

9-12-10. Inspection personnel. All inspections, reports, tests, vaccinations, surgical procedures, accreditation, reaccreditation, or any other methods or procedures necessary to accredit, and maintain accreditation of, SPF swine herds, shall be done by a veterinarian, or by some other appropriate individual who shall not have any financial interest in the swine herd involved; except when special permission to perform any of these acts is granted by the livestock sanitary commissioner or his authorized representative. (Authorized by K.S.A. 1968 Supp. 47-670; effective, E-68-24, Aug. 9, 1968; effective Jan. 1, 1969.)

Article 13.—ANIMAL WELFARE

9-13-1. (Authorized by and implementing K.S.A. 47-1712; effective Jan. 1, 1974; revoked, T-9-7-1-91, July 1, 1991; revoked, T-9-10-22-91, Oct. 22, 1991; revoked Feb. 10, 1992.)

9-13-2. (Authorized by and implementing K.S.A. 47-1712; effective Jan. 1, 1974; revoked, T-9-7-1-91, July 1, 1991; revoked, T-9-10-22-91, Oct. 22, 1991; revoked Feb. 10, 1992.)

9-13-3. (Authorized by and implementing K.S.A. 47-1712; effective Jan. 1, 1974; revoked, T-9-7-1-91, July 1, 1991; revoked, T-9-10-22-91, Oct. 22, 1991; revoked Feb. 10, 1992.)

9-13-4. (Authorized by and implementing K.S.A. 1989 Supp. 47-1712; effective June 11, 1990; revoked April 15, 1991.)

**Article 14.—LIVESTOCK DEALERS
REGISTRATION**

9-14-1. Definitions. The following definitions shall apply in the interpretation, administration and enforcement of Article 14:

(a) “Commissioner” means the livestock commissioner of the state of Kansas.

(b) “Livestock” means cattle, swine, horses, sheep, goats, and poultry.

(c) “Livestock dealer” means any person engaged in the business of buying or selling livestock in commerce, either on that person’s own account or as the employee or agent of the seller or purchaser, or any person engaged in the business of buying or selling livestock in commerce on a commission basis. It shall not include any person who buys or sells livestock as part of that person’s own breeding, feeding, or dairy operation, nor any person who receives livestock exclusively for immediate slaughter.

(d) “Person” means any individual, partnership, corporation, company, firm, or association. “Person” does not include any public livestock market operator licensed under K.S.A. 47-1001, *et seq.*, or any feed lot operator licensed under K.S.A. 47-1501, *et seq.* (Authorized by and implementing K.S.A. 47-607d, 47-610; effective, T-84-23, Aug. 30, 1983; effective May 1, 1984.)

9-14-2. Registration; application; fee. Each person operating as a livestock dealer in Kansas shall register with the Kansas animal health department on an application form approved by the commissioner. An annual fee of \$75.00 shall accompany each application for registration or renewal of registration. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-607d, 47-610, and 47-1805; effective, T-84-23, Aug. 30, 1983; effective May 1, 1984; amended, T-9-8-8-00, Aug. 8, 2000; amended Nov. 13, 2000.)

9-14-3. Recordkeeping; violations. Each livestock dealer shall keep records and accounts of all livestock purchased for resale that are sufficient to enable the commissioner to trace individual animals back to the herd of origin, to the point of destination or both. These records and accounts shall be kept for a minimum of two years after livestock were purchased for resale. The commissioner or the commissioner’s employees or agents shall have the authority to examine the records and accounts during normal working hours. After notice and hearing, the commissioner may

deny any application for registration or suspend or revoke any registration in force, if formal findings are made that the person has failed repeatedly to maintain records and accounts that are sufficient to allow the commissioner to trace animals back to the herd of origin, to the point of destination or both. (Authorized by and implementing K.S.A. 47-607d, 47-610; effective, T-84-23, Aug. 30, 1983; effective May 1, 1984.)

Article 15.—LIVESTOCK BRANDS

9-15-1. Single letters or numerals banned. Single letters or single numerals are not acceptable for registration as cattle brands. (Authorized by K.S.A. 47-418, 47-426; effective Jan. 1, 1966.)

9-15-2. Ear marks; limited recognition. Ear marks are not acceptable for registration as livestock brands. Applicants may record ear marks in conjunction with the registration of a lawful brand, at the time of the original registration without additional cost, and subsequent to the original registration of a lawful brand upon the payment of a handling charge of one dollar. (Authorized by K.S.A. 47-418 and 47-426; effective Jan. 1, 1966.)

9-15-3. Brand locations. Certificate of brand title shall not be issued upon original application for registration except for the shoulder, rib and hip locations on either side of the animal; *Provided*, That certificate of brand title may be issued for the branding of sheep with paint or tar on the back. (Authorized by K.S.A. 47-418 and 47-426; effective Jan. 1, 1966.)

9-15-4. Brand registration and renewal fees. Each person desiring to register a livestock brand in accordance with the laws of the state of Kansas shall forward to the livestock commissioner a fee of \$45.00. Upon receipt of a notice of renewal from the livestock commissioner, each person who wishes to renew the registration of a livestock brand shall submit to the livestock commissioner a renewal fee of \$45.00 before the registration period expires. (Authorized by and implementing K.S.A. 1999 Supp. 47-417; effective, E-81-5, Jan. 10, 1980; effective May 1, 1980; amended, T-9-8-8-00, Aug. 8, 2000; amended Nov. 13, 2000.)

9-15-5. Brand inspection fees. (a)(1) Each owner or seller of cattle or sheep that are in a brand inspection area shall pay a fee of \$.50 per head of cattle inspected by the livestock commissioner’s brand inspectors and a fee of \$.05 per

head of sheep inspected. The total minimum fee charged for each brand inspection area shall be the sum of \$20.00 plus a mileage charge per mile traveled by the brand inspector between the inspection site and the inspector's residence. The mileage charge shall be based on the schedule of charges for use of central motor pool vehicles established under K.S.A. 75-4607, and amendments thereto.

(2) If one or more of the livestock commissioner's brand inspectors provide on-site inspection of cattle or sheep that are not in a brand inspection area or a public livestock market, the owner or seller shall pay the fee established under paragraph (a)(1).

(b) The owner or seller shall pay the fee established under subsection (a) to the brand inspector at the conclusion of the inspection. (Authorized by K.S.A. 47-426, K.S.A. 47-436, and K.S.A. 47-437, as amended by L. 2000, Ch. 111, §5; implementing K.S.A. 47-417a and K.S.A. 47-437, as amended by L. 2000, Ch. 111, §5; effective, T-9-8-29-00, Aug. 29, 2000; effective Dec. 29, 2000.)

Article 16.—ESTRAY NOTICES

9-16-1 and 9-16-2. (Authorized by K.S.A. 1965 Supp. 47-230; effective Jan. 1, 1966; revoked, E-70-40, Aug. 19, 1970; revoked Jan. 1, 1971.)

Article 17.—PSEUDORABIES IN SWINE

9-17-1. Definitions. (a) "Herd" means all swine on the premises of any person owning or possessing swine.

(b) "Negative herd test" means all breeding-age animals are negative to an approved pseudorabies test or tests conducted by an approved diagnostic laboratory.

(c) "Monitored herd test" means a herd in which an approved percentage or qualifying number of breeding animals in the herd have been tested and are negative to an approved pseudorabies test.

(d) "Pseudorabies infected herd" means any herd that has been determined to be infected with pseudorabies by an official pseudorabies test or diagnosed by a veterinarian as having pseudorabies.

(e) "Exposed animal" means any animal that has been in contact with an animal infected with pseudorabies.

(f) "Exhibition swine" means swine that are to be exhibited in public view.

(g) "Swine slaughter show" means a show at which all swine on the premises are slaughtered

immediately following their exhibition and swine may exhibit without a negative pseudorabies test.

(h) "Breeding herd" means all swine on the premises six months of age and older maintained for breeding purposes and which shall be kept separate and apart from all other swine except their progeny less than eight weeks of age.

(i) "Pseudorabies monitored qualified feedlot" means a licensed premise that feeds swine originating from a qualified pseudorabies negative tested herd or a monitored pseudorabies negative herd.

(j) "Swine feedlot" means licensed premises that purchase, grow and/or finish swine. They may be animals of unknown status from either intra or interstate sources.

(k) "Quarantine swine feedlot" means premises that may feed swine from a known infected or exposed quarantined herd located in Kansas.

(l) "Circle testing" means testing all swine including those in feedlots within a 1.5 mile radius of infected premises by either testing of all breeding swine or by a monitored herd test for pseudorabies.

(m) "Mandatory infected herd plan" means any herd owner that has been determined to be infected with pseudorabies shall develop an acceptable herd plan to eradicate the virus from the owner's premises. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 154, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing 47-607d as amended by L. 1989, Ch. 154, Sec. 14, 47-608 as amended by L. 1989, Ch. 156, Sec. 15; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Sept. 26, 1988; amended Feb. 5, 1990.)

9-17-2. Qualified pseudorabies negative herd.

(a) Qualified pseudorabies negative herd status shall be attained by subjecting all swine over six months of age to an official pseudorabies test and finding all swine so tested to be negative. Each herd shall not have been a known infected herd within the last 30 days before the test. Ninety percent of the swine in the herd shall have been on the premises for at least 50 days prior to testing.

(b) Each qualified pseudorabies negative herd status shall be maintained by subjecting all swine in the herd over six months of age to an official pseudorabies test at least once each year. This shall be accomplished by:

(1)(A) testing 25 per cent of the swine over six months of age, every 80-105 days with negative results for all tested; or

(B) testing 10 per cent of the herd each month with negative results for all tested; and

(2) finding the entire herd negative for pseudorabies as a result of tests performed in paragraph (1) (A) and (B).

(c) All swine to be added to a qualified negative herd shall be isolated until they have passed two official negative tests. The first test shall be conducted 30 days or more after the start of isolation. The second test shall be conducted 30 days or more after the first test. Any modification of these requirements shall have prior approval from the livestock commissioner. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; 46-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Sept. 26, 1988; amended Feb. 5, 1990.)

9-17-3. Eradication of pseudorabies from infected swine herds. (a) The herd owner of a pseudorabies infected herd shall submit a mandatory infected herd plan within 60 days after discovery of the infection.

(b)(1) Any swine may be fed out for slaughter, or moved to a quarantined feed lot after approval for direct movement and a shipping permit by the Kansas animal health department for direct movement.

(2) Swine shall not be eligible for exhibition if they originate from a known infected herd.

(c) Any swine herd owner possessing pseudorabies infected tissue or a carcass may dispose of the tissue or carcass by deep burial, removal to a rendering plant, or incineration. The infected swine herd shall be isolated from all other animals. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; effective Sept. 26, 1988; amended Feb. 5, 1990.)

9-17-4. Exhibition swine. All swine shall pass an official pseudorabies test approved by the livestock commissioner within 60 days before the opening date of exhibition, except:

(a) Swine from a qualified pseudorabies negative herd;

(b) Swine qualifying for slaughter shows where all swine on the premises are slaughtered immedi-

ately following exhibition and no other species of animals are on the premises; or

(c) Suckling pigs accompanying tested and negative dams. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; and 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Sept. 26, 1988; amended Feb. 5, 1990.)

9-17-5. Swine slaughter show. (a) Swine originating from a herd or premises known to have had pseudorabies in any animal within the preceding 12 months shall not be exhibited in Kansas, except at a slaughter show.

(b) Shows of any animals except poultry, rabbits or horses shall not be on the same premises within 14 days following a swine slaughter show.

(c) Swine from a herd in which pseudorabies vaccine has been used shall not be exhibited, except in a swine slaughter show. (Authorized by K.S.A. 47-607d; 47-610; implementing 47-607d, 47-608, and 47-610; effective Sept. 26, 1988.)

9-17-6. Change of ownership. All breeding swine that are offered for sale shall be tested for pseudorabies or originate from a qualified pseudorabies negative herd. The seller shall be responsible for the testing. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; and 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Feb. 5, 1990.)

9-17-7. Monitored qualified feedlot breeding swine. Animals for breeding purposes originating in a pseudorabies monitored qualified feedlot shall be separated 21 to 45 days prior to being tested for pseudorabies. A positive test shall result in the loss of pseudorabies monitored qualified feedlot status. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; and 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Feb. 5, 1990.)

9-17-8. Swine feedlot restrictions. Sale of animals from a swine feedlot are restricted to sale

for slaughter only or for sale to another approved swine feedlot. (Authorized by K.S.A. 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-610 as amended by L. 1989, Ch. 156, Sec. 16; implementing 47-607d as amended by L. 1989, Ch. 156, Sec. 14; 47-608 as amended by L. 1989, Ch. 156, Sec. 15; and 47-610 as amended by L. 1989, Ch. 156, Sec. 16; effective Feb. 5, 1990.)

**Article 18.—ANIMAL FACILITY
INSPECTION PROGRAM—LICENSE
AND REGISTRATION FEES**

9-18-1. (Authorized by and implementing K.S.A. 2004 Supp. 47-1721, as amended by 2005 SB 266, sec. 1; effective, T-9-7-22-89, July 27, 1989; amended Sept. 11, 1989; amended, T-9-7-1-91, July 1, 1991; amended, T-9-10-22-91, Oct. 22, 1991; amended Feb. 10, 1992; amended, T-9-7-1-96, July 1, 1996; amended Nov. 15, 1996; amended, T-9-5-31-01, May 31, 2001; amended, T-9-9-27-01, Sept. 27, 2001; amended May 30, 2003; amended, T-9-7-1-05, July 1, 2005; amended Sept. 16, 2005; revoked Nov. 17, 2017.)

9-18-2 and 9-18-3. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1709; effective, T-9-7-1-03, July 1, 2003; effective Nov. 7, 2003; revoked Nov. 17, 2017.)

9-18-4. Definitions. For purposes of this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Act" means Kansas pet animal act, K.S.A. 47-1701 et seq., and amendments thereto.

(b) "Adult animal" means a dog or cat that is four months of age or older.

(c) "Housing facility" has the meaning specified in K.S.A. 47-1701, and amendments thereto, and shall include any land or area housing or intended to house animals.

(d) "Indoor housing facility" means any structure or building with environmental controls that houses or is intended to house animals and that is an enclosure created by the continuous connection of a roof, walls, and floor.

(e) "Licensee" means the individual, group of individuals, or entity to whom a license is issued by the Kansas department of agriculture, animal health division's animal facility inspection program.

(f) "Outdoor housing facility" means any facility that houses or is intended to house animals and does not meet the definition of indoor housing

facility or sheltered housing facility. The temperatures for outdoor housing facilities typically cannot be controlled.

(g) "Pet animal foster home" means the licensed premises of an individual who has a written and signed agreement to provide temporary care for one or more dogs or cats owned by an animal shelter or a rescue network that is licensed by the state of Kansas.

(h) "Rescue network" means the premises of a rescue network manager and all pet animal foster homes organized under that rescue network manager that provide temporary care for one or more dogs or cats not owned by an animal shelter that maintains a central facility for keeping animals.

(i) "Rescue network manager" means the person designated by a rescue network to be responsible for the following functions:

(1) Approving the membership of each pet animal foster home in the rescue network;

(2) carrying out the duties of the rescue network manager under K.A.R. 9-18-27, including the intake of all dogs and cats in the care of the rescue network;

(3) maintaining on that person's premises all documentation required by K.A.R. 9-18-27 and 9-18-28, including records pertaining to the adoption, placement, or other disposition of each dog and cat receiving temporary care from the rescue network; and

(4) ensuring compliance with this regulation and K.A.R. 9-18-28 by each pet animal foster home belonging to the rescue network.

(j) "Sheltered housing facility" means a housing facility that includes a structure or building with environmental controls and also allows animals independent access to the outside. This term shall include any facility that does not meet the definition of indoor housing facility due to having a gravel or dirt floor or not being entirely enclosed.

(k) "Temporary care" means the care and housing of an animal for 12 months or less during the calendar year, except as provided by K.A.R. 9-18-27(g) and K.A.R. 9-18-28(j).

(l) "Temporary pet shop" means a type of pet shop that operates for a total of 12 or fewer sale days per license year and is not permanently located on a premises.

(m) "U.S.D.A." means United States department of agriculture. (Authorized by and implementing K.S.A. 2016 Supp. 47-607d and K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-5. Importing dogs and cats. Dogs and cats shall not be imported into Kansas unless the dogs and cats are accompanied by a certificate of veterinary inspection issued by a licensed veterinarian, stating that each dog and cat meets the following requirements:

- (a) Is free from symptoms of any communicable disease;
- (b) has not been exposed to rabies; and
- (c) has been vaccinated against rabies with a product licensed by the U.S.D.A., with the duration of immunity and method of administration in accordance with the manufacturer's guidelines. Dogs and cats under three months of age shall not be required to be vaccinated against rabies. (Authorized by K.S.A. 2016 Supp. 47-607, 47-607d, 47-610; implementing K.S.A. 2016 Supp. 47-607, 47-607d, 47-608, 47-610; effective Nov. 17, 2017.)

9-18-6. Fees. Each applicant for a license or permit and each applicant, licensee, or permittee subject to or requesting an inspection pursuant to K.S.A. 47-1701 et seq., and amendments thereto, shall pay the applicable fee or fees, as follows:

- (a) License for animal breeder premises of a person licensed under 7 U.S.C. § 2131 et seq. \$450.00
- (b) License for an animal shelter located as follows:
 - (1) First-class city, as defined in K.S.A. 13-101, and amendments thereto, or any entity contracting with a first-class city \$400.00
 - (2) Second-class city, as defined in K.S.A. 14-101, and amendments thereto, or any entity contracting with a second-class city \$335.00
 - (3) Third-class city, as defined in K.S.A. 15-101, and amendments thereto, or any entity contracting with a third-class city \$285.00
- (4) License for a rescue network manager, regardless of location \$125.00
- (c) License for a retail breeder licensed under 7 U.S.C. § 2131 et seq. \$450.00
- (d) License for a retail breeder not licensed under 7 U.S.C. § 2131 et seq. \$450.00
- (e) License for an operator of a temporary pet shop with 12 or fewer sale days in a license year \$200.00
- (f) License for an operator of a pet shop \$600.00
- (g) License for an operator of a research facility licensed under 7 U.S.C. § 2131 et seq. \$300.00
- (h) License for an operator of a research facility not licensed under 7 U.S.C. § 2131 et seq. \$300.00

- (i) License for a hobby breeder \$250.00
- (j) License for a boarding or training kennel operator \$200.00
- (k) License for an animal distributor licensed under 7 U.S.C. § 2131 et seq. \$400.00
- (l) Out-of-state distributor permit \$650.00
- (m) Temporary closing permit for a hobby breeder or training kennel operator \$45.00
- (n) Temporary closing permit for an animal shelter, animal breeder, animal distributor, retail breeder, pet shop, or research facility \$95.00
- (o) Inspection fee for each inspection performed upon request by a licensee, permittee, or applicant for a license or permit \$200.00
- (p) No-contact fee pursuant to K.S.A. 47-1721, and amendments thereto \$200.00
- (q) Reinspection fee pursuant to K.S.A. 47-1721, and amendments thereto \$200.00
- (r) License for each premises required to be licensed under multiple license categories the fee for the most expensive applicable license and a fee of \$50 for each additional applicable license
- (s) Late fee for failure to renew any existing license before October 1 \$70.00

(Authorized by and implementing K.S.A. 2018 Supp. 47-1721; effective Nov. 17, 2017; amended Feb. 8, 2019.)

9-18-7. Records. (a) Each licensee shall maintain records for each animal purchased, acquired, held, transported, sold, or disposed of in any other manner.

(1) Each cat or dog of weaning age and older shall be individually identified. The records shall include the following:

- (A) The name and address of the person from whom each animal was acquired;
- (B) the date each animal was acquired; and
- (C) a description of each animal, including the following:
 - (i) The animal's age, size, color markings, sex, species, and breed;
 - (ii) any available information regarding vaccinations;
 - (iii) any other significant identification for each animal, including any official tag number, microchip, or tattoo; and
 - (iv) the name and address of the person to whom any animal is sold, given, bartered, or otherwise

delivered or euthanized, and the date on which the action took place. The record shall show the method of disposition.

(2) The records of animals other than cats and dogs shall be kept so that the origins of lots can be identified. Animals from multiple origins may be comingled if records indicate all of the origins of a lot. The records shall include the date the lots were acquired, from whom the lots were acquired, general identification information, and disposition information.

(b) Each licensee shall store records for the current license year and previous two license years on the premises where the animals are located and shall make the records available for inspection. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-8. Access to premises. Each licensee shall provide the commissioner or the commissioner's representatives with access to the licensee's premises Monday through Friday, between 7:00 a.m. and 7:00 p.m., in order to take any of the following actions:

- (a) Enter the licensee's place of business;
- (b) examine records required to be kept under K.A.R. 9-18-7;
- (c) make copies of the records;
- (d) inspect premises and animals as the commissioner or the commissioner's representatives consider necessary to enforce the provisions of the act and this article of the department's regulations;
- (e) document, by the taking of photographs and other means, any conditions and areas of noncompliance; and
- (f) use a room, table, or other facilities necessary for the examination of the records and inspection. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-9. Inspections of premises. (a) Each premises that is licensed or that the commissioner finds reasonable grounds to believe is required to be licensed under the act shall be subject to routine inspections by the commissioner or any of the commissioner's authorized representatives to determine compliance with the act and all applicable regulations.

(b) Each premises shall be subject to routine inspections at the following intervals:

(1) A routine inspection shall be conducted every three to 12 months for each new premises and

each premises that has failed one of its two most recent inspections.

(2) A routine inspection shall be conducted every nine to 18 months for each premises that has passed its two most recent inspections.

(3) A routine inspection shall be conducted every 15 to 24 months for each premises that has passed its three most recent inspections.

(c) In addition to routine inspections, any premises may be subject to one or more additional inspections under any of the following circumstances:

(1) A violation was found in a previous inspection.

(2) A complaint is filed regarding the premises.

(3) The ownership of the premises changed in the previous year.

(4) The license for the premises was not renewed in a timely manner.

(d) Routine inspections shall be made on Monday through Friday, between the hours of 7:00 A.M. and 7:00 P.M., except that these inspections may be conducted at alternate times, upon the agreement of all interested persons or entities.

(e) If the owner or operator of the premises is not routinely available between the hours of 7:00 A.M. and 7:00 P.M., the owner or operator shall designate a representative who will be present while the inspection is conducted and shall notify the commissioner in writing of the name of the designated representative. The designated representative shall be 18 years of age or older and mentally and physically capable of representing the licensee in the inspection process. The owner or operator shall notify the commissioner in writing of any new representative who is designated to be present during inspections.

(f) Any inspection to investigate allegations of violations adversely affecting the health, safety, and welfare of the animals may be conducted on any day of the week and at any hour deemed reasonably necessary by the commissioner.

(g) Prior notice of inspection dates shall not be provided to the owner or operator of any licensed premises. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2018 Supp. 47-1709, K.S.A. 2018 Supp. 47-1733, and K.S.A. 2018 Supp. 47-1736; effective Nov. 17, 2017; amended Feb. 8, 2019.)

9-18-10. General requirements for housing facilities. (a) Construction. Each housing facility shall be designed and constructed as follows:

(1) In a manner that is structurally sound; and

(2) in a manner that protects animals from injury, contains the animals securely, and restricts other animals from entering.

(b) Housekeeping. Each licensee shall keep the premises where housing facilities and food storage are located, including buildings and surrounding grounds, clean and in good repair to protect the animals from injury, to facilitate the husbandry practices required by K.A.R. 9-18-14 and to reduce or eliminate breeding and living areas for rodents and other pests and vermin. The licensee shall keep the premises free of accumulations of trash, junk, waste products, and discarded matter. The licensee shall control weeds, grasses, and bushes so as to facilitate cleaning of the premises and pest control and to protect the health and well-being of the animals.

(c) Surfaces.

(1) The surfaces of each housing facility, including any houses, dens, fixtures, and objects in the housing facility that are similar to furniture, shall be constructed and maintained in a manner and made of materials that allow them to be readily cleaned and sanitized on a regular basis, or shall be removed or replaced when worn or soiled.

(2) All interior surfaces and any surfaces that come into contact with animals shall meet the following requirements:

(A) Be free of rust; and

(B) be free of jagged edges or sharp points that might injure the animals.

(3) Each licensee shall maintain all surfaces on a regular basis, which shall include regular cleaning and sanitizing. Surfaces shall be replaced when the surfaces are worn or permanently soiled and can no longer be effectively cleaned and sanitized.

(4) The floors and walls of each indoor housing facility, and any other surfaces in contact with the animals, shall be impervious to moisture. The ceilings of each indoor housing facility shall be impervious to moisture or shall be replaceable.

(d) Water and electric power. Each indoor housing facility or sheltered housing facility shall have electric power. Each outdoor housing facility shall have lighting and electric power that allows for animal husbandry as required under this act. Each housing facility shall have access to adequate potable water for animal and facility needs.

(e) Storage. Each licensee shall store supplies of food and bedding in a manner that protects the supplies from spoilage, contamination, and vermin infestation. Food requiring refrigeration shall be stored accordingly. Each licensee shall keep all

open supplies of food and bedding in leakproof containers with tightly fitted lids. Only food and bedding currently being used may be kept in the animal areas. The licensee shall not store any substance that is toxic to the animals in food storage and preparation areas. However, toxic substances that are required for normal husbandry practices may be stored in the animal areas if stored in a manner that prevents harmful exposure to animals.

(f) Drainage and waste disposal.

(1) Each licensee shall provide for the regular and frequent collection, removal, and disposal of animal and food wastes and other debris in a manner that minimizes contamination and disease risks.

(2) If present, disposal facilities and drainage systems shall be properly constructed, installed, and maintained in such a manner to avoid all foul odors and any backup of sewage.

(3) Each licensee shall ensure that any standing liquid in the animal enclosures is removed in an efficient manner so that the animals stay dry.

(4) Each licensee shall use trash containers for facility waste that are leakproof and shall keep tightly fitted lids on the containers at all times.

(g) Washing facilities. Washing facilities shall be provided for animal caretakers and shall be readily accessible. Washing facilities may include washrooms, basins, sinks, or showers. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-11. Additional requirements for indoor housing facilities and sheltered housing facilities. The requirements in this regulation shall be in addition to the requirements in K.A.R. 9-18-10.

(a) Structure. The building or structure of each indoor housing facility and each sheltered housing facility shall be constructed so that temperature and humidity levels can be controlled and odors can be eliminated rapidly. The building or structure shall have at least one door for entry and exit that can be opened and closed. Any windows or openings that provide natural light shall be covered with glass, hard plastic, or a similar hard, transparent material.

(b) Heating, cooling, and temperature. Each licensee operating an indoor housing facility or a sheltered housing facility shall ensure that the facility is sufficiently heated and cooled to protect and provide for the animals' health and well-being.

(1) Each licensee operating an indoor housing facility or a sheltered housing facility shall ensure

that, when dogs or cats are present, the ambient temperature in the facility does not fall below 45°F or 7.2°C for more than four consecutive hours and does not exceed 85°F or 29.5°C for more than four consecutive hours.

(2) Each licensee shall provide dry bedding, solid resting boards, or other means of conserving body heat whenever the ambient temperature inside the facility is below 50°F or 10°C.

(3) Except as approved by the attending veterinarian, a licensee operating an indoor housing facility or a sheltered housing facility shall not permit the ambient temperature in the facility to fall below 50°F or 10°C when any of the following dogs or cats are present:

(A) Any dog or cat not acclimated to lower temperatures;

(B) any dog or cat of a breed that cannot tolerate lower temperatures without stress or discomfort, including short-haired breeds; or

(C) any dog or cat that is sick, infirm, or of a young or advanced age so that the dog or cat cannot tolerate lower temperatures without stress or discomfort.

(c) Ventilation. When animals are present, each indoor housing facility or sheltered housing facility shall be sufficiently ventilated at all times to provide for the animals' health and well-being and to minimize odors, drafts, ammonia levels, and moisture condensation. Ventilation shall be provided by windows, vents, fans, or air conditioning units. The licensee shall provide auxiliary ventilation whenever the ambient temperature is at least 85°F or 29.5°C. Auxiliary ventilation may include fans, blowers, and air conditioning units. The licensee shall maintain the relative humidity at a level that ensures the health and well-being of the animals housed in the facility, in accordance with the directions of the attending veterinarian and generally accepted professional and husbandry practices.

(d) Lighting. Each licensee shall provide enough lighting in all animal areas of each indoor housing facility or sheltered housing facility to permit inspection and cleaning of the facility and observation of the animals. All animal areas shall be provided with a regular, uniform diurnal lighting cycle of either natural or artificial light when species-appropriate. Each primary enclosure shall be placed in a manner that protects the dogs and cats from excessive light. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-12. Additional requirements for outdoor housing facilities. The requirements in this regulation shall be in addition to the requirements in K.A.R. 9-18-10.

(a) Restrictions.

(1) A licensee shall not keep any of the following categories of dogs or cats in outdoor housing facilities, unless that practice is specifically approved in writing by the attending veterinarian:

(A) Any dog or cat that is not acclimated to the temperatures prevalent in the area or whose acclimation status is unknown;

(B) any dog or cat of a breed that cannot tolerate the prevalent temperatures of the area without stress or discomfort, including short-haired breeds in cold climates; and

(C) any dog or cat that is sick, infirm, or of a young or advanced age so that the dog or cat cannot tolerate the prevalent temperatures of the area without stress or discomfort.

(2) If a licensee operating an outdoor housing facility does not know whether a dog or cat is acclimated, the licensee shall not keep that dog or cat in the outdoor housing facility whenever the ambient temperature is less than 50°F or 10°C.

(b) Shelter from the elements. Each outdoor housing facility shall include one or more shelter structures accessible to each animal, large enough to allow each animal in the shelter to sit, stand, and lie in a normal manner and to turn about freely, and of appropriate size to allow each animal to conserve body heat. In addition to the shelter structures, each licensee shall provide one or more separate, outside areas of shade that are large enough to contain all the animals at one time and protect them from the direct rays of the sun. Each shelter structure in an outdoor housing facility for dogs or cats shall contain a roof, four sides, and a flat floor and shall meet the following requirements:

(1) Provide protection and shelter from the cold, heat, and direct effects of sun, wind, rain, snow and other elements;

(2) be provided with a wind break and rain break at the entrance; and

(3) contain clean, dry bedding material as necessary. Bedding shall be provided if the ambient temperature is below 50°F or 10°C. The licensee shall provide additional clean, dry bedding material when the temperature is 35°F or 1.7°C or lower.

(c) Prohibited shelter structures. A licensee shall not use metal barrels, cars, refrigerators, freezers, or any similar items as shelter structures.

(Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-13. Primary enclosures. (a) Construction. Each primary enclosure shall be designed and constructed of suitable materials so that the primary structure is structurally sound. Each licensee shall keep the primary enclosure in good repair.

(b) Maintenance. Each primary enclosure shall be constructed and maintained so that the primary enclosure meets the following conditions:

(1) Provides all the animals with shelter and protection from extreme temperatures and weather conditions that could be uncomfortable or hazardous;

(2) provides sufficient shade to protect from direct sun all the animals housed in the primary enclosure simultaneously;

(3) has floors that are constructed in a manner that protects the animals' feet and legs from injury. If the floor is constructed of mesh or slats, the floor shall not allow the animals' feet to pass through any openings in the floor. If any metal strands are used to construct a suspended floor for the primary enclosure, the metal strands shall be nine-gauge wire or wire that is greater than $\frac{1}{8}$ of an inch in diameter or shall be coated with plastic, fiberglass, or a comparable material. If any suspended floor is used in a primary enclosure, that floor shall be strong enough that the floor does not sag or bend between structural supports; and

(4) if stacked cages are used to house animals, provides an impervious barrier between the levels of stacked cages. The barrier may be removed as needed for cleaning.

(c) Additional requirements for cats. The requirements of this subsection shall be in addition to the requirements in subsection (a), (b), and (e).

(1) Space. The licensee shall provide the following minimum vertical space and floor space for each cat that is housed in the primary enclosure, including any weaned kitten:

(A) Each primary enclosure housing cats shall be at least 24 inches (60.96 centimeters) high.

(B) Each cat weighing not more than 8.8 pounds (4 kilograms) shall be provided with at least 3.0 square feet (0.28 square meters) of floor space.

(C) Each cat weighing more than 8.8 pounds (4 kilograms) shall be provided with at least four square feet (0.37 square meters) of floor space.

(D) Each queen with nursing kittens shall be provided with an additional amount of floor space,

based on her breed and behavioral characteristics and in accordance with generally accepted husbandry practices.

(E) The minimum floor space required by this subsection shall not include any space occupied by food or water pans. The litter pan may be considered part of the floor space if the pan is cleaned and sanitized.

(2) Litter. The licensee shall provide a receptacle in each primary enclosure that contains sufficient clean litter to contain excreta and other body wastes.

(3) Resting surfaces. Each primary enclosure housing cats shall contain one or more elevated resting surfaces that, when added together, are large enough to hold simultaneously all the occupants of the primary enclosure comfortably. Low resting surfaces that do not allow the space under them to be comfortably occupied by the animal shall be counted as part of the floor space.

(d) Additional requirements for dogs. The requirements of this subsection shall be in addition to the requirements in subsections (a), (b), and (e).

(1) Space.

(A) The licensee shall provide a minimum amount of floor space for each dog housed in the primary enclosure, including each weaned puppy housed in a primary enclosure, using the following calculation: the length of the dog or puppy from the tip of the nose to the base of the tail in inches plus six inches, squared, and then divided by 144, shall equal the required minimum floor space in square feet.

(B) The licensee shall provide each bitch that has nursing puppies with an additional amount of floor space, based upon the dog's breed and behavioral characteristics and in accordance with generally accepted husbandry practices, as determined by the attending veterinarian.

(C) The interior height of a primary enclosure shall be at least six inches higher than the head of the tallest dog in the primary enclosure in a normal standing position.

(2) Prohibited types of primary enclosures for dogs. The tethering of dogs shall be prohibited for use as a permanent primary enclosure.

(e) Innovative primary enclosures. Any licensee may use an innovative primary enclosure not meeting the floor area and height requirements specified in this regulation if the commissioner determines that the primary enclosure will provide the dogs or cats with a sufficient volume of space and the opportunity to express species-

typical behavior. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-14. Cleaning, sanitization, and pest control. (a) Each licensee shall spot-clean daily all surfaces with which the animals come into contact. These surfaces shall be sanitized as necessary to avoid excessive accumulation of excreta, reduce disease hazard, avoid animal contact with excreta, and prevent or eliminate odors, insects, pest, and vermin infestation. If steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, the licensee shall first remove the animals, unless the enclosure is large enough to ensure that the animals will not be harmed, wetted, or distressed in the process.

(b)(1) Each licensee shall clean and sanitize each used primary enclosure and each used food and water receptacle using one of the methods prescribed in paragraph (b)(3) before the primary enclosure or food and water receptacle is used to house, feed, or water another dog, cat, or social grouping of animals.

(2) The licensee shall sanitize all used primary enclosures and food and water receptacles for animals at least once every two weeks using one of the methods prescribed in paragraph (b)(3), and more often if necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards.

(3) Each licensee shall sanitize the surfaces of primary enclosures and the food and water receptacles using one of the following methods:

(A) Spraying all surfaces with steam under pressure;

(B) washing all surfaces with hot water that is at least 180°F or 82.2°C and with soap or detergent, using a mechanical cage washer or similar device; or

(C)(i) Washing all soiled surfaces with appropriate detergent solutions and disinfectants or with a product that is a combination of a detergent and a disinfectant that accomplishes the same purpose;

(ii) thoroughly cleaning the surfaces to remove all organic material and mineral buildup and to provide sanitization; and

(iii) rinsing with clean water.

(4) Each licensee shall remove any contaminated material that cannot be sanitized using the methods specified in paragraph (b)(3), including gravel, sand, grass, earth, or absorbent bedding, as often as necessary to prevent odors, diseases, pests, insects, and vermin infestation.

(c) Each licensee shall establish and maintain an effective program for the control of insects and external parasites affecting animals. Additionally, the licensee shall develop a plan for the management of birds and mammals that are pests or potential hazards so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-15. Compatible grouping. No licensee shall house any animals in groups that are incompatible, including incompatibility due to age, sexual status, aggressive disposition, breed, species, contagious disease, or any other reasons. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-16. Separation of animals by gender. All sexually intact adult animals shall be housed separately from all other sexually intact adult animals of the opposite sex within an animal shelter, rescue network, or pet animal foster home. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-17. Feeding and watering. (a)(1) Each licensee shall meet the “adequate feeding” requirements as defined in K.S.A. 47-1701, and amendments thereto. Each licensee shall feed all animals as appropriate to species and age. All cats and dogs shall be fed at least once each day, unless restricted by written order by the attending veterinarian. The food shall be uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal. The diet shall be appropriate for each animal’s age and condition.

(2) Each licensee shall provide a sufficient number of food receptacles for animals, which shall meet the following requirements:

(A) Be easily accessible to all animals being fed;

(B) be located so as to minimize contamination by excreta and pests;

(C) be protected from rain and snow; and

(D) either be discarded after one use or be easily cleaned and sanitized.

(b) Each licensee shall meet the “adequate watering” requirements as defined in K.S.A. 47-1701, and amendments thereto. Drinkable water shall be supplied in a sanitary manner and in adequate amounts at intervals suitable for each animal’s species and either continuously accessible to

each animal or supplied to maintain the health and well-being of each animal. If water is not continuously accessible, then water shall be provided at least twice daily for at least one hour each time or more often as conditions warrant, unless restricted by written order of the attending veterinarian or not species-appropriate. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-18. Contingency planning. Each licensee shall develop, document, and follow a written contingency plan to provide for the humane handling, treatment, transportation, housing, and care of the animals on the premises if an emergency or natural disaster occurs. The plan shall be updated annually, be made available to the commissioner or the commissioner's representatives upon request, and at minimum include the following:

(a) Identification of potential known risks, including power failures, fires, natural disasters, and faulty heating, ventilation, and air conditioning systems;

(b) an outline of specific tasks required to be carried out in response to the identified emergency; and

(c) identification of the individual or individuals responsible for carrying out the plan, along with contact information for each individual. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-19. Employees and volunteers. Each licensee shall employ enough individuals to provide the level of husbandry practices and care required by the act and this article of the department's regulations. Each employee or volunteer who provides husbandry and care or who handles animals shall be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of animals to supervise others. The licensee shall ensure that the supervisor, other employees, and volunteers perform to these standards. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-20. Age of animal. A licensee shall not sell, exchange, or adopt any animal if the animal is at an age at which doing so would be detrimental to the animal's health or well-being. No puppy or kitten may be sold, exchanged, or adopted until the animal is at least eight weeks of age and has been weaned, which shall mean eating solid food and not nursing, for at least five days.

For the purposes of this regulation, weight and other factors may be used to approximate the age of an animal of unknown age. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-21. Adequate veterinary medical care. Each licensee shall have an attending veterinarian who provides the licensee's animals with "adequate veterinary medical care," as defined in K.S.A. 47-1701 and amendments thereto. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-22. Exercise. (a) Each licensee shall develop, document, and follow a plan to provide dogs over 12 weeks of age, except bitches with litters, with the opportunity for exercise. The plan shall include written standard procedures. Forced exercise devices shall be strictly prohibited. If a dog is without sensory contact with another dog, the dog shall be provided with positive physical contact with humans at least daily. The opportunity for exercise may be provided in a number of ways, which may include the following:

(1) Providing group housing in cages, pens, or runs that provide at least 100 percent of the required space for each dog under the minimum floor space requirements of K.A.R. 9-18-13;

(2) maintaining individually housed dogs in cages, pens, or runs that provide at least twice the minimum floor space required by K.A.R. 9-18-13; and

(3) providing access to a run or open area at the frequency and duration prescribed by the attending veterinarian.

(b) If, in the opinion of the attending veterinarian, it is inappropriate for a dog to exercise because of the dog's health, condition, or well-being, the attending veterinarian shall document this exemption in writing. The licensee shall make this documentation available to the commissioner or the commissioner's representatives upon request. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-23. Transfer, movement, adoption, or other permanent relocation of feline immunodeficiency virus-positive cats. (a) The transfer, movement, adoption, or other permanent relocation of any feline immunodeficiency virus-positive cat (FIV-positive cat) from a licensed animal shelter or rescue network to another licensed animal shelter or rescue network and to a foster home or a member of the public shall be

allowed if a veterinarian who has a veterinary-client-patient relationship with the animal shelter or rescue network where the FIV-positive cat is currently located performs the following:

(1) Confirms that the FIV-positive cat to be transferred, moved, adopted, or otherwise permanently relocated is a nonsymptomatic FIV-positive cat; and

(2) provides a written statement to the animal shelter or rescue network and to the new owner or holder authorizing the transfer, movement, adoption, or other permanent relocation of the FIV-positive cat that states the symptoms, the risks, and the recommendations of how the cat should be housed to minimize the spread of the virus.

(b) All notifications and statements created under this regulation shall be maintained as a part of the recordkeeping requirements under K.A.R. 9-18-7.

(c) If the commissioner determines that the continued transfer, movement, adoption, or other permanent relocation of FIV-positive cats endangers the health of any other domestic animals, this regulation may be temporarily suspended by order of the commissioner. (Authorized by and implementing K.S.A. 2018 Supp. 47-610 and K.S.A. 47-1712; effective Dec. 20, 2019.)

9-18-24. Animal breeders and animal distributors. K.A.R. 9-18-10 through 9-18-15, K.A.R. 9-18-17, K.A.R. 9-18-19, and K.A.R. 9-18-22 shall not apply to animal breeders and animal distributors. Each animal breeder and each animal distributor shall comply with 9 C.F.R. 3.1 through 3.4 and 3.6 through 3.12, as in effect on January 1, 2015. These sections are hereby adopted by reference, with the following modifications and deletions:

(a) All references to “the administrator,” “APHIS,” “pertinent funding federal agency,” and “USDA officials” shall be deemed to refer to the commissioner.

(b) All references to “dealer” or “dealers” and to “exhibitor” or “exhibitors” shall be deemed to refer to animal breeders and animal distributors.

(c) All references to “research facility,” “research facilities,” “federal research facilities,” and “research needs” shall be deleted.

(d) In 9 C.F.R. 3.6, paragraphs (b)(5) and (c)(3) shall be deleted.

(e) In 9 C.F.R. 3.8, paragraphs (b)(1) and (d)(2) shall be deleted. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-25. Prohibiting the sale or gift of certain animals by pet shops. (a) A pet shop shall not sell any reptiles, offer any reptiles for sale, or offer any reptiles as a gift or promotional consideration unless a notice regarding safe reptile-handling practices meeting the requirements of subsection (b) is prominently posted or displayed at each location in the pet shop where the reptiles are displayed, housed, or held.

(b) Each notice regarding safe reptile-handling practices shall be the notice provided at no charge by the Kansas department of agriculture upon the request of any pet shop, any notice created by the centers for disease control and prevention, or any other notice that meets the following requirements:

(1) The dimensions of each notice shall be at least 8.5 inches by 11 inches. The notice shall use one or more typefaces or fonts that are clearly visible and readily draw attention to the notice.

(2) At a minimum, the notice shall contain the following statements:

“As with many other animals, reptiles carry salmonella bacteria, which can make people sick. To reduce the chance of infection, follow these safe reptile-handling steps:

“Always wash your hands thoroughly after you handle your pet reptile, its food, and anything it has touched.

“Keep your pet reptile and its equipment out of the kitchen or any area where food is prepared.

“Don’t nuzzle or kiss your pet reptile.

“Keep reptiles out of homes where there are children less than one year of age or people with weakened immune systems. Children less than five should handle reptiles only with adult or parental guidance, and they should wash their hands afterwards.”

(c) A pet shop shall not possess, sell, offer for sale, or offer as a gift or promotional consideration any skunk, raccoon, fox, or coyote.

(d) A pet shop shall not possess, sell, offer for sale, or offer as a gift or promotional consideration any viable turtle eggs or live turtles with a carapace length of less than four inches. For purposes of this subsection, the term “turtle” shall include all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order Testudinata, class Reptilia, except marine species. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1713; effective Nov. 17, 2017.)

9-18-26. Animal research facilities. Each animal research facility shall meet all require-

ments of K.A.R. 9-18-10 through 9-18-15, K.A.R. 9-18-17, K.A.R. 9-18-20, and K.A.R. 9-18-22, unless differing conditions are needed for legitimate research reasons. These differing conditions and legitimate research reasons shall be documented in a specific research protocol and shall be made available to the commissioner or the commissioner's authorized representatives upon request. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-27. Rescue networks. (a) An application form for a rescue network manager license shall be provided by the commissioner at the request of any individual seeking a license as a rescue network manager. The individual shall submit the completed application and the license fee to the commissioner.

(b) Except for stray dogs and cats, each dog or cat in the care of a licensee, other than the personal pets of the licensee, shall have been relinquished by an owner, transferred from another licensee, or transferred from an animal shelter licensed in Kansas. Each rescue network manager shall be responsible for the intake of all dogs or cats in the rescue network. Each licensee that obtains a dog or cat from a veterinarian for the purpose of adopting shall comply with K.S.A. 47-1731, and amendments thereto. Stray dogs, cats, puppies, or kittens may be placed with a rescue network only after the requirements of K.S.A. 47-1710, and amendments thereto, have been met by a licensed animal shelter.

(c) Each rescue network manager wanting to maintain or house more than 19 adult animals at any time at the premises of the rescue network manager shall apply for and receive an animal shelter license before accepting more than 19 adult animals. The limit of 19 adult animals shall include the following:

(1) Any adult animal that is a personal pet of the rescue network manager; and

(2) any adult animal owned by any other individual or entity and maintained, housed, or harbored by the rescue network manager.

(d) Any licensee may offer any animal in its custody for adoption and may transfer ownership of the animal pursuant to K.S.A. 47-1731, and amendments thereto.

(e) Each rescue network manager shall arrange to spay or neuter each cat and dog, or certify each animal as unable to be spayed or neutered, within 10 business days of receipt of the dog or cat.

(f) Each rescue network manager shall process all documentation for each adoption of a dog or cat in the custody of the rescue network and for all spay and neuter deposits required by K.S.A. 47-1731, and amendments thereto. A copy of each of these documents shall be kept at the premises of the rescue network manager. Intact dogs, cats, puppies, or kittens may be adopted only from the premises of the rescue network manager or a licensed animal shelter.

(g) Each rescue network manager shall comply with K.A.R. 9-18-28 regarding adoption and transfer of ownership of each dog or cat receiving temporary care in a pet animal foster home.

(h) Dogs or cats shall not remain in the custody of a rescue network for more than 12 months without written permission from the commissioner. Each licensee wanting to retain custody of a dog or cat beyond 12 months shall send a written request to the commissioner, stating the reasons for the request.

(i) Each licensee accepting animals from out of state shall comply with the importation and certificate of veterinary inspection requirements specified in K.A.R. 9-18-5 and K.A.R. 9-7-11. The original of each certificate of veterinary inspection shall be maintained with the files of the licensed rescue network manager or animal shelter. A copy of the health certificate shall be available at the pet animal foster home.

(j) Rescue network manager licenses shall not be transferable. (Authorized by K.S.A. 47-1712 and K.S.A. 2015 Supp. 47-1731; implementing K.S.A. 2015 Supp. 47-1701, K.S.A. 47-1704, K.S.A. 2015 Supp. 47-1710, K.S.A. 47-1712, and K.S.A. 2015 Supp. 47-1731; effective Nov. 17, 2017.)

9-18-28. Pet animal foster homes. (a) Rescue networks and animal shelters may utilize pet animal foster homes.

(b) Rescue network managers and animal shelter licensees shall require each of their prospective pet animal foster homes to sign a pet animal foster home agreement with the supervising rescue network or animal shelter licensee. The rescue network manager or animal shelter licensee shall state in the agreement that the pet animal foster home is required to comply with all the requirements contained in this regulation.

(c) Each rescue network manager and animal shelter licensee shall keep records of all pet animal foster homes utilized by the rescue networks and animal shelter.

(d) Each rescue network manager and each animal shelter licensee shall ensure that all pet animal foster homes utilized by the rescue network or animal shelter comply with the Kansas pet animal act and all applicable regulations.

(e) Each animal shelter licensee or rescue network manager using a pet animal foster home shall develop a plan of veterinary care to be followed by the pet animal foster home. The plan of veterinary care shall be recorded on the form specified in the definition of “adequate veterinary medical care” in K.S.A. 47-1701, and amendments thereto. This plan shall include the name of the licensed veterinarian whom the pet animal foster home shall contact in case of injury or illness and the name of the party responsible for the payment of treatment and office call charges. The animal shelter licensee or rescue network manager shall require each pet animal foster home to notify the sponsoring animal shelter or rescue network manager of any dog or cat receiving veterinary care within 24 hours of treatment. A copy of the plan of veterinary care shall be filed annually with the commissioner.

(f) The animal shelter licensee or rescue network manager shall require that a pet animal foster home not directly accept stray dogs or cats or any animal relinquished by its owner. Each pet animal foster home wanting to accept stray dogs or cats or animals that are relinquished by their owners shall apply for and receive an animal shelter license before accepting these animals. Each rescue network manager shall be responsible for the intake of all animals in the care of the rescue network. No stray dog or cat may be placed with a pet animal foster home until the applicable requirements of K.S.A. 47-1710, and amendments thereto, have been met.

(g) A pet animal foster home shall not foster more than 10 adult cats or dogs at the same time.

(h)(1) A pet animal foster home shall not at any time maintain or house on the premises more than 19 adult dogs or cats. The limit of 19 dogs or cats shall include the following:

(A) Any adult dog or cat that is a personal pet of the pet animal foster home caretaker; and

(B) any adult dog or cat owned by any other individual or entity and maintained, housed, or harbored on the premises.

(2) If more than 19 adult dogs or cats will be housed on the premises for any reason, the pet animal foster home shall apply for an animal shelter license and shall not accept any adult dogs or cats

in excess of that limit before receiving the animal shelter license.

(i)(1) An animal shelter licensee or rescue network manager shall not place any intact dog or cat six months of age or older into the custody of a pet animal foster home unless spaying or neutering is contraindicated by a licensed veterinarian. If a veterinarian has examined and recommends that the dog or cat should not be altered, the pet animal foster home shall obtain a copy of a written opinion by the veterinarian as to why the animal cannot be altered and an estimated time of when, if ever, the animal can be altered. A copy of the written opinion shall be kept by both the pet animal foster home and the rescue network manager or animal shelter licensee.

(2) Intact female dogs or cats that are nursing puppies or kittens may be housed in a pet animal foster home until the puppies or kittens are weaned. Puppies or kittens shall be considered weaned once they are eating solid food and not nursing for five consecutive days. Puppies or kittens may remain unaltered in foster care only up to six months of age. Puppies and kittens at four months of age shall be considered adults and shall be counted as part of the 10 total dogs or cats that rescue network managers or animal shelter licensees may place at pet animal foster homes.

(j) The animal shelter licensee or rescue network manager shall process all documentation for each adoption and all spay and neuter deposits required by K.S.A. 47-1731, and amendments thereto. Each intact dog, cat, puppy, or kitten shall be adopted directly from the animal shelter or, in the case of a rescue network, from the premises of the rescue network manager. Any altered dog, cat, puppy, or kitten may be adopted directly from the pet animal foster home only after all final adoption paperwork has been processed through the animal shelter or rescue network manager and all applicable requirements of K.S.A. 47-1710, and amendments thereto, have been met by a licensed animal shelter. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2018 Supp. 47-1701, K.S.A. 2018 Supp. 47-1704, K.S.A. 2018 Supp. 47-1710, K.S.A. 47-1712, and K.S.A. 2018 Supp. 47-1731; effective Nov. 17, 2017; amended Feb. 8, 2019.)

9-18-29. Mobile adoption facilities. Once an animal shelter license or rescue network manager license has been obtained, the animal shelter licensee or the rescue network manager may host adoption events at a location other than the

licensed premises if the requirements of all applicable statutes and regulations are met at the licensee's other locations. The animal shelter licensee or rescue network manager shall provide notice to the commissioner or the commissioner's authorized representative of the date and location of each adoption event at least five business days before the adoption event. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1704; effective Nov. 17, 2017.)

9-18-30. Tethering of animals by boarding or training kennel operators. The tethering of dogs by boarding or training kennel operators for training purposes may be permitted for periods not to exceed two hours per interval and never to exceed a total of four hours per day. This tethering shall not adversely affect the welfare of the animal. (Authorized by and implementing K.S.A. 47-1712; effective Nov. 17, 2017.)

9-18-31. Euthanasia methods; prohibition. The following portion of the American veterinary medical association's document titled "AVMA guidelines for the euthanasia of animals: 2013 edition" is hereby adopted by reference: pages 5-102, excluding the section titled "references" on pages 84-97 and any portion that applies to any animal that is not an "animal" as defined in K.S.A. 47-1701 and amendments thereto. For the purposes of this document, the terms "animal" and "euthanasia" shall have the meanings specified in K.S.A. 47-1701, and amendments thereto.

Each licensee who euthanizes any animals shall follow the recommendations and guidelines for the handling and care of animals during the euthanasia process as identified in this document and shall use only the acceptable methods of euthanasia for a particular species to be euthanized specified in this document. Inhaled carbon monoxide shall not be used as a method of euthanasia of dogs and cats. (Authorized by K.S.A. 47-1712; implementing K.S.A. 2015 Supp. 47-1718; effective April 29, 2016.)

Article 19.—ANIMAL BREEDERS AND DISTRIBUTORS; FACILITY STANDARDS, ANIMAL HEALTH, HUSBANDRY, AND OPERATIONAL STANDARDS

9-19-1. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-91, July 1, 1991; effective, T-9-10-22-91, Oct. 28, 1991; ef-

fective Feb. 10, 1992; amended, T-9-7-1-96, July 1, 1996; amended Nov. 15, 1996; revoked, T-9-7-1-03, July 1, 2003; revoked Oct. 31, 2003.)

9-19-2 through 9-19-11. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; amended, T-9-7-1-96, July 1, 1996; amended Nov. 15, 1996; revoked, T-9-7-1-03, July 1, 2003; revoked Oct. 31, 2003.)

9-19-12. (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-03, July 1, 2003; effective Oct. 31, 2003; revoked Nov. 17, 2017.)

Article 20.—PET SHOPS

9-20-1, 9-20-2, and 9-20-3. (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

9-20-4. (Authorized by K.S.A. 1998 Supp. 47-1712; implementing K.S.A. 1998 Supp. 47-1713; effective Feb. 26, 1999; revoked Nov. 17, 2017.)

Article 21.—ANIMAL RESEARCH FACILITY

9-21-1, 9-21-2, and 9-21-3. (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

Article 22.—ANIMAL POUNDS AND SHELTERS

9-22-1, 9-22-2, and 9-22-3. (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

9-22-4 and 9-22-5. (Authorized by K.S.A. 47-1712 and 47-1731; implementing K.S.A. 47-1701, 47-1704, 47-1710, 47-1712, and 47-1731; effective, T-9-5-31-01, May 31, 2001; effective, T-9-9-27-01, Sept. 27, 2001; effective May 30, 2003; amended, T-9-7-1-03, July 1, 2003; amended Sept. 19, 2003; revoked Nov. 17, 2017.)

**Article 23.—HOBBY
KENNEL OPERATORS**

9-23-1, 9-23-2 and 9-23-3. (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Dec. 20, 2019.)

Article 24.—KENNEL OPERATORS

9-24-1, 9-24-2, and 9-24-3. (Authorized by and implementing K.S.A. 1990 Supp. 47-1712, as amended by L. 1991, Ch. 152, Sec. 32; effective, T-9-10-22-91, Oct. 22, 1991; effective Feb. 10, 1992; revoked Nov. 17, 2017.)

**Article 25.—RETAIL BREEDERS
FACILITY STANDARDS; ANIMAL
HEALTH, HUSBANDRY AND
OPERATIONAL STANDARDS**

9-25-1. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

9-25-2 and 9-25-3. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; revoked Nov. 17, 2017.)

9-25-4. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

9-25-5 and 9-25-6. (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Oct. 31, 2003; revoked Nov. 17, 2017.)

9-25-7, 9-25-8, 9-25-9, 9-25-10, and 9-25-11. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

9-25-12. (Authorized by and implementing K.S.A. 47-1712; effective, T-9-7-1-96, July 1,

1996; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Nov. 7, 2003; revoked Nov. 17, 2017.)

9-25-13, 9-25-14, and 9-25-15. (Authorized by and implementing K.S.A. 1995 Supp. 47-1712, as amended by Sub. for 1996 HB 2607, § 15; effective, T-9-7-1-96, July 1, 1996; effective Nov. 15, 1996; revoked Nov. 17, 2017.)

Article 26.—EUTHANASIA

9-26-1. (Authorized by K.S.A. 47-1712; implementing K.S.A. 47-1718; effective Nov. 15, 1996; amended, T-9-7-1-03, July 1, 2003; amended Oct. 31, 2003; revoked April 29, 2016.)

Article 27.—REPORTABLE DISEASES

9-27-1. Designation of infectious or contagious diseases. The following diseases shall be designated as reportable infectious or contagious animal diseases and shall be reported in accordance with K.S.A. 47-622, and amendments thereto:

- (a) Anthrax;
- (b) all species of brucellosis;
- (c) equine infectious anemia;
- (d) classical swine fever, which is also known as hog cholera;
- (e) pseudorabies;
- (f) psoroptic mange;
- (g) rabies;
- (h) tuberculosis;
- (i) vesicular stomatitis;
- (j) avian influenza;
- (k) pullorum;
- (l) fowl typhoid;
- (m) psittacosis;
- (n) viscerotropic velogenic Newcastle disease, which is also known as exotic Newcastle disease;
- (o) foot-and-mouth disease;
- (p) rinderpest;
- (q) African swine fever;
- (r) piroplasmiasis;
- (s) vesicular exanthema;
- (t) Johne's disease;
- (u) scabies;
- (v) scrapie;
- (w) trichomoniasis;
- (x) equine herpesvirus myeloencephalopathy;
- (y) western equine encephalomyelitis;
- (z) eastern equine encephalomyelitis;
- (aa) Venezuelan equine encephalomyelitis;

(bb) West Nile virus;
(cc) bovine spongiform encephalopathy;
(dd) chronic wasting disease; and
(ee) any other diseases that the animal health commissioner determines to be immediately reportable due to an animal health emergency situation. (Authorized by K.S.A. 2015 Supp. 47-610 and 47-1832; implementing K.S.A. 2015 Supp. 47-610 and 47-622; effective Jan. 23, 1998; amended Sept. 24, 2010; amended Aug. 19, 2016.)

Article 28.—BRUCELLA OVIS

9-28-1. Definitions. As used in these regulations, the terms below shall have the following definitions. (a) “Brucella ovis” means an infectious, contagious disease of sheep characterized by ram epididymitis.

(b) “Brucella ovis-free flock” means a flock of sheep in which all test-eligible rams annually have two negative serology tests 45 to 120 days apart.

(c) “Individual identification” means any of the following:

(1) an official United States department of agriculture metal ear tag; or

(2)(A) a microchip;

(B) a tattoo;

(C) a physical description; or

(D) any other means that clearly identifies the animal.

(d) “Official serology test” means the following:

(1) the collection of samples by a licensed, federally accredited veterinarian; and

(2) the submission of the samples to a laboratory registered with the animal health department and approved by the livestock commissioner to conduct tests to identify brucella ovis.

(e) “Test-eligible ram” means any ram six months of age or older that was not born in the year of the test. (Authorized by K.S.A. 47-607d and K.S.A. 47-610; implementing K.S.A. 47-610; effective Jan. 23, 1998.)

9-28-2. Brucella ovis tests. (a) Any owner of a flock of sheep may apply for a certificate certifying that flock as a brucella ovis-free flock when the flock meets the following requirements.

(1) Each ram in the flock shall have an individual identification.

(2) Each test-eligible ram shall test negative on two official serology tests 45 to 120 days apart. Each ram shall be exempt from testing in the year of its birth.

(b) Each owner of a flock of sheep satisfactorily completing the test requirements under subsection (a) for a brucella ovis-free flock shall be issued a certificate certifying the flock of sheep as a brucella ovis-free flock by the Kansas animal health department. The certificate shall be valid for one year from the date of certification.

(c) To continue the brucella ovis-free flock certification, each test-eligible ram shall test negative annually. Each owner of one or more brucella ovis-free flocks shall be notified by mail of recertification requirements no fewer than 30 days before the expiration of the brucella ovis-free flock status. (Authorized by K.S.A. 47-607d and K.S.A. 47-610; implementing K.S.A. 47-610; effective Jan. 23, 1998.)

Article 29.—CERVIDAE

9-29-1, 9-29-2, and 9-29-3. (Authorized by and implementing K.S.A. 47-2101; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-4. (Authorized by K.S.A. 1996 Supp. 47-607 and K.S.A. 47-607d; implementing K.S.A. 1996 Supp. 47-607 and K.S.A. 47-607a; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-5. (Authorized by K.S.A. 1996 Supp. 47-607, K.S.A. 47-607d, 47-610, 47-611, and 47-657; implementing K.S.A. 1996 Supp. 47-607, K.S.A. 47-608, 47-610, 47-612, 47-614, and 47-657; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-6. (Authorized by K.S.A. 1998 Supp. 47-607, K.S.A. 47-607d, 47-610, 47-611, and 47-631; implementing K.S.A. 1998 Supp. 47-607, K.S.A. 47-608, 47-610, 47-612, 47-614, 47-631, 47-632, 47-633a, 47-634, and K.S.A. 1998 Supp. 47-635; effective Jan. 23, 1998; amended July 2, 1999; revoked Sept. 19, 2014.)

9-29-7. (Authorized by K.S.A. 47-2101; implementing K.S.A. 47-122; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-8. (Authorized by K.S.A. 47-610; implementing K.S.A. 47-122, 47-610 and 47-614; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-9. (Authorized by K.S.A. 1996 Supp. 47-607, 47-607d, 47-610, 47-611, 47-631, and 47-657; implementing K.S.A. 1996 Supp. 47-607, K.S.A. 47-610, 47-631, and 47-657; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-10. (Authorized by K.S.A. 47-607d; implementing K.S.A. 47-608 and 47-2101; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-11. (Authorized by K.S.A. 47-607d, 47-610, and 47-631; implementing K.S.A. 47-608, 47-610, 47-611 and 47-631; effective Jan. 23, 1998; revoked Sept. 19, 2014.)

9-29-12, 9-29-13, and 9-29-14. (Authorized by K.S.A. 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-610 and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002; revoked Sept. 19, 2014.)

9-29-15. (Authorized by K.S.A. 47-607, 47-607d, 47-610, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; implementing K.S.A. 47-607, 47-610, 47-614, 47-622, and 47-2101, as amended by L. 2001, Ch. 5, Sec. 176; effective Jan. 18, 2002; revoked Sept. 19, 2014.)

Article 30.—EQUINE INFECTIOUS ANEMIA

9-30-1. Notification. Each testing laboratory approved by the United States department of agriculture (USDA) shall notify the livestock commissioner of the test results for each equidae of Kansas origin that is tested for equine infectious anemia and that is bled within the state of Kansas. The testing laboratory shall report positive test results within 48 hours. (Authorized by K.S.A. 1996 Supp. 47-607 and K.S.A. 47-610; implementing K.S.A. 47-622; effective Jan. 23, 1998.)

9-30-2. Testing positive for equine infectious anemia. (a) Each equidae testing positive for equine infectious anemia shall be quarantined. Each owner of a quarantined equidae shall take one of the following actions:

(1) confine the equidae no fewer than 200 yards from any other equidae;

(2) confine the equidae in a screened stall;

(3) slaughter the equidae in a slaughter plant that has been inspected and approved by the animal and plant health inspection service of the United States department of agriculture (USDA); or

(4) euthanize the equidae and bury or incinerate the carcass.

(b) Within 48 hours after the quarantine begins, the owner of the quarantined equidae shall provide written notification to the Kansas animal

health department of the location of each quarantined equidae.

(c) Any owner may re-test positive equidae one time within 60 days after the date the quarantine begins, for confirmation of the results.

(d) Following a second positive test, the test-positive equidae shall be branded by the livestock commissioner or the commissioner's designee on the left side of the neck by hot iron or by freeze branding with the code "48," followed by the letter "A." The number "48" and the letter "A" shall be at least two inches in height and shall not be obscured by the equidae's mane. (Authorized by and implementing K.S.A. 1996 Supp. 47-607 and K.S.A. 47-610; effective Jan. 23, 1998.)

9-30-3. Infected equidae moving to another state. (a) If an equidae located in Kansas is known to be infected with equine infectious anemia and is to be moved to another state, the livestock commissioner or the commissioner's designee shall brand the equidae on the left side of the neck by hot iron or by freeze branding with the Kansas code "48," followed by the letter "A." The number "48" and the letter "A" shall be at least two inches in height and shall not be obscured by the equidae's mane.

(b) Each equidae branded in this manner shall be individually identified on and be accompanied by a USDA veterinary services form 1-27 for interstate movement of restricted equidae. (Authorized by K.S.A. 1996 Supp. 47-607d and K.S.A. 47-610; implementing K.S.A. 47-608; effective Jan. 23, 1998.)

Article 32.—SCRAPIE IN SHEEP AND GOATS

9-32-1. Definitions. (a) Only the following terms and their definitions from part I of "scrapie eradication: uniform methods and rules," publication APHIS 91-55-079 of the United States department of agriculture's animal and plant health inspection service (USDA/APHIS), dated June 1, 2005, are hereby adopted by reference, except as modified in this regulation:

(1) "Accredited veterinarian";

(2) "administrator";

(3) "animal";

(4) "APHIS";

(5) "APHIS representative";

(6) "approved test";

(7) "breed associations and registries";

- (8) “breeding sheep and goats”;
- (9) “certificate”;
- (10) “commingled, commingling”;
- (11) “direct movement to slaughter”;
- (12) “electronic implant”;
- (13) “exposed animal”;
- (14) “exposed flock”;
- (15) “female animal”;
- (16) “flock or herd”;
- (17) “flock of origin”;
- (18) “flock plan”;
- (19) “high-risk animal”;
- (20) “infected flock”;
- (21) “interstate commerce”;
- (22) “male animal”;
- (23) “noncompliant flock”;
- (24) “official eartag”;
- (25) “official identification”;
- (26) “owner”;
- (27) “owner statement”;
- (28) “permit”;
- (29) “postexposure management and monitoring plan (PEMMP)”;
- (30) “premises”;
- (31) “premises identification”;
- (32) “premises identification number”;
- (33) “premises number”;
- (34) “scrapie”;
- (35) “scrapie-positive animal”;
- (36) “slaughter channels”;
- (37) “source flock”;
- (38) “state”;
- (39) “state representative”;
- (40) “state veterinarian”;
- (41) “suspect animal”;
- (42) “terminal feedlot”; and
- (43) “trace.”

(b) The definitions of the following terms adopted in subsection (a) shall be modified as specified in this subsection:

(1) The following sentence shall be added at the end of the definition of “certificate”: “The terms ‘health certificate’ and ‘certificate of veterinary inspection’ are synonyms for ‘certificate.’”

(2) In the last sentence of the definition of “flock or herd,” the following phrase shall be deleted: “in accordance with the guidelines published in 9 CFR 54.7.”

(3) In the definition of “flock plan,” the last sentence shall be deleted.

(4) The following sentence shall be added at the end of the definition of “permit”: “The term ‘shipping permit’ is a synonym for ‘permit.’”

(5) In the definition of “postexposure management and monitoring plan (PEMMP),” the following modifications shall be made:

(A) The following text shall be added after “A written agreement”: “approved by the livestock commissioner and the administrator that is.”

(B) The last sentence of this definition shall be deleted.

(6) In the definition of “state veterinarian,” the word “veterinary” shall be deleted.

(7) In the first sentence of the definition of “suspect animal,” the following phrase shall be deleted: “in accordance with 9 CFR 79.4.”

(c) The following terms and definitions shall be added:

(1) “Exhibition. The commingling of animals for the purpose of showing or judging contests or for any other type of public display.”

(2) “In commerce. The term describing any animal that is to be traded, sold, bartered, slaughtered, or otherwise exchanged or any animal being moved for any of these purposes.” (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-608 and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-2. Identification requirements.

(a) Before any change of ownership, the following categories of sheep and goats shall be individually identified with official identification sufficient to trace the sheep and goats to the premises of origin:

(1) All sexually intact animals, except any lamb or kid under eight weeks of age accompanied by its dam;

(2) all animals for exhibition purposes, except any lamb or kid under eight weeks of age accompanied by its dam; and

(3) all sheep and goats over 18 months of age, as evidenced by the presence of the second set of permanent incisors.

(b) All animals in the following categories shall be permanently and individually identified with official identification before movement of any kind from the premises on which the animals currently reside:

(1) All exposed animals and high-risk animals regardless of age, reproductive status, or genetic susceptibility as determined by an official genotype test; and

(2) all suspect animals and scrapie-positive animals.

(c) The seller shall be required to ensure that all sheep and goats requiring official identification

have been identified accordingly and that records are maintained showing either the name of the purchaser of these animals or the name of the market and the date on which the animals were consigned.

(d) Any sheep or goat required to have official identification that is sold at a licensed Kansas livestock market may be identified accordingly at the market if the market maintains records sufficient to trace the animal back to the consignor and the buyer of that animal.

(e) For purposes including genetic testing, exhibition, and interstate movement, any designated agent approved to apply official identification under agreement with the livestock commissioner and the USDA/APHIS may apply the identification to sheep and goats, if the agent maintains records sufficient to trace the animals back to the individual or premises for which the identification was applied.

(f) All sheep and goats in commerce requiring official identification that have not yet been identified and are to be commingled with animals from a different flock shall be identified by the person delivering, hauling, or handling these animals.

(g) If a sheep or goat requiring official identification is received without this identification on a premises where the animal is to be commingled with animals from different flocks, the receiver of the animal shall be required to apply official identification to that animal.

(h) The following categories of sheep and goats shall not be required to be identified:

(1) Wethers under 18 months of age in slaughter channels;

(2) sheep or goats, or both, from a single premises maintained in a separate trailer or section of a transport and accompanied by an owner statement sufficient to allow the slaughter plant or slaughter market to identify the animals; and

(3) sheep or goats, or both, moved for grazing or similar management purposes whenever the animals are moved without a change of ownership from a premises owned or leased by the owner of the animals to another premises owned or leased by the owner of the animals. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-608 and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-3. Movement of scrapie-infected or scrapie-exposed sheep and goats. (a) No sheep or goat known to be or suspected of being infect-

ed with scrapie and no exposed animal from any flock that is not in compliance with a flock plan shall be imported into Kansas.

(b) No sheep or goat from a Kansas premises that is known to be or suspected of being infected with scrapie and no sheep or goat from a flock that is not in compliance with a flock plan shall be allowed to be moved from the premises without being individually identified with official identification recorded on a shipping permit issued by the Kansas livestock commissioner or the commissioner's deputy. All movement of these sheep and goats shall be only for the purpose of direct movement to slaughter or to a designated facility for euthanasia or research purposes.

(c) Scrapie-exposed sheep and goats from out-of-state flocks that are in compliance with a flock plan in the state of origin shall be allowed to be imported into Kansas, moved to a Kansas livestock market, or slaughtered at a licensed Kansas slaughter facility if the animals are individually identified with official identification and a special permit number issued by the Kansas animal health department is obtained before movement. The official identification numbers of all sheep and goats in each consignment shall be listed on the certificate of veterinary inspection or the owner statement, along with a statement that the animals listed are known to have been exposed to scrapie.

(d) Any scrapie-exposed sheep or goats from Kansas flocks that are in compliance with a flock plan may be sold privately, moved within the state to a licensed livestock market, or moved to a licensed Kansas slaughter facility if the sheep or goats are individually identified with official identification and are accompanied by an owner statement or certificate of veterinary inspection identifying them as exposed animals and listing the official identification numbers of the sheep or goats in the consignment. (Authorized by K.S.A. 47-607, 47-607d, and 47-610; implementing K.S.A. 47-607, 47-608, and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-4. Movement into Kansas of sheep and goats intended for breeding. (a)(1) All sheep and goats imported into Kansas for breeding purposes, except those moving directly to a licensed Kansas livestock market, shall be accompanied by a certificate of veterinary inspection issued by a veterinarian licensed and accredited in the state of origin stating that the consigned an-

imals show no clinical signs of, and are not known to be infected with or exposed to, any infectious or contagious disease. The certificate of veterinary inspection shall state the full name and complete physical address of the premises from which the consignment originated, as well as the full name and complete physical address of the premises of destination in Kansas.

(2) If a special permit number from the Kansas animal health department is required before movement of any sheep or goats, the special permit number shall be included on the certificate of veterinary inspection.

(b) All sheep and goats listed on the certificate of veterinary inspection shall meet one of the following requirements:

(1) Be individually identified with official identification; or

(2) be permanently identified to the premises of origin including the type of official identification used, which may include registered brands or tattoos, electronic implants, official eartags, radio frequency identification, and premises identification tags or tattoos. The number of sheep or goats, or both, included in the consignment shall be listed on the certificate of veterinary inspection.

(c)(1) In addition to the certificate of veterinary inspection, all sheep and goats shall be accompanied by an owner statement declaring one of the following:

(A) No sheep or goats in the consignment are known to be high-risk animals or known to be infected with or exposed to scrapie or to have originated from a source flock.

(B) The sheep or goats in the consignment are scrapie-exposed animals that originate from a flock in compliance with an approved flock plan in the state of origin. These sheep and goats shall have a special permit number obtained from the Kansas animal health department before movement of any shipment containing these animals. This special permit number shall appear on the certificate of veterinary inspection or the owner statement.

(2) The owner statement required by paragraph (c)(1) may be signed by a veterinarian, rather than the owner, at an approved livestock market if both of the following conditions are met:

(A) All consignors of sheep or goats are notified in writing or by signs posted at the livestock market that any sheep or goat known to be an exposed animal, suspect animal, or high-risk animal is required to be identified as such to the market upon consignment.

(B) The identification of these animals is maintained throughout the sale. (Authorized by K.S.A. 47-607, 47-607d, and 47-610; implementing K.S.A. 47-607, 47-607a, 47-608, and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-5. Movement into Kansas of sheep and goats intended for slaughter.

(a) All sheep and goats moving interstate into Kansas directly to a licensed slaughter facility shall be accompanied by a certificate of veterinary inspection or by an owner statement as defined in K.A.R. 9-32-1. In addition, all sheep and goats in the consignment, except wethers under 18 months of age as evidenced by the absence of the second set of permanent incisors, shall be identified in one of the following ways to enable the animals to be traced to the flock of origin:

(1) Have official identification, with the type of identification listed on the owner statement or certificate of veterinary inspection; or

(2) be maintained as a separate and distinct group, without commingling, from the time the sheep and goats leave the premises of origin until they arrive at the licensed slaughter facility within Kansas if the slaughter facility performs the following:

(A) Keeps these sheep or goats, or both, separate and apart from all other animals;

(B) slaughters the sheep or goats, or both, consecutively as a group to maintain their identity; and

(C) maintains records sufficient to trace the sheep or goats, or both, from the consignment to the premises of origin.

(b) All sheep and goats moving into Kansas directly to a terminal feedlot, except wethers under 18 months of age as determined by the absence of the second set of permanent incisors, shall be accompanied by a certificate of veterinary inspection and have official identification. The type of official identification used and the number of sheep or goats, or both, consigned shall be recorded on the certificate of veterinary inspection.

(c) Wethers under 18 months of age, as determined by the absence of the second set of permanent incisors, shall not be required to be identified but shall be accompanied by a certificate of veterinary inspection or an owner statement. (Authorized by K.S.A. 47-607, 47-607d, and 47-610; implementing K.S.A. 47-607, 47-608, and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-6. Exhibition sheep and goats. All exhibition sheep and goats in Kansas, except any lamb or kid under two months of age accompanying its dam, shall be individually identified by a means of official identification, regardless of their sex or premises of origin. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-608 and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-7. Sheep and goats consigned to Kansas livestock markets. (a) Any sheep or goat originating outside Kansas may be consigned to a Kansas livestock market if the sheep or goat is accompanied by an owner statement.

(b) All sexually intact sheep and goats and all wethers over 18 months of age, as evidenced by the presence of the second set of permanent incisors, shall be individually identified with official identification before being sold. All sheep and goats requiring official identification that have not been identified before movement to the market shall be identified at the market, which shall maintain records sufficient to trace these animals back to the flock of origin.

(c) Wethers less than 18 months of age, as evidenced by the absence of the second set of permanent incisors, shall not be required to be identified. (Authorized by K.S.A. 47-607, 47-607d, and 47-610; implementing K.S.A. 47-607, 47-608, and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

9-32-8. Recordkeeping requirements. (a) Each individual who applies official identification to an animal shall maintain the associated records for a minimum of five years from the date of application. These records shall be made available upon request during normal business hours to any authorized employee of the USDA or the Kansas animal health department upon presentation of

the employee's official agency credentials. Each record shall show the following:

- (1) The official identification number applied;
- (2) the number of animals identified, by species;
- (3) the type of official identification; and
- (4) the date on which the official identification was applied.

(b) In addition to maintaining the records specified in subsection (a), each individual who applies official identification shall provide the following, upon request:

- (1) The name, premises, mailing address, and, if available, phone number of the individual for which the official identification was applied;
- (2) the name and address of the owner of the flock of birth, if the flock of birth is known; and
- (3) the name, premises, mailing address, and, if available, phone number of the individual or premises that purchased or otherwise received these animals.

(c) Each individual or entity who receives, purchases, acquires, sells, or disposes of any sheep or goats shall keep records of each transaction for a minimum of five years from the date of the transaction. Each record shall include the following:

- (1) The number of animals included in the transaction;
- (2) the date of the transaction;
- (3) the name, address, and, if available, the phone number of the second party involved in the transaction;
- (4) the species and breed of the animals involved;
- (5) a copy of the brand inspection certificate or certificate of veterinary inspection for all animals that have official identification consisting of brands or ear notches; and
- (6) all business records, including yardage receipts, sale tickets, invoices, and waybills. (Authorized by K.S.A. 47-607d and 47-610; implementing K.S.A. 47-608 and 47-610; effective, T-9-1-9-06, Jan. 9, 2006; effective April 21, 2006.)

Agency 10

Kansas Bureau of Investigation

Articles

- 10-1. *DEFINITIONS. (Not in active use.)*
- 10-2. *COLLECTION AND REPORTING. (Not in active use.)*
- 10-3. *SECURITY. (Not in active use.)*
- 10-4. *DISSEMINATION. (Not in active use.)*
- 10-5. *INSPECTION AND CHALLENGE. (Not in active use.)*
- 10-6. *AUDITING CRIMINAL JUSTICE AGENCIES. (Not in active use.)*
- 10-7. *REPORTABLE EVENTS; DUPLICATION. (Not in active use.)*
- 10-8. *MAINTENANCE OF RECORDS. (Not in active use.)*
- 10-9. DEFINITIONS.
- 10-10. COLLECTION AND REPORTING.
- 10-11. SECURITY.
- 10-12. DISSEMINATION.
- 10-13. INSPECTION AND CHALLENGE.
- 10-14. AUDITING CRIMINAL JUSTICE AGENCIES.
- 10-15. REPORTABLE EVENTS; DUPLICATION.
- 10-16. *COLLECTION AND REPORTING. (Not in active use.)*
- 10-17. *REPORTABLE EVENTS; DUPLICATION. (Not in active use.)*
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- 10-19. JUVENILE JUSTICE INFORMATION SYSTEM.
- 10-20. MISSING PERSONS; UNIDENTIFIED DECEASED PERSONS.
- 10-21. KANSAS BUREAU OF INVESTIGATION DNA DATABANK.
- 10-22. FIELD TESTING FOR CONTROLLED SUBSTANCES.
- 10-23. KANSAS ASSET SEIZURE AND FORFEITURE REPOSITORY.
- 10-24. KANSAS SCRAP METAL DATA REPOSITORY.

Article 1.—DEFINITIONS

10-1-1. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 2.—COLLECTION AND REPORTING

10-2-1 to 10-2-4. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 3.—SECURITY

10-3-1 and 10-3-2. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12,

1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

10-3-3. (Authorized by K.S.A. 1980 Supp. 22-4704; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

10-3-4 and 10-3-5. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 4.—DISSEMINATION

10-4-1 to 10-4-3. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

10-4-4 to 10-4-7. (Authorized by K.S.A.

1980 Supp. 22-4704; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 5.—INSPECTION AND CHALLENGE

10-5-1 and 10-5-2. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

10-5-3 to 10-5-5. (Authorized by K.S.A. 1980 Supp. 22-4704; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 6.—AUDITING CRIMINAL JUSTICE AGENCIES

10-6-1 and 10-6-2. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 7.—REPORTABLE EVENTS; DUPLICATION

10-7-1. (Authorized by K.S.A. 1980 Supp. 22-4704; effective, E-81-6, March 12, 1980; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 8.—MAINTENANCE OF RECORDS

10-8-1. (Authorized by K.S.A. 1980 Supp. 22-4704; effective May 1, 1980; revoked, E-81-31, Oct. 8, 1980; revoked May 1, 1981.)

Article 9.—DEFINITIONS

10-9-1. Definitions. As used in these regulations, the following words and phrases shall have the meanings ascribed to them herein.

(a) “Disposition” means information disclosing that criminal proceedings have been concluded, including information disclosing that a law enforcement officer has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reasons for such postponement. Dispositions shall include, but not be

limited to, acquittal, not guilty by reason of insanity, charge dismissed, guilty plea, nolle prosequi, nolo contendere plea, convicted, deceased, dismissed—civil action, pardoned, mistrial—defendant discharged, placed on probation, paroled, or released from correctional supervision.

(b) “Conviction” means all pleas of guilty, nolo contendere, or finding of guilty by a court or jury.

(c) “Non-conviction” means all acquittals, dismissals and releases authorized pursuant to K.S.A. 22-2406 or that a prosecutor has elected not to commence criminal proceedings.

(d) “Pending proceeding” refers to that period of time between arrest and disposition.

(e) “Direct access” means having the authority to access the criminal history record data base, whether by manual or automated means.

(f) “Criminal history record information” has the meaning ascribed to it at K.S.A. 1980 Supp. 22-4701(b). All information defined at K.A.R. 10-1-1(b), (c), and (d) is considered within this definition. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 10.—COLLECTION AND REPORTING

10-10-1. Accuracy and completeness. Prior to disseminating criminal history record information, a criminal justice agency shall make every reasonable effort to determine the accuracy of the record disseminated. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

10-10-2. Reporting time frame. Each criminal justice agency required to report criminal history record information to the central repository shall do so within 14 days of the reportable event to which the information relates, unless otherwise specified by law. (Authorized by K.S.A. 2012 Supp. 22-4704, as amended by 2013 HB 2041, sec. 3; implementing K.S.A. 2012 Supp. 22-4705; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981; amended Aug. 23, 2013.)

10-10-3. Forms for reporting arrests. Agencies reporting arrests to the central repository shall use only forms provided by the Kansas bureau of investigation or Federal bureau of investigation. (Authorized by K.S.A. 1980 Supp.

22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

10-10-4. Reporting of dispositions. District attorneys, county attorneys, city attorneys and special prosecutors shall report the disposition of all cases in which an arrest was made within his or her jurisdiction to the central repository, except in those cases where the disposition has been reported by another criminal justice agency. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4705; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

10-10-5. Electronic reporting by district courts. Each district court shall electronically report all case filings and dispositions for all violations of K.S.A. 8-1567, K.S.A. 2013 Supp. 8-1025, K.S.A. 2013 Supp. 21-5426, K.S.A. 2013 Supp. 21-6419, K.S.A. 2013 Supp. 21-6420, K.S.A. 2013 Supp. 21-6421 or K.S.A. 2013 Supp. 21-6422, and amendments thereto, to the central repository. The case filings and dispositions shall be electronically submitted by a method approved by the director. (Authorized by and implementing K.S.A. 2013 Supp. 22-4704, as amended by 2014 HB 2501, sec. 6; effective Aug. 23, 2013; amended, T-10-5-30-14, July 1, 2014; amended Sept. 19, 2014.)

Article 11.—SECURITY

10-11-1. Personnel security; direct access. Direct access to criminal history record information is prohibited except by employees of a criminal justice agency. Physical security of criminal history record information shall be maintained by a criminal justice agency by storing such information in a way as to prevent direct access by anyone not authorized in this section. In addition, reasonable steps shall be taken by a criminal justice agency to insure that criminal history record information will be secure from theft, sabotage, fire, wind, and other natural or man-made disasters. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4706; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

10-11-2. Transmission of non-conviction criminal history record information. Except when necessary to protect human life, non-conviction criminal history record information shall not be transmitted by any means which may be lawfully intercepted by a person not authorized

to have direct access to such information. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 12.—DISSEMINATION

10-12-1. Dissemination of conviction records. (a) Except as provided in subsection (c), the KBI shall be the sole agency releasing criminal history record information from the Kansas central repository for non-criminal justice purposes. Upon request by any individual, the KBI may, at its discretion, release conviction information from the central repository. Each request for conviction information shall include the name, sex, and date of birth of the individual in question and shall be accompanied by a fee as prescribed by the director of the KBI.

(b) Upon a request by a non-criminal justice agency or an individual, a criminal justice agency other than the KBI may provide any conviction information originated by that criminal justice agency. Each request for a conviction record shall include as part of the request the name, sex, and date of birth of the individual in question.

(c) A criminal justice agency may obtain conviction information from the KBI for a non-criminal justice purpose only if required under a municipal ordinance or county resolution for governmental licensing or certification purposes. (Authorized by K.S.A. 22-4704; implementing K.S.A. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981; amended April 19, 2002.)

10-12-2. Dissemination of non-conviction criminal history record information. Criminal justice agencies may provide non-conviction criminal history record information to the following:

(a) other criminal justice agencies;
(b) those authorized by court order or subpoena; and

(c) federal agencies for such investigative purposes as authorized by law or presidential executive order. (Authorized by K.S.A. 1982 Supp. 22-4704; implementing K.S.A. 1982 Supp. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1984.)

10-12-3. Dissemination by criminal justice information system employees. Persons employed as part of a criminal justice information system, which is not operated by a criminal justice agency, shall disseminate criminal history record

information only to a criminal justice agency as defined in K.S.A. 1980 Supp. 22-4701. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 13.—INSPECTION AND CHALLENGE

10-13-1. Right to review and challenge decisions. (a) Upon presentation of proper identification, a person may request a copy of that person's criminal history record information and juvenile offender information retained at the local level or at the KBI. Requested criminal history record information and juvenile offender information may be provided in abstract form by mail or electronic transmission, at the discretion of the providing agency. The providing agency shall include with the record written notification to the individual of the right to challenge the accuracy of the content of the individual's record and the procedures to submit these challenges. Any unresolved challenge may be reviewed by the director of the KBI or the authorized designee.

(b) All corrections made to the record by local agencies shall be reported to the KBI. (Authorized by K.S.A. 22-4704; implementing K.S.A. 22-4709, 38-1608, 38-1618; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981; amended April 19, 2002.)

10-13-2. Inspection and challenge. The inability of a criminal justice agency to locate a disposition shall not be reason for denying an individual's right of inspection and challenge on grounds that the record is incomplete. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4709; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 14.—AUDITING CRIMINAL JUSTICE AGENCIES

10-14-1. Logging of disseminations. All disseminations shall be logged, including disseminations made by radio transmission pursuant to K.A.R. 10-11-2 except that, radio transmissions of conviction data are not subject to this requirement. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4706; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

10-14-2. Disclosure of dissemination log. Dissemination logs shall be confidential and released only to a criminal justice agency. (Authorized by K.S.A. 1980 Supp. 22-4704; implementing K.S.A. 1980 Supp. 22-4707; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 15.—REPORTABLE EVENTS; DUPLICATION

10-15-1. Reportable events, duplication. No criminal justice agency shall knowingly provide a duplicate report of an event required by K.S.A. 1980 Supp. 22-4705. A criminal justice agency may fulfill its reporting responsibility by agreements with other criminal justice agencies. (Authorized by K.S.A. 1980 Supp. 22-4704, 22-4705; implementing K.S.A. 1980 Supp. 22-4706; effective, E-81-31, Oct. 8, 1980; effective May 1, 1981.)

Article 16.—COLLECTION AND REPORTING

10-16-1 to 10-16-3. (Authorized by L. 1983, Ch. 140, Sec. 36; effective May 1, 1984; revoked, T-86-1, Jan. 9, 1985; revoked May 1, 1986.)

10-16-4. (Authorized by L. 1983, Ch. 140, Sec. 35; effective May 1, 1984; revoked, T-86-1, Jan. 9, 1985; revoked May 1, 1986.)

Article 17.—REPORTABLE EVENTS; DUPLICATION

10-17-1. (Authorized by L. 1983, Ch. 140, Sec. 35; effective May 1, 1984; revoked, T-86-1, Jan. 9, 1985; revoked May 1, 1986.)

10-17-2 and 10-17-3. (Authorized by L. 1983, Ch. 140, Sec. 36; effective May 1, 1984; revoked, T-86-1, Jan. 9, 1985; revoked May 1, 1986.)

Article 18.—IMPLEMENTATION; ADMINISTRATION

10-18-1 and 10-18-2. (Authorized by L. 1983, Ch. 140, Sec. 36; effective May 1, 1984; revoked, T-86-1, Jan. 9, 1985; revoked May 1, 1986.)

Article 19.—JUVENILE JUSTICE INFORMATION SYSTEM

10-19-1. Definitions. As used in these regulations, the following words and phrases shall have the meanings ascribed to them herein.

(a) "Juvenile" means any person under the legal age of majority.

(b) "Juvenile justice information system" means data initiated or collected by a juvenile justice agency on a person under the age of majority, including any juvenile offender, any child in need of care, and any person under the age of majority processed through adult court.

(c) "Missing child" means any person under the age of 18 whose location has not been determined, who has been reported missing, and for whom a verified report has been filed with local law enforcement.

(d) "Runaway" means any person under the age of 18 who has been reported to be a runaway and for whom a verified report has been filed with the local law enforcement agency. (Authorized by and implementing K.S.A. 1983 Supp. 38-1617, 38-1618, and L. 1984, Ch. 115, Sec. 1, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-2. Additional reportable events. Additional reportable events shall include: (a) clearance of an offense through the identification of an alleged perpetrator;

- (b) the issuance of a summons;
- (c) filing or non-filing of a complaint;
- (d) diversion activities;
- (e) an order of temporary custody;
- (f) referral of a child in need of care to law enforcement;
- (g) filing or non-filing of a petition;
- (h) entry of a judgement of an appellate court; and
- (i) reports of missing or runaway juveniles. (Authorized by and implementing K.S.A. 1983 Supp. 38-1617, and L. 1984, Ch. 115, Sec. 1; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-3. Obligation to report. Each juvenile justice agency obligated to report to the juvenile justice information system shall do so within 14 days of the occurrence of the reportable event to which the information relates, unless otherwise specified by law.

Reports of missing or runaway juveniles shall be made immediately to the system upon receipt by the local agency with concurrent entry into the national crime information center system. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-4. Accuracy and completeness. Each juvenile justice agency shall make all necessary efforts to ensure the accuracy and completeness of data supplied to the juvenile justice information system. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-5. Forms for reporting. Data supplied to the juvenile justice information system shall be on forms, or in a format, approved by the director of the KBI. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-6. Duplication in reporting. No juvenile justice agency shall knowingly provide a duplicate report of an event required by the juvenile justice information system. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-7. Responsibility for reporting. Events which shall be reported include the following: (a) Each law enforcement agency shall report:

- (1) clearance of an offense through the identification of an alleged perpetrator;
 - (2) contacts pursuant to the child in need of care code;
 - (3) taking a juvenile into custody;
 - (4) release of a juvenile without referral to the county or district attorney;
 - (5) placement of a juvenile in a detention shelter or youth residential facility;
 - (6) release of a juvenile from a juvenile detention facility;
 - (7) fingerprinting of juveniles taken into custody for a felony-type offense;
 - (8) referral of a juvenile to the county or district attorney or the department of social and rehabilitation services; and
 - (9) reports of missing or runaway juveniles.
- (b) Each detention, shelter or youth residential facility shall report:
- (1) admissions;
 - (2) releases;
 - (3) escapes from custody; and
 - (4) issues relative to the state's compliance with the federal juvenile justice and delinquency prevention act.
- (c) Each county or district attorney shall report:
- (1) the filing or non-filing of a petition;

- (2) the filing or non-filing of a complaint;
- (3) issuance of an ex parte order to take a child into custody;
- (4) issuance of an order of temporary custody for a child in need of care;
- (5) detention hearings; and
- (6) diversion activities;
- (d) Each court shall report:
 - (1) issuance of a warrant or summons;
 - (2) probation;
 - (3) dismissals;
 - (4) adjudications;
 - (5) pleadings;
 - (6) dispositions;
 - (7) motions for waiver;
 - (8) appeals;
 - (9) termination of parental rights;
 - (10) hearings relative to placement; and
 - (11) release from jurisdiction or custody.
- (e) Each correctional agency and SRS agency shall report:
 - (1) referrals to the county or district attorney for the filing of a petition or a complaint;
 - (2) admissions;
 - (3) releases from custody or jurisdiction;
 - (4) escapes from commitment or placement; and
 - (5) treatment during supervision. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-8. Implementation, administration, enforcement. When any data on a juvenile offender of an identifiable nature is released to a party specifically authorized by law to receive that data, and when the accuracy of the identification cannot be determined due to the absence of fingerprint records for comparison, the data shall be accompanied by a statement attesting to the lack of positive identification of the subject of the data.

Release of any data on a child in need of care of an identifiable nature is strictly limited as defined by statute.

Juvenile justice agencies failing to report as required by these sections shall be referred to the attorney general for appropriate action. (Authorized by and implementing K.S.A. 1983 Supp. 38-1618, and L. 1984, Ch. 115, Sec. 2(f); effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

10-19-9. Fingerprints and photographs. (a)(1) Fingerprints taken of any person under the age of majority for state and local purposes shall be

taken on standardized juvenile fingerprint cards as provided by the central repository. Disposition forms shall not be required on these fingerprints.

(2) If any person is processed for an adult violation or if any person will be handled as an adult by the court, that person's fingerprints shall also be taken on an FBI card. The FBI card shall indicate that the person will be handled as an adult. If the person is 16 or 17 years of age, an FBI card may be taken. Disposition sheets shall be completed for all FBI cards taken.

(b) All fingerprints taken on persons under the age of majority and the related disposition sheets shall be submitted to the central repository for processing within 14 days of the date they were taken.

The arresting agency or the agency serving summons shall have the responsibility for ensuring that required fingerprints are taken. (Authorized by and implementing L. 1984, Ch. 157, Sec. 3; effective, T-86-1, Jan. 9, 1985; effective May 1, 1986.)

Article 20.—MISSING PERSONS; UNIDENTIFIED DECEASED PERSONS

10-20-1. Definitions. As used in these regulations, the following terms shall have the meanings specified in this regulation: (a) "Missing person" means any person of any age whose location is not currently known and who is reported missing by any individual.

(b) "Missing and unidentified person system" means the state system maintained by the KBI that contains information on missing persons and unidentified persons.

(c) "NCIC" means the federal bureau of investigation's (FBI's) national crime information center.

(d) "Unidentified person" means any unidentified deceased person, any person of any age who is living and whose identity cannot be ascertained, any unidentified victim of a catastrophe, or any human remains. (Authorized by and implementing K.S.A. 2006 Supp. 75-712b; effective May 1, 1986; amended May 4, 2007.)

10-20-2. Procedures and forms for reporting any missing person. (a) All law enforcement agencies shall accept without delay any report of a missing person made by any individual.

(b) Unless law enforcement knows the exact physical location of any missing person, the law enforcement agency shall upon receipt of the report enter the information into NCIC as prescribed by the chapter titled "missing per-

son file,” which is contained in the “NCIC 2000 operating manual,” as in effect on November 8, 2006 and hereby adopted by reference, to create an active record.

(c) After the initial NCIC entry report has been made, the law enforcement agency shall attempt to obtain additional information as prescribed by the “NCIC missing person file data collection entry guide,” revised February 2006 and hereby adopted by reference, and enter the information into NCIC as promptly as possible and no longer than 30 days from the date of the initial report.

(d) If the person identified in the missing person report remains missing after 30 days, the law enforcement agency shall contact family members of the missing person and attempt to obtain DNA samples for comparison purposes as prescribed by the “national missing persons program family reference sample collection kit,” dated April 2005 by the U.S. department of justice and hereby adopted by reference.

(e) The law enforcement agency shall advise the reporting party to notify the law enforcement agency no later than 24 hours after the missing person returns or is located.

(f) Upon locating each missing person, the law enforcement agency shall remove the entry from NCIC.

(g) A law enforcement agency shall not remove a missing person’s report from NCIC based solely on the person’s age. (Authorized by and implementing K.S.A. 2006 Supp. 75-712b; effective May 1, 1986; amended July 7, 1997; amended May 4, 2007.)

10-20-2a. Procedures and forms for reporting any unidentified person. (a) All law enforcement agencies shall accept without delay any report of any unidentified person made by any individual.

(b) The law enforcement agency shall upon receipt of the report enter the information into NCIC as prescribed by the chapter titled “unidentified person file,” which is contained in the “NCIC 2000 operating manual,” as in effect on November 8, 2006 and hereby adopted by reference, to create an active record.

(c) After the initial NCIC entry report has been made and at the time of autopsy of any unidentified deceased person, the law enforcement agency shall obtain and immediately enter information into NCIC as prescribed by the “NCIC unidentified person file data collection entry guide,”

revised February 2006 and hereby adopted by reference. In the case of an unidentified living person, law enforcement shall obtain and enter information as prescribed in this subsection as promptly as possible and no longer than 30 days from the date of the initial report. (Authorized by and implementing K.S.A. 2006 Supp. 75-712b, K.S.A. 2006 Supp. 75-712c, and K.S.A. 2006 Supp. 75-712d; effective April 19, 2002; amended May 4, 2007.)

10-20-3. (Authorized by and implementing K.S.A. 75-712b(d)(1); effective May 1, 1986; revoked July 7, 1997.)

10-20-4. Dissemination. (a) All information contained in the KBI missing and unidentified person system shall be available to all law enforcement officers and coroners in this state, other governmental entities in the state who have a need to know the information for criminal justice purposes, and the federal bureau of investigation.

(b) Any member of the public may request data from the KBI missing and unidentified person system at any time and receive information in accordance with Kansas law. (Authorized by and implementing K.S.A. 75-712b, as amended by L. 2006, ch. 37, sec. 1; effective May 1, 1986; amended July 7, 1997; amended May 4, 2007.)

Article 21.—KANSAS BUREAU OF INVESTIGATION DNA DATABANK

10-21-1. Definitions. As used in this article, the following terms shall have the meanings specified below:

(a) “CODIS” (Combined DNA index system) means the federal bureau of investigation’s (FBI) national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories.

(b) “Convicted offender” means a person 18 years of age or older who commits an act that constitutes the commission of one of the crimes listed in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, and is convicted by a court.

(c) “DNA” means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(d) “DNA analysis” means the process through which DNA in a human biological specimen is

analyzed and compared with DNA from another human biological specimen for identification purposes.

(e) "DNA databank" means the repository of DNA samples collected under the provisions of K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(f) "DNA database" means the Kansas bureau of investigation's (KBI) DNA identification record system. It is administered by the KBI and provides DNA records to the FBI for storage and maintenance in CODIS. The KBI's DNA database system is computer software and procedures administered by the KBI, to store and maintain DNA records regarding forensic casework, certain convicted offenders, and juvenile offenders, and DNA records used for research or quality control.

(g) "DNA record" means DNA identification information stored in the state DNA database or CODIS. The DNA record is the result obtained from the DNA analysis tests. The DNA record is comprised of the characteristics of a DNA sample that are of value in establishing the identity of individuals. The DNA record shall not contain any of the personal information submitted to the KBI on any form prescribed by the director of the KBI. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(h) "DNA samples" means one blood sample and one saliva sample provided by any convicted offender or juvenile offender, or submitted to the KBI laboratory for analysis pursuant to a criminal investigation.

(i) "FBI" means the federal bureau of investigation.

(j) "Juvenile offender" means a person who meets the following criteria:

(1) Is 10 or more years of age, but less than 18 years of age;

(2) performs an act while a juvenile that, if done by an adult, would constitute the commission of one of the crimes listed in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto; and

(3) is adjudicated by a court.

(k) "KBI" means the Kansas bureau of investigation.

(l) "Law enforcement" means those law enforcement officers and agencies authorized to receive information under K.S.A. 21-2511(f) or 22-4901 et seq., and amendments thereto.

(m) "NDIS" (national DNA index system) means the federal bureau of investigation's (FBI)

centralized system of DNA identification records contributed by state and local forensic DNA laboratories. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-2. Purpose of DNA identification.

The DNA databank shall be utilized only for the following purposes:

(a) For identifying investigative leads in criminal investigations;

(b) for locating missing persons;

(c) for identifying unknown human remains;

(d) for a population statistic database, after personal identifiable information is removed; or

(e) for research, protocol development, and quality control, after personal identifiable information is removed. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-3. Procedural compatibility with the FBI. (a) The DNA database as established by the KBI shall be compatible with the following documents, all of which are hereby adopted by reference:

(1) "National DNA index system (NDIS): NDIS standards for acceptance of DNA data," dated January 2000;

(2) "quality assurance standards for forensic DNA testing laboratories," effective October 1998; and

(3) "quality assurance standards for convicted offender DNA databasing laboratories," effective April 1999.

(b) DNA samples shall be received by the KBI for storage and analysis. The DNA analysis may be conducted under contract with the KBI by a qualified DNA laboratory that meets KBI procedural guidelines.

(1) Each DNA record submitted pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, shall be classified and filed by the KBI for the purposes specified in K.A.R. 10-21-2.

(2) The DNA profile of individuals in the state database shall be made available to local, state, and federal law enforcement agencies, approved CODIS crime laboratories that serve these agencies, and the county or district attorney's office in furtherance of an official investigation of a criminal offense.

(3) If the laboratory is a non-CODIS crime laboratory, the laboratory request shall be submitted

in compliance with the procedures specified in the documents adopted in subsection (a).

(c) A separate population database comprised of blood samples obtained pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, shall be created by the KBI after all personal identification is removed.

(1) The KBI's population databases may be shared with or disseminated to other law enforcement agencies, crime laboratories that serve them, and other third parties that the KBI deems necessary to assist the KBI with statistical analysis of the KBI's population database.

(2) The population database may be made available to and searched by other agencies participating in the CODIS system. (Authorized by and implementing K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, ch. 208, sec. 2; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-4. Expungement. (a) Any person whose DNA record or profile has been included in the DNA database and whose DNA samples are stored in the databank may apply for expungement on any of the following grounds:

(1) The felony conviction that resulted in the inclusion of the person's DNA record or profile in the database or the inclusion of the person's DNA sample in the databank has been reversed or dismissed.

(2) The person has been acquitted on retrial.

(3) The person has been pardoned by the governor of the state of Kansas pursuant to article 1, section 7 of the constitution of the state of Kansas and any implementing legislation.

(b) The person, either individually or through an attorney, may make application to the KBI for expungement of the record. The written application for expungement shall be on a form approved by the KBI and shall include the following information about the person:

- (1) Name;
- (2) date of birth;
- (3) sex;
- (4) race;
- (5) place of birth, including city and state;
- (6) district court case number and county; and
- (7) offense or offenses.

(c) The application shall be forwarded to the KBI along with a certified copy of the final order of reversal, dismissal, acquittal, or pardon, which shall be attached to the application for expungement.

(d) When an application for expungement is

submitted, the record contained in the state's DNA databank and database shall be reviewed by the KBI to confirm the existence of the record and the identity of the contributor. The DNA record and all other identifiable information shall be purged from the DNA database, and the DNA sample stored in the DNA databank shall be purged after the contributor no longer meets the requirements to submit blood and saliva pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(e) If the individual has more than one offense that requires submission of blood and saliva samples to the state DNA database, DNA databank, and CODIS, if applicable, then only the offense covered by the expungement shall be expunged. The samples submitted shall be retained if additional offenses require retention pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(f) If an individual has a record expunged, that individual shall be treated as not having had a DNA record in the DNA database, DNA databank, or CODIS for that offense.

(g) Upon receiving information regarding a contributor, a record may be expunged by the KBI on its own initiative according to this article.

(h) The Kansas department of corrections shall be notified by the KBI when the record of any inmate who has contributed DNA while housed with the department of corrections is expunged. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

10-21-5. Maintenance. (a) DNA records maintained at the KBI shall be treated as confidential as provided in K.S.A. 21-2511 and 22-4901 et seq., and amendments thereto.

(b) A criminal defendant's rights to access DNA testing information during the course of a criminal case shall be governed by existing rules of discovery of scientific evidence in criminal cases.

(c) Access to blood and saliva samples shall be limited only to forensic DNA analysis for profiles to be included in the DNA databank.

(d) All DNA records obtained by the KBI shall be maintained, preserved, and securely stored at the KBI for not less than 10 years. (Authorized by and implementing K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, ch. 208, sec. 2; effective Dec. 22, 1995; amended April 19, 2002)

10-21-6. Collection of samples for DNA databank procedures. (a) The collection, labeling, storage, handling, preservation, and shipment of blood and saliva samples obtained from convicted felons pursuant to K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto, for the DNA databank shall be in conformance with a form prescribed by the director of the KBI. Copies of the applicable protocol may be obtained from the KBI DNA laboratory.

(b) Each offender shall be positively identified using photo identification before taking the blood and saliva samples.

(c) When the offender is positively identified, one blood sample and one saliva sample shall be taken from the offender in a reasonable manner according to generally accepted medical practices.

(d) These samples shall be taken using only the DNA sample collection kit provided by the KBI.

(e)(1) The DNA information sheet provided in the collection kit shall be completed, providing all relevant information requested on the form.

(2) The offender's left and right thumbs shall be imprinted by means of an inked impression in the spaces indicated on the form.

(3) The person taking the blood and saliva samples and one other witness shall complete and sign, as indicated on the form, a verification that the blood sample and saliva sample were taken from the positively identified offender. Additional supplies may be obtained from the KBI DNA laboratory.

(f) All samples so collected shall be transmitted within 72 hours of collection to the KBI in the manner prescribed in the instructions.

(g) Results from the DNA analysis made from blood or saliva samples, or both, obtained from convicted felons under K.S.A. 21-2511 or 22-4901 et seq. and amendments thereto, shall be entered into the DNA database and CODIS.

(h) Each convicted offender or juvenile offender placed on probation and required to provide blood and saliva samples shall provide the samples within 10 days after sentencing or disposition.

(1) Court services officers or community corrections officers shall facilitate the collection of DNA samples.

(2) The offender may have the DNA sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(i) Each convicted offender sentenced to the

custody of the secretary of corrections and each juvenile offender placed in a youth residential facility or in a state youth center shall provide these samples upon arrival. The collection of DNA samples shall be facilitated by the department of corrections and SRS, as appropriate.

(j) Each convicted offender or juvenile offender currently incarcerated and required to provide blood and saliva samples shall provide these samples before release, discharge, or parole.

(k) Each convicted offender or juvenile offender paroled and required to provide blood and saliva samples shall provide the samples within 10 days of being paroled.

(1) Parole officers shall facilitate the collection of DNA samples.

(2) The offender may have the DNA sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(l) Any convicted offender or juvenile offender placed on probation, parole, or community corrections or in SRS custody may have the blood sample collection kit completed at any public health agency, clinic, hospital, or any other facility with persons qualified to draw blood as provided in K.S.A. 21-2511 or 22-4901 et seq., and amendments thereto.

(m) Each convicted offender or juvenile offender sentenced or receiving a disposition to a term of incarceration in the county jail and required to provide blood and saliva samples shall provide these samples upon arrival.

(n) When any convicted offender or juvenile offender is placed on probation, parole, or community corrections or in SRS custody, the cost or fee associated with collection of the DNA sample shall be paid by the offender. (Authorized by and implementing K.S.A. 2001 Supp. 21-2511; effective Dec. 22, 1995; amended April 19, 2002.)

Article 22.—FIELD TESTING FOR CONTROLLED SUBSTANCES

10-22-1. Approved field tests. (a) Law enforcement officers shall use only the field tests specified in this regulation on suspected controlled substances for admission of the field test results at any preliminary examination pursuant to K.S.A. 22-2902, and amendments thereto.

(b) The following reagents shall be the only reagents approved by the director of the Kansas

bureau of investigation (KBI) for reagent-based field tests:

- (1) Chen's reagent;
- (2) cobalt thiocyanate reagent;
- (3) Dille-Koppanyi reagent;
- (4) Duquenois-Levine reagent;
- (5) Ehrlich's reagent;
- (6) fast blue B or BB reagent or the salts of either reagent;
- (7) Fröhdes reagent;
- (8) Mandelin reagent;
- (9) Marquis reagent;
- (10) Mecke's reagent;
- (11) nitric acid reagent;
- (12) Sanchez reagent;
- (13) Scott reagent;
- (14) sodium nitroprusside reagent, which is also known as nitrosylpentacyanoferrate, nitroprussidnatrium, sodium nitroprussate, sodium nitrosylpentacyanoferrate, or disodium pentacyanonitrosylferrate. This reagent may be used only in conjunction with the Marquis reagent; and
- (15) Zwikker reagent.

(c) The following instruments shall be the only instruments approved by the director of the KBI for instrument-based field tests:

- (1) B&W Tek TacticID®-N handheld Raman analyzer, without utilizing the "mixture ID" software feature; and
- (2) Thermo Scientific TruNarc™ handheld narcotics analyzer. (Authorized by and implementing K.S.A. 22-2902c; effective March 11, 2005; amended June 17, 2005; amended Sept. 20, 2019.)

Article 23.—KANSAS ASSET SEIZURE AND FORFEITURE REPOSITORY

10-23-1. Definitions. As used in this article of the KBI's regulations, each of the following terms shall have the meaning specified in this regulation:

- (a) "Director" means director of the KBI.
- (b) "KBI" means Kansas bureau of investigation.
- (c) "Law enforcement agency" means any Kansas entity vested by law with a duty to maintain public order or to make arrests for violations of the laws of Kansas or ordinances of any Kansas municipality. A law enforcement agency is deemed a seizing agency when the law enforcement agency makes a seizure for forfeiture.
- (d) "Repository" means the Kansas asset seizure and forfeiture repository.
- (e) "Seizing agency" has the meaning specified in K.S.A. 60-4102, and amendments thereto. (Au-

thorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

10-23-2. Accuracy and completeness; duplicate reporting prohibited. Each law enforcement agency shall ensure the accuracy and completeness of all information that the law enforcement agency submits to the repository. No law enforcement agency shall knowingly provide a duplicate of any report required by the repository. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

10-23-3. Means of reporting. The information reported to the repository shall be submitted electronically or on a paper form that has been approved by the director. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

10-23-4. Seizure for forfeiture report. Once a seizing agency submits a seizure for forfeiture report to the repository, the repository staff shall review the report. Repository staff shall contact the seizing agency if the staff has any questions about the report. If the seizure for forfeiture report needs to be changed, the seizing agency shall submit an amended report to the repository within 30 calendar days of the date on which the repository staff requests an amended report. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

10-23-5. Forfeiture fund report. (a)(1) Once a law enforcement agency submits a forfeiture fund report for the preceding calendar year, the repository staff shall review the report.

(2) Repository staff shall contact the law enforcement agency if the staff has any questions about the forfeiture fund report. If the report needs to be changed, the law enforcement agency shall submit an amended report to the repository within 30 calendar days of the repository staff's request for an amended report.

(b) If a law enforcement agency had zero seizures for forfeiture during the preceding calendar year, the law enforcement agency shall provide verification to the repository of no activity on the forfeiture fund report on or before the following February 1.

(c) Repository staff shall electronically send a request to complete a forfeiture fund report to all law enforcement agencies that have not met the requirements of paragraph (a)(1) or subsection (b). Each law enforcement agency that receives

the request to complete a forfeiture fund report shall provide the repository with a forfeiture fund report or an electronic signature confirming zero seizures for forfeiture during the preceding calendar year. Each law enforcement agency that receives the request to complete a forfeiture fund report shall respond to the repository within 30 calendar days of the date on which the request was sent by the repository. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

10-23-6. Point of contact. With each annual submission of the forfeiture fund report, each law enforcement agency shall provide the repository with a point of contact for the law enforcement agency, including name, phone number, electronic-mail address, and mailing address. Each law enforcement agency shall notify the repository within 30 calendar days of any change in the point of contact's information. (Authorized by and implementing K.S.A. 2018 Supp. 60-4127; effective June 21, 2019.)

Article 24.—KANSAS SCRAP METAL DATA REPOSITORY

10-24-1. Definitions. As used in this article of the KBI's regulations, each of the following terms shall have the meaning specified in this regulation:

- (a) "KBI" means Kansas bureau of investigation.
- (b) "Repository" means the Kansas scrap metal data repository.
- (c) "Seller" means an individual selling regulated scrap metal to a scrap metal dealer.
- (d) "Transaction" means the purchase or receipt of any junk vehicle or regulated scrap metal by a scrap metal dealer that requires information to be recorded pursuant to K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6, and amendments thereto. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)

10-24-2. Information to be submitted.

For each transaction, each scrap metal dealer shall submit to the KBI the following information for entry into the repository:

- (a) The date and place of the transaction;
- (b) the seller's name, address, date of birth, and sex;
- (c)(1) The identifying number from the seller's driver's license, military identification card, passport, or personal identification license; or
- (2) the identifying number from the seller's official governmental document for a country other than the United States;
- (d) the license number, make, and model of the vehicle in which the junk vehicle or other regulated scrap metal is delivered in the transaction, if applicable;
- (e) a general description, made in accordance with the custom of the trade, of the predominant type of junk vehicle or other regulated scrap metal property purchased in the transaction;
- (f) the weight or quantity, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;
- (g) if a junk vehicle or vehicle part, a description of the junk vehicle or vehicle part, including the make, the model, and either the vehicle identification number or the serial number; and
- (h) the name of the individual acting on behalf of the scrap metal dealer in making the purchase. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)

10-24-3. Manner of submission. Each scrap metal dealer shall submit the information specified in K.A.R. 10-24-2 to the repository either by using the KBI's electronic form online or by using a standard software interface to electronically transfer the information from the scrap metal dealer's transaction storage system to the repository. (Authorized by and implementing K.S.A. 2019 Supp. 50-6,110, as amended by L. 2019, ch. 66, sec. 6; effective, T-10-5-4-20, July 1, 2020; effective Sept. 11, 2020.)

Agency 11
Kansas Department of Agriculture—
Division of Conservation

Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 40, powers, duties and functions of the State Conservation Commission were transferred to the Kansas Department of Agriculture, Division of Conservation. See L. 2011, Ch. 135.

Articles

- 11-1. WATER RESOURCES COST-SHARE PROGRAM.
- 11-2. HIGH PRIORITY COST-SHARE PROGRAM. (*Not in active use.*)
- 11-3. WATERSHED DAM CONSTRUCTION PROGRAM.
- 11-4. MULTIPURPOSE SMALL LAKES PROGRAM.
- 11-5. COST-SHARING FOR LAND TREATMENT ABOVE MULTIPURPOSE SMALL LAKE PROJECTS. (*Not in active use.*)
- 11-6. WATER SUPPLY RESTORATION PROGRAM.
- 11-7. NON-POINT SOURCE POLLUTION CONTROL FUND.
- 11-8. LAND RECLAMATION PROGRAM.
- 11-9. KANSAS WATER QUALITY BUFFER INITIATIVE.
- 11-10. WATER RIGHTS PURCHASE PROGRAM.
- 11-11. IRRIGATION TRANSITION ASSISTANCE PROGRAM. (*Not in active use.*)
- 11-12. WATER RIGHT TRANSITION ASSISTANCE PILOT PROJECT PROGRAM.
- 11-13. KANSAS SEDIMENT AND NUTRIENT REDUCTION INITIATIVE.

**Article 1.—WATER RESOURCES
COST-SHARE PROGRAM**

11-1-1. (Authorized by K.S.A. 1982 Supp. 2-1904, 2-1915; implementing K.S.A. 1982 Supp. 2-1915; effective, E-81-26, Sep. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; revoked, T-88-18, July 1, 1987; revoked May 1, 1988.)

11-1-2 and 11-1-3. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, E-81-26, Sep. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-86-43, Dec. 18, 1985; amended May 1, 1986; revoked, T-88-18, July 1, 1987; revoked May 1, 1988.)

11-1-4 and 11-1-5. (Authorized by K.S.A. 1982 Supp. 2-1904, 2-1915; implementing K.S.A. 1982 Supp. 2-1915; effective, E-81-26, Sep. 10, 1980; effective May 1, 1981; amended May 1,

1982; amended May 1, 1983; revoked, T-88-18, July 1, 1987; revoked May 1, 1988.)

11-1-6. Definitions. (a) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply conservation or pollution control practices.

(b) "Commission" means the state conservation commission.

(c) "District" means a conservation district that is a political subdivision of the state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(d) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved soil and water conservation and pollution control practices.

(e) "Landowner" means a private or public owner of land or group of persons owning land within the district or, if excepted by the commission, an adjacent district.

(f) “Practice” means a land treatment or management practice constructed or implemented to effect soil erosion control, pollution control, water conservation, and water supply.

(g) “Total maximum daily load” and “TMDL” mean state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant-reduction goals developed and strategies implemented.

(h) “Water resources cost-share program” and “WRCSP” mean a state-financed cost-share program providing financial assistance to landowners for the installation of conservation and water quality practices for the restoration and protection of Kansas water resources. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

11-1-7. Allocation of water resources cost-share program funding. (a) Appropriation for the water resources cost-share program may be used for financial assistance to construct conservation and water quality practices or to contract for technical expertise, with specific allocations for each recommended annually by the commission and approved by the governor and legislature.

(b) The allocation of WRCSP funds shall be made by the commission on or after July 1 to districts or other entities receiving funds.

(c) Appropriated funds for cost-share assistance shall be allocated to districts under three accounts:

(1) The district needs allocation (DNA) shall represent a portion of the total WRCSP appropriation and shall be allocated to all districts. The total amount of the appropriation dedicated to the DNA shall be recommended by the commission and shall be subject to approval by the governor and legislature. The DNA may be used for eligible conservation and water quality improvement practices as determined by the conservation districts. The approved DNA shall be allocated to districts based on the following criteria:

(A) Non-federal rural acres: one point for each 100,000 acres, with a maximum point total of eight;

(B) water quality: ranging from one point for districts in low sedimentation areas up to eight points for districts in high sedimentation areas; and

(C) water quantity: ranging from one point for districts in areas of high rainfall and significant surface water storage up to eight points for dis-

tricts in areas of low rainfall, limited surface water storage, and depleting groundwater supplies.

(2) The water quality (WQ) or total maximum daily load (TMDL) allocation shall represent a portion of the balance of the appropriation remaining after the DNA is deducted. WQ or TMDL funds may be allocated by the commission to districts if the following requirements are met:

(A) The WQ allocation shall be used only in targeted areas identified by the state water plan and commission for eligible practices that address sedimentation, nutrient and pesticide runoff, and bacteria from livestock waste.

(B) The TMDL allocation shall be utilized in the identified watersheds for only those practices that address the impairment for which the TMDL was established.

(3) The annual irrigation initiative allocation (IIA) shall be made by the commission in accordance with the following criteria:

(A) The amount remaining after the DNA and WQ allocation are deducted;

(B) commission-developed targeting criteria based on irrigation water use in areas of major groundwater decline;

(C) state water plan priority areas;

(D) other priority areas with declining groundwater supplies as identified by the governor, legislature, agencies, groundwater management and conservation districts; and

(E) any other criteria determined by the commission to meet the water resource goals and objectives of the state. (Authorized by and implementing K.S.A. 2-1915; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

11-1-8. Conservation district program.

Each participating district board of supervisors shall develop and submit to the commission for approval, upon commission-prescribed forms, the district’s fiscal year financial assistance program under the following provisions: (a) The district shall develop the program after receiving the state program forms and a list of eligible practices from the commission.

(b) Each participating district shall develop annual financial assistance prioritization criteria following commission guidelines, upon which the district shall base its considerations for cost-sharing.

(c) In the installation of any eligible practices, the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and regulations.

The landowner also shall be solely responsible for obtaining all permits, licenses, or other instruments of permission required before the installation of the proposed practice.

(d) Unless a special allowance is granted by the commission, the minimum standards of design, construction, operation, and maintenance specified in section IV of the "Kansas field office technical guide," as adopted by reference in K.A.R. 11-7-14 and the other standards adopted by the commission in K.A.R. 11-7-14 shall be the basis for determining the need and practicability of the proposed practice. Specifications for additional soil and water conservation and water quality pollution control practices not set forth in section IV of the "Kansas field office technical guide," and modifications to those included in the technical guide may be considered and authorized by the commission at the request of the district. Practice descriptions and specification information shall be on file in the district office.

(e) A responsible technician or a qualified representative of the district, as determined by the district board of supervisors, shall inspect the work in progress to determine that all specifications are met. Following each installation, the district shall certify to the commission that the practice was properly installed.

(f) Financial assistance levels set by the district shall not exceed 70% of the actual cost or the countywide average cost, whichever is less, and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(g) The maximum amount of financial assistance allowed for each practice, except \$20,000 for livestock waste systems and irrigation systems, shall be \$10,000 unless exempted by the commission.

(h) Each district shall submit to the commission, in writing, all amendments to the district program for commission approval or disapproval. The only permissible amendments shall be the following:

(1) Changes in district representatives authorized to sign cost-share forms;

(2) the addition of conservation practices within the current year; and

(3) county average costs under exceptional circumstances. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

11-1-9. Financial assistance contract. (a) Each request for a financial assistance payment shall

be submitted to the district on forms prescribed by the commission. All requests submitted on commission-prescribed forms shall be considered for approval or disapproval by the district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission requirements and procedures shall be followed in the submittal of financial requests.

(c) The actual cost or county average cost, whichever is less, shall be used as a basis for determining financial assistance earned.

(d) (1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(e) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(f) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(g) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(h) Contract cancellation and amendments of an approved contract shall be considered by the district for approval or disapproval and shall be duly recorded in the regularly scheduled board of supervisors' meeting minutes. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(i) Each applicant implementing a livestock waste control system funded from the water re-

sources cost-share program shall ensure that the system meets the requirements specified in K.A.R. 11-7-14.

(j) The district shall submit the original of each completed and signed contract, on a commission-approved form, to the commission for approval or disapproval. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

11-1-10. Cancellation of funds. (a) A status report of all active contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall become void.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be individually evaluated by the commission and may be encumbered and continued for one or more years or may become void.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one or more years.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may expire and become void, if not extended by the commission.

(g) Any contract may be extended by the commission if the contract is determined by the commission to be highly significant in pollution reduction. (Authorized by and implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

11-1-11. Contract between the landowner and the state conservation commission.

(a) Each applicant for financial assistance shall sign a contract on the form or forms approved by the commission.

(b) The applicant shall agree to maintain the practice according to maintenance procedures prescribed by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract pro-

visions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

(4) more than seven years but eight or fewer years: 40%;

(5) more than eight years but nine or fewer years: 20%; and

(6) more than nine years but 10 or fewer years: 10%.

(d) Each recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or any other actions to ensure satisfactory operation and continued pollution control, at the recipient's expense.

(e) Each financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities specified in the event of new ownership of the property where the practice was installed.

(f) If a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within the time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply.

(g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

(1) Natural disasters;

(2) faulty design or construction, as determined by the commission; or

(3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

11-1-12. Special projects. (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the pur-

pose of cost-sharing or contributing to special projects that the commission considers necessary and of high priority for the abatement of soil erosion and water pollution, and for conservation of water resources.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for future soil and water conservation and water quality needs.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be essential to increasing the effectiveness and efficiency of the cost-share program.

(c) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

11-1-13. Irrigation funding procedures.

(a) Eligible applicants shall include the following:

- (1) Landowners; and
- (2) tenants or operators granted authority by landowners through power of attorney.

(b) If cost-share funds are utilized to convert nonirrigated land, which is also known as land with no water right, an equal amount of previously irrigated land shall be taken out of irrigated production, unless an exception is granted by the commission.

(c) Before project approval, the applicant shall provide the district with verification of the following:

- (1) The allowable pump rate;
- (2) the location and the amount of the land authorized for irrigation; and
- (3) a valid water right in good standing.

(d) Each approved applicant for irrigation practice financial assistance shall review and sign a conservation plan of operations (CPO) and an irrigation development plan prepared by the natural resources conservation service. Failure to implement the requirements of the CPO due to neglect by the irrigator may result in payback of cost-share funds by the recipient according to the guidelines specified in K.A.R. 11-1-11.

(e) Each application for financial assistance for irrigation practices shall meet eligibility requirements based on the estimated cost of potential

water savings. Potential water savings shall be determined using table KS6-1 of the natural resource conservation service's "irrigation guide," as in effect January 2002 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

11-1-14. Petition for reconsideration.

(a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

Article 2.—HIGH PRIORITY COST-SHARE PROGRAM

11-2-1 to 11-2-3. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; revoked, T-88-18, July 1, 1987; revoked May 1, 1988.)

11-2-4 to 11-2-6. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1986, Ch. 7; implementing K.S.A. 2-1915, as amended by L. 1986, Ch. 7; effective, T-88-18, July 1, 1987; effective May 1, 1988; revoked Aug. 23, 2002.)

Article 3.—WATERSHED DAM CONSTRUCTION PROGRAM

11-3-1. Definitions. (a) "Appurtenant works" means the following:

- (1) The primary spillway;
- (2) other conduits through a dam;
- (3) valves;
- (4) the auxiliary spillway;
- (5) the service spillway;
- (6) the stilling basin;
- (7) any constructed outlet channel;

(8) all dikes and berms designed and constructed to protect a dam;

(9) drains; and

(10) all other features constructed to protect or operate a dam.

(b) “Breach” means a gap or an opening in an embankment or auxiliary spillway that results in the complete loss of reservoir storage.

(c) “Breach analysis” means an analysis performed by a licensed professional engineer to determine the areas that would be inundated if a dam failed.

(d) “Chief engineer” means the chief engineer, division of water resources, department of agriculture.

(e) “Commission” means the state conservation commission.

(f) “Decommissioning” means the removal of a dam, the appurtenant works, and the embankment.

(g) “Detention dam” means a single-purpose dam designed for the temporary storage of floodwaters and for the controlled release of those floodwaters.

(h) “District” means a watershed district, drainage district, or any other special-purpose district that has been organized and incorporated according to appropriate statutes and has the power to levy taxes and the power of eminent domain.

(i) “Embankment” means a dam’s principal barrier made of earth or rock fill or a combination of earth and rock fill.

(j) “General plan” means a preliminary engineering report describing the characteristics of the project area, and the nature and methods of dealing with the soil and water problems within the project area. The general plan shall include maps, descriptions, and other data as necessary for the location, identification, and establishment of the scope of the work to be undertaken and any other relevant data and information that the chief engineer may require.

(k) “Grade stabilization dam” means a structure designed to control the erosion of a watercourse.

(l) “Hazard” means any situation that creates the potential for adverse consequences that may include loss of life, property damage, and any other adverse impact.

(m) “Inundation area” means the area below a dam that would be inundated with water as determined by conducting a breach analysis.

(n) “Operation and maintenance” means the actions or upkeep, or both, necessary for a dam to continue to function properly, including the following:

(1) Woody vegetation control;

(2) grass seeding;

(3) burrowing animal control;

(4) the repair of minor erosion, cracks, animal burrows, and minor settling;

(5) the care of pipes, piezometers, drains, valves, gates, and other mechanical devices;

(6) the replenishment and proper placement of riprap;

(7) the removal of debris from spillways; and

(8) any other actions necessary for upkeep.

(o) “Permit” means the formal document issued by the chief engineer or other issuing agency to the district authorizing the construction or rehabilitation of a project.

(p) “Project” means the construction or rehabilitation of a detention dam or grade stabilization dam.

(q) “Rehabilitation” means any work, except work required due to inadequate operation and maintenance, to extend the service life of a dam and to meet the applicable safety and performance standards.

(r) “Structure condition report worksheet” means a current physical assessment of a rehabilitation project on a form prescribed by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-2. Application for construction. (a) Any organized watershed district, drainage district, or other special-purpose district interested in state assistance may apply for state cost-share assistance funds appropriated for the construction of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission. All applications shall be due at the commission office on or before April 1 to be included in the evaluation process for possible funding during the next fiscal year.

(b) Each district submitting an application shall employ or acquire the services of a person knowledgeable of watershed dam construction administrative procedures, who shall be known as the contracting officer for the proposed site.

(c) Each recipient of state cost-share assistance for construction shall submit an inundation area map before the final payment is made. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915,

and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-3. Permit to construct or rehabilitate. Before the allocation of funds to any project and before any district advertises for bids, the district shall submit the following to the commission:

(a) A copy of the permit to construct or rehabilitate, as issued by the chief engineer; and

(b) an updated general plan. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-4. Allocation of funds. (a) An evaluation of applications shall be made by the commission to determine the priority ranking for all proposed projects. In addition, an amount that is contingent on appropriations shall be determined for projects in each district and other dams as authorized by the legislature.

(b) The maximum cost-share level for construction or rehabilitation costs, including engineering and inspection costs, shall be 80 percent. The maximum annual assistance per structure or district shall be \$120,000, except when uncommitted funds are available after all eligible structures have been funded. These uncommitted funds may be used to provide additional cost-sharing above the maximum limit. Assistance funds shall not be used for easements or administrative costs, except on rehabilitation projects if the commission determines that easements within the inundation area are the most cost-effective alternative.

(c) The standard bidding procedures of the department of administration shall be used in the bidding process for approved applications for state assistance.

(d) Adequate accounting and fiscal records shall be maintained by the district to reflect the receipts and expenditures of all funds of the project.

(e) The district shall submit project documents and relevant information as required by the commission.

(f) The district shall construct or cause the project to be constructed to final completion in accordance with the plans and specifications approved by the chief engineer. (Authorized by

K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-5. Contract. (a) Each contract shall be a fund-obligating document and shall include the contractual provisions required by the commission and the state.

(b) Any contract not completed by the end of the fiscal year in which appropriation was made may be extended upon written request. (Authorized by K.S.A. 2-1904, K.S.A. 2004 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2004 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-6. Partial payments. Partial payments of appropriated funds shall be made to the district no more often than once each month. Each partial payment shall be requested on a form furnished by the commission. All partial payments shall be documented by construction or rehabilitation progress reports. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-7. Notification of completion. (a) The district shall notify the commission and the chief engineer when the district's approved project is complete and ready for final inspection.

(b) The notification to the commission shall include the following:

(1) The date of completion of the project; and

(2) an itemized list of all costs of the following:

(A) Construction or rehabilitation; and

(B) engineering inspections and geological investigations.

(c) The district shall submit a request for final payment of state funds for the project on a form provided by the commission, after the issuance of the certificate of completion by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-8. Alterations to project plan. Each alteration of or change order regarding any original construction or rehabilitation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-9. Supplemental application procedures. Each supplemental request of funds for costs of construction or rehabilitation and engineering costs exceeding the approved funding shall be submitted on a form supplied by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-10. Inspection. The district shall conduct an annual operation and maintenance inspection of each completed new or rehabilitated state-funded structure and shall file an inspection report on a form provided by the commission. The district shall submit a copy of the inspection report to the commission and chief engineer. The district shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-11. Application for rehabilitation. (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner as authorized by the legislature that is interested in state assistance may apply for state cost-share assistance funds appropriated for the rehabilitation of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission.

(b) Each applicant shall submit a letter of intent to the commission by July 1 for a specific rehabilitation project to be considered for funding in the next fiscal year. The letter of intent shall include the following:

- (1) A preliminary rehabilitation design;

- (2) a preliminary cost estimate for the rehabilitation;

- (3) a cost estimate for a breach analysis;

- (4) the hazard classification; and

- (5) the structure condition report worksheet.

The chief engineer shall be notified upon commission receipt of all rehabilitation applications.

(c) At the beginning of each fiscal year, each applicant shall be notified of the applicant's priority ranking by the commission. Each applicant with a priority ranking high enough to be selected for possible funding shall complete the detailed design, total cost, and financial assistance funding requirements using forms prescribed by the commission.

(d) The components eligible for financial assistance for the dam and appurtenant works, inundation area delineation, or inundation area easements shall include the following:

- (1) The engineering fees;

- (2) the construction or repair of embankments;

- (3) excavation;

- (4) metal, concrete, and other components;

- (5) breach of a dam;

- (6) establishment of permanent vegetation;

- (7) fencing;

- (8) riprap or filter material;

- (9) decommissioning;

- (10) upgrade of a spillway;

- (11) acquisition of inundation area easements;

- (12) inundation area mapping; and

- (13) any other components that the commission deems necessary.

(e) Each request for financial assistance for any rehabilitation required because of deficient operation and maintenance shall receive the lowest priority for funding. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

11-3-12. Application for financial assistance for inundation area mapping. (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner authorized by the legislature may apply for state financial assistance for inundation area mapping. Each application shall be submitted on a form prescribed by the commission.

(b) Each application for financial assistance for inundation area mapping within a district shall include the following:

(1) The identification of each person whose services will be employed to complete the map;

(2) an acknowledgement that the services specified in paragraph (b) (1) will be conducted by a licensed professional engineer; and

(3) a summary of how the district will use the inundation area map to encourage the prevention of future inundation area development.

(c) Prioritization for funding shall include consideration of the following factors:

(1) The applicant's plan for using the dam inundation map to encourage prevention of future inundation area development;

(2) the amount of funding provided by the district for each inundation area mapping application;

(3) any application that includes a strategic inundation area mapping plan. The plan shall include the district's prioritized mapping completion timelines to address inundation area mapping for all dams in the district; and

(4) other relevant criteria identified by the commission that mitigate hazards associated with watershed dams. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

Article 4.—MULTIPURPOSE SMALL LAKES PROGRAM

11-4-1. Definitions. (a) "Authorized representative" means the individual designated by the sponsor to be responsible for all correspondence. The authorized representative shall be the point of contact for the proposed project.

(b) "Bathymetric survey" means a survey recording the water depth of a reservoir at various points.

(c) "Commission" means the state conservation commission.

(d) "Cost-share limit" means the limitation of state funds as established by statute for class I, class II, and class III projects.

(e) "Land treatment" means a structure or conservation practice that shall constitute a viable method of erosion abatement or sediment and pollution control.

(f) "Phase I letter of interest" means an initial written request from a sponsor for a determination of whether a proposed project is eligible for funding.

(g) "Phase II letter of intent" means a letter providing the necessary information for establishing the funds required for a proposed project. Project

plans, budgets, and schedules shall be developed in sufficient detail to support the funding request. An approved general plan, which shall be submitted with the letter of intent, shall supply detailed information to allow comparison with other projects. The signed letter of intent and supporting documentation shall be reviewed by the state water-related agencies. An order of priority for the proposed projects shall be established from the information provided in the letter of intent and recommendations from the reviewing agencies.

(h) "Phase III application" means the application for the appropriated funds for a project. This term shall include construction documents including technical specifications, contract documents, bidding plans and procedures, and documentation showing that all required permits, titles, or options on the necessary lands and easements have been obtained.

(i) "Program" means the multipurpose small lakes program.

(j) "Project" means construction or renovation of a multipurpose small lake structure by the sponsor, including acquisition of land rights and installation of land treatment structures, dams, and recreation facilities.

(k) "Renovation," as defined in K.S.A. 82a-1603 and amendments thereto, shall include the act of restoring an existing structure to safe and efficient functioning for the original purpose or for a new purpose.

(l) "Renovation plan" means a plan that outlines the scope of work of the project and shall include the following:

(1) A benefit and cost analysis;

(2) documentation of how the renovation will return the structure to its original purpose or a new purpose; and

(3) basic construction and hydrologic data for planning purposes. (Authorized by and implementing K.S.A. 2005 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-2. Phase I letter of interest. (a) Each prospective sponsor of new construction shall submit a phase I letter of interest to the commission to determine if the proposed project will qualify for the program. The letter of interest shall be submitted on a form furnished by the commission.

(b) In the phase I letter of interest for renovation of an existing lake, the sponsor shall provide the commission with evidence that the proposed

project meets the following initial eligibility requirements:

(1) The lake shall currently provide local public water supply benefits or be reasonably expected to do so in the future.

(2) The dam impounding the lake shall not be considered hydrologically inadequate or unsafe by the chief engineer.

(c) The phase I letter of interest shall be reviewed by the commission, and the sponsor shall be notified in writing if the proposed project qualifies for funding or does not qualify. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

11-4-3. Phase II letter of intent. (a) (1) Any sponsor may submit a phase II letter of intent following receipt of a letter from the commission acknowledging that the proposed project is eligible for possible funding. The letter of intent, submitted on a form furnished by the commission, shall include an approved general plan, if applicable.

(2) Each proposed project involving community development block grant funds shall include a copy of an application for these funds. If the grant conditions change or new grants are awarded anytime after submittal of the proposal, the sponsor shall forward the most current version to the commission.

(3) The sponsor shall include an agricultural impact statement and resources inventory when five acres or more of prime agricultural land is taken under the power of eminent domain, if applicable.

(b) In addition to meeting the requirements specified in subsection (a), the sponsor of a renovation project shall submit a renovation plan with the letter of intent.

(c) The consideration of renovation projects shall be based on the following criteria:

- (1) The water supply status of the lake;
- (2) the back-up water supply source;
- (3) any prior use of multipurpose small lake program funds;
- (4) the population served by the lake;
- (5) the age of the lake;
- (6) the loss of storage capacity due to sedimentation;
- (7) the location of the lake relative to a total maximum daily load area;
- (8) the current and potential recreational uses of the lake;

(9) the availability of bathymetric surveys and studies of the lake;

(10) the sedimentation rate; and

(11) a plan for prevention of future sedimentation.

(d) The original of the phase II letter of intent, plus one copy for each reviewing agency, shall be submitted to the commission no later than June 1 to be considered in the budget request for the next fiscal year. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-4. Review process. (a) The agencies reviewing each phase II letter of intent shall include the following:

- (1) Kansas department of health and environment;
- (2) division of water resources, Kansas department of agriculture;
- (3) Kansas department of wildlife and parks;
- (4) Kansas biological survey at the university of Kansas;
- (5) Kansas state historical society; and
- (6) Kansas water office.

(b) Each agency's review comments shall be considered by the commission in the priority-ranking process. The proposed projects not recommended for funding shall be returned to the sponsor with the reasons for rejection. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-5. Funding. Each project recommended for funding through the review process and approved by the commission shall be included as a line item in the commission's budget request. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

11-4-6. Phase III application. (a) After funds have been appropriated by the legislature for a project, the sponsor shall submit to the commission a phase III application. The application shall be submitted on a form furnished by the commission.

(b) The sponsor shall be responsible for securing all required permits before a state contract

may be authorized. A copy of each required permit shall be furnished to the commission before any construction or renovation reimbursements are made.

(c) In addition to meeting the other requirements of this regulation, the sponsor of each renovation project shall submit a pre-excavation bathymetric survey estimating the volume of sediment to be excavated and a plan to address the safe handling and disposing of contaminants.

(d) The contractor selection committee shall include a representative of the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

11-4-7. State contract. (a) Each contract between the commission and the sponsor shall include the contractual provisions required by the commission and the state.

(b) Any contracts not completed by the end of the fiscal year in which appropriation was made may be extended by the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-8. Procedures. (a) Each engineering plan submitted to the chief engineer shall reflect economical design and shall conform to or exceed the construction requirements of the chief engineer.

(b) Each sponsor shall have acquired fee simple title or any other estate or interest in the site of the project, including all necessary easements and rights-of-ways, to ensure undisturbed use and possession for the purpose of construction, operation, and maintenance for the life of the project.

(c) Standard bid procedures of the department of administration shall be used in the bidding process for construction projects.

(d) Standard bid procedures of the department of administration and the bid procedures of the commission shall be used in the bidding process for renovation projects.

(e) The sponsor shall maintain adequate accounting and fiscal records to reflect the receipt and expenditure of all funds on the project.

(f) The sponsor shall submit relevant documents and information as required by the commission.

(g) The sponsor shall ensure that a bid bond and a performance bond are secured by the contractor.

(h) The sponsor shall complete the project in accordance with the application, plans, specifications, and any modifications approved by the chief engineer. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-9. Partial payments. (a) Partial payments of appropriated state funds shall be made by the commission to the sponsor no more often than once each month. Each partial payment shall be requested by the sponsor on a form furnished by the commission. All claims shall be documented by the sponsor as directed by the commission.

(b) Each partial payment request shall include a project progress report. Partial payments shall be made in proportion to the work completed on the project.

(c) Until final certification is made by the chief engineer, 10 percent of the total project cost-share shall be retained by the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

11-4-10. Notification of completion. (a) The sponsor of a construction project shall notify the commission and the chief engineer when the project is completed and ready for final certification by the chief engineer. The notification of completion shall be submitted on a form supplied by the commission and shall include the following:

(1) The date of completion of the project;

(2) an itemized list of all costs of construction, engineering, surveys, geological investigations, inspections, and land acquisition; and

(3) a request for final payment of funds for the project.

(b) The sponsor of a renovation project shall notify the commission when the project is completed. The notification of completion shall be submitted on a form supplied by the commission and shall include the following information:

(1) The date of completion of the project;

(2) an itemized list of all costs of restoration, engineering, surveys, geological investigations, inspections, and land acquisition costs;

(3) a final bathymetric survey and a determination of the final excavated volume; and

(4) a request for final payment.

(c) Final disbursement of the funds due from appropriated state funds shall be made after receipt of final certification from the chief engineer. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-11. Modifications to construction or renovation plan. Each modification of the original construction or renovation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

11-4-12. Amendment to costs of project.

(a) The sponsor shall notify the commission of all increases in costs and of all proposed additions to, deletions from, and modifications of the project.

(b) The sponsor may submit an amendment to the application for state funds to the commission for costs of construction, engineering, and land rights above the approved application funding. The amendment shall be submitted on a form furnished by the commission and shall include any documentation required by the commission.

(c) After review by the commission, each approved amendment for increased funding shall be designated as either of the following:

(1) Funded from appropriations made available for necessary amendments; or

(2) included as a line item request in the commission budget.

(d) Each amendment that is not approved shall be returned to the sponsor with each reason for rejection. The sponsor may appeal the nonapproved amendment in writing by requesting a hearing with the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

11-4-13. Maintenance. The sponsor shall provide maintenance of the completed structure throughout its designed life or useful life, which-

ever is longer. The sponsor shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-14. Annual inspection. The sponsor shall ensure that an annual operation and maintenance inspection of the completed structure is made. The inspection shall be made by a person experienced in dam operation and maintenance. The sponsor shall submit a copy of the operation and maintenance inspection report, on a form provided by the commission, to the commission and chief engineer. (Authorized by and implementing K.S.A. 2005 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

11-4-15. Eligible components of renovation projects. The eligible components of a renovation project shall include the following:

(a) Engineering;

(b) repair of embankments;

(c) construction of silt basins;

(d) mobilization and demobilization of equipment;

(e) excavation;

(f) removal of sediment from a reservoir;

(g) metal, concrete, and associated materials;

(h) inundation mapping; and

(i) land rights. (Authorized by K.S.A. 2005 Supp. 82a-1602; implementing K.S.A. 2005 Supp. 82a-1603(m), 82a-1604, 82a-1605, and 82a-1606; effective Sept. 22, 2006.)

11-4-16. Testing and disposal of sediment from reservoir. The testing of sediment by the sponsor may be required by the commission before or during excavation, or both. The sponsor shall be required to have one or more sufficient sediment storage basins for the disposal of excavated material. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective Sept. 22, 2006.)

Article 5.—COST-SHARING FOR LAND TREATMENT ABOVE MULTIPURPOSE SMALL LAKE PROJECTS

11-5-1 through 11-5-4. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 8; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; revoked Aug. 23, 2002.)

Article 6.—WATER SUPPLY RESTORATION PROGRAM

11-6-1. Definitions. (a) “Commission” means the state conservation commission.

(b) “Land treatment” means structures or conservation practices that constitute viable methods of erosion abatement or sediment and pollution control.

(c) “Letter of interest” means an initial written request from a sponsor for a determination of whether a proposed project is eligible for funding.

(d) “Letter of intent” means a letter providing the necessary information for establishing the funds required for a proposed project. Project plans and specifications, budgets, and schedules shall be developed in sufficient detail to support the funding request. The signed letter of intent and supporting documentation shall be reviewed by the environmental review agencies specified in K.A.R. 11-6-6.

(e) “Project” means the restoration of a water supply structure by a sponsor, including land treatment.

(f) “Public water supply” means a water supply that has beneficial municipal use.

(g) “Restoration” means the act of returning an existing water supply structure to safe and efficient functioning, including the installation or repair of erosion control measures and land treatment.

(h) “Restoration plan” means a document providing sufficient details to support the letter of intent.

(i) “Sponsor” means any of the following:

(1) A political subdivision of the state that has the power of taxation and the right to eminent domain;

(2) a public wholesale water supply district; or

(3) a rural water district.

(j) “Total maximum daily load” means the maximum amount of a pollutant that a body of water can receive without violating water quality standards.

(k) “Watershed protection” means land treatment that reduces sediment load and abates erosion.

(l) “Water supply structure” means a structure that impounds a public water supply. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

11-6-2. Eligible components of projects. The eligible components of a project shall include the following:

(a) Engineering, including project design, plans, and specifications;

(b) repairs of the structure and its appurtenant works;

(c) mobilization and demobilization of equipment;

(d) dredge and sediment disposal facilities; and

(e) watershed protection and restoration. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

11-6-3. Letter of interest. (a) Each prospective sponsor shall submit a letter of interest to the commission to determine if the proposed project is eligible for consideration for funding. The letter of interest shall be submitted on a form furnished by the commission.

(b) In the letter of interest, the sponsor shall provide the commission with evidence that the proposed project meets the following initial eligibility requirements:

(1) The structure shall currently provide local public water supply benefits or be reasonably expected to do so in the future.

(2) The sponsor shall demonstrate that existing or planned infrastructure and practices are capable of preserving the improvements and address watershed protection.

(c) The letter of interest shall be reviewed by the commission and the Kansas water office. The sponsor shall be notified in writing whether the proposed project is eligible for consideration for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

11-6-4. Letter of intent. (a) Any sponsor may submit a letter of intent following receipt of a letter from the commission acknowledging that the proposed project is eligible for consideration for funding. The letter of intent, submitted on a form furnished by the commission, shall include a restoration plan as specified in K.A.R. 11-6-5.

(b) The sponsor shall submit the original of the letter of intent, plus one copy for each environmental review agency specified in K.A.R. 11-6-6, to the commission no later than June 1 to be considered in the budget request for the next state fiscal year. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

11-6-5. Restoration plan. (a) Each restoration plan shall consist of the following:

(1) Restoration scope;

(2) design plans and specifications;

(3) watershed protection plan, if applicable;

(4) cost estimates;

(5) project schedule; and

(6) any other relevant documents that pertain to renovation, protection, or restoration of the water supply structure, as determined by the commission.

(b) Each modification of the original restoration plan shall require the prior notification and approval of the commission. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

11-6-6. Review process. (a) Each letter of intent shall be reviewed by the environmental review agencies listed in K.S.A. 82a-326(b) and amendments thereto.

(b) Prioritization of projects shall be based on the following:

- (1) The current use of the water;
- (2) the population served;
- (3) the age of the structure;
- (4) any loss of storage capacity due to sedimentation or deficiencies, or both;
- (5) any documented efforts to provide watershed protection;
- (6) the status of operation and maintenance;
- (7) the current and potential recreational uses of the lake;
- (8) specification of whether the watershed has a high total maximum daily load;
- (9) any prior use of multipurpose small lake program funds;
- (10) the percentage of sponsor funding for the project; and
- (11) the proposed location of the project with respect to federal reservoirs that provide water supply.

(c) Each agency's review comments shall be considered by the commission in the final priority-ranking process. Each sponsor shall be notified in writing if that sponsor's proposed project is approved for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

Article 7.—NON-POINT SOURCE POLLUTION CONTROL FUND

11-7-1. Definitions. (a) "Animal unit" means a defined unit of measurement to determine the applicability of state and federal regulations and pollution potential of a confined feeding facility as defined by K.S.A. 65-171d, and amendments thereto.

(b) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply pollution control practices.

(c) "Commission" means the state conservation commission.

(d) "Confined feeding facility" is as defined in K.S.A. 65-171d (c)(2), and amendments thereto, exclusive of swine.

(e) "Critical or targeted water resources" means water resources that have been identified as exceptional and vulnerable.

(f) "District" means a conservation district that is a political subdivision of state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(g) "Exceptional value water resources" means any of the following:

- (1) A public water supply impoundment and associated tributary watershed;
- (2) a recharge area or groundwater capture zone of a public water supply well field;
- (3) a sole source aquifer;
- (4) a flowing stream and tributary watershed above a public water supply diversion;
- (5) a flowing stream and tributary watershed that sustains or supports habitats of threatened or endangered species;
- (6) a flowing stream and tributary watershed above the highest valued fishery resources;
- (7) a flowing stream and tributary watershed above reaches having any habitat of aquatic species in need of conservation; or
- (8) a flowing stream and tributary watershed above highly valued recreation areas.

(h) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved pollution control practices.

(i) "KDHE" means the Kansas department of health and environment.

(j) "Non-point source (NPS)" means any activity that is not required to have a national pollutant discharge system permit and that results in the release of pollutants to waters of the state. This release may result from precipitation runoff, aerial drift and deposition from the air, or release of subsurface brine or other contaminated groundwaters to surface waters of the state.

(k) "On-site wastewater system" means a system composed of a septic tank disposal field, a wastewater pond, or an alternative treatment system designed to treat wastewater from a single-family residence or business installed in compliance with

state regulations and county ordinances to prevent surface and groundwater contamination by disease-causing organisms, organic matter, chemicals, and nutrients.

(l) "Plan" means a locally developed, long-range comprehensive plan for the non-point source pollution control in a watershed, hydrologic unit, or county.

(m) "Pollution" means either of the following:

(1) Any contamination or other alteration of the physical, chemical, or biological properties of any waters of the state that will or is likely to create a nuisance or render these waters harmful, detrimental, or injurious to public health, safety, or welfare; to the plant, animal, or aquatic life of the state; or to other designated beneficial uses; or

(2) any discharge that will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(n) "Practice" means a land treatment or management practice constructed or implemented to effect pollution control.

(o) "Project work plan" means a detailed plan for a proposed project that is identified in the approved local non-point source pollution management plan.

(p) "State contract" means a contract between the commission and the district to prescribe the annually allocated amount of technical assistance and information and education funds and to prescribe expenditure guidelines for those funds.

(q) "State non-point source pollution management plan" means a process to identify measures to control pollutants discharged from non-point source pollution sources and shall also mean state and local programs for controlling non-point source pollution.

(r) "Total maximum daily load" means state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant reduction goals developed and strategies implemented.

(s) "Vulnerable water resources" means water resources that have a high probability of being contaminated. Factors that contribute to vulnerability shall include the following:

- (1) Infiltration recharge;
- (2) vadose zone characteristics;
- (3) depth to water table;
- (4) topography;
- (5) soil characteristics;
- (6) pollutant source concentration;

(7) pollutant characteristics;

(8) groundwater;

(9) surface water;

(10) precipitation;

(11) runoff;

(12) land cover; and

(13) proximity of the pollution to a stream or lake. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-2. Local non-point source pollution management plan. (a) The conservation district responsibility, with assistance from sponsors or cosponsors, shall be to coordinate the development and submission of a comprehensive local non-point source pollution management plan. Local, state, and federal agencies and the private sector shall be invited to assist in the development of the management plan.

(b) The management plan submitted to the commission shall include the following:

(1) Pollution reduction goals;

(2) a description and the location of the area included in the plan;

(3) a description of problems and potential problems;

(4) a description of proposed solutions, evaluation, and monitoring;

(5) estimated costs;

(6) the source of funding;

(7) an implementation schedule; and

(8) a list of participants in the development of the plan.

(c) An administrative review by the commission and a technical review by the following state and federal natural resource agencies shall be completed with recommendations consolidated by the KDHE:

(1) KDHE;

(2) United States natural resources conservation service;

(3) Kansas biological survey;

(4) Kansas corporation commission;

(5) Kansas geological survey;

(6) Kansas water office;

(7) Kansas forest service;

(8) Kansas department of wildlife and parks;

(9) Kansas department of agriculture;

(10) Kansas state university cooperative extension service; and

(11) United States environmental protection agency.

(d) The reviewer's recommendations shall be included in the plan as an amendment and incorporated into project work plans.

(e) The conservation district shall be notified in writing when the local non-point source pollution management plan is approved. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-3. Project work plan. (a) The conservation district shall coordinate the development and submission of a project work plan to request funds for a new or significantly modified existing project work plan to implement all or part of an approved management plan, or to report the implementation of a non-point source pollution control project that does not require additional state assistance.

(b) The project work plan submitted to the commission shall include the following:

- (1) A description of the water quality problem;
- (2) a description of the project area;
- (3) a priority designation;
- (4) the goals and objectives of the project;
- (5) evaluation procedures;
- (6) schedules and milestones;
- (7) a budget; and
- (8) a list of all participating organizations.

(c) Approval of a project work plan requesting state funds shall include the following:

- (1) An implementation schedule;
- (2) local initiatives;
- (3) utilization of existing state and federal programs; and
- (4) administration of the project to assure successful completion and consistency with the approved and amended local non-point source pollution management plan.

(d) Approved project work plans requesting funding from the non-point source pollution control fund shall be considered by the commission, if funds are available.

(e) Financial requests for new and existing project work plans shall be submitted to the commission using forms prescribed by the commission.

(f) Project work plans shall address at least one of the following water resources included in the state non-point source pollution management plan and assessment report:

- (1) Critical or targeted water resources;
- (2) exceptional value water resources; or
- (3) vulnerable water resources. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-4. Project work plan amendment. (a) An amendment to the project work plan may be submitted to the commission for review.

(b) An amendment that involves a funding increase and is approved shall be funded from available non-point source pollution control funds.

(c) An amendment that involves a funding increase and is not approved shall be returned with the reason for disapproval. Appeal may be made in writing within 15 days after the notice of disapproval. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-5. Allocation of non-point source pollution control funding. (a) When funds are available, any district with an approved local non-point source management plan shall annually request from the commission NPS funding for new and existing project work plans to implement specific elements of the plan and to request contract funds by April 1, using forms prescribed by the commission.

(b) Annual district allocations shall be made by the commission in accordance with the following criteria:

- (1) The amount of geographic inclusion in a state water plan priority area;
- (2) the identified areas or drainage addressing the protection of public water supply areas;
- (3) other locally identified priority areas;
- (4) the total maximum daily load project areas; and
- (5) any other criteria determined by the commission to meet the resource goals and objectives of the state. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-6. Contract funds. (a) The state contract shall provide for the distribution of non-point source pollution technical assistance, information, and education or nonfinancial assistance funds.

(b) A one-time advance of the annual allocation of either technical assistance or information and education funds, or both, shall be paid to each district by the commission after July 1, upon receipt of the signed contract.

(c) The amount allocated shall be a supplement to each district's uncommitted balance retained on June 30, to equal the current fiscal year allocation.

(d) Uncommitted funds held by each district on June 30 shall remain in each district account and

shall be deducted from the next fiscal year's annual advance if the contract is extended.

(e) If the contract is not extended or if uncommitted funds exceed the next fiscal year's allocation, the uncommitted funds shall be returned to the commission by the district within 10 days after the expiration of the contract or receipt of the next fiscal year's allocation.

(f) The district may employ a water quality coordinator to provide technical assistance. This coordinator shall be an employee of the district and shall be supervised by that district's board of supervisors or its designee.

(g) The technical assistance allocation shall be used solely for salaries, wages, and benefits as prescribed by the commission for the employment of any conservation district employee or employees, based on staff hours directly related to the implementation of the program, with funds accounted for on forms prescribed by the commission.

(h) The information and education allocation shall be used to fund activities that support implementation of the district non-point source pollution management plan and project work plans and shall be accounted for on forms prescribed by the commission and submitted to the commission by the requested date.

(i) Any district purchase, using state contract funds, of equipment exceeding \$500.00 in value shall be the property of the commission for five years or the life of the equipment, whichever is less, and shall require advance purchase approval of the commission. After five years, the equipment shall become the property of the conservation district.

(j) Transfers of either technical assistance or information and education funds to a district's financial assistance account may be allowed for reasons determined to be valid by the commission.

(k) Supplemental allocations to districts may be made by the commission for information and education projects.

(l) Each district shall follow the operations fund guidelines in K.S.A. 2-1907b, and amendments thereto, in its expenditure of state contract funds. (Authorized by and implementing K.S.A. 2-1915, 2-1904 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-7. Conservation district program. Each participating conservation district board of supervisors shall develop and submit to the commission for approval, using commission-prescribed

forms, the district's fiscal year financial assistance program under the following provisions:

(a) The district may develop the program after receiving the state program forms from the commission.

(b) The district shall select the non-point source pollution control practices from those identified in the project work plans that will best address pollution prevention and improvement.

(c) The district shall implement its adopted program policies upon approval by the commission.

(d) The financial assistance applicant shall follow the minimum standards of design, construction, operation, and maintenance as outlined in K.A.R. 11-7-12, 11-7-13, and 11-7-14.

(e) Financial assistance levels set by the conservation district shall not exceed 70% for private ownership and 50% for public entities and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(f) The maximum amount of financial assistance allowed for each practice shall not exceed \$10,000. However, the maximum amount of financial assistance allowed shall be \$1,000 for abandoned water well plugging and \$20,000 for livestock waste systems. The amounts specified in this subsection shall apply, unless exempted for reasons prescribed by the commission.

(g) Each district shall develop financial assistance prioritization criteria following commission guidelines and requirements in the funding of financial assistance contracts.

(h) Amendments to the district program shall be submitted, in writing, by the district to the commission and may be approved following commission-prescribed guidelines.

(i) Approval shall be obtained from the state historical preservation office before any expenditure of state funds on practices that impact national or state historic sites or other cultural resource areas. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-8. Financial assistance contract. (a) Each request for a financial assistance payment submitted by the district shall be recommended for approval by the conservation district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) The district shall review and recommend approval of requests for payment from the non-

point source pollution control fund on forms prescribed by the commission.

(c) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission guidelines and procedures shall be followed in the submittal of financial requests.

(d) The actual cost or county average cost, whichever is smaller, shall be used as a basis for determining financial assistance earned.

(e)(1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(f) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(g) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(h) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(i) Contract cancellation and amendments of an approved contract shall be recommended by the district and duly recorded in the regularly scheduled board of supervisors' meeting. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(j) The commission-prescribed maintenance agreement shall be signed by the applicant, who shall be the landowner or legal agent, with the original copy attached to the request for financial assistance submitted to the commission for approval. (Authorized by K.S.A. 1998 Supp. 2-1915 and K.S.A. 75-5657; implementing K.S.A. 1998

Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-9. Final payment. Final disbursement of funds due on the contract shall be made upon submission of request for payment on forms prescribed by the commission. Certification that the project is complete and that it meets all the requirements of the contract shall be required before final payment of funds. (Authorized by K.S.A. 82a-903; implementing K.S.A. 82a-951; effective May 21, 1990.)

11-7-10. Cancellation of funds. (a) A status report of all active NPS contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall be canceled.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be canceled.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one year.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may be canceled by the commission.

(g) Any contract may be extended by the commission beyond previously outlined guidelines if the contract is determined by the commission to be highly significant in pollution reduction and if other factors exist that are beyond the control of the applicant. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

11-7-11. Maintenance contract. (a) Each applicant for financial assistance shall sign form SCC/NPS-3 entitled "non-point source pollution control program application/contract for financial assistance."

(b) The applicant shall agree to maintain the practice according to recommended maintenance procedures adopted by the commission

for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro-rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

- (1) Five or fewer years: 100%;
- (2) more than five years but six or fewer years: 80%;
- (3) more than six years but seven or fewer years: 60%;
- (4) more than seven years but eight or fewer years: 40%;
- (5) more than eight years but nine or fewer years: 20%; and
- (6) more than nine years but 10 or fewer years: 10%.

(d) The recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or other actions to ensure satisfactory operation and continued pollution control at the recipient's expense.

(e) The financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities contained in the commission's "non-point source pollution control program application/contract for financial assistance" in the event of new ownership of the property where the practice was installed within the life span specified.

(f) When a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within a time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply.

(g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

- (1) Natural disasters;
- (2) faulty design or construction as determined by the commission; or
- (3) any other situation beyond the control of the financial recipient. (Authorized by and imple-

menting K.S.A. 1998 Supp. 2-1915; effective Dec. 27, 1999.)

11-7-12. On-site wastewater system. (a) The minimum standards established by the KDHE for design and construction of on-site wastewater systems outlined in KDHE bulletin 4-2, as in effect in March 1997, and the "environmental health handbook," written by the KDHE, Kansas state university cooperative extension service, and Kansas association of sanitarians and as in effect on January 1, 1999, are hereby adopted by reference. These minimum standards shall be superseded only by local ordinances requiring more stringent standards of design and construction.

(b) The standard for on-site waste system operation and maintenance outlined in Kansas state university cooperative extension publications MF-947, dated August 1998, and MF-2290, dated October 1997, shall be followed for all state financially assisted on-site wastewater projects and are hereby adopted by reference.

(c) Each on-site wastewater system shall be designed, inspected, and certified as complete by a local official according to locally adopted sanitary or environmental codes approved by KDHE and state design and permitting standards, before any state financial assistance payment is made.

(d) Only existing systems determined to be failing by the local county official or a KDHE representative shall be eligible for state financial assistance.

(e) Each district shall establish and apply applicant prioritization based on non-point source pollution water quality benefit criteria for all state financially assisted on-site wastewater systems.

(f) An alternative on-site wastewater treatment system that is other than a conventional soil absorption field or pond and that is authorized by the local health official and the commission shall be eligible for financial assistance if the lowest cost treatment system cost-share calculation is used.

(g) State financial assistance for an applicant for an on-site wastewater system shall not be available if the local health official reports the applicant to the county attorney for enforcement action under locally adopted ordinances. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-13. Abandoned water well plugging. (a) Any individual plugging abandoned water wells to control non-point source pollution

and receiving state financial assistance shall follow KDHE rules and regulations.

(b) Financial assistance for abandoned water well plugging shall not exceed \$1,000 for each well. However, an exception to the \$1,000 limit may be granted by the commission when circumstances warrant.

The procedures and minimum standards for plugging abandoned wells outlined in Kansas state university cooperative extension publication “plugging abandoned wells,” MF-935 (revised), as published January 1998 and hereby adopted by reference, shall be superseded only by more stringent local ordinances.

(c) All plugged abandoned wells shall be registered with the KDHE before financial assistance is paid. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-14. Livestock waste control systems.

(a) Only minimum pollution control measures shall be eligible for financial assistance.

(b) Expansion costs of a livestock waste control system requiring a design that accommodates more animal units than currently exist shall not be eligible for financial assistance unless the commission determines that an exception is warranted.

(c) Applicants relocating a confined feeding facility and receiving financial assistance shall be required to perform the following:

(1) Clean and properly dispose of waste from the existing facility;

(2) remove interior fencing and feeding facilities to render the site incapable of the confined feeding of animals; and

(3) plant vegetation at the abandoned facility that maximizes nutrient uptake as approved by the district.

(d) Financial assistance shall not be available for livestock waste control facilities over 999 animal units unless the commission determines that an exception is warranted.

(e) Sewage discharge from a home site shall not be deposited in a livestock waste facility of any type.

(f) A new livestock waste control facility that does not replace or modify an existing livestock waste control facility or confined feeding facility shall not be eligible for financial assistance.

(g) Partial payments shall not be available for livestock waste control systems, with the exception of grass seeding within the appropriate seeding dates.

(h) Only livestock waste systems approved by the KDHE and designed and certified as complete by a Kansas licensed professional engineer shall be eligible for state financial assistance. Exceptions may be granted by the commission for Kansas state university cooperative extension service designs approved by the KDHE for demonstration purposes.

(i) Confined animal feeding operators who incur court action for noncompliance with KDHE confined animal feeding operation regulations shall not be eligible for state financial assistance.

(j) The following minimum standards of design, construction, and operation of state financially assisted livestock waste management systems are hereby adopted by reference:

(1) “Animal and related waste control,” K.A.R. 28-18-1 through 28-18-15 and K.A.R. 28-18a-1 through 28-18a-32, effective Jan. 15, 1999; and

(2) section IV of the “Kansas field office technical guide,” as in effect on January 1, 2002, and the “agricultural waste management field handbook,” as in effect on January 1, 2002, published by the United States department of agriculture, natural resources conservation service, formerly known as the soil conservation service. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-15. Petition for reconsideration.

(a) A landowner who has been denied cost-share funding may appeal an adverse decision of the district by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days after the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Dec. 27, 1999; amended Aug. 23, 2002.)

11-7-16. Special projects. (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of contributing to special projects that the

commission considers necessary and important for the abatement of non-point source pollution.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for water quality protection and restoration.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be necessary to increase the effectiveness and efficiency of the cost-share program.

(3) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Aug. 23, 2002.)

Article 8.—LAND RECLAMATION PROGRAM

11-8-1. Definitions. In addition to the terms defined in K.S.A. 49-603, the following terms shall be defined as set out below. (a) “Site” means a tract or consolidated tracts of land which can be described by the operator as a single operating unit.

(b) “New site” means an area that has or will have affected land during the registration year but does not have affected land from any previous year.

(c) “Tons of material extracted” means tons of material sold through direct sales or tons of material consumed in the operation of a business, or both. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-603; effective June 19, 1995.)

11-8-2. Mining license renewal. (a) Each operator licensed by the director under K.S.A. 49-605 shall renew the mining license annually until all sites registered by that person have been properly reclaimed or transferred to another licensed operator. The mining license renewal fee, except for political subdivisions, shall be based on the annual tons of material extracted by the operator and shall be:

- (1) if less than 10,000 tons, \$25.00;
- (2) if between 10,000 tons and 99,999 tons, \$50.00;
- (3) if between 100,000 tons and 499,999 tons, \$100.00; and
- (4) if 500,000 tons or greater, \$150.00.

(b) The renewal application shall be signed by the operator or an authorized representative of the operator.

(c) Any operator who fails to renew the operator’s mining license before the expiration date shall be required to apply for a new license and pay the \$300 initial license fee established under K.S.A. 49-605, and amendments thereto. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-605; effective June 19, 1995.)

11-8-3. Initial site registration. (a) Each person, business, corporation, or political subdivision of the state of Kansas that engages in or intends to engage in operating a surface mine shall register the site with the director. In addition to the application requirements of K.S.A. 49-607 and amendments thereto, each application for site registration shall include the following:

(1) The name and license number of the operator;

(2) for each site that is active or inactive, the number of tons of material extracted and the number of acres of affected land created during the preceding year;

(3) the site registration fee, except for political subdivisions; and

(4) the signature of the operator.

(b)(1) The initial registration fee for each active site shall be \$45 per acre of land affected during the previous year and \$0.003 per ton of material extracted during the preceding year.

(2) The initial registration fee for each new site shall be \$45.

(3) The initial registration fee for each inactive site that is returning to active status shall be \$45.

(4) The minimum initial registration fee shall be \$45.

(5) The initial registration fee for each site active during the preceding year but being registered as inactive shall be as specified in paragraph (1) of this subsection.

(c) If more than one operator is extracting materials from a given site within the same time frame, then each operator shall register the site and distinguish each operator’s scope of operation and responsibility. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

11-8-4. Site registration renewal. (a) Each site registration shall be renewed annually. Each applicant for renewal of a site registration shall submit the renewal form to the director within 30 days before the expiration date of the registration.

(b) Each renewal form shall include the following, in addition to information required in K.S.A. 49-607 and amendments thereto:

(1) For each active site, the number of tons of material extracted and the number of acres of affected land created during the previous year; and

(2) the signature of the operator.

(c) (1) The minimum renewal fee shall be \$45.

(2) The annual site registration renewal fee for each active site shall be \$45 per acre of land affected during the previous year and \$0.003 per ton of material extracted during the previous year.

(3) The renewal fee for a site that was active during the previous year but is to be registered as an inactive site upon renewal shall be as specified in paragraph (2) of this subsection.

(4) The renewal fee for each site that is registered as an inactive site for more than one year shall be \$45 annually until additional acres are affected or material is extracted, or both, during the year preceding renewal.

(5) The renewal fee for each site undergoing reclamation shall be \$45 per year until the reclamation is approved and the site is released by the director. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

11-8-5. Annual report. (a) An annual report of mining operations for each registered site shall be submitted to the director within 30 days of the site registration expiration. The report, in addition to information required by K.S.A. 49-612(a), and amendments thereto, shall include:

(1) the site registration number;

(2) any proposed changes to the reclamation plan;

(3) any proposed changes to the bonding agreement; and

(4) an aerial photograph, survey map, engineered drawing or other representation approved by the director, of all land affected by mining during the period covered by the report.

(b) If mining operations will be completed within 90 days of the registration expiration date, the final completion report may be substituted for the annual report. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-612; effective June 19, 1995.)

11-8-6. Reclamation plan. (a) A reclamation plan shall be completed for each registered site and submitted with the initial registration application. The plan shall include the following:

(1) a legal description of where the site is located including the nearest quarter quarter section, township, range and county;

(2) the total acreage of the site;

(3) a general description of the material to be mined, including:

(A) the average depth of the mineral layer;

(B) the average depth of overburden; and

(C) the average depth of the topsoil;

(4) the estimated life-span of the mine or the time period covered by the operator's long-term plan;

(5) an aerial photograph, survey map, engineered drawing or other representation approved by the director describing the land to be mined first and how the mining will proceed across the site;

(6) a description of the estimated total number of acres to be affected by mining, including the proportion to be reclaimed if different than the total affected acres;

(7) an aerial photograph, survey map, engineered drawing or other representation approved by the director outlining the affected land, water bodies remaining after reclamation, stockpiles, crushing areas, roads and buildings;

(8) a general description of the pre-mining and post-mining land-use;

(9) a general description of the final grading and revegetation that will be completed and an estimated time-line for completion of those activities;

(10) an illustration of the final topography;

(11) a general description of the types of plants to be used in revegetation;

(12) the approximate amount of topsoil and overburden, or if topsoil is not present the amount of overburden, to be stockpiled and used for reclamation of the site; and

(13) the name, address, telephone number and signature of the person responsible for reclamation. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607; effective June 19, 1995.)

11-8-7. Reclamation requirements. Reclamation of affected lands shall meet the following standards, in addition to the standards listed in K.S.A. 49-611, and amendments thereto. (a) Affected lands shall be graded to allowable slopes within six months after filing the final report for the site.

(b) In grading the affected lands, all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the affected lands. Boulders and stones incompatible with the proposed post-

mining use of the site shall be buried or removed from the site.

(c) Topsoil and overburden, or if topsoil was not present initially, then overburden only, shall be preserved in an amount specified in the reclamation plan on the site for reclamation of affected lands.

(d) Within one year following the conclusion of all earthwork, seeding of all areas in which vegetation is to be provided shall be completed to the extent permitted by weather and planting requirements.

(e) Erosion control methods shall be used where necessary to prevent rill and gully formation.

(f) Each operator shall allow the seeded vegetation at least one year to become established before filing a release request.

(g) A variance from the requirements of subsections (a), (d) and (f) of this regulation, may be granted by the director if the operator submits a written request at least 30 days before the initiation of affected reclamation activities. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-611; effective June 19, 1995.)

11-8-8. Bond or other security. (a) Each applicant for registration of a surface mining site shall file a bond or other security with each application in the following amounts:

(1) \$400 per affected acre, for sand and gravel mining operations;

(2) \$600 per affected acre, for all other types of mining operations.

(b) Subject to the limitations of K.S.A. 49-615, and amendments thereto, the amount of bond required may be adjusted by the director based on the estimated cost to reclaim the affected land.

(c) Each surety bond shall be written on a form provided by the director.

(d) An attachment which lists the sites by registration number and legal description shall be included as part of the bond document. This attachment shall be signed by representatives of the surety and the operator and shall be notarized.

(e) Each certificate of deposit posted as a bond shall be made payable to the state of Kansas, state conservation commission. All interest earned shall be paid to the operator.

(f) All cash bonds accepted in lieu of a surety bond shall not draw interest. Each check shall be made payable to the state of Kansas, state conservation commission.

(g) The bond shall cover all affected land not previously reclaimed.

(h) The amount of bond or other security may be adjusted for annual variations in the amount of affected land by the director or by request from the operator, if approved by the director.

(i) No single certificate of deposit shall exceed the sum of \$100,000, nor shall any operator submit a certificate of deposit totaling more than \$100,000 from a single bank or financial institution. The issuing bank or financial institution shall be insured by the federal deposit insurance corporation.

(j) The bank or financial institution issuing the certificate of deposit shall provide a letter that assigns the certificate of deposit to the commission. The letter shall accompany each certificate of deposit submitted as a bond.

(k) Before the commission requests the attorney general to institute proceedings for forfeiture of a bond, the bonding company shall be notified by the director that the operator is in violation of this act and forfeiture proceedings may be initiated. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-615; effective June 19, 1995; amended Sept. 27, 1996.)

Article 9.—KANSAS WATER QUALITY BUFFER INITIATIVE

11-9-1. Definitions. (a) “Buffer” is a strip or area of land maintained in permanent vegetation to help reduce potential pollution problems and achieve other conservation objectives. Buffers are appropriately installed along streams to enhance water quality.

(b) “Commission” means the state conservation commission (SCC).

(c) “Commissioners” means the commissioners of the state conservation commission.

(d) “Continuous sign-up” means that persons eligible for CRP may request to enroll certain acreage in the program at any time. The CRP practices available during continuous sign-up provide environmental benefits complementary to the initiative.

(e) “CRP” means the conservation reserve program administered by the USDA farm service agency (FSA) with technical responsibility assigned to the USDA natural resources conservation service (NRCS). The CRP may provide cost share assistance to establish vegetation on eligible land and provides annual rental payments on a per acre basis to maintain enrolled acres for a period up to 15 years.

(f) “Director” means the executive director of the state conservation commission.

(g) “District” means a conservation district.

(h) “Filter strip” means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(i) “FSA” means the farm service agency.

(j) “Initiative” means the Kansas water quality buffer initiative.

(k) “NRCS” means the natural resources conservation service.

(l) “Practices” means cultural or structural measures that are installed or constructed on land for the purpose of improving or maintaining water quality.

(m) “Program” means the Kansas water quality buffer initiative, which shall be implemented in a manner to enhance participation under the continuous sign-up provision of the conservation reserve program by providing state incentives to supplement federal payments for riparian forest buffers and filter strips.

(n) “Riparian forest buffer” means a strip or area of vegetation containing trees and grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(o) “Unfarmable field” means the remaining portion of a field in which 51% or more of the total acreage has been enrolled in the continuous sign-up.

(p) “USDA” means the United States department of agriculture. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-2. Eligible areas. All land within a TMDL high priority area or a designated priority area within the state of Kansas as determined by the commission shall be eligible for the initiative. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Feb. 5, 1999; amended Aug. 23, 2002.)

11-9-3. Eligible applicants. Any individual, owner, or operator, excluding state units of government, who is eligible for CRP and owns land within the eligible area shall be eligible for the initiative. Applicants who are ineligible for CRP may be eligible under the initiative if all selection criteria are met. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-4. Eligible practices. Practices that shall be eligible for incentive payments are filter strips and riparian forest buffers. Payments made through the buffer initiative shall be in addition to any CRP payments received by each applicant. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-5. Annual payments; exception. (a) Payments shall be made on an annual basis coinciding with federal payments for the purpose of providing an incentive to enroll in the CRP for 10 to 15 years, except as specified in subsection (e).

(b) Incentive payments shall not exceed the following:

(1) 30% of the total federal payment, excluding the maintenance fee for the establishment of filter strips; or

(2) 50% of the total federal payment, excluding the maintenance fee for the establishment of riparian forest buffers.

(c) All acres determined to be in an unfarmable field shall be eligible for the state incentive if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the continuous CRP contract.

(d) The total state and federal payment shall not exceed \$150.00 per acre unless an exception is granted by the commission.

(e) In lieu of the annual payments described in subsection (a), the director may make a single lump-sum payment for the remaining amount of any contract. Upon a participant’s receipt of a lump-sum payment, the participant shall still be responsible for meeting the requirements of all other terms and practices contained in the contract. Any failure to meet these requirements may result in termination of the agreement and repayment of all or part of any incentive payments. (Authorized by and implementing K.S.A. 2020 Supp. 2-1915; effective Feb. 5, 1999; amended Aug. 23, 2002; amended April 16, 2021.)

11-9-6. Contracts. Each contract shall be for no fewer than 10 years and no more than 15 years. Funding for contracts shall be subject to annual appropriations from the state legislature and may be canceled if the funding is not renewed after the first year. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-7. Selection. Eligible applicants shall be approved for funding by the SCC and according to criteria developed by the director. These criteria may include the following:

- (a) The amount of existing vegetation;
- (b) the size of the area offered;
- (c) the type of vegetation offered;
- (d) the type of practice or practices offered; and
- (e) the proximity either to an intermittent or perennial stream or to other areas conducive to overland flow and length of contract. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-8. Haying and grazing. If authorized by the CRP, haying, grazing, or both may occur without penalty under the state contract. A non-CRP participant shall be allowed to hay or graze a filter strip without penalty after development of a grazing management plan developed in cooperation with the USDA-NRCS. No grazing shall be allowed on a riparian forest buffer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-9. Termination. If the federal CRP is terminated by the FSA for any contract violation or for any other reason, the state contract may also be canceled. A refund of incentive payments earned may be required at the commission's discretion. A refund of incentive payments may be required by the commission if there is a failure to follow and maintain the program objective. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

11-9-10. Petition for reconsideration. (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915; effective Feb. 5, 1999; amended Aug. 23, 2002.)

Article 10.—WATER RIGHTS PURCHASE PROGRAM

11-10-1. Definitions. (a) "Program" means water rights purchase program.

(b) "Commission" means the state conservation commission.

(c) "Director" means the executive director of the state conservation commission.

(d) "Local entity" means a local subdivision of state government.

(e) "Eligible water right" shall mean all of the following:

(1) A water right that has been certified as being in an area in need of aquifer restoration or stream recovery pursuant to K.S.A. 2-1919, and amendments thereto, and located in a priority area identified for water right purchase;

(2) a water right that, when placed in the custodial care of the state, yields a positive impact on the aquifer or stream targeted for restoration or recovery; and

(3) a water right meeting the criteria established in K.S.A. 2-1915, and amendments thereto.

(f) "Active water right" means a water right for which water has been lawfully applied to the authorized beneficial use. This water right shall have been used within a specified time period during the calendar years 1996 through 2000 or any succeeding consecutive five-year time period. Active water rights that have been placed in the water rights conservation program in accordance with K.A.R. 5-7-4 or active water rights appurtenant to land placed in the conservation reserve program in accordance with K.A.R. 5-7-4a shall also be considered to be active water rights while in the program.

(g) "Partial water right" means a portion of a water right that has been split up by a division agreement by the owner. The total quantity of the divided water rights shall not be greater than 70 percent of the original appropriated quantity that was divided. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

11-10-2. Application. (a) A local entity may apply for assistance to purchase water rights by submitting the form prescribed by the commission.

(b) Applications shall be submitted to the commission by July 1 to be considered for the next state fiscal year's budget cycle. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

11-10-3. Priority areas. Applications shall address only priority areas identified for the program by the Kansas water plan or Kansas water authority. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

11-10-4. Procedures. (a) Each local entity shall designate a period in which to accept offers from eligible water right holders.

(b) The minimum period to accept offers shall be two weeks.

(c) The local entity shall notify all water right holders located in the priority area of the local entity's intent to purchase water rights and of the procedures to be followed in making an offer.

(d) This notification of intent to purchase water rights shall be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties encompassing the priority area. Both publications shall occur prior to the close of the offer acceptance period.

(e) Each water right holder wanting to make an offer shall submit the offer to the local entity in a sealed envelope, which shall be opened by the local entity at the close of the offer acceptance period.

(f) The local entity shall determine the water right or rights that the entity wishes to purchase by ranking each water right according to at least one of the following:

(1) The water right having the most beneficial impact on stream recovery or aquifer restoration within the identified priority area; or

(2) the lowest offer per acre-foot of water contained on the water right.

(g) The local entity shall submit, for commission review, the water right or rights proposed for purchase on forms provided by the commission.

(h) Upon favorable review by the commission, the local entity shall submit to the commission the water right or rights selected for purchase on forms prescribed by the commission.

(i) The local entity or the commission shall have the right to reject any water right purchase offer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

11-10-5. Payment. (a) After the water right holder agrees to the purchase terms established by the local entity and the commission, payment shall be made by the commission to the local entity for the purchase of the eligible water rights.

(b) The terms of the water right purchase shall

be identified on forms provided by the commission.

(c) The maximum amount paid by the commission for a water right authorized for irrigation shall be calculated as follows:

(1) The average per-acre difference between irrigated cropland and dryland cropland values shall be determined by the director for the county in which the water right is located, for the three years preceding the year in which the water right is to be purchased. This determination shall be made based on information available from the Kansas department of revenue, Kansas agricultural statistics, county appraisers, and any other sources of data that the director considers appropriate.

(2) The value determined in paragraph (c)(1) above shall be divided by the appropriate county value contained in K.A.R. 5-3-24.

(3) The value determined in paragraph (c)(2) above shall be multiplied by the authorized acre-foot quantity.

(4) The value determined in paragraph (c)(3) above shall be multiplied by 80 percent.

(d) The maximum payment for water rights authorized for beneficial uses other than irrigation shall be determined by the director. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

11-10-6. Petition for reconsideration. (a) A water right holder or local entity may appeal any decision of the commission by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the commission should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

Article 11.—IRRIGATION TRANSITION ASSISTANCE PROGRAM

11-11-1. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as

amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective March 11, 2005; revoked Dec. 23, 2005.)

11-11-2. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2004 Supp. 2-1915, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective March 11, 2005; revoked Dec. 23, 2005.)

11-11-3 to 11-11-7. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective March 11, 2005; revoked Dec. 23, 2005.)

Article 12.—WATER RIGHT TRANSITION ASSISTANCE PILOT PROJECT PROGRAM

11-12-1. Definitions. (a) “Active vested or certified water right” means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years of actual irrigation, including any water use that occurred before certification.

(b) “Chief engineer” means chief engineer of the division of water resources, Kansas department of agriculture.

(c) “Closed to new appropriations” and “closed to further appropriations” mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) “Commission” means state conservation commission, which serves as the division’s conservation program policy board created by K.S.A. 2-1904, and amendments thereto, within the department of agriculture.

(e) “Consumptive use” means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(f) “Division” means division of conservation, Kansas department of agriculture.

(g) “Dry land transition plan” means a plan sub-

mitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:

(1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and

(2) not exceed three calendar years.

(h) “Eligible water right” means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been verified by the chief engineer as being in a target area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state’s dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.

(4) The point of diversion is located within a target area.

(i) “Groundwater management district” and “GMD” mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.

(j) “High-priority area” means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and

(2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance program.

(k) “Historic consumptive water use retirement goal” means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance program in each target area. The identification of a historic consumptive water use retirement goal in each tar-

get area provides a reference point for evaluating the program objectives of the water right transition assistance program. The attainment of a historic consumptive water use retirement goal in a particular target area indicates that no more water right transition assistance program funds should be expended in that target area without a requantification of the historic consumptive water use retirement goal.

(l) “Local entity” means any political subdivision chartered to address water conservation.

(m) “Partial water right” means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. Before enrollment of the partial water right, the chief engineer shall determine the net historic consumptive water use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation.

(n) “Secretary” means secretary of agriculture or designee of the secretary.

(o) “Water right” means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance.

(p) “WTAP” and “program” mean water right transition assistance program. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

11-12-2. Eligible areas. (a) Each eligible area shall meet one of the following criteria:

(1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in

need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(b) The chief engineer shall notify the division of all approved target areas and high-priority areas before January 1 of each grant funding cycle and shall provide technical data that will assist the division in considering the ranking of the areas relative to any previously designated target areas or high-priority areas.

(c) The ranking of target areas and high-priority areas relative to any previously designated target areas and high-priority areas shall be determined by the secretary, after review of the input from the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

11-12-3. Application and review. (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register before each application period.

(c) The program procedures and application forms shall be available at the division office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the division. The application shall include all of the following:

(1) The name, address, telephone number, and tax identification number of the owner of the water right;

(2) the water right file number and the priority date of the water right;

(3) the location of the point of diversion;

(4) documentation of the annual water usage, in acre-feet, for the previous 10 years of actual irrigation;

(5) the authorized annual quantity of water associated with the water right;

(6) the bid price expressed on a “per acre-foot of historic consumptive water use” basis;

(7) if the land is going to be planted to permanent cover, a dry land transition plan;

(8) documentation that verifies historical crop information for the previous 10 years of actual irrigation;

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for permanent retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930, and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for permanent retirement of a water right or permanent reduction of a water right and specification of whether only a partial water right is being submitted for permanent retirement in the application.

(e)(1) Upon the division’s receipt of each application, it shall be reviewed for completeness by the division. If the application is not complete, the missing information shall be provided by the applicant to the division within 30 calendar days of the division’s written request.

(2) After the application is determined to be complete, the application shall be provided by the division to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the division from the chief engineer:

(1) A statement indicating whether the water right is an eligible water right;

(2) the historic consumptive water use associated with each water right or portion of a water right;

(3) the potential impact of dismissing or permanently reducing the water right on aquifer restoration or stream recovery; and

(4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the division regarding WTAP applications in any target area within that GMD. The chief engineer and the

appropriate GMD shall be notified by the division regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) Each applicant shall be notified by the division of the approval or the disapproval of the program application no later than 60 calendar days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(i) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the division that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission or the division.

(k) No more than 10 percent of a county’s irrigated acres shall be eligible for the duration of this program.

(l) Each program application that does not meet the requirements of these regulations shall be rejected by the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

11-12-4. Payment. (a) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the division. Each grant agreement shall include the following provisions:

(1) The price to be paid by the division to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the division indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the division indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for

the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(b) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the division, in one lump sum payment. If annual payments are elected, the first payment shall be made within 60 calendar days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 calendar days after the beginning of each new state fiscal year. The following factors shall be considered by the division when determining which payment schedule to use:

(1) The number of eligible applicants; and

(2) the amount of program funds for that year.

(c) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

11-12-5. Transition to dry land. (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the division to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the division if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the executive director of the division and modifications to any dry land transition plan may be required by the executive director of the division if the plan does not meet the requirements for soil erosion prevention practices in section IV of the “Kansas field office technical guide” as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

11-12-6. Dismissal or permanent reduction of water right. (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(c) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division within 60 calendar days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

11-12-7. Petition for reconsideration. (a) Any water right owner may request reconsideration of any decision of the division by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the division within 30 calendar days of the division’s decision and shall state why the decision should be reviewed by the secretary and why the decision should be affirmed, modified, or reversed.

(c) The secretary’s final decision shall state each reason for this determination.

(d) The decision of the division shall be considered the final agency action if no petition for reconsideration of that decision has been received by the division after 30 calendar days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

Article 13.—KANSAS SEDIMENT AND NUTRIENT REDUCTION INITIATIVE

11-13-1. Definitions. Each of the following terms, as used in this article of the division of conservation's regulations, shall have the meaning specified in this regulation:

(a) "Bottomland timber establishment" means the trees planted in floodplains adjacent to perennial streams to provide wildlife habitat and other benefits.

(b) "CRP" means the conservation reserve program administered by the USDA farm service agency.

(c) "Director" means the executive director of the division of conservation, Kansas department of agriculture or the executive director's designee.

(d) "Farmable wetland or farmable wetland buffer" means land eligible for restoration by improving the land's hydrology and vegetation.

(e) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater and for providing food and cover for wildlife.

(f) "FSA" means the farm service agency in the USDA.

(g) "Grassed waterway" means a designated strip of grass that is designed to convey runoff and gully erosion for the purpose of improving water quality and providing wildlife habitat.

(h) "Habitat buffers for upland birds" means a narrow band of native grasses, legumes, forbs, or shrubs, or any combination of these, to provide habitat for bobwhite quail, ring-necked pheasant, and other upland birds and to limit the amount of nutrients, sediment, pesticides, and other contaminants entering water bodies.

(i) "HUC 12 watershed" means a hydrological unit code consisting of a sequence of 12 numbers identifying a hydrological feature like a river, river reach, or lake or an area like a drainage basin.

(j) "Initiative" means the Kansas water quality buffer initiative and the application requirements for the program specified in this article of the division of conservation's regulations. This term is also known as the Kansas sediment and nutrient reduction initiative.

(k) "NRCS" means natural resources conservation service.

(l) "Practices" means the use of cultural techniques or structures installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program-eligible area" means the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood, and Lower Cottonwood watersheds.

(n) "Program-eligible boundaries" means the boundaries based on HUC 12 watersheds that are above Tuttle Creek, Milford, Perry, John Redmond, and Clinton reservoirs and are identified as target areas for nutrient and sediment reduction in watershed restoration and protection strategy plans. The program-eligible boundaries shall contain two tiers for priority enrollment, which are called tier 1 areas and tier 2 areas.

(o) "Shallow water areas for wildlife" means wet areas that have been developed or restored and include 6-18 inches of water depth for wildlife.

(p) "Tier 1 areas" means those HUC 12 watersheds identified in watershed restoration and protection strategy plans as the highest priority target areas for nutrient and sediment reduction within program-eligible boundaries.

(q) "Tier 2 areas" means all areas within the program-eligible boundaries that are not tier 1 areas.

(r) "Unfarmable field" means the remaining portion of a field in which 51 percent or more of the total acreage has been enrolled in CRP.

(s) "USDA" means United States department of agriculture.

(t) "Wetland restoration" means the restoration of constructed wetlands for the purpose of intercepting tile runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices.

(u) "WRAPS" means watershed restoration and protection strategy, which consists of a planning and management framework intended to engage stakeholders in a process to identify watershed restoration. The process documents stakeholder goals, strategies to achieve the goals, and the resources required to implement the strategies. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

11-13-2. Initiative requirements for new applications; funds for existing contracts. On and after the effective date of this regulation, all new applications for the initiative shall be required to meet the requirements in this article of the division of conservation's regulations. These requirements shall be known as the Kansas sediment and nutrient reduction initiative, which consists of the

new requirements for the Kansas water quality initiative. All persons with parcels currently enrolled in the initiative with contracts whose terms have not yet expired shall continue to be paid through funds made available under K.S.A. 2-1915, and amendments thereto, and any other available sources. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

11-13-3. Selection of applicants for initiative. Funding may be distributed to initiative applicants for proposed projects that meet the eligibility requirements specified in K.S.A. 2-1915 and K.S.A. 2017 Supp. 2-1933, and amendments thereto, and the director's requirements as follows:

(a) Land shall lie within a tier 1 area or a tier 2 area of the initiative-eligible area and meet the basic eligibility criteria for CRP.

(b) To be eligible for tier 1 area payments, all of the land shall be within the tier 1 area. To be eligible for tier 2 area payments, all of the land shall be within the tier 2 area.

(c) Land that has an existing CRP contract or an approved offer with a CRP contract pending shall not be eligible for the initiative. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

11-13-4. Haying and grazing. Any eligible initiative applicant that is authorized to hay or graze, or both, pursuant to an existing CRP contract may conduct these activities upon initiative-eligible land without penalty. (Authorized by K.S.A. 2016 Supp. 2-1915; implementing K.S.A. 2016 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

11-13-5. Practices eligible for incentive payments. (a) Any of the following practices may be eligible for incentive payments:

- (1) Grassed waterways;
 - (2) shallow water areas for wildlife;
 - (3) filter strips;
 - (4) riparian buffers;
 - (5) wetland restorations;
 - (6) improvements to farmable wetland or farmable wetland buffers by utilizing any of the practices listed in this regulation or any other conservation practice approved by the director;
 - (7) bottomland timber establishment; or
 - (8) habitat buffers for upland birds.
- (b) Payments made through the initiative shall be in addition to any CRP payments. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

11-13-6. Incentive payments; refunds. (a) Incentive payments under the initiative shall be made on a one-time basis coinciding with enrollment in the CRP. Each incentive payment shall be an upfront payment on all eligible acres enrolled.

(b) Incentive payments shall not exceed the following:

- (1) \$225.00 per acre in tier 1 areas; and
- (2) \$162.50 per acre in tier 2 areas.

(c) Any acres determined to be in an unfarmable field may be eligible for the one-time incentive payment if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the CRP contract.

(d) If a CRP contract is terminated by the FSA for any contract violation or for any other reason, a refund of the incentive payment shall be required.

(e) A refund of the incentive payment shall be required from any initiative participant who fails to meet the initiative requirements. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

Agency 12

Agricultural Labor Relations Board

Articles

12-1. GENERAL PROVISIONS.

12-2. PROCEDURE.

Article 1.—GENERAL PROVISIONS

12-1-1. Definitions. (a) Act—The term “act” shall refer to the agricultural labor relations act, K.S.A. 44-818 *et seq.*, and amendments. Terms used in these rules shall have the same meaning as defined in the act unless their context clearly indicates otherwise.

(b) Computation of time—Whenever the time limited in these rules for any act is seven days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time so limited is less than seven days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any such period shall fall on a Saturday, Sunday or legal holiday, such day shall be omitted from the computation. The board, for good cause shown, may extend any time prescribed in these rules. Computation of time shall commence when service to a party is made by the board.

(c) Party—The term “party” as used herein shall mean any agricultural employee, employee organization, or agricultural employer filing a complaint, petition, or application under the act or these rules; any agricultural employee, employee organization or agricultural employer named as a party in a complaint or petition filed under the act or these rules; or any person, organization or agricultural employer whose timely motion to intervene in a proceeding has been granted.

(d) Board—The term “board” shall mean the agricultural labor relations board established pursuant to K.S.A. 44-820, or such person or persons designated by said board to act in its behalf. (Authorized by K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-1-2. Scope. (a) Waiver—In the event that the application of these rules would not be feasible or would work an injustice, the board may waive or suspend the rules at any time or in any proceeding unless such action results in depriving a party of substantial rights.

(b) Separability—If any provisions of these rules be held invalid, it shall not be construed to invalidate any of the other provisions of these rules.

(c) Filing annual report—Every employee organization having one hundred or more members shall file with the board a copy of the annual report required pursuant to K.S.A. 44-806.

(d) Proof of employee organization Kansas license—Every person who shall act or attempt to act for any employee organization shall show proof of being licensed in Kansas as provided in K.S.A. 44-804 before that person will be allowed to participate in proceedings under the agricultural labor relations act, K.S.A. 44-818 *et seq.* (Authorized by K.S.A. 44-823(g), K.S.A. 1977 Supp. 44-804, 44-806, 44-820(d); effective May 1, 1978.)

Article 2.—PROCEDURE

12-2-1. Service of process and other board documents. (a) Method; proof; complaints, orders, and other processes and papers of the board—Complaints, decisions and orders and other processes and papers of the board may be served personally, by certified mail, by telegraph or by leaving a copy thereof in the proper office or place of business of persons to be served. The return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt, when certified and mailed or telegraphed as aforesaid, shall be proof of service of the same.

(b) Service by a party—The moving party and the respondent in any action shall be required to file an original and three copies of any pleadings with the board either in person or by certified mail.

(c) Service upon attorney—If a party appears by its attorney, all papers other than the complaint, notice of original hearings, and decisions and orders may be served as hereinafter provided upon such attorney with the same force and effect as though served upon the party.

(d) Service by the board—The board shall be required to serve all parties to an action with all papers duly filed with the board. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-2. Hearings. a. General provisions

1. Hearings may be conducted by the board, or any member or members thereof, or any member of its staff or other individual designated by the board. In the event a duly-appointed hearing examiner is unable to continue a hearing, such hearing may be reconvened at a later date, when the appointed examiner is available, or with the consent of all parties a hearing officer may be substituted.

2. The hearing shall be limited to pertinent matters necessary to determine questions relating to the immediate controversy.

b. Notice of hearing

1. Following the filing of a petition, if it appears to the board that further proceedings are warranted, the board or its agent shall issue and serve upon each of the parties and upon any known individuals or employee organizations claiming to represent any employee directly affected, a notice of hearing, at a place fixed therein, and, except by agreement of the parties or in unusual circumstances, at a time not less than seven days after the service of such notice.

2. Any such notice of hearing may be withdrawn or amended prior to the beginning of the hearing by the board.

c. Conduct of hearings

1. It shall be the duty of the board or its agent to inquire fully into all matters at issue and to obtain a full and complete record.

2. The board may, at its discretion, continue the hearing from day to day or adjourn it to a later date or another place by announcement thereof at the hearing or by other appropriate notice.

3. Motions:

(a) All motions made during a hearing shall be made part of the record of the proceedings.

(b) All motions and answers thereto other than those made during a hearing shall be made in writing to the board, pursuant to the provisions of K.S.A. 44-829(a), shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds upon which they are based. Answering affidavits, if any, shall be filed with the board within five working days after service of the motion, unless the board or its agent directs otherwise. The board or its agent shall rule upon

motions filed with it. It may hear oral argument or testimony thereon, in which case it shall notify the parties of the time and place of such argument or for the taking of such testimony. The board shall issue rulings and orders to decide all matters in hearings before it and all such motions and rulings and orders thereon shall be part of the record of the proceedings.

4. An objection not duly made before the board shall be deemed waived unless the failure to make such objection shall be excused by the board or its agent because of extraordinary circumstances.

5. Introduction of evidence; rights of parties at hearings:

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the board or its agent shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless excused by the board or its agent. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required for any hearing other than a hearing conducted pursuant to K.S.A. 44-829. Stipulations of fact may be introduced into evidence with respect to any issue.

(b) The refusal of a witness at any hearing to answer any question which has been ruled proper by the hearing officer shall be noted in the record. Such refusal shall go to the weight of previous testimony, but shall not be grounds for striking previous testimony of the particular witness.

(c) Misconduct at any hearing before the board shall be grounds for exclusion from the hearing. As used herein, "misconduct" shall mean conduct which disrupts or interferes with the orderly administration of proceedings under the act, or conduct which evinces a refusal to obey or disregard a lawful order or ruling of the hearing officer.

6. Upon appointment by the board of an agent to perform any of its functions, the parties shall file within three days any objection to said appointment. The objection shall contain a statement setting forth the reasons for the party's position. Such objection shall be confined to the person appointed, not the appointment in and of itself.

7. Findings of fact; conclusions of law; recommendations:

(a) As expeditiously as possible after the conclusion of the hearing, the hearing officer shall issue

his or her findings of fact, conclusions of law, and recommendations to the board. Such findings of fact, conclusions of law, and recommendations shall be in writing and shall contain, but need not be limited to:

(1) A statement of the case and preliminary procedures before the board or the hearing officer,

(2) findings of fact,

(3) conclusions of law and recommendations to the board. The board shall convene in open meeting to consider the case no later than thirty days after such date as the hearing examiner has made his or her recommendations available. (Authorized by K.S.A. 44-823(c), 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-3. Intervention. Any third party having a legitimate interest in any proceedings may file a petition of intervention setting forth facts sufficient to establish such interest and requesting that the board resolve contested factual matters in its favor. Any organization which has a signed, valid memorandum of agreement encompassing the proposed unit or any portion thereof shall be considered to have a legitimate interest in any proceedings upon presentation of same. (Authorized by K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-4. Authorization cards—acceptability. Evidence of representation or legitimate interest may be either by individual authorization cards or by petition. In either case, the petition or card shall show the address and social security number of, and be signed and dated by, the employee expressing an intent to be represented by a specific employee organization. A card or petition signed and dated by an agricultural employee less than one-hundred eighty days prior to the date on which the petition was filed shall constitute prima facie evidence of continuation of such authorization. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-5. Validity of showing of interest. (a) The proof of interest submitted shall not be furnished to any of the parties. The board shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before the board. Proof of interest shall not be required until after unit determination has been made by the board.

(b) All agricultural employers shall be required to furnish the board with an alphabetical listing of all employees within the appropriate unit as expe-

ditiously as possible, not to exceed thirty days after the filing of a petition for a certification election following unit determination, unless otherwise directed by the board or its agent. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-6. Units. (a) Determining appropriate unit

(1) Any unit may consist of all of the employees of the agricultural employer, or any department, division, section or area, or party or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules.

(2) In considering whether a unit is appropriate, the board shall consider the provisions of K.S.A. 44-823(e) and whether the proposed unit of the agricultural employees is a distinct and homogeneous group, with significant problems which can be adjusted without regard to the other agricultural employees of the agricultural employer. It may also consider the relationship of the proposed unit to the total organizational pattern of the agricultural employer. Neither the extent to which agricultural employees have been organized by an employee organization nor the desires of a particular group of agricultural employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate. (Authorized by K.S.A. 44-823(e), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-7. Petition for unit determination, unit clarification and investigation or certification of employee organization. (a) Petition; filing—A petition may be filed with the board by an employee organization or group of agricultural employees or agricultural employer. The petition form shall be provided by the board. The original petition shall be signed by the petitioner or his or her authorized representative and the original and three copies thereof shall be filed with the board. (Authorized by K.S.A. 44-823(c); effective May 1, 1978.)

12-2-8. Procedure following filing of petitions. (a) Petition; amendment or withdrawal—Any petition may be amended, in whole or in part, or withdrawn by the petitioner at any time prior to the filing of an answer by any interested party. A petition may be amended or withdrawn by the petitioner after the filing of an answer by any party

or after the board has acted thereon, only with the approval of the board and upon such conditions as the board may deem proper and just.

(b) Answers—Each party shall file an answer to the petition within seven days after receipt thereof. The board may extend the time for filing an answer upon showing of good cause. Failure to answer within seven days shall be deemed as an admission by said party to all allegations in the petition.

(c) Investigation—Subsequent to the filing of a petition, the board shall direct an investigation of all questions concerning representation, including, if applicable, whether the proof of interest requirement, as set forth in the above rules, has been met, whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit, and whether there is agreement among the parties as to the appropriateness of the alleged unit.

(d) Hearings—The board may conduct a hearing, pursuant to K.S.A. 44-823(c), in which event it or its agent shall prepare and cause to be served upon the parties a notice of hearing before the board or its agent at a time and place fixed therein. A copy of the petition shall be served within the notice of hearing. (Authorized by K.S.A. 44-823, K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-9. Elections—eligibility and conditions. (a) General Provisions

(1) If the board, upon petition of an employee organization, determines that an employee organization has made a valid showing of interest, it shall order that an election be conducted by such person or persons as may be designated by the board.

(2) All elections shall be held not later than thirty days from date of validation of the first submitted proof of interest or such other date as the board or its agent may specify, at such times and places and upon such terms or conditions as the board or its agent may specify.

(3) The employees eligible to vote shall be those on the payroll on the date of the validation of proof of interest and who remain on the payroll on the date of the election.

(4) Upon validation of proof of interest the board shall immediately furnish a list of names and addresses of all eligible employees in the appropriate unit to all employee organizations submitting proof of interest.

(5) A motion for intervention for purpose of representation on an election ballot at a certification election shall not be entertained during the ten days immediately preceding said election.

(6) At least seven days prior to the election, the board shall cause a notice of election and sample ballot to be posted in conspicuous areas where employees in the affected unit assemble. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-10. Elections—procedure. (a) General Provisions

(1) All elections shall be by secret ballot, at times and places and in such manner as the board or its agent may direct. Elections shall be conducted by a designated agent of the board, whose determination of all questions arising shall be final, subject only to review by the board.

(2) Ballots shall be prepared and issued by the board. Ballots shall contain the name of each representative and a choice of “no representative.” The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the board with the petitioner taking first priority. In a run-off election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inclusive election.

(3) Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer’s observers, shall be non-supervisory personnel, unless otherwise agreed to by all parties or other appropriate persons.

(4) Prior to the commencement of the election, the agent of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(5) Any prospective voter may be challenged for cause.

(6) All employees whose names do not appear upon the list certified by the board as being a complete list of the employees within the defined appropriate unit shall be challenged by the agent of the board.

(7) A challenged voter shall be permitted to vote, but the voter’s ballot shall not be cast. It shall, instead, be sealed in a separate, unmarked envelope under the supervision of the agent of the board and inserted in a special identifiable form

envelope provided by the board for that purpose and returned to the election agent. All questions of challenged ballots shall be resolved by the election agent prior to counting the ballots.

(8) In all elections a majority of the valid votes cast shall determine the employee representative designated by the employees in the defined appropriate unit, or the determination of no representative shall be designated. A tally of ballots shall be made by the board agent immediately following the closing of the polls, except in the case of an unresolved challenged ballot, and a tally sheet shall be furnished to all parties to the election.

(9) Each party to the election shall be permitted to observe the count of the ballots.

(10) All objections to a party's conduct or third person's conduct to the election shall be, by a charge of prohibiting practice, filed with the board within five days of the holding of the election and the board shall immediately issue such order as to effectuate the purposes of the act.

(11) All objections of the board's conduct of an election shall be filed within five days of the holding of the same and the board shall immediately issue such order as required to effectuate the purposes of the act.

(12) The board shall conduct a run-off election when an election in which the ballot provides for not less than three choices (*i.e.* at least two representatives and no representation) results in no choice receiving a majority of the valid ballots cast.

(13) The ballot in the run-off election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(14) The board shall conduct run-off elections as expeditiously as possible not to exceed thirty days following the first election unless otherwise ordered by the board or its agent. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-11. Certification of election results.

(a) Certification—If no objections are filed within the time set forth above, and if no run-off election is to be held, the board or its agent shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate. All employee organizations shall be certified as of the last day of the election. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-12. Impasse resolution. (a) Petition filing—In the event a recognized employee organization or an agricultural employer believes an impasse in negotiations exists, such recognized employee organization or agricultural employer may file a request for assistance at impasse with the board.

(1) Such request shall be in writing and shall show whether a joint party or single party request is being made.

(2) Such request shall also show the names and addresses of the parties to the dispute.

(b) The board, upon receipt of such request, shall, as expeditiously as possible, investigate and rule whether an impasse exists or whether the parties shall continue to meet.

(c) In the event the board declares that an impasse exists, the board shall appoint a mediator from a list of qualified persons maintained by the board.

(d) If the impasse exists seven days after the mediator first meets with the parties, or upon notice to the board by the mediator that the impasse still exists, the board shall appoint a fact finder or panel of fact finders.

(1) The board shall ascertain from the parties their preference for an individual fact finder or a panel of fact finders. In the event the parties to the dispute cannot agree upon the number of fact finders to be utilized, the board shall appoint such person or persons as it shall deem necessary to effectuate the provisions of the act.

(2) The fact finder or panel of fact finders shall submit to the parties and the board the fact-finding report no later than twenty-one days from the date of the fact-finding hearing.

(e) If the parties have not resolved the impasse by the end of a forty-day period commencing with the submission of the report of the fact-finding board, the agricultural labor relations board shall forthwith schedule an arbitration hearing.

(1) The board shall grant the parties a five-day period in which to select a neutral arbitrator. In the event the parties cannot within the five-day period agree on a neutral arbitrator, the board may appoint such person or persons as it deems necessary, or the board may choose to hear the matter.

(2) Any person or persons selected by the parties or appointed by the board to serve as a neutral arbitrator or the agricultural labor relations board, serving as an arbitration board, shall issue findings and the award no later than five days from the close of the arbitration hearing. In the event

the arbitration hearing is conducted by a person or persons selected by the parties or appointed by the board, the board shall issue its order upon receipt of the arbitration award. (Authorized by K.S.A. 44-826, K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-13. Complaints. (a) Who may file—A complaint that any agricultural employee, employee organization or agricultural employer has engaged in or is engaging in any prohibited practice under the act may be filed by an agricultural employee, a group of agricultural employees, an employee organization or an agricultural employer, any of whom may hereafter be referred to as the party filing the complaint.

(b) Form and filing—Complaint forms shall be provided by the board. An original and three copies of the complaint shall be filed with the board. (Authorized by K.S.A. 44-829(a).)

(c) Answer to complaint—contents—The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or if the filing party is without knowledge thereof, he shall so state, such statement operating as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation;

(2) A specific detailed statement of any affirmative defense;

(3) A clear and concise statement of the facts and matters of law relied upon. Any allegation in the complaint not specifically denied in the answer, unless the respondent shall state in the answer that the respondent is without knowledge, and the reasons he or she is without knowledge, shall be deemed admitted to be true and may be so found by the board.

(d) Answer to complaint—time for filing

(1) The party named in the complaint shall file a written answer within seven days after service of the complaint.

(e) Amendment to complaint—Any complaint may be amended, in whole or in part, by the complainant at any time prior to the filing of an answer by the respondent. A complaint may be amended by the complainant with approval of the board or its agent after an answer has been filed by the respondent at any time before the board's final decision or order.

(f) Amendment of answer; following amendment of complaint—In any case where a com-

plaint has been amended, the respondent shall have an opportunity to amend his answer within such period as may be fixed by the board.

(g) Withdrawal of complaint—Through written notice served on the board, a complaint or any part thereof may be withdrawn at any time. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-14. Hearing notice. After a complaint has been filed, if it appears to the board or its agent that formal proceedings in respect thereto should be instituted, the board, or any member thereof, or its agent shall serve on each party a notice of hearing. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-15. Record of proceedings before the board; prohibited practice cases. (a) General provisions.

(1) The record of the proceedings before the board in prohibited practice cases shall consist of the complaint or amended complaint, any other pleadings, notices of hearings, motions, orders, stenographic report, exhibits, depositions, findings of fact, conclusions of law, decisions and order.

(2) If a prohibited practice proceeding is predicated in whole or in part upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record for all purposes in the prohibited practice proceeding. (Authorized by K.S.A. 44-823(c), 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-16. Joinder of parties. All persons alleged to have engaged in any unfair practices may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them upon all of the evidence, without regard to the party by or against whom such evidence has been introduced. No proceedings shall be dismissed because of nonjoinder or misjoinder of parties. Upon motion of any party or upon motion of the board or its hearing examiner, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed just and proper. Such motions shall be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move shall be deemed a waiver of all objections to a nonjoinder or misjoinder. (Authorized by K.S.A.

44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-17. Strikes or lockout. In the case of an alleged violation of K.S.A. 44-820(d) or K.S.A.

44-829(a), the board or its agent may handle the case as expeditiously as possible by waiving normal time limitations. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

Agency 13

Alcoholic Beverage Control Board of Review

Editor's Note:

The Alcoholic Beverage Control Board of Review was abolished on July 1, 1987. The authority, property and proceedings were transferred to the director. See K.S.A. 1988 Supp. 41-203.

Articles

- 13-1. *GENERAL INFORMATION. (Not in active use.)*
- 13-2. *APPEALS AND HEARINGS. (Not in active use.)*
- 13-3. *ORDERS OF BOARD. (Not in active use.)*
- 13-4. *REGULAR MEETINGS AND DUTIES. (Not in active use.)*
- 13-5. *PRICE AND FREIGHT DETERMINATION. (Not in active use.)*
- 13-6. *STATUTES, REGULATIONS AND INTERPRETATION. (Not in active use.)*

Article 1.—GENERAL INFORMATION

13-1-1. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-1-2. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

Article 2.—APPEALS AND HEARINGS

13-2-1. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-2. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-3. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-4. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-5. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-6. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-7. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-8. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-321; effective Jan. 1, 1966; amended May 1, 1987; revoked May 1, 1988.)

13-2-9. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-10. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-11. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-12. (Authorized by K.S.A. 41-321, 41-322; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-13. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-14. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-2-15. (Authorized by K.S.A. 41-210, 41-321; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1988.)

Article 3.—ORDERS OF BOARD

13-3-1. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-3-2. (Authorized by K.S.A. 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

Article 4.—REGULAR MEETINGS AND DUTIES

13-4-1. (Authorized by K.S.A. 41-203, 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-4-2. (Authorized by K.S.A. 41-203, 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-4-3. (Authorized by K.S.A. 41-210, 41-321, K.S.A. 1977 Supp. 41-203; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1988.)

13-4-4. (Authorized by K.S.A. 41-203, 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

13-4-5. (Authorized by K.S.A. 41-203, 41-321; effective Jan. 1, 1966; revoked May 1, 1988.)

**Article 5.—PRICE AND
FREIGHT DETERMINATION**

13-5-1. (Authorized by K.S.A. 41-1118; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1988.)

13-5-2. (Authorized by K.S.A. 41-1118; im-

plementing K.S.A. 1983 Supp. 41-1101, and K.S.A. 41-1112; effective Jan. 1, 1966; amended, E-80-27, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1985; revoked May 1, 1988.)

13-5-3. (Authorized by K.S.A. 41-1112, K.S.A. 1979 Supp. 41-1118; effective Jan. 1, 1966; amended, E-66-9, Aug. 8, 1966; amended Jan. 1, 1967; revoked, E-80-27, Dec. 12, 1979; revoked May 1, 1980.)

**Article 6.—STATUTES, REGULATIONS
AND INTERPRETATION**

13-6-1. (Authorized by K.S.A. 41-211; K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

Agency 14
Kansas Department of Revenue—
Division of Alcoholic Beverage Control

Articles

- 14-1. *DEFINITIONS. (Not in active use.)*
- 14-2. *LICENSEES AND VENDORS. (Not in active use.)*
- 14-3. *RETAILERS. (Not in active use.)*
- 14-4. *MANUFACTURERS, DISTRIBUTORS AND NONBEVERAGE USERS. (Not in active use.)*
- 14-5. **TRANSPORTATION, CARRIERS AND STORAGE.**
- 14-6. **CONTAINERS AND LABELS.**
- 14-7. **TAX AND TAX STAMPS; CROWNS AND LIDS.**
- 14-8. **ADVERTISING.**
- 14-9. *SALESMEN'S PERMITS. (Not in active use.)*
- 14-10. **TRADE PRACTICES.**
- 14-11. **FARM WINERIES.**
- 14-12. *CEREAL MALT BEVERAGES. (Not in active use.)*
- 14-13. **RETAIL LIQUOR DEALER.**
- 14-14. **MANUFACTURERS; DISTRIBUTORS; NONBEVERAGE USERS;
FARM WINERIES; MICROBREWERIES.**
- 14-15. **BEER AND CEREAL MALT BEVERAGE KEG REGISTRATION.**
- 14-16. **LICENSES; SUSPENSION AND REVOCATION.**
- 14-17. **MISCELLANEOUS.**
- 14-18. *CLASS A AND CLASS B CLUBS. (Not in active use.)*
- 14-19. **CLASS A CLUBS.**
- 14-20. **CLASS B CLUBS.**
- 14-21. **DRINKING ESTABLISHMENTS.**
- 14-22. **CATERER.**
- 14-23. **TEMPORARY PERMITS.**
- 14-24. *WINERY SHIPPING PERMITS. (Not in active use.)*
- 14-25. **OFF-PREMISES CEREAL MALT BEVERAGE RETAILERS.**
- 14-26. **ON-PREMISES CEREAL MALT BEVERAGE RETAILERS.**

Article 1.—DEFINITIONS

14-1-1. (Authorized by K.S.A. 41-210, 41-211; effective Jan. 1, 1966; amended Feb. 15, 1977; revoked May 1, 1988.)

Article 2.—LICENSEES AND VENDORS

14-2-1. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-308(a); effective Jan. 1, 1966; amended May 1, 1986; revoked May 1, 1988.)

14-2-2. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implement-

ing K.S.A. 41-311; effective Jan. 1, 1966; amended May 1, 1986; revoked May 1, 1988.)

14-2-3. (Authorized by K.S.A. 41-211, 41-311, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-4. (Authorized by K.S.A. 41-211, 41-310, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-5. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-6. (Authorized by K.S.A. 1985 Supp. 41-211, as amended by L. 1986, Ch. 185, Sec. 4, K.S.A. 1985 Supp. 41-210; implementing K.S.A. 41-703, 41-713; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1987; revoked May 1, 1988.)

14-2-7. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-8. (Authorized by K.S.A. 41-211, 41-308, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-9. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-10. (Authorized by K.S.A. 41-211, 41-1101, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-11. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-12. (Authorized by K.S.A. 41-211, K.S.A. 1972 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-13. (Authorized by K.S.A. 41-211, 41-601, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-14. (Authorized by K.S.A. 41-209, 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-15. (Authorized by K.S.A. 41-211, 41-210 as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-315; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1986; revoked May 1, 1988.)

14-2-16. (Authorized by K.S.A. 41-211, 41-315, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-17. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-18. (Authorized by K.S.A. 41-211, 41-1102, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-19. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-2-20. (Authorized by K.S.A. 41-211, K.S.A. 1968 Supp. 41-210; effective Jan. 1, 1969; revoked May 1, 1988.)

14-2-21. (Authorized by K.S.A. 41-211, 41-326, K.S.A. 1971 Supp. 41-210; effective Jan. 1, 1972; revoked May 1, 1988.)

14-2-22. (Authorized by K.S.A. 41-211, K.S.A. 1971 Supp. 41-210; effective Jan. 1, 1972; revoked May 1, 1988.)

14-2-23. (Authorized by K.S.A. 41-209, 41-210; implementing K.S.A. 41-211, 41-905; effective May 1, 1978; amended May 1, 1982; revoked May 1, 1988.)

Article 3.—RETAILERS

14-3-1. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-711; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-81-36, Dec. 10, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1988.)

14-3-2. (Authorized by K.S.A. 41-211, 41-710, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-3. (Authorized by K.S.A. 41-211, 41-710, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-4. (Authorized by K.S.A. 41-211, 41-318, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-5. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-712, 41-713; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1971; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; revoked May 1, 1988.)

14-3-6. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-712; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1986; revoked May 1, 1988.)

14-3-7. (Authorized by K.S.A. 41-211, 41-308, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-8. (Authorized by K.S.A. 41-211, 41-722, K.S.A. 1965 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-9. (Authorized by K.S.A. 41-211, 41-308, 41-717, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-10. (Authorized by K.S.A. 41-211, 41-717, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-11. (Authorized by K.S.A. 41-210, 41-211; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1988.)

14-3-12. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-13. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-708, K.S.A. 1983 Supp. 41-717; effective Jan. 1, 1966; amended Jan. 1, 1972; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; revoked May 1, 1988.)

14-3-14. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-15. (Authorized by K.S.A. 41-210, 41-211, 41-308; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1988.)

14-3-16. (Authorized by K.S.A. 41-210 and 41-211; implementing K.S.A. 41-713; effective Jan. 1, 1966; amended May 1, 1982; revoked May 1, 1988.)

14-3-17. (Authorized by K.S.A. 41-211 as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-407; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1986; revoked May 1, 1988.)

14-3-18. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-713; effective Jan. 1, 1966; amended May 1, 1986; revoked May 1, 1988.)

14-3-19. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-715; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1988.)

14-3-20. (Authorized by K.S.A. 41-211, 41-308, K.S.A. 1970 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1988.)

14-3-21. (Authorized by K.S.A. 41-103, 41-210, 41-211 and 41-2634; effective Jan. 1, 1966; revoked May 1, 1982.)

14-3-22. (Authorized by K.S.A. 41-211, 41-712, 41-1101, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-23. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-3-24. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-3-25. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1969 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1988.)

14-3-26. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-27. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-28. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1970 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 2, 1971; revoked May 1, 1988.)

14-3-29. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1988.)

14-3-30. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-31. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-32. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-33. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-34. (Authorized by K.S.A. 41-211, 41-702, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-3-35. (Authorized by K.S.A. 41-210 and 41-211 as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-308, 41-702; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Feb. 15, 1977; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; revoked May 1, 1988.)

14-3-36. (Authorized by K.S.A. 41-211, K.S.A. 1971 Supp. 41-210; effective, E-66-1, Jan. 14, 1966; effective Jan. 1, 1967; revoked May 1, 1988.)

14-3-37. (Authorized by K.S.A. 41-210, 41-211, 41-308; effective Jan. 1, 1972; amended May 1, 1975; revoked May 1, 1988.)

14-3-38. (Authorized by K.S.A. 41-210, K.S.A. 1979 Supp. 41-211, 41-311; effective Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1988.)

14-3-39. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-714; effective Jan. 1, 1974; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1988.)

14-3-40. (Authorized by K.S.A. 41-210, 41-211, 41-1117; effective Jan. 1, 1974; revoked May 1, 1988.)

14-3-41. (Authorized by K.S.A. 41-210, 41-717, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-3-42. (Authorized by K.S.A. 41-210, 41-7033, 41-714, K.S.A. 1980 Supp. 41-211; effective May 1, 1981; revoked May 1, 1988.)

**Article 4.—MANUFACTURERS,
DISTRIBUTORS AND
NONBEVERAGE USERS**

14-4-1. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-402; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1986; revoked May 1, 1988.)

14-4-2. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-3. (Authorized by K.S.A. 41-211, 41-401, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-4. (Authorized by K.S.A. 41-211, 41-601, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-5. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-6. (Authorized by K.S.A. 41-211, 41-311, 41-316, 41-326, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-7. (Authorized by K.S.A. 41-210, 41-211; implementing 41-1112, 41-1118, 41-1119, 41-1120, 41-1121, 41-306, 41-1101, 41-1111, 41-1114, 41-1115, 41-1116, 41-1117; effective Jan. 1, 1966; amended, E-66-10, Aug. 8, 1966; amended Jan. 1, 1967; amended Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; revoked May 1, 1988.)

14-4-8. (Authorized by K.S.A. 41-210, 41-1112, 41-1118, 41-1119, 41-1120, 41-1121, K.S.A. 1979 Supp. 41-211, 41-1101, 41-1111, 41-1114, 41-1115, 41-1116, 41-1117; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; revoked May 1, 1988.)

14-4-9. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-308; effective Jan. 1, 1966; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1988.)

14-4-10. (Authorized by K.S.A. 41-211; and amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-401; effective Jan. 1, 1966; amended May 1, 1986; revoked May 1, 1988.)

14-4-11. (Authorized by K.S.A. 1985 Supp. 41-1118; implementing K.S.A. 1985 Supp. 41-1101, K.S.A. 41-1112; effective Jan. 1, 1966; amended, E-66-11, Aug. 8, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1971; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended, E-81-36, Dec. 10, 1980; modified, L. 1981, Ch. 418, May 1, 1981; amended May 1, 1985; amended May 1, 1987; revoked May 1, 1988.)

14-4-11a. (Authorized by K.S.A. 41-210, 41-1112, 41-1118, 41-1119, K.S.A. 1980 Supp. 41-

211, 41-1101; effective May 1, 1981; revoked May 1, 1988.)

14-4-12. (Authorized by K.S.A. 41-1118, 41-1119, K.S.A. 1979 Supp. 41-1101; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1988.)

14-4-13. (Authorized by K.S.A. 41-210, 41-211 as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-402, 41-405, 41-408, 41-701, 41-709, 41-1101, 41-1111, 41-1117, 41-1118, 41-1119; effective Jan. 1, 1966; amended, E-66-12, Aug. 8, 1966; amended Jan. 1, 1967; amended Jan. 1, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1983; amended May 1, 1986; revoked May 1, 1988.)

14-4-14. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-402, 41-405, 41-408, 41-701, 41-708, 41-709, 41-712; effective Jan. 1, 1966; amended, E-73-21, June 29, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended, E-79-31, Nov. 21, 1978; amended May 1, 1980; amended, E-81-26, Dec. 10, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1985; amended May 1, 1986; revoked May 1, 1988.)

14-4-15. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-16. (Authorized by K.S.A. 41-210, 41-211, 41-702; effective Jan. 1, 1974; amended May 1, 1975; revoked May 1, 1988.)

14-4-17. (Authorized by K.S.A. 41-210, 41-211, 41-1101; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1987.)

14-4-18. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-19. (Authorized by K.S.A. 41-211, 41-602, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-20. (Authorized by K.S.A. 41-211, 41-602, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-21. (Authorized by K.S.A. 41-211, 41-602, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-4-22. (Authorized by K.S.A. 41-211, K.S.A. 1969 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1970; revoked May 1, 1988.)

14-4-23. (Authorized by K.S.A. 41-211, K.S.A. 1972 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1973; revoked May 1, 1988.)

14-4-24. (Authorized by K.S.A. 41-210, 41-1119, K.S.A. 1979 Supp. 41-211, 41-1101, 41-1111; effective, E-66-13, Aug. 8, 1966; effective Jan. 1, 1967; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-4-25. (Authorized by K.S.A. 41-210, 41-211, effective Jan. 1, 1974; amended Feb. 15, 1977; revoked May 1, 1988.)

14-4-26. (Authorized by K.S.A. 41-210, K.S.A. 1979 Supp. 41-211, 41-410; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1988.)

14-4-27. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-714; effective May 1, 1986; revoked May 1, 1988.)

14-4-28. (Authorized by K.S.A. 41-211, as amended by L. 1985, Ch. 170, Sec. 3; implementing K.S.A. 41-306, 41-408, 41-507, 41-709, 41-801; effective May 1, 1986; revoked May 1, 1988.)

Article 5.—TRANSPORTATION, CARRIERS AND STORAGE

14-5-1. Alcoholic liquor (except beer) transported into state or federal area only by bonded carriers. (a) All alcoholic liquor, except beer, shipped into the state of Kansas shall be transported only by common, contract or private carriers that hold liquor carrier permits issued by the director.

(b) Except as provided in subsection (c), all alcoholic liquor that is taxable under the act and shipped into this state or a federal area in interstate commerce and that is consigned to a consignee or person located, residing, or stationed on or at a federal area shall be transported into this state or a federal area only by common, contract or private carriers that hold liquor carrier permits issued by the director.

(c) When a licensed distributor is the holder of a valid private carrier permit issued by the Kansas

corporation commission and is also the holder of a valid liquor carrier permit issued by the director, the distributor may transport only alcoholic liquor owned exclusively by that distributor into the state of Kansas in compliance with the laws, rules and regulations of the interstate commerce commission and the Kansas corporation commission. (Authorized by K.S.A. 41-211, 41-210 as amended by L. 1987, Ch. 182, Sec. 10; implementing K.S.A. 41-408 as amended by L. 1987, Ch. 182, Sec. 36, 41-501a; effective Jan. 1, 1966; amended, T-88-22, July 1, 1987; amended May 1, 1988.)

14-5-2. Carriers' permits; application; fees. (a) A common, contract or private carrier shall not transport alcoholic liquor within or into the state, for delivery within the state, without first having obtained a permit to do so from the director.

(b) Applications for permits to transport alcoholic liquor within or into the state shall be filed with the director and shall contain any information the director may require. A permit fee of \$5.00 shall be paid at the time of application. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-211; implementing K.S.A. 41-408 as amended by L. 1987, Ch. 182, Sec. 36; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, T-88-22, July 1, 1987; amended May 1, 1988.)

14-5-3. (Authorized by K.S.A. 41-211, 41-501a, K.S.A. 1968 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1969; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-5-4. Storage of alcoholic liquor and cereal malt beverage in transit in public liquor warehouses; reports of warehouseman. Whenever alcoholic liquor or cereal malt beverage is transported into this state, consigned to a licensed distributor or licensed manufacturer of alcoholic liquor or cereal malt beverage, the alcoholic liquor or cereal malt beverage shall be considered to remain in transit until it is delivered to the bonded warehouse of the consignee. Alcoholic liquor and cereal malt beverage may be stored in transit in a public bonded liquor warehouse within the state of Kansas, upon the following terms and conditions:

(a) Any public bonded liquor warehouse in which alcoholic liquor or cereal malt beverage is stored in transit shall, within 48 hours of receipt of the alcoholic liquor or cereal malt beverage, give written notice to the director of the receipt, stating the names and addresses of the consignor and consignee, the description of the liquor, and the

name of the carrier that delivered the liquor to that warehouse.

(b) Each public bonded liquor warehouse shall make delivery of the alcoholic liquor or cereal malt beverage, or any part of it, only to a carrier that has been designated by the director as a liquor carrier, for delivery by the carrier to a licensed manufacturer or licensed distributor who is the consignee of such liquor.

(c) Within 48 hours after the alcoholic liquor or cereal malt beverage has been removed from the public bonded liquor warehouse for delivery to the consignee, the warehouse shall make a written report to the director setting out the name of the carrier to which the liquor has been delivered, the name and address of the consignee, and a description of the liquor delivered. (Authorized by K.S.A. 41-211, K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-408, 41-409; effective Jan. 1, 1966; amended, T-88-22, July 1, 1987; amended May 1, 1988; amended Aug. 6, 1990.)

14-5-5. (Authorized by K.S.A. 41-210, K.S.A. 1979 Supp. 41-211, 41-407; effective Jan. 1, 1966; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-5-6. Required delivery of alcoholic liquor to distributor by common carrier. All alcoholic liquor transported into this state and consigned to a licensed distributor or a licensed manufacturer of alcoholic liquor shall be delivered to the consignee in the state of Kansas and shall be received into the consignee's bonded warehouse. No part of the liquor shall remain in the hands of the carrier nor shall any carrier acquire any property rights in such alcoholic liquor. (Authorized by K.S.A. 41-211, 41-210 as amended by L. 1987, Ch. 182, Sec. 10; implementing K.S.A. 41-408 as amended by L. 1987, Ch. 182, Sec. 36; effective Jan. 1, 1966; amended, T-88-22, July 1, 1987; amended May 1, 1988.)

Article 6.—CONTAINERS AND LABELS

14-6-1. Containers, nature and form; change of original containers or labels. (a)(1) Each original package of alcoholic liquor or cereal malt beverage sold or offered for sale in this state shall be constructed of such material and be in such form as has been generally founded by the industry and recognized by federal and state enforcement officers to be safe, sanitary, and in no manner prejudicial to the health or interest of the public.

(2) All original packages of alcoholic liquor shall, before being offered for sale or sold, be approved by the director as to nature and form. Each manufacturer or corporate subsidiary of any manufacturer who markets the manufacturer's products through a subsidiary, each rectifier, distiller, and fermenter and each distributor of alcoholic liquor bottled in foreign countries shall submit an approved copy of the federal label approval form for each container offered for sale in this state.

(3) Each manufacturer or corporate subsidiary of a manufacturer who markets the manufacturer's products through a subsidiary, each rectifier, distiller, and fermenter, and each distributor of alcoholic liquor bottled in foreign countries, wishing to offer alcoholic liquor for sale in this state shall, upon requesting authority to do so, furnish a copy of the price list containing the information required by K.A.R. 14-14-10.

(4) After a container has been approved as to nature and form for sale in Kansas, further approval shall not be required.

(5) Each item shall be approved prior to posting it on the first of any month. No new container embodying changes as to nature and form for the same brand or kind of merchandise shall be sold or offered for sale until an approved copy of the federal label approval form has been submitted to the director.

(6) Imported containers embodying substantially the same brand, type and age of alcoholic liquor as that offered domestically by the same manufacturer or supplier, or a subsidiary of same, may be approved for sale in Kansas by the director.

(7) A container shall not be approved for sale in this state which, because of its design, composition or form, is obscene material.

(b) Whenever any original package of alcoholic liquor which has been approved as provided by subsection (a) of this regulation is changed by different labeling, closure, container, age or proof or changed in any other respect which, in the opinion of the director, constitutes a significant package change, the following procedure shall be followed:

(1) The new package, which reflects the change or changes, shall, before being offered for sale or sold, be approved by the director as to nature and form and shall be subject to all other provisions of subsection (a) of this regulation.

(2) To insure the orderly depletion of old packages in the inventories of licensed distributors, the manufacturer or supplier, subject to approval

by the director, may redistribute at the expense of the manufacturer or supplier, among licensed distributors, the remaining stocks of the old packages prior to the release of the new packages. All inventories of the old package in the hands of the distributors shall be depleted before the new package may be offered for sale. (Authorized by K.S.A. 1989 Supp. 41-210, implementing K.S.A. 41-211; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1971; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended Sept. 26, 1988; amended Aug. 6, 1990.)

14-6-2. (Authorized by K.S.A. 41-210, 41-211, 41-1117; implementing K.S.A. 41-211; effective Jan. 1, 1966; amended Jan. 1, 1967; amended Jan. 1, 1968; amended Jan. 1, 1972; amended May 1, 1975; amended Feb. 15, 1977; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1982; revoked May 1, 1983.)

14-6-2a. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211, and K.S.A. 41-1119; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Sept. 26, 1988; revoked Sept. 17, 2010.)

14-6-3. (Authorized by K.S.A. 1987 Supp. 41-210; K.S.A. 41-211; implementing K.S.A. 41-211, 41-706; effective Jan. 1, 1966; amended May 1, 1987; amended Sept. 26, 1988; revoked Sept. 17, 2010.)

14-6-4. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-211 and K.S.A. 41-706; effective Jan. 1, 1966; amended May 1, 1985; amended Sept. 26, 1988; amended Aug. 6, 1990; amended Sept. 17, 2010; revoked, T-14-6-26-19, June 26, 2019; revoked Oct. 25, 2019.)

14-6-5. Labels, false representations prohibited. No label on any original package of alcoholic liquor shall contain any false or misleading representations. (Authorized by K.S.A. 41-209, 41-211, 41-706, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-6-6. Private labels, requirements for use of. A licensed distributor may be authorized to bottle, label and sell to licensed retailers, under labels owned by the distributor, alcoholic liquors except beer purchased in bulk by class or type providing such liquors are labeled in accordance with the following:

(1) Before a distributor shall offer for sale or sell such liquor, said distributor shall submit an application, verified positively, for approval of each label to be used in the bottling of alcoholic liquors purchased by class or type.

(2) Said application shall consist of the following:

(a) Ownership. The application shall include a statement that the label, including brand name, designs, pictures, slogans and descriptive phraseology, is the exclusive property of the applicant. If the label or any component part thereof has been used previously, full particulars relating to said use shall be given including prior users, where used, and how said label or part thereof was acquired.

(b) Copyright or trade-mark. If said label or any brand name, design, picture, slogan or phraseology has been the subject of a copyright, patent or trademark under the laws of the United States or the various states, the application shall show where and by whom such action was taken with dates and identifying numbers being given.

(c) Acquisition of label. A statement shall be included stating that the label was created and designed by the distributor or setting out from whom said label including brand name, designs, pictures, slogans or phraseology was secured. Copies of contracts or agreements relating to the acquisition of said label and relating to the bottling of said liquors shall be attached. If said contracts or agreements are implemented by letters of intent, oral or other commitments, copies of all instruments with a statement of the details of oral commitments shall be attached.

(d) Resemblance to other labels. A statement shall be included that the proposed label including brand name, designs, pictures, slogans and phraseology bears no resemblance in any material manner to any label now used by any person, association or corporation in this or another state in the knowledge and belief of the applicant.

(e) Submission of copies. Two copies of each front and back label, neck label and any other design, picture, slogan or descriptive phraseology which shall be attached to the container shall be submitted with the application, with a photostatic or certified copy of the formal certificate of label approval issued by the United States government.

(3) All labels to be affixed to alcoholic liquors for bottling and labeling pursuant to this regulation shall include thereon the statement, "Distilled and bottled by" or "Bottled by" as the case may be, followed by the name of the person, association or corporation first offering said alcoholic

liquors for sale in Kansas to licensed distributors for bottling under labels owned by a distributor.

(4) On receipt of the foregoing, the director shall approve or disapprove said label. Additional information may be required in support of the application. If after approval, the label is changed, a new application shall be submitted.

(5) If it shall appear that the information upon which approval was given is incorrect or that a label exists resembling the approved label in a material feature, an inquiry shall be made and approval of the label may be withdrawn if the facts warrant. Misrepresentation, withholding of information, or fraud shall be cause for the issuance of a citation for the purpose of suspension or revocation of the applicant's license. (Authorized by K.S.A. 41-211, 41-306, 41-1101, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

Article 7.—TAX AND TAX STAMPS; CROWNS AND LIDS

14-7-1. (Authorized by K.S.A. 41-211, 41-501a, 41-502, K.S.A. 1965 Supp. 41-210, 41-501; effective Jan. 1, 1966; revoked May 1, 1986.)

14-7-2. Beer, crowns, lids, and labels; stamping of master carton, keg shipments.

(a) Beer containing more than 3.2% of alcohol by weight shall not be required to have an identifying mark on each container evidencing Kansas tax paid.

(b) All labels attached to the original package shall be approved by the director of alcoholic beverage control before the package may be sold in the state of Kansas.

(c) Each case of bottled or canned beer shipped into the state of Kansas by a beer manufacturer or supplier shall have the legend, "Kansas strong," or other appropriate language, stamped in black lettering on the exterior master carton in any position normally used for code dates, or as approved by the director. Labels, crowns and lids used for the packaging of strong beer for the state of Kansas shall not be required to indicate the alcoholic content. All kegs of strong beer shipped into the state of Kansas shall be identified by a distinctive bung. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211, 41-503; effective Jan. 1, 1966; amended Sept. 26, 1988.)

14-7-3. (Authorized by K.S.A. 41-211, 41-504, 41-505, K.S.A. 1972 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1973; revoked Sept. 26, 1988.)

14-7-4. Alcoholic liquor and cereal malt beverage; payment of tax; bond required. (a) The tax on alcoholic liquor and cereal malt beverage, as levied by the act and payable by a distributor, shall be paid by the distributor on or before the 15th day of the calendar month succeeding the month in which the distributor acquires possession of any alcoholic liquor upon which the tax has not been paid. The payment shall be by check and shall be accompanied by a report to the director, upon forms to be furnished by the director. The report shall show separately the exact total amount, in gallons or in fractions of gallons, of the following types of alcoholic beverages received by the distributor during the preceding month:

- (1) Wine containing 14% or less of alcohol by volume;
- (2) Wine containing more than 14% of alcohol by volume;
- (3) Alcohol and spirits;
- (4) Beer, containing more than 3.2% alcohol by weight; and
- (5) Cereal malt beverages, containing 3.2% or less alcohol by weight.

(b) Any sheriff who possesses alcoholic liquor, except beer, that is to be sold under an order of a court which has jurisdiction and upon which the tax has not been paid, shall file a report that provides the description and the amount of all alcoholic liquor to be sold. The report shall be filed on forms furnished by the director. The tax due and owing upon the liquor shall be paid out of the money received by the sheriff at the sale. The tax shall be remitted with the report, by cash, certified check, bank draft, post office or express money order.

(c)(1) Each licensed distributor shall furnish a bond payable to the director for the term of the license of the distributor. The bond shall be in a penal sum fixed and in a form approved by the director, shall be executed by the distributor as principal and by a corporate surety authorized to do business in the state of Kansas as surety and shall be conditioned upon the payment of the tax and penalties imposed by the act and this regulation upon such distributor.

(2) Any distributor may furnish, in lieu of this required bond, one or more certificates of deposit, corporate stock certificates, revenue bonds, or similar forms of collateral in the required amount. The collateral shall be deposited in an escrow account to be held by any recognized professional escrow agent. The escrow agreement shall be sub-

mitted upon a form provided by the director. All escrow agreements shall be subject to the director's approval.

(3) The amount of the bond shall be fixed by the director as follows:

(A) Each licensed spirits distributor shall furnish a bond equivalent in amount to the distributor's estimated highest monthly tax liability. However, the total amount of the bond shall not be less than \$15,000.

(B) Each licensed wine distributor shall furnish a bond equivalent to the distributor's estimated highest monthly tax liability. However, the total amount of the bond shall not be less than \$5,000.

(C) Each licensed beer distributor shall furnish a bond equivalent to the distributor's estimated highest monthly tax liability. However, the total amount of the bond shall not be less than \$5,000.

(d) A licensed distributor shall not accept any money from a manufacturer or another distributor to be used for the payment of the tax on alcoholic liquor. A distributor or manufacturer shall not advance any money to a licensed distributor for the purpose of paying that tax. (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-409, 41-502, 41-317; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1984; amended May 1, 1985; amended Sept. 26, 1988; amended Aug. 6, 1990.)

14-7-5. (Authorized by K.S.A. 41-211, 41-502, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

14-7-6. Kansas liquor stamps or strips; securing, affixation to original package; who shall affix; placing of stamps or strips. (a) All alcoholic liquor other than beer, wine and brandy, shall be identified by a Kansas liquor identification stamp or strip which shall be placed thereon for identification in accordance with the rules and regulations of the director. The provisions of this regulation shall not apply to beer, wine and brandy sold or distributed in the state of Kansas.

(b) The Kansas liquor identification stamp shall be affixed to each original package of the alcoholic liquor at the place where the alcoholic liquor is manufactured. When alcoholic liquor, is bottled in a foreign country and is imported into the United States, the Kansas liquor identification stamps, or strips may be affixed to the original packages by the person importing them into the United States

as the place within the United States where the shipment of alcoholic liquor into the state of Kansas originated. A licensed distributor or licensed manufacturer may stamp in the bonded distributor's warehouse any alcoholic liquor bottled in a foreign country, within 96 hours after receiving the alcoholic liquor in the bonded warehouse in the manner prescribed by the act and the rules and regulations of the director. Nothing contained in this rule and regulation shall be construed as changing or altering the provisions of the act or rules and regulations of the director.

(c) Each Kansas liquor identification stamp on alcoholic liquor shall be placed in a horizontal position upon a smooth surface on the front side, neck or shoulder or each original package in such a manner that the stamp will be plainly visible. Discretion shall be exercised in selecting the location for the Kansas liquor stamp to avoid mutilation of the stamp and the covering of any age, designation, bottled-in-bond identification, brand name or other information.

(d) When Kansas liquor identification strips are placed on original containers of alcoholic liquor instead of the identification stamp, each strip shall be placed over the cap or top of the bottle and down the neck, and shoulder of the bottle, in the location where federal revenue strips were formerly placed.

(e) Other alternate stamping methods may be approved by the director. (Authorized by K.S.A. 41-210 and 41-211, as amended by L. 1985 Ch. 170, Sec. 3; implementing K.S.A. 41-502; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1986.)

14-7-7. (Authorized by K.S.A. 41-211, 41-502, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked Jan. 1, 1974.)

14-7-8. (Authorized by K.S.A. 41-211, 41-409, 41-505, K.S.A. 1965 Supp. 41-210, 41-501; effective Jan. 1, 1966; revoked Sept. 26, 1988.)

14-7-9. (Authorized by K.S.A. 41-210, 41-211; effective Jan. 1, 1974; amended, E-74-36, July 2, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1982; revoked May 1, 1983.)

14-7-10. Beer distributors must provide designated geographic territory. Before commencing or continuing business every manufacturer or distributor of beer and every importer of beer must file with the director a diagram in a

form approved by the director, showing the designated territory within which the distributor will distribute beer to retailers. The said territory shall be agreed upon in writing by the manufacturer and distributor and a copy of the written agreement concerning the designated geographic territory must be filed with the director. (Authorized by K.S.A. 41-210, 41-211, K.S.A. 1974 Supp. 41-409; effective May 1, 1975.)

14-7-11. Change or modification of geographic territory. The geographic territory within which any distributor does distribute beer to retailers may not be changed, modified, or cancelled without the written consent of both the manufacturer and distributor and a verified copy of the consent must be filed by the manufacturer and distributor with the office of the alcoholic beverage control division and acknowledged before said change or modification will be effective. (Authorized by K.S.A. 41-210, 41-211, K.S.A. 1974 Supp. 41-409; effective May 1, 1975.)

14-7-12. Beer distributor selling outside his designated geographic territory. No beer distributor shall sell beer to any retailer who is located outside the geographic territory designated in the notice filed with the director by the distributor: *Provided*, That, if any beer distributor shall refuse to sell beer or provide service in connection therewith to any retailer located within such beer distributor's geographic territory, it shall be lawful for any other beer distributor to sell beer to such retailer after getting approval from the director. (Authorized by K.S.A. 41-210, 41-211, K.S.A. 1974 Supp. 41-701; effective May 1, 1975.)

Article 8.—ADVERTISING

14-8-1. "Advertisement" defined. The word "advertisement," as used in this article, means any advertisement of alcoholic liquor through the medium of radio, television, newspapers, periodicals, circulars, pamphlets, or other publications or any sign or outdoor advertisement or any other printed or graphic matter. (Authorized by K.S.A. 41-211, K.S.A. 1987 Supp. 41-714, 41-210; effective Jan. 1, 1966; amended Sept. 26, 1988.)

14-8-2. Prohibited statements and restrictions in the advertising of alcoholic liquor. (a) Advertisements of alcoholic liquor shall not contain any of the following:

(1) Any statement, design, device, or representation that is false or likely to mislead the consumer;

(2) any statement, design, device, or representation that is obscene, as defined by K.S.A. 21-4301(c)(1) and amendments thereto; or

(3) any statement concerning the brand of alcoholic liquor that is inconsistent with any statement on the labeling.

(b) Cooperative advertising by two or more retail liquor stores shall be permitted, but advertisements for retail liquor stores shall not directly or indirectly imply, state, or suggest to the public that multiple retail liquor stores have the same ownership or are part of a chain or franchise of retail liquor stores.

(c) Each advertisement shall conspicuously state the full "doing business as" name of each licensed premises included in the advertisement. This name shall be at least as prominent as the stated location of the licensed premises. (Authorized by K.S.A. 41-210, K.S.A. 41-211, and K.S.A. 2006 Supp. 41-714; implementing K.S.A. 41-211 and K.S.A. 2006 Supp. 41-714; effective Jan. 1, 1966; amended Jan. 1, 1971; amended, E-81-36, Dec. 10, 1980; amended, E-82-9, April 27, 1981; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; amended Dec. 28, 2007.)

14-8-3. Public display of alcoholic liquor regulated. No public display of alcoholic liquor, except domestic table wine as provided by K.A.R. 14-11-15, intended for retail sale for purposes of consumption shall be made in any place or at any other location than the licensed premises. (Authorized by K.S.A. 41-210, K.S.A. 41-211, K.S.A. 2006 Supp. 41-714; implementing K.S.A. 2006 Supp. 41-714; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended Dec. 28, 2007.)

14-8-4. (Authorized by K.S.A. 41-211; implementing 1983 Supp. K.S.A. 41-714(d); effective Jan. 1, 1966; amended Jan. 1, 1971; amended Feb. 15, 1977; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1984; revoked May 1, 1988.)

14-8-5. (Authorized by K.S.A. 41-210, 41-714, K.S.A. 1980 Supp. 41-211; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1981; revoked May 1, 1988.)

14-8-6. (Authorized by K.S.A. 1987 Supp. 41-210, K.S.A. 41-211; implementing K.S.A. 1987 Supp. 41-714; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1986; amended Sept. 26, 1988; revoked Aug. 29, 2008.)

14-8-7. House to house, door to door solicitation prohibited. (a) A manufacturer, importer, distributor, club, drinking establishment, caterer, temporary permit holder, farm winery, microbrewery, or retailer shall not, directly or indirectly, solicit from house to house, from door to door, personally, by telephone, or to places of business other than licensed premises authorized by these regulations the purchase or sale of alcoholic liquor and shall not allow any solicitation.

(b) If authorized by the director, seminars conducted by manufacturers or distributors may be conducted for other licensees and their employees. (Authorized by K.S.A. 41-210, K.S.A. 41-211, and K.S.A. 2007 Supp. 41-714; implementing K.S.A. 2007 Supp. 41-714; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1986; amended Sept. 26, 1988; amended Aug. 29, 2008.)

14-8-8. (Authorized by K.S.A. 41-211, 41-714, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked Aug. 29, 2008.)

14-8-9. (Authorized by K.S.A. 41-211, 41-714, K.S.A. 1970 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1971; revoked May 1, 1986.)

14-8-10. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-714; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1983; revoked May 1, 1986.)

14-8-11. (Authorized by K.S.A. 41-210, 41-714, K.S.A. 1979 Supp. 41-211; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; amended Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1988.)

14-8-12. (Authorized by K.S.A. 41-211, 41-714, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked Aug. 29, 2008.)

14-8-13. (Authorized by K.S.A. 41-211, 41-712, 41-714, K.S.A. 1970 Supp. 41-210; effective Jan. 1, 1966; amended Jan. 1, 1971; revoked May 1, 1986.)

Article 9.—SALESMEN’S PERMITS

14-9-1 to 14-9-9. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-9-10. (Authorized by K.S.A. 41-211, K.S.A. 1969 Supp. 41-210; effective, E-69-22, Sept. 16, 1969; effective Jan. 1, 1970; revoked May 1, 1988.)

Article 10.—TRADE PRACTICES

14-10-1. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-211, 41-703, 41-714; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1985; amended May 1, 1986; revoked May 1, 1988.)

14-10-1a. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-702, 41-703, 41-714; effective May 1, 1983; rejected, L. 1983, Ch. 360, July 1, 1983.)

14-10-1b. (Authorized by K.S.A. 41-210, 41-211; implementing K.S.A. 41-703; effective May 1, 1983; rejected, L. 1983, Ch. 360, July 1, 1983.)

14-10-2. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1988.)

14-10-3. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1980 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; amended, E-81-36, Dec. 10, 1980; amended May 1, 1981; revoked May 1, 1988.)

14-10-4. (Authorized by K.S.A. 41-210, 41-703, 41-714, K.S.A. 1980 Supp. 41-211; effective, E-81-36, Dec. 10, 1980; effective May 1, 1981; revoked May 1, 1988.)

14-10-5. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) “Caterer” means a person licensed pursuant to Article 22 of these regulations.

(b) “Club” means the premises or person licensed pursuant to Articles 19 or 20 of these regulations.

(c) “Director” means the director of the division of alcoholic beverage control of the department of revenue.

(d) “Distributor” means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(e) “Drinking establishment” means the premises or person licensed pursuant to Article 21 of these regulations.

(f) “Industry member” means any distributor, manufacturer or supplier, or any agent, salesperson or representative thereof.

(g) “Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler, person or other entity who fills or refills an original package or is engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. A “manufacturer” shall also mean:

(1) A corporate subsidiary of any manufacturer which markets alcoholic liquor through a subsidiary; and

(2) an American distributor of alcoholic liquor manufactured, produced or bottled in a foreign country. A “manufacturer” shall not include a farm winery or a microbrewery.

(h) “Person” means any natural person, corporation, association, trust or partnership.

(i) “Retailer” means a retailer licensed under the Kansas liquor control act or under K.S.A. 41-2702 and amendments thereto.

(j) “Supplier” means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of such a manufacturer, other than a salesperson. (Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-10-6. General. (a) Action taken by an industry member, retailer, club, drinking establishment, or caterer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau, department of the treasury shall be considered good faith compliance with this article unless the director has communicated a contrary interpretation pertaining to the subject of the memoranda.

(b) Subject to the exceptions provided in this article, industry members shall be prohibited from inducing the purchases of a retailer, club,

drinking establishment, or caterer by furnishing, giving, renting, lending, or selling to the retailer, club, drinking establishment, or caterer any equipment, fixtures, signs, supplies, money, services, or any other things of value. (Authorized by and implementing K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 20, 2012.)

14-10-7. (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-8. (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-9. (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-10. (Authorized by K.S.A. 1991 Supp. 41-703; implementing K.S.A. 1991 Supp. 41-703; 41-308 as amended by 1992 HB 2840; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; revoked Jan. 20, 2012.)

14-10-11. Value-added packages. Any industry member may include in packaging with alcoholic liquor other goods to be offered directly to the consumer. All costs directly related to the assembly of packages containing alcoholic liquor and other goods shall be borne solely by the industry member. An industry member shall not include any goods in packaging with alcoholic liquor for sale to a retailer before obtaining written approval from the director. The industry member shall request approval by submitting the following information to the director at least 30 days in advance of the intended shipping date:

(a) A color photograph, at least five inches by seven inches in size, of the complete package;

(b) the cost to the industry member of each item to be packaged with the alcoholic liquor;

(c) the total cost of the complete package, including alcoholic liquor, to be charged to the distributor or retailer by the industry member;

(d) a description of each item's intended use or value to the consumer, including a statement identifying the expiration date of any item intended for human consumption; and

(e) the "unimeric" (universal numeric) code number assigned to the package. (Authorized by K.S.A. 41-210, K.S.A. 41-308, and K.S.A. 41-

703; implementing K.S.A. 41-210, K.S.A. 41-308, K.S.A. 41-702, and K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended Jan. 20, 2012.)

14-10-12. (Authorized by and implementing K.S.A. 1991 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; revoked Jan. 20, 2012.)

14-10-13. (Authorized by and implementing K.S.A. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-14. (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-15. (Authorized by and implementing K.S.A. 1987 Supp. 41-703; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 20, 2012.)

14-10-16. Defective liquor containers. (a) No industry member shall knowingly sell any liquor containers that leak, contain foreign matter in the bottle, are short-filled, have broken seals, have badly soiled or stained labels, or are otherwise not fit for resale to the general public. Industry members shall not arrange to have retailers accept such merchandise.

(b) Each industry member that sells such damaged merchandise shall take the following action:

(1) Retrieve the damaged merchandise and exchange for merchandise fit for sale; or

(2) authorize the destruction of the damaged merchandise and refund to the distributor or retailer the purchase price. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 20, 2012.)

14-10-17. Trade practices. (a) To the extent not otherwise prevented by statute or regulation, the trade practice regulations of the alcohol and tobacco tax and trade bureau, department of the treasury in 27 C.F.R. Part 6, subpart B, subpart C, and subpart D, as in effect on April 1, 2010, excluding the following portions, are hereby adopted by reference and shall be the authorized trade practices under the liquor control act:

(1) The first four paragraphs in section 6.11;

(2) subsections (a) and (f) of section 6.21;

(3) sections 6.25, 6.26, 6.27, 6.31, 6.32, 6.33, 6.34, 6.35, 6.41, 6.44, 6.45, 6.51, 6.52, 6.53, 6.54, 6.55, 6.56, 6.61, 6.65, 6.66, 6.67, 6.71, 6.72, 6.85, and 6.98;

(4) the first two sentences in section 6.81(a); and

(5) the phrases “within the meaning of the Act” and “within the meaning of section 105(b) (3) of the Act” in sections 6.42(a), 6.43, 6.83(a), 6.84(a), 6.88(a), 6.91, 6.93, 6.96(a), 6.99(b), 6.100, 6.101(a)(b), and 6.102.

(b) For the purpose of this regulation, the terms “retailer” and “industry member” shall have the meaning specified in 27 C.F.R. Part 6, subpart B, section 6.11. (Authorized by and implementing K.S.A. 41-703; effective Jan. 20, 2012.)

14-10-18. Repurchase by distributor; when allowed. (a) Any distributor may perform any of the following:

(1) Buy back any item of alcoholic liquor or cereal malt beverage when required by the supplier;

(2) buy back any item of alcoholic liquor or cereal malt beverage from a club, drinking establishment, caterer, or retailer that has obtained the approval of the director to close out;

(3) buy back, with approval of the director, any unopened item of alcoholic liquor or cereal malt beverage for which the distributor has a franchise agreement to sell from a club, drinking establishment, caterer, or retailer who is quitting business;

(4) buy back or exchange, at the original sales price, any item of beer or cereal malt beverage that is within 14 days of its expiration date;

(5) buy back or exchange, within 24 hours after delivery, any item of alcoholic liquor that is broken, leaking, or short-filled, contains foreign material, has a soiled or stained label, or is otherwise not fit for resale to the general public; or

(6) buy back, with written permission from the director and within three business days after the end of an event conducted under a special event retailer’s permit issued under K.S.A. 41-2703 and amendments thereto, any cereal malt beverage sold to the holder of the special event retailer’s permit.

(b) A product shall not be returned or exchanged because it is overstocked or slow-moving.

(c) Products for which there is only a seasonal demand, including holiday decanters and certain distinctive bottles, shall not be returned or exchanged. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective Jan. 20, 2012.)

Article 11.—FARM WINERIES

14-11-1. Definitions. As used in this article and the liquor control act, unless the context clearly requires otherwise, the following terms shall have the meanings specified in this regulation:

(a) “Bonded wine premises” means a facility registered under the internal revenue code, 26 U.S.C. chapter 51, for the production, blending, cellar treatment, storage, bottling, or packing of wine.

(b) “Calendar year” means the period of time from January 1 through the following December 31.

(c) “Domestic fortified wine” has the meaning provided by K.S.A. 41-102, and amendments thereto.

(d) “Domestic table wine” has the meaning provided by K.S.A. 41-102, and amendments thereto.

(e) “Farmers’ market” means a regularly scheduled gathering of vendors, the primary purpose of which is to sell produce and other agricultural products directly to consumers.

(f) “Farm winery” has the meaning provided by K.S.A. 41-102, and amendments thereto.

(g) “Farm winery outlet” means a facility owned by the owner of a farm winery that is licensed by the director to manufacture, store, and sell the same brands of domestic table wine and domestic fortified wine as those of the farm winery.

(h) “Federal basic wine manufacturing permit” means a permit issued under the federal alcohol administration act, 27 U.S.C. chapter 8, to a bonded wine premises to produce wine.

(i) “Manufacturer” has the meaning provided by K.S.A. 41-102, and amendments thereto.

(j) “Standard case” means a package of original containers consisting of a total of 9,000 milliliters of wine of one brand or a combination of brands.

(k) “Wine” has the meaning provided by K.S.A. 41-102, and amendments thereto.

(l) “Winery” has the meaning provided by K.S.A. 41-350, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 41-350; implementing K.S.A. 2009 Supp. 41-308a; effective Sept. 17, 2010.)

14-11-2. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-715; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-3. Farm winery licensee shall not be employed by a licensed club. No farm winery licensee, or the spouse of any licensee, shall be employed in the capacity of an officer or manager of a club which is licensed by the director and shall not be employed in connection with the

mixing, serving, selling and dispensing of alcoholic liquor in such a club. Employees of farm winery licensees shall not purchase, or receive an order to deliver, any alcoholic liquors for a licensed private club. (Authorized by K.S.A. 41-210; implementing K.S.A. 1983 Supp. 41-311(b)(4); effective May 1, 1984.)

14-11-4. Registration of employees; salesperson permits. (a) The licensee of each farm winery and farm winery outlet shall notify the director of the name of each employee who will sell or serve domestic wine, within five days after that employee begins work and upon each renewal of the license. The notification shall be submitted upon forms provided by the director.

(b) Each person engaged in the sale of domestic table wine or domestic fortified wine off the premises of a farm winery or farm winery outlet, or the taking or soliciting of orders for the sale of domestic table wine or domestic fortified wine on behalf of a farm winery or farm winery outlet, shall obtain a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. Each salesperson shall provide that person's permit for inspection upon request by the director or any agent or employee of the director or secretary. (Authorized by K.S.A. 41-210; implementing K.S.A. 2009 Supp. 41-308a, as amended by L. 2010, ch. 142, sec. 5, and K.S.A. 41-333; effective Sept. 17, 2010.)

14-11-5. Licensed warehouses. Each licensee of a farm winery or farm winery outlet shall provide, at the licensee's own expense, a warehouse area situated on and constituting a part of the farm winery's or farm winery outlet's premises. The warehouse area shall be used for the storage of domestic table wine and domestic fortified wine manufactured by that farm winery or farm winery outlet. Domestic table wine and domestic fortified wine shall not be stored in any other place. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-401 and K.S.A. 2009 Supp. 41-308a, as amended by L. 2010, ch. 142, sec. 5; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-6. Opened containers of domestic table wine or domestic fortified wine on the licensed premises. The licensee of a farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall not permit the original package or container of any domestic table wine or domestic fortified wine to

be opened on that portion of the licensed premises that is used for retail sales, except as needed for serving free samples. (Authorized by K.S.A. 41-210; implementing 2009 Supp. 41-308a; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-7. Retail sales and deliveries. (a) Retail sales of domestic table wine and domestic fortified wine by a farm winery or farm winery outlet shall be made only on the licensed premises. Deliveries of domestic table wine and domestic fortified wine sold at retail by a farm winery or farm winery outlet shall be made only on the licensed premises for consumption off the premises.

(b) Any farm winery may deliver domestic table wine and domestic fortified wine to either of the following:

(1) The licensed premises of any of the following:

- (A) A club;
- (B) a drinking establishment;
- (C) a wine distributor; or
- (D) a retailer; or

(2) the principal place of business of a caterer. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-210 and K.S.A. 2009 Supp. 41-308a; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-8. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-715; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-9. Farm winery or farm winery outlet licensee prohibited from warehousing domestic table wine or domestic fortified wine for consumers. No farm winery or farm winery outlet that sells domestic table wine or domestic fortified wine at retail shall take orders, or otherwise arrange sales of the wine, for consumers for the purpose of delivering the wine before the legal opening hour, after the legal closing hour, or on any day when sales at retail are prohibited. (Authorized by K.S.A. 41-210; implementing K.S.A. 2009 Supp. 41-712; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-10a. (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

14-11-10b. (Authorized by K.S.A. 41-1118; implementing K.S.A. 41-1112, K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

14-11-10c. (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-10d. (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Sept. 17, 2010.)

14-11-11. (Authorized by K.S.A. 41-1118; implementing K.S.A. 1983 Supp. 41-1101; effective May 1, 1984; revoked Nov. 29, 2010.)

14-11-12. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-702, K.S.A. 1983 Supp. 41-308a; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-13. (Authorized by K.S.A. 41-211; implementing K.S.A. 41-714, as amended by L. 1983, Ch. 161, Sec. 17; effective May 1, 1984; revoked May 1, 1985.)

14-11-14. (Authorized by K.S.A. 41-211; implementing K.S.A. 1984 Supp. 41-714; effective May 1, 1984; amended May 1, 1985; revoked Sept. 17, 2010.)

14-11-15. Public display of domestic table wine or domestic fortified wine. (a) Domestic table wine or domestic fortified wine intended for retail sale for purposes of consumption shall not be placed on public display in any place or at any other location than the licensed premises of any of the following:

- (1) A farm winery;
- (2) a farm winery outlet;
- (3) a retail liquor store;
- (4) a farmers' market for which a bona fide farmers' market sales permit has been issued; or
- (5) a special event approved and monitored by the director.

(b) Any farm winery licensee may, if approved by the director upon receipt of a written request, display domestic table wine or domestic fortified wine at state or county fairs or other agricultural shows if all of the following conditions are met:

- (1) No free samples are dispensed.
 - (2) No retail sales are made at the fair or show.
 - (3) No orders are taken for subsequent sales.
- (Authorized by K.S.A. 41-211; implementing K.S.A. 2009 Supp. 41-714; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-16. Farm wineries and farm winery outlets selling at retail; marking prices; price or inventory control tags; shelf mark-

ings. Any licensee of a Kansas farm winery or farm winery outlet that sells domestic table wine and domestic fortified wine at retail may mark the retail selling price on the glass portion of the original container by using a crayon, grease pencil, or other similar means. Licensees may affix, to an original container, a price or inventory control paper or tag, or both. Luminous or fluorescent paper, or any similar paper, may be used for price or inventory control tags.

Farm winery and farm winery outlet licensees may place on a wall, or on a freestanding device, a list of items available and the price per item or case. In addition, licensees may place price information on point-of-sale materials. (Authorized by K.S.A. 41-210 and K.S.A. 41-211; implementing K.S.A. 41-210, K.S.A. 41-211, and K.S.A. 2009 Supp. 41-714; effective May 1, 1984; amended Sept. 17, 2010.)

14-11-17. (Authorized by K.S.A. 41-211; implementing K.S.A. 1983 Supp. 41-714; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-18. (Authorized by K.S.A. 41-211; implementing K.S.A. 1983 Supp. 41-714; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-19. (Authorized by K.S.A. 41-211; implementing K.S.A. 1983 Supp. 41-714; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-20. (Authorized by K.S.A. 41-211; implementing K.S.A. 1983 Supp. 41-714; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-21. (Authorized by K.S.A. 41-211; implementing K.S.A. 1983 Supp. 41-714; effective May 1, 1984; revoked Jan. 2, 1989.)

14-11-22. Special order shipping; license requirements. (a) Each owner or operator of a winery located either within this state or in another state wishing to ship wine directly to consumers in Kansas shall first obtain a special order shipping license from the secretary.

(b) Each application for a special order shipping license shall be submitted upon a form prescribed by the director, contain all information that the director deems necessary, and include the following:

- (1) A copy of the winery's federal basic wine manufacturing permit;
- (2) the appropriate license and registration fees; and

(3) a bond, pursuant to K.S.A. 41-317(b) and amendments thereto.

(c) The application of any winery may be rejected by the director for any of the following reasons:

(1) The application does not include all information that the director deems necessary.

(2) The application does not include a copy of the winery's federal basic wine manufacturing permit.

(3) The application does not include the appropriate license and registration fees.

(4) The application does not include the required bond.

(5) The applicant or its owners, officers, agents, or managers have violated a provision of the liquor control act or these regulations relating to special order shipping.

(6) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(7) The applicant or its owners, officers, agents, or managers previously held a license issued under the liquor control act or the club and drinking establishment act, and when that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(8) The applicant has had a liquor license revoked for cause in Kansas or another state.

(9) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any tax, fees, or fines to any state or to the United States.

(d) The special order shipping license shall be valid for two years from the date of issuance. The owner or operator of a winery wishing to renew its special order shipping license shall submit its renewal application to the department at least 30 days before the expiration of its current license. (Authorized by and implementing K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec.10; effective Nov. 29, 2010.)

14-11-23. Special order shipping. (a) No holder of a special order shipping license, and no owner, employee, or agent of the licensee, shall sell, give, or deliver wine to a person under 21 years of age.

(b) No licensee shall ship wine that was not manufactured by the licensee to a consumer in Kansas.

(c) For each shipment of wine to be sent directly to a consumer in Kansas, the licensee shall complete an invoice or sales slip containing all of the following information:

(1) The name, address, and license number of the winery;

(2) the name and address of the purchaser;

(3) the date of the purchase;

(4) the quantity and size of each brand of wine purchased;

(5) the subtotal of the cost of the wine and the total price of the shipment, including enforcement tax and shipping charge;

(6) a statement that the purchaser's age was verified and that the purchaser is at least 21 years of age; and

(7) the type of photo identification examined and the internet-based age and identification service utilized.

(d) For each sale of wine to be shipped directly to a consumer in Kansas, the licensee shall collect gallonage tax as required by K.S.A. 41-501 and amendments thereto.

(e) Each licensee, other than a licensed Kansas farm winery or manufacturer, shall file gallonage tax returns and remit these taxes annually. These returns and remittances shall be submitted on or before the 15th day of January for the preceding calendar year. The gallonage tax returns shall be accompanied by an annual sales report, which shall be submitted on a form prescribed by the director and shall reflect all sales made under the license during that calendar year.

(f) Each licensee shall file enforcement tax returns and shall submit returns showing zero sales if no wine was sold under the license during that tax period.

(g) Each licensee of a Kansas farm winery or farm winery outlet that also holds a special order shipping license shall maintain separate records and file separate returns for its special order shipping license. The licensee of each farm winery or farm winery outlet shall remit these taxes separately from the taxes collected and reported under any other license or permit held by the farm winery or farm winery outlet.

(h) Each licensee shall maintain, on the licensed premises, a copy of the invoice or sales slip for each shipment of wine sent directly to a consumer in Kansas for at least three years from the date of sale. The copies shall be made available for inspection by the director or any agent or employee of the director or secretary upon request. (Autho-

alized by K.S.A. 41-210 and K.S.A. 2009 Supp. 41-350; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350; effective Sept. 17, 2010.)

14-11-24. Bona fide farmers' market sales permit. A farm winery licensee may sell domestic table wine and domestic fortified wine manufactured by the licensee at a farmers' market only after obtaining a bona fide farmers' market sales permit from the director.

(a) Each farm winery licensee intending to sell wine at a farmers' market shall submit an application to the director for a bona fide farmers' market sales permit. Each application shall be submitted on a form prescribed by the director and shall include all information the director deems necessary. The application shall indicate the location of the farmers' market and the day of the week on which the applicant intends to sell wine.

(b) No bona fide farmers' market sales permit shall be issued if the local governing body has not approved the sale of alcoholic liquor at retail for the proposed location of the farmers' market.

(c) No bona fide farmers' market sales permit shall be issued for any farmers' market located on state property or within 200 feet of any school, college, or church.

(d) The director may reject an application for a bona fide farmers' market sales permit for either of the following reasons:

(1) The application does not include all information the director deems necessary.

(2) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(e) Each bona fide farmers' market sales permit shall be valid for one year from the date of issuance. Each farm winery licensee wishing to renew its bona fide farmers' market sales permit shall submit its renewal application to the department at least 30 days before the expiration of its current permit.

(f) No holder of a bona fide farmers' market sales permit shall sell domestic table wine or domestic fortified wine at a farmers' market on any day of the week other than the day specified in the application or at any farmers' market other than the one specified in the application.

(g) Domestic table wine and domestic fortified wine shall be sold at a farmers' market only in the original, unopened container. The serving of samples of domestic table wine or domestic fortified wine at a farmers' market shall be prohibited.

(h) Any of the following may sell domestic table wine and domestic fortified wine at a farmers' market:

(1) The holder of a bona fide farmers' market sales permit;

(2) a member of the permit holder's family who is at least 21 years of age; or

(3) an employee of the permit holder who is at least 21 years of age and is reported to the director as an employee, on a form prescribed by the director.

(i) Each person selling domestic table wine and domestic fortified wine under a bona fide farmers' market sales permit shall possess a salesperson's permit as required by K.S.A. 41-333 and amendments thereto. The person shall produce the permit upon request by the director or any agent or employee of the director or secretary upon request.

(j) Each farm winery selling wine at a farmers' market shall display its bona fide farmers' market sales permit in a conspicuous place in its farmers' market sales area.

(k) For each sale of domestic table wine or domestic fortified wine at a farmers' market, the holder of a bona fide farmers' market sales permit shall collect liquor enforcement tax as required by K.S.A. 79-4101 and amendments thereto. The permittee shall file enforcement tax returns and remit payment according to the provisions of the liquor enforcement tax act, K.S.A. 79-4101 et seq. and amendments thereto.

(l) Each licensee of a Kansas farm winery that also holds a bona fide farmers' market sales permit shall maintain separate records and file separate returns for its bona fide farmers' market sales permit. The farm winery licensee shall remit enforcement taxes collected from sales at the farmers' market separately from the taxes collected and reported under its farm winery license. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-351, and K.S.A. 79-4106; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-351; effective Sept. 17, 2010.)

14-11-25. Licensee of farm winery also licensed as manufacturer. (a) A farm winery licensee may request a license as a manufacturer by submitting an application to the director.

(b) Each application for a manufacturer's license shall be submitted upon forms prescribed by the director, shall contain all information the director deems necessary, and shall include the following:

(1) The appropriate license fee pursuant to K.S.A. 41-310(c), and amendments thereto;

(2) a bond pursuant to K.S.A. 41-317(b), and amendments thereto; and

(3) the registration fee pursuant to K.S.A. 41-317(a), and amendments thereto.

(c) The director may reject an application for a manufacturer's license for any of the following reasons:

(1) The application does not include all information the director deems necessary.

(2) The application does not contain the appropriate license fee, bond, or registration fee.

(3) The applicant or its owners, officers, agents, or managers are currently delinquent in payment of any gallonage tax, enforcement tax, or any fees or fines to the state of Kansas.

(d) Each farm winery licensee shall maintain separate storage facilities, production records, and sales records from those of the manufacturer.

(e) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be sold at or under any of the following:

(1) The licensed premises of any farm winery;

(2) the licensed premises of any farm winery outlet;

(3) a bona fide farmers' market; or

(4) any special order shipping license.

(f) No alcoholic liquor or cereal malt beverage manufactured by the manufacturer shall be displayed or sampled in any sales area or tasting area of the farm winery premises.

(g) Each farm winery licensee that also holds a manufacturer's license shall file separate gallonage tax returns for its manufacturer's license. The farm winery licensee shall remit gallonage taxes separately from the taxes reported under its manufacturer's license.

(h) Each farm winery licensee that also holds a manufacturer's license shall submit a monthly sales report with each manufacturer license's gallonage tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under the manufacturer's license during that month.

(i) Each farm winery licensee that also possesses a manufacturer's license shall be subject to the record retention and reporting requirements of both license types. (Authorized by K.S.A. 41-210 and K.S.A. 79-4106; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-305, K.S.A. 2009 Supp. 41-317; effective Sept. 17, 2010.)

14-11-26. Label approval required. Before offering for sale in this state any domestic table wine or domestic fortified wine, a farm winery or farm winery outlet shall submit each label and a "certificate of label approval" from the federal tax and trade bureau to the director. No domestic table wine or domestic fortified wine shall be sold in this state unless the label and the "certificate of label approval" have been submitted to the director. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective Sept. 17, 2010.)

14-11-27. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211, K.S.A. 2009 Supp. 41-308a; effective Sept. 17, 2010; revoked Dec. 27, 2010.)

14-11-28. Sales to minors prohibited. No farm winery licensee, farm winery outlet licensee, holder of a special order shipping license, holder of a bona fide farmers' market sales permit, or any owner, employee, or agent of any of these individuals shall sell, give, or deliver domestic table wine or domestic fortified wine to any person under 21 years of age. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective Sept. 17, 2010.)

14-11-29. Record retention; reporting requirements. (a) Each farm winery licensee, farm winery outlet licensee, holder of a bona fide farmers' market sales permit, or holder of a special order shipping license shall maintain records of all sales made under the license or permit for at least three years after the date of sale. The records required by this subsection shall be available for inspection by the director, any agent or employee of the director, or the secretary upon request.

(1) Each record required by the regulation shall be maintained on the premises of the farm winery or farm winery outlet for at least 90 days after the sale.

(2) Any record required by this regulation may be stored electronically and maintained off the licensed premises.

(b) Each farm winery licensee shall submit a monthly sales report with each gallonage tax return. The report shall be submitted on a form prescribed by the director and shall reflect all sales made under any license or permit issued under the liquor control act and held by the farm winery licensee during that month. (Authorized by K.S.A. 41-210, K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec. 10, and K.S.A. 2009 Supp.

41-351; implementing K.S.A. 41-211 and K.S.A. 2009 Supp. 41-350, as amended by L. 2010, ch. 142, sec. 10; effective Sept. 17, 2010.)

Article 12.—CEREAL MALT BEVERAGES

14-12-1. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 41-2702; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-2. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-2713; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-3. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 41-2702, 41-2703; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-4. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 17-6002, 41-2703; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-5. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-409; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-6. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-409, 41-2713; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-7, 14-12-8. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-409; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-9. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-409, 41-2705, 41-2713; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-10. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-409, 41-2705; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-11. (Authorized by K.S.A. 79-3835; implementing K.S.A. 79-3827, 79-3828; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-12, 14-12-13. (Authorized by K.S.A. 79-3835; implementing K.S.A. 79-3824; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-14. (Authorized by K.S.A. 79-3835; implementing K.S.A. 79-3819, K.S.A. 79-3824; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-15. (Authorized by K.S.A. 79-3835; implementing K.S.A. 79-3825; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-16. (Authorized by K.S.A. 1985 Supp. 41-210; K.S.A. 1985 Supp. 41-211, as amended by L. 1986, Ch. 185, Sec. 4; implementing K.S.A. 1985 Supp. 41-211(a)(2), as amended by L. 1986, Ch. 185, Sec. 4; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-17. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-2705; effective May 1, 1987; revoked Jan. 3, 2003.)

14-12-18. (Authorized by K.S.A. 1985 Supp. 41-2717; implementing K.S.A. 1985 Supp. 41-2723; effective May 1, 1987; revoked Jan. 3, 2003.)

Article 13.—RETAIL LIQUOR DEALER

14-13-1. Definitions. As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) "Adjacent premises" means an enclosed permanent structure that is contiguous to the licensed premises and may be located in front of, beside, behind, below, or above the licensed premises. Adjacent premises shall be under the direct or indirect control of the retailer. This term shall not include empty lots, parking lots, temporary structures, or enclosed structures not contiguous to the licensed premises.

(b) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association, or other form of business organization.

(c) "Bulk wine" means wine that is sold to a club by either a retailer or a distributor in barrels, casks, or bulk containers that individually exceed 20 liters.

(d) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(e) "Church" means a building that is owned or leased by a religious organization and is used exclusively as a place for religious worship and other activities ordinarily conducted by a religious organization.

(f) "Crime opposed to decency and morality" means a crime involving any of the following:

(1) Prostitution;

(2) solicitation of a child under 18 years of age for any immoral act involving sex;

(3) possession or sale of narcotics, marijuana, amphetamines, or barbiturates;

(4) rape;

(5) incest;

(6) gambling;

(7) adultery;

(8) bigamy; or

(9) procuring any person to be involved in the commission of any of the criminal acts specified in paragraphs (f) (1)-(8).

(g) "Licensed premises" means those areas described in an application for a retailer's license that are under the control of the applicant and are intended as the area in which alcoholic liquor is to be sold for consumption off the licensed premises or stored for later sale.

(h) "Manager" means a person with the status, duties, and authority to have control over the licensee's business operation, finances, or disbursement of business funds including any of the following:

(1) The authority to make decisions concerning the day-to-day operations of the business;

(2) the authority to hire or fire employees;

(3) the authority to sign business checks;

(4) the authority to direct payment of business funds; or

(5) supervision of those employees responsible for any of these duties.

(i) "Mixer" means any liquid capable of being consumed by a human being that can be combined with alcoholic liquor for consumption.

(j) "Tasting event" means any time during which a retailer or supplier is serving free samples of alcoholic liquor on the retailer's licensed premises or at adjacent premises monitored and regulated by the director. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-102; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended, T-14-6-28-12, July 1, 2012; amended, T-14-10-25-12, Oct. 29, 2012; amended Feb. 22, 2013; amended June 7, 2018.)

14-13-2. Application for retail liquor license; requirements, conditions, and restrictions on issuance of license. (a) A retailer's license shall be issued by the director to each applicant who is determined by the director to have met the requirements of the liquor control act.

(b) Each application for a retailer's license shall be submitted on forms prescribed by the director and include the following:

(1) A copy of any partnership agreement, operating agreement of a limited liability company, declaration of trust, or other documents specifying the aims and purposes of the trust, if applicable;

(2) a copy of a written lease or proof of ownership of the premises to be licensed;

(3) a certified statement from the applicant that the licensed premises are located in one of the following areas:

(A) An area where the zoning regulations of the city, township, or county allow the operation of a retail liquor store; or

(B) an area where no zoning regulations have been adopted;

(4) the proper license fee and registration fee;

(5) a bond, pursuant to K.S.A. 41-317 and amendments thereto;

(6) a diagram of the licensed premises, showing the area or areas in which alcoholic liquor will be stored and sold. Subject to the prior approval of the director, the licensed premises may include either of the following:

(A) Those areas outside the main sales area that are within 100 yards of the main sales area and located upon property that is subject to the applicant's legal control; or

(B) a detached storage area, located within 100 yards of the main sales area and used exclusively for storage of alcoholic liquor by the retailer; and

(7) all other information necessary to complete the application process.

(c) On and after April 1, 2020, in addition to the items specified in subsection (b), each application for a renewal of a retailer's license shall include a statement of gross receipts from the previous 12-month period showing that the sale of all goods and services other than cereal malt beverage and alcoholic liquor is not more than 20 percent of the retailer's total gross sales. For the purposes of this calculation, all fees derived from the sale of lottery tickets and cigarette and tobacco products shall be excluded.

(d) The initial application for any retailer's license, or any renewal application for a retailer's license, may be rejected by the director for any of the following reasons:

(1) The applicant does not provide all the information necessary for completion of the application process.

(2) The applicant does not include the proper license fee and registration fee.

(3) The applicant does not include the required bond.

(4) The applicant or its owners, officers, resident agent, or managers have violated a provision of the liquor control act or these regulations relating to the sales of alcoholic liquor that may have been grounds for license revocation.

(5) The applicant or its owners, officers, resident agent, or managers are currently delinquent in payment of any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(6) The applicant or its owners, officers, resident agent, or managers previously held a license issued under the liquor control act or the club and drinking establishment act, and when that license expired or was surrendered, the licensee was delinquent in payment of any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(7) The applicant has had a liquor license revoked for cause in Kansas or another state.

(8) The applicant or its owners, officers, resident agent, or managers have been convicted of a crime opposed to decency and morality.

(9) For any renewal application received on or after April 1, 2020, the licensee has failed to demonstrate that the sale of all goods and services other than cereal malt beverage and alcoholic liquor is not more than 20 percent of the retailer's total gross sales pursuant to subsection (c).

(e) Each person who provides financing to or leases premises to a retailer upon terms that result in that person having a beneficial interest in the retailer's business shall be deemed to be a partner in the retailer's business. Each person who provides financing to a retailer shall be deemed to have a beneficial interest in the retailer's business if the terms for repayment are conditioned on the amount of the retailer's receipts or profits from the sale of alcoholic liquor. A lessor shall be deemed to have a beneficial interest in a retailer's business if the lessor receives as rent, in whole or in part, a percentage of the retailer's receipts or profits from the sale of alcoholic liquor. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-308, K.S.A. 2017 Supp. 41-310, K.S.A. 2017 Supp. 41-311, K.S.A. 41-315, and K.S.A. 2017 Supp. 41-317; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended Feb. 22, 2013; amended June 7, 2018.)

14-13-3. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; imple-

menting K.S.A. 41-211, 41-318, 41-327; effective May 1, 1988; revoked Feb. 22, 2013.)

14-13-4. Local occupation or license tax; display requirement. (a) If the retail premises are located in a city or county that imposes a local occupation or license tax, a retailer shall not sell or offer for sale any alcoholic liquor until the retailer has paid the occupation or license tax.

(b) Each retailer whose licensed premises is located in a city or county that requires a local occupation or license tax shall cause proof of payment of the occupation or license tax to be framed and hung in a conspicuous place on the retailer's licensed premises. (Authorized by K.S.A. 41-210; implementing K.S.A. 2011 Supp. 41-310, as amended by L. 2012, ch. 144, sec. 13; effective May 1, 1988; amended Aug. 6, 1990; amended Feb. 22, 2013.)

14-13-5. Retailers; employees; roster; responsibility for conduct. (a) Each retailer shall be responsible for the conduct of the retailer's business and shall be directly responsible for violations of the liquor control act or these regulations by any employee engaged in and acting in the course of employment.

(b) Each retailer shall maintain, on the licensed premises, a roster of all employees, including unpaid volunteers, who are involved in the sale or service of alcoholic liquor. This roster shall be made available for inspection upon request by the director, any agent or employee of the director, or secretary.

The roster required by this regulation shall contain each employee's first name, last name, middle initial, gender, and date of birth. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-713 and K.S.A. 41-904; effective May 1, 1988; amended July 1, 1991; amended Feb. 22, 2013.)

14-13-6. Change of location of business. (a) Any retailer may change the location of the licensed premises only upon written permission of the director.

(b) At least 20 days before changing the location of the business, the retailer shall submit a written request, on forms prescribed by the director, to change the location of the business.

(c) Each request required by subsection (b) shall contain all of the following:

- (1) The retailer's name and license number;
- (2) the retailer's current business address;
- (3) the retailer's new business address;

(4) a copy of a written lease or proof of ownership of the new premises sought to be licensed; and

(5) a certified statement, from the clerk of the city or county in which the premises sought to be licensed are located, that the premises are in one of the following areas:

(A) An area where the zoning regulations of the city, township, or county allow the operation of a retail liquor store; or

(B) an area where no zoning regulations have been adopted.

(d) Any request to change the location of a licensed business may be denied by the director for any of the following reasons:

(1) The new location is in an area where the zoning regulations of the city, township, or county do not allow the operation of a retail liquor store.

(2) The new location is within 200 feet of any school, college, or church.

(3) The new location has an inside entrance that connects with another place of business. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-315, K.S.A. 2011 Supp. 41-710, as amended by L. 2012, ch. 144, sec. 24, and K.S.A. 41-711; effective May 1, 1988; amended Feb. 22, 2013.)

14-13-7. Licenses, loss or destruction of; duplicate license. (a) Whenever any license issued by the director is lost or destroyed before its expiration, the retailer to whom the license was issued may submit a written application to the director for a duplicate license.

(b) The application required by subsection (a) shall be submitted on forms prescribed by the director and shall contain the facts and circumstances concerning the loss or destruction of the license.

(c) The director may issue a duplicate license upon receipt of information that the license has been lost or destroyed. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211; effective May 1, 1988; amended Feb. 22, 2013.)

14-13-8. Transfer of retailer's stock of alcoholic liquor; application for permission; seizure and sale of abandoned alcoholic liquor. (a) When a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's stock of alcoholic liquors to another licensee.

(b) The application to transfer the retailer's stock of alcoholic liquors shall be submitted on

forms prescribed by the director and shall contain all of the following:

(1) The retailer's name and license number;

(2) the purchaser's name and license number;

(3) the gross sale price of the transferred alcoholic liquor; and

(4) the quantity, brand, and type of each container of alcoholic liquor to be transferred.

(c) No alcoholic liquor in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer alcoholic liquor under the provisions of subsection (a) if the retailer owes any gallonage tax, liquor enforcement tax, liquor drink tax, license fees, or liquor-related fines to the state of Kansas.

(e) The director or any employee or agent of the director may seize and sell any alcoholic liquor located on the premises subject to a retailer's license if the director determines that the alcoholic liquor has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the alcoholic liquor has been abandoned:

(1) The licensee has quit its occupation of the building, leaving alcoholic liquor in the building.

(2) The licensee has been evicted and has made no attempt to collect the alcoholic liquor.

(3) Attempts to contact the licensee to determine its plans for the alcoholic liquor have been unsuccessful.

(4) The presence of the alcoholic liquor in the building poses a threat to the public health, safety, and welfare or the orderly regulation of the market.

(f) Upon the director's determination that the alcoholic liquor has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the alcoholic liquor. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the alcoholic liquor, the director may seize and sell the alcoholic liquor.

(g) The proceeds from the sale of alcoholic liquor under subsection (e) shall be deposited into the state general fund. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-1102; effective May 1, 1988; amended Feb 22, 2013.)

14-13-9. Transactions prohibited; deliveries by retailer for sale or resale off licensed premises. (a) Any retailer may sell and deliver al-

coholic liquor to a club, drinking establishment, public venue, or caterer if all of the following conditions are met:

(1) All deliveries of alcoholic liquor are made to the licensed premises of a club, public venue, or drinking establishment and to the principal place of business of a caterer.

(2) All deliveries are made by an employee of the retailer.

(3) The retailer provides a sales slip or numbered invoice, purchase order, or sales ticket for each item delivered as required by K.A.R. 14-13-10.

(4) The retailer receives payment for all deliveries before or at the time of the deliveries.

(5) The retailer has first obtained a federal wholesale basic permit and displays a sign on the licensed premises stating that the retailer is a “Wholesale Liquor Dealer Under Federal Law.”

(6) All deliveries of alcoholic liquor are made on those days and during those hours that a retailer may sell alcoholic liquor pursuant to K.S.A. 41-712, and amendments thereto.

(7) All deliveries originate from the licensed premises of the retailer.

(b) Any retailer may sell alcoholic liquor to a temporary permit holder if all of the following conditions are met:

(1) Sales are made only upon the licensed premises of the retailer.

(2) No deliveries are made to a temporary permit holder.

(3) The retailer provides a sales slip or numbered invoice, purchase order, or sales ticket as required by K.A.R. 14-13-10.

(c) No retailer shall sell or deliver any alcoholic liquor to any person with knowledge of, or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the alcoholic liquor for the purpose of peddling or reselling the alcoholic liquor in violation of this article, the Kansas liquor control act, or the club and drinking establishment act.

(d) All alcoholic liquor of a retail licensee shall be stored upon the licensed premises of the licensee. Alcoholic liquor shall not be stored upon the licensed premises after the sale. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-210, K.S.A. 41-308, as amended by L. 2012, ch. 144, sec. 10, and K.S.A. 41-717, as amended by L. 2012, ch. 144, sec. 26; effective May 1, 1988; amended Aug. 6, 1990; amended July 1, 1991; amended Nov. 21, 2003; amended Feb. 22, 2013.)

14-13-10. Records of purchases and sales; retention of records; reports. (a) Each retailer purchasing alcoholic liquor from a licensed distributor shall obtain a numbered invoice, purchase order, or sales ticket that contains the following information:

(1) The date of purchase;

(2) the name, address, and license number of the retailer;

(3) the name, address, and license number of the distributor;

(4) the name of the individual making the purchase for the retailer;

(5) the brand, size, and amount of each brand purchased;

(6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the alcoholic liquor purchased and the total cost of the order including delivery charge, if any.

(b) Each retailer engaged in sales to licensed clubs, drinking establishments, caterers, public venues, or temporary permit holders shall provide a numbered invoice, purchase order, or sales ticket in connection with all purchases, which shall include the following information:

(1) The date of purchase;

(2) the name, address, and license number of the retailer;

(3) the name, address, and license number of the club, drinking establishment, caterer, public venue, or temporary permit holder;

(4) the name of the individual making the purchase for the club, drinking establishment, caterer, public venue, or temporary permit holder and that individual’s position with the club, drinking establishment, caterer, public venue, or temporary permit holder;

(5) the brand, size, and amount of each brand purchased;

(6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the alcoholic liquor sold and the total cost of the order including enforcement tax and delivery charge, if any.

(c) Each retailer who holds a federal wholesale basic permit shall, between the first and the fifteenth day of each month, upon a form prescribed by the director, submit a certified report of all sales made to any licensed club, drinking establishment, caterer, public venue, or temporary permit holder during the preceding month. The report shall include the following information for each order placed by and

sold to a club, drinking establishment, caterer, public venue, or temporary permit holder:

- (1) The date of the order;
- (2) the name, address, and license number of the club, drinking establishment, caterer, public venue, or temporary permit holder; and
- (3) the total price paid for each order.

(d) On and after April 1, 2019, each retailer shall keep all sales receipts from the sale to any customer of all alcoholic liquor, cereal malt beverage, and any other goods or services, excluding the sales of lottery tickets and cigarette and tobacco products.

(e) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date the alcoholic liquor was sold.

(f) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, or the secretary upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2017 Supp. 41-212; implementing K.S.A. 2017 Supp. 41-308, K.S.A. 41-407, K.S.A. 41-703, and K.S.A. 41-708; effective May 1, 1988; amended Feb. 22, 2013; amended June 7, 2018.)

14-13-11. (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-308; K.S.A. 41-715; effective May 1, 1988; amended Aug. 6, 1990; revoked Feb. 22, 2013.)

14-13-12. Defective liquor containers; repurchase by retailer. (a) No retailer shall knowingly sell any liquor containers that leak, contain foreign matter in the bottle, are short-filled, have broken federal seals, have badly soiled or stained labels, or are otherwise not fit for resale to the general public.

(b) Any retailer may perform the following:

(1) Buy back from a customer any item of alcoholic liquor when required by the distributor to do so;

(2) buy back any item of alcoholic liquor from a club, drinking establishment, or caterer for which

the club, drinking establishment, or caterer has obtained the approval of the director to close out;

(3) buy back or exchange, within 24 hours of delivery, any item of alcoholic liquor that is damaged, as described in subsection (a); and

(4) buy back, with written permission from the director and within three business days after the end of an event conducted under a temporary permit issued under K.S.A. 41-2645 and amendments thereto, any beer sold to the holder of the temporary permit. (Authorized by and implementing K.S.A. 41-210 and K.S.A. 41-211; effective May 1, 1988; amended Aug. 5, 2011.)

14-13-13. Prohibited conduct of retailer.

(a) A retailer shall not permit gambling or the possession of any gambling or gaming device on the licensed premises. However, any retailer may sell, operate, possess, and offer to the public lottery tickets permitted by the Kansas lottery act if the retailer is authorized by the Kansas lottery commission to do so.

(b) A retailer shall not, as a condition for the sale or delivery of alcoholic liquor to a customer or to any other licensee who is licensed under the liquor control act or the club and drinking establishment act, require that the other licensee or customer purchase or contract to purchase alcoholic liquor of another form, quantity, or brand in addition to or partially in lieu of that specifically ordered or wanted by the licensee or customer.

(c) A retailer shall not sell or deliver alcoholic liquor of a particular form or brand to a customer or to any other licensee who is licensed under the liquor control act or the club and drinking establishment act under any arrangement, agreement, or understanding, direct or implied, such that the sale or delivery will be made only if the other licensee or customer also buys or accepts delivery of a quantity of alcoholic liquor of another form or brand.

(d) A retailer shall not refuse to permit the director or any agent or employee of the director to inspect the licensed premises and any alcoholic liquor in the retailer's possession or under the retailer's control upon the licensed premises or upon any other premises where the retailer has stored any alcoholic liquor.

(e) A retailer shall not make any false or misleading representations with respect to any alcoholic liquor product or any licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of an alcoholic liquor

or beer. A retailer shall not deceive or attempt to deceive a customer by removing or changing any label or sanitation cover from a container of alcoholic liquor.

(f) A retailer shall not sell or remove any alcoholic liquor from the licensed premises on any day other than a legal day for the sale of alcoholic liquor at retail, after the legal closing hour or before the legal opening hour.

(g) A retailer shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates, or similar inducements with the sale of any alcoholic liquor, nor shall any retailer directly or indirectly offer, furnish, or sell any alcoholic liquor at less than its cost plus enforcement tax, except according to the following:

(1) Any retailer may include in the sale of alcoholic liquor any goods included by the manufacturer in packaging with the alcoholic liquor. Goods included by the manufacturer shall be packaged with one or more original packages of alcoholic liquor in such a manner as to be delivered to the consumer as a single unit. A retailer shall not sell or give away goods included by a manufacturer that are not packaged as a single unit with the original package of alcoholic liquor as shipped by the manufacturer.

(2) Any retailer may distribute consumer advertising specialty items, subject to the limitations imposed by this regulation. For the purposes of this regulation, consumer advertising specialty items shall be limited to the following: ashtrays, bottle or can openers, corkscrews, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, postcards, posters, printed sports schedules, pens, pencils, and other items of minimal value as approved by the director. Each consumer advertising specialty item shall contain advertising material relating to a brand name of alcoholic liquor or to the operation of the retail liquor store distributing the consumer advertising specialty item. No charge may be made for any consumer advertising specialty item or any purchase required in order to receive any consumer advertising specialty item.

(h) A retailer shall not open or permit to be opened, on the licensed premises, any container or original package containing alcoholic liquor or cereal malt beverage, except as provided in K.A.R. 14-13-16 and K.A.R. 14-13-17.

(i) A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage on or about the licensed premises, except that any con-

sumer who is at least 21 years of age may sample alcoholic liquor available for sale by the retailer, on the licensed premises and at adjacent premises monitored and regulated by the director, in accordance with K.A.R. 14-13-16 and K.A.R. 14-13-17.

(j) A retailer shall not allow an intoxicated person to frequent, loiter, or be employed upon the licensed premises. A retailer's manager or employee shall not be intoxicated while on duty for the licensee.

(k) A retailer shall not permit any other person to use the licensed premises for the purpose of carrying on any business activity other than the sale of alcoholic liquor.

(l) A retailer shall not accept or receive from any agent or employee of any licensed distributor any cash rebate or thing of value, or enter into or be a party to any agreement or transaction with any licensed distributor, directly or indirectly, that would result in, or have as its purpose, the purchase of any alcoholic liquor by the retailer at a price less than the listed price that has been filed by the distributor in the office of the director.

(m) A retailer shall not sell, give, or deliver any intoxicating liquor to any person under the age of 21 years. A retailer shall not sell, give, or deliver any intoxicating liquor to any person if the retailer knows or has reason to know that the intoxicating liquor is being obtained for a person under 21 years of age.

(n) A retailer shall not purchase or sell any alcoholic liquor on credit. A retailer shall not enter into any transaction or scheme the purpose of which is to buy or sell alcoholic liquor on credit. The following transactions shall be considered to be buying or selling alcoholic liquor on credit:

(1) Taking or giving a postdated check;

(2) giving an insufficient funds check;

(3) taking a check with knowledge that there are insufficient funds to pay the check upon presentation;

(4) accepting delivery from a distributor without making payment for the alcoholic liquor when delivered or before delivery;

(5) making delivery to a club, drinking establishment, or caterer without receiving payment before or at the time of delivery; and

(6) allowing any alcoholic liquor to be removed from the licensed premises without receiving payment for the alcoholic liquor.

(o) A retailer shall not fail to make the reports or keep the records required by these regulations.

(p) A retailer who is authorized by the Kansas lottery commission to sell lottery tickets shall not commingle the proceeds from the sale of the lottery tickets with the proceeds from the sale of alcoholic liquor.

(q) A retailer shall not refill a package of alcoholic liquor and shall not sell alcoholic liquor in anything other than the original package. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211, K.S.A. 2017 Supp. 41-308, K.S.A. 41-702, K.S.A. 41-703, K.S.A. 2017 Supp. 41-717, K.S.A. 2017 Supp. 41-718; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992; amended, T-14-6-28-12, July 1, 2012; amended, T-14-10-25-12, Oct. 29, 2012; amended Feb. 22, 2013; amended June 7, 2018.)

14-13-14. Management of retail liquor store by any person or entity other than the owner or owners. (a) “Performance of management or operational services” shall mean the exercise of independent control by any person or entity, other than the owner or owners of a retail liquor store, over any of the following activities:

(1) Hiring, firing, or supervising the store’s employees;

(2) determining the amount or type of inventory to be ordered or maintained by the store, ordering inventory for the store, or coordinating deliveries of inventory to the store;

(3) determining the advertising, marketing, or promotional programs that are enlisted, offered, or utilized by the store;

(4) negotiating, entering into, or executing contracts to which the store is a party;

(5) paying for or authorizing payment for services provided to or purchases made by the store; or

(6) performing any other task essential to the operation of or the ability to operate the store.

(b) An employee of a retail liquor store who meets both of the following criteria shall not be considered to be involved in the performance of management or operational services:

(1) Engages or participates in any of the activities specified in subsection (a) but does not exercise independent control in performing the activities; and

(2) is not an independent contractor.

(c) No retail liquor store owner shall authorize or allow the performance of management or operational services by any person or entity other than the owner or owners of the store, unless the owner or owners provide the following to the director:

(1) The terms by which any person or entity other than the owner or owners will perform the management or operational services, specifying the following:

(A) That the person or entity will be paid a fixed rate of compensation, not based on or derived from a percentage of the gross receipts from liquor sales; and

(B) that the compensation will not include payment of any business expenses in a way that effectively circumvents the terms of paragraph (c)(1)(A);

(2) the name, address, date of birth, social security number, and all other information required on forms provided by the director, for any person, or in the case of an entity, for any officer, manager, or director, or any stockholder owning in the aggregate more than five percent of the common or preferred stock in the entity, who will perform the management or operational services; and

(3) a disclosure of any interest or involvement in any other retail liquor store or business involving alcoholic liquor that is held by any person or entity performing management or operational services, submitted on forms provided by the director.

(d) Each retail liquor store owner shall be expressly prohibited from performing the following activities:

(1) Authorizing or allowing any person or entity that would not qualify to obtain and hold the store’s retail liquor license to perform management or operational services for or on behalf of the owner or owners of the store;

(2) commingling any inventory between or among multiple retail liquor stores; and

(3) streamlining business processes with those of another retail liquor store or any other entity, or allowing the collective performance of management or operational services for the retail liquor store and any other store, in a manner suggesting to the public that multiple stores are part of a chain or are owned or operated by a corporation, including any of the following:

(A) Using a “d/b/a” or trade name in violation of K.A.R. 14-13-15;

(B) having employees wear uniforms or accessories identical to those worn by employees of another retail liquor store or corporate entity;

(C) delivering products in sacks or bags bearing the same trade name, logo, or other identifying mark that is used by any other retail liquor store or a corporate entity; or

(D) limiting access or offering discounts only to those persons who are members of, or pos-

sess membership or access credentials for, any corporate entity. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-104, 41-210, 41-211, and K.S.A. 2001 Supp. 41-311; effective July 5, 2002.)

14-13-15. “Doing business as” names. (a) Each applicant for a retailer’s license shall include in the license application the “doing business as” (d/b/a) name by which the applicant wishes to operate the store for which licensure is sought.

(b) An application with a d/b/a name that suggests to the public that multiple stores are part of a chain or are owned or operated by a corporation shall not be approved by the director.

(c) Each retailer shall post its d/b/a name within the store or on the exterior of the store.

(d) Each retailer wishing to change its approved d/b/a name shall submit, on a form prescribed by the director, a request for approval to change its d/b/a name. The request shall contain all of the following:

- (1) The retailer’s name and license number;
- (2) the retailer’s current d/b/a name; and
- (3) the retailer’s requested new d/b/a name.

(e) The director may deny a retailer’s request to change its d/b/a name for any of the following reasons:

(1) The requested d/b/a name is currently in use in the same county where the retailer’s premises is located.

(2) The requested d/b/a name misleads the public by indicating that the retail store is part of a chain.

(3) The requested d/b/a name misleads the public by indicating that the retail store is owned by a corporation. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-211 and K.S.A. 2011 Supp. 41-311, as amended by L. 2012, ch. 144, sec. 14; effective July 5, 2002; amended Feb. 22, 2013.)

14-13-16. Tasting events; requirements; prohibitions. Any retailer may provide free samples of alcoholic liquor offered for sale by the retailer to members of the general public on the retailer’s licensed premises and at adjacent premises as approved by the director.

(a) No retailer shall receive payment from any person, either directly or indirectly, to conduct a tasting event.

(b)(1) Each container of alcoholic liquor to be sampled shall be removed from the retailer’s inventory.

(2) The retailer shall clearly mark each container of alcoholic liquor removed from inventory for sampling as reserved for samples only. The marking shall not obscure the label of the alcoholic liquor container.

(c) No samples of alcoholic liquor may be served on a retailer’s licensed premises or on adjacent premises at any time other than those hours and days during which the retailer may sell alcoholic liquor, pursuant to K.S.A. 41-712 and amendments thereto.

(d) Except as specifically allowed by this subsection, no employee of the retailer who is on duty may consume alcoholic liquor during the tasting event.

The owner or manager of a retail premises may consume wine from an original container sufficient to verify that the wine has not deteriorated in quality or has otherwise become unfit for human consumption.

(e) The director, or any agent or employee of the director, shall be granted immediate entry to and inspection of any adjacent premises used for tasting events at any time the adjacent premises are occupied. Failure to grant immediate entry shall be grounds for revocation of the retailer’s license.

(f) Except as specifically allowed in this subsection, no retailer may provide any food, service, or other thing of value other than samples of alcoholic liquor at any tasting event.

(1) Any retailer conducting a tasting event on the licensed premises may provide cups, napkins, and mixers.

(2) Any retailer conducting a tasting event on adjacent premises may provide cups, napkins, food, mixers, and other similar items.

(g) A licensed distributor or its agent, employee, or representative shall not purchase alcoholic liquor for tasting, pour samples, or provide any supplies or things of value, except that an agent, employee, or representative of a distributor may provide education on the product or products being sampled.

(h)(1) Any partially used container of alcoholic liquor removed from the licensed premises for tasting at adjacent premises shall be disposed of or returned to the licensed premises before the retailer’s close of business on the same date the container was removed.

(2) Each retailer shall perform one of the following for each partially used container of alcoholic liquor used for sampling:

- (A) Dispose of the container;

(B) store the container on the licensed premises in a secured, locked storage area, separate from containers of alcoholic liquor available for purchase; or

(C) secure the container with a tamperproof seal around the opening of the container.

(i) Each retailer engaged in tasting events shall keep, for at least three years, records of all alcoholic liquor removed from inventory for the tasting events. These records shall be available for inspection by the director, any agent or employee of the director, or the secretary, upon request.

(1) Each record required by this regulation shall be maintained on the licensed premises of the retailer for at least 90 days after the date on which the alcoholic liquor was removed from inventory. These records may be maintained in electronic format but shall be capable of being printed immediately upon request.

(2) After 90 days, any record required by this regulation may be stored electronically and maintained off the licensed premises. Each record shall be provided in electronic or paper format, upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2012 Supp. 75-5155; implementing K.S.A. 2012 Supp. 41-308d; effective, T-14-6-28-12, July 1, 2012; effective, T-14-10-25-12, Oct. 29, 2012; effective May 10, 2013.)

14-13-17. Tasting events; supplier participation; requirements; prohibitions. Any supplier may participate in a retail tasting event through the supplier's employee or agent. For the purpose of this regulation, "supplier" shall mean any person holding a permit issued pursuant to K.S.A. 41-331, and amendments thereto.

(a) A supplier's "agent" may include a third party contracted for the purpose of conducting the tasting. This term shall not include a licensed distributor or any agent, employee, or representative of a licensed distributor.

(b) For the purpose of participation in tasting events, each licensed distributor who also possesses a Kansas supplier permit shall be limited to providing educational information about the product or products being sampled. A distributor or its agent or employee shall not participate in any other manner in a tasting event.

(c) The supplier shall purchase alcoholic liquor to be sampled at a tasting event from the retailer. For each purchase under this regulation, the retailer shall provide the supplier with a numbered invoice or sales slip that contains the following information:

(1) The date of purchase;

(2) the name and license number of the retailer;

(3) the name and Kansas permit number of the supplier;

(4) the brand, size, and quantity of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor and the total cost of the purchase, including enforcement tax.

(d) Any supplier may store containers of alcoholic liquor used for sampling at a tasting event on the retailer's licensed premises if all of the following conditions are met:

(1) Each container of alcoholic liquor is clearly marked, in a manner that does not obscure the label, as reserved for samples only.

(2) The container is secured in a locked storage area separate from containers of alcoholic liquor available for purchase or is secured with a tamperproof seal around the opening of the container.

(3) The container is accompanied by a copy of the invoice provided to the supplier by the retailer.

(e)(1) Any supplier participating in a tasting event on the retailer's licensed premises may provide cups, napkins, and mixers.

(2) Any supplier participating in a tasting event on the retailer's adjacent premises may provide nonalcoholic mixers, cups, napkins, food, and similar items.

(f) Each retailer who sells alcoholic liquor to a supplier participating in a tasting event shall keep a copy of the invoice or sales slip required by this regulation for at least three years. The records required by this subsection shall be available for inspection by the director, any agent or employee of the director, or the secretary, upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format but shall be capable of being printed immediately upon request.

(2) After 90 days, any record required by this regulation may be stored electronically and maintained off the licensed premises. Each record shall be provided in electronic or paper format, upon request. (Authorized by K.S.A. 41-210 and K.S.A. 2012 Supp. 75-5155; implementing K.S.A. 2012 Supp. 41-308d; effective, T-14-6-28-12, July 1, 2012; effective, T-14-10-25-12, Oct. 29, 2012; effective May 10, 2013.)

14-13-18. Change of ownership; notice to director. (a) Each retailer intending to transfer

ownership in its business association shall report this intent to the director at least 20 days before the intended transfer of ownership if the transfer would result in any person holding a beneficial interest greater than five percent in the business association that is subject to the license.

(b) Each retailer shall notify the director within 10 days after each transfer of ownership specified in subsection (a).

(c) The retailer shall submit the notifications required by subsections (a) and (b) on forms prescribed by the director and shall include all information necessary to determine the continued eligibility of the retailer under K.S.A. 41-311, and amendments thereto. (Authorized by K.S.A. 41-210; implementing K.S.A. 2012 Supp. 41-311; effective May 10, 2013.)

**Article 14.—MANUFACTURERS;
DISTRIBUTORS; NONBEVERAGE USERS;
FARM WINERIES; MICROBREWRIES**

14-14-1. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) “Alcoholic liquor” means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) “Beer” means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such an alcoholic content.

(c) “Beer distributor” means any person licensed pursuant to K.S.A. 1991 Supp. 41-307 to sell or offer for sale beer or cereal malt beverage to any person authorized by law to sell beer or cereal malt beverage at retail.

(d) “Beneficial interest” means any ownership interest by a person or that person’s spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

(e) “Bona fide group of grape growers and wine

makers” means any group that is an incorporated, non-profit organization of commercial grape growers or wine makers who are organized for the purpose of promoting grape growing and wine making within the state of Kansas.

(f) “Bulk wine” means wine that is sold to a club, either by a retailer or a distributor, in barrels, casks or bulk containers which individually exceed 20 liters.

(g) “Caterer” means a person licensed pursuant to Article 22 of these regulations.

(h) “Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(i) “Club” means the premises or person licensed pursuant to Articles 19 or 20 of these regulations.

(j) “Director” means the director of the division of alcoholic beverage control of the department of revenue.

(k) “Distributor” means any person licensed by the director as a “beer distributor,” “spirits distributor” or “wine distributor.”

(l) “Drinking establishment” means the premises or person licensed pursuant to Article 21 of these regulations.

(m) “Licensed premises” means those areas described in an application for a license which are under the control of the applicant and in which the applicant will conduct the licensed business.

(n) “Manufacturer” means every brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler, person or other entity who fills or refills an original package or is engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. A “manufacturer” shall also mean:

(1) A corporate subsidiary of any manufacturer which markets alcoholic liquor through a subsidiary; and

(2) an American distributor of alcoholic liquor manufactured, produced or bottled in a foreign country. A “manufacturer” shall not include a farm winery or a microbrewery.

(o) “Morals charge” means a charge made in an indictment, information or a complaint alleging crimes which involve:

(1) Prostitution;

(2) procuring any person;

(3) solicitation of a child under 18 years of age for any immoral act involving sex;

(4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;

(5) rape;

(6) incest;

(7) gambling;

(8) adultery; or

(9) bigamy.

(p) "Person" means any natural person, corporation, association trust or partnership.

(q) "Retailer" means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(r) "Small quantities of wines" means those quantities of wine that a grape grower or wine maker may import into the state to be used for bona fide educational and scientific tasting programs. A grape grower or wine maker may import up to 18 liters, or not more than .18 liters per participant, of each variety of wine manufactured for the Kansas state fair or any bona fide group of grape growers or wine makers.

(s) "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substances in solution. The term "spirits" includes brandy, rum, whiskey, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(t) "Spirits distributor" means any person licensed pursuant to K.S.A. 1991 Supp. 41-306 to sell or offer for sale spirits to any person authorized by law to sell spirits at retail.

(u) "Supplier" means a manufacturer of alcoholic liquor or cereal malt beverage or an agent of a manufacturer, other than a salesperson.

(v) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(w) "Wine distributor" means any person licensed pursuant to K.S.A. 1991 Supp. 41-306a, to sell or offer for sale wine to any person authorized by law to sell wine at retail. (Authorized by K.S.A. 1991 Supp. 41-210; implementing K.S.A. 1991 Supp. 41-102, 41-308a, as amended by 1992 HB 2719; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 2, 1989; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-14-2. Application for manufacturer's, distributor's, nonbeverage user's, farm winery and microbrewery license; contents, conditions and restrictions on issuance of license. (a) An annual license shall be issued to each applicant determined by the director to have satisfied the requirements of the liquor control act and this article of these regulations.

(b) Each application for a license shall be made upon forms prepared by the director and shall contain all information the director deems necessary. Any application which does not contain the required information may be returned to the applicant without the application being considered on its merits.

(c) Each applicant shall provide a description of the licensed premises. The description shall state the location of the licensed premises, the approximate dimensions of the licensed premises and shall include enough detail to identify the licensed premises. Each application for a distributor's license shall include a description of any warehouse situated on and constituting a part of the licensed premises.

(1) Subject to the prior approval of the director, the distributor's licensed premises may include:

(A) More than one structure if no more than 400 meters separate any two structures sought to be licensed by the distributor; or

(B) a temporary storage area used exclusively for storage of alcoholic liquor by the distributor which may be more than 100 meters from any other part of the licensed premises.

(2) The licensed premises shall not include:

(A) An inside entrance or opening which connects directly with any other place of business or with a residence; or

(B) any premises which is located within 200 feet of any public or parochial school, college or church, unless the premises were licensed at the time the school, college or church was established.

(d) For the purpose of determining qualification for a license under this regulation, any person who leases premises to any licensee upon terms which result in the lessor having a beneficial interest in the licensee's business, shall be deemed to be a partner in the licensee's business. A lessor shall be deemed to have a beneficial interest in a licensee's business if the lessor receives as rent, in whole or in part, a percentage of the licensee's gross receipts or profits from the sale of alcoholic liquor. Percentage rent provisions that exclude alcoholic liquor sales shall be subject to review and approval by the director.

(e) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211, 41-711, K.S.A. 1987 Supp. 41-311, 41-316, 41-317, 41-401, 41-402, 41-710; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-3. Application for renewal of license, short method. (a) Any licensee making application for the renewal of an existing license may file a certified statement that the information contained in the licensee's most recent complete application has not changed except for those items specifically identified by the licensee as having changed. In addition to this certified statement, the licensee shall provide the following items with each renewal application:

(1) A certified statement that the renewal applicant is still qualified to obtain a license under the requirements of K.A.R. 14-14-2;

(2) the registration fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(3) the license fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted; and

(4) the bond or bonds required of the licensee by the liquor control act.

(b) Notwithstanding the provisions of subsection (a), each licensee shall file a new and complete application, as required by K.A.R. 14-14-2, at least every five years.

(c) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211, 41-327, K.S.A. 1987 Supp. 41-316, 41-317; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-4. Corporate licensees, change of ownership updating application, certification that new owner qualified. (a) Each transfer of the stock of a corporation holding a manufacturer's license which results in any person holding 25 percent of the outstanding stock of the corporation shall be reported to the director. Within 20 days of the transfer of stock to that person, the corporation shall file with the director:

(1) A supplement to its current application reflecting the change; and

(2) a sworn statement that the person obtaining 25 percent or more of the outstanding shares is qualified under the liquor control act to hold a manufacturer's license.

(b) Each transfer of the stock of a corporation holding a distributor's license which results in any person obtaining a beneficial interest in the corporation shall be reported to the director. Within 20 days of the transfer of stock to that person, the corporation shall file with the director:

(1) A supplement to its current application reflecting the change in ownership; and

(2) a sworn statement that the person obtaining the beneficial interest in the corporation is:

(A) Qualified under the liquor control act to hold a distributor's license; or

(B) not qualified under the liquor control act to hold a distributor's license but meets the requirements of K.S.A. 1987 Supp. 41-311(d)(1) (A) or (B).

(c) Each corporation holding a manufacturer's, distributor's, farm winery, microbrewery or non-beverage user's license shall keep a register of all stockholders, which shall be open for inspection by the director, the director's agents or employees at all reasonable business hours. The register shall contain the following information applicable to each stockholder:

(1) Name;

(2) current address;

(3) amount of stock owned;

(4) the amount which may be voted by power of attorney or proxy;

(5) the date of acquisition of any stock; and

(6) the execution or revocation of any power of attorney or proxy.

(d) The records of every corporation holding a manufacturer's, distributor's, farm winery, microbrewery or nonbeverage user's license shall reflect the election of all directors and the appointment of all officers of the corporation.

(e) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 1987 Supp. 41-311; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-5. Franchises. (a) Definitions. As used in this regulation, the following terms shall have the meanings ascribed to them:

(1) "Sale or distribution" includes the act of leasing, renting or consigning.

(2) "Goods" means any personal property, real property, or any combination thereof.

(3) "Other property" means a franchise, license, distributorship or other similar right, privilege or interest.

(4) "Franchise" means a written arrangement in which a supplier grants to a distributor a license to use a trade name, trademark, service mark, or related characteristic, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement or otherwise, including a commercial relationship subject to termination pursuant to K.S.A. 1989 Supp. 41-410. The arrangement grants the distributor the right to offer, sell and distribute within this state or any designated area, the supplier's brands of alcoholic liquors, cereal malt beverages, non-alcoholic malt beverages or all of them as may be specified.

(b) Franchise discrimination is prohibited.

(1) If more than one franchise for the same brand or brands of alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages is granted to different distributors in this state, the supplier shall not discriminate in regard to price or availability of alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages between distributors.

(2) A supplier shall not encourage, solicit, cause or conspire with a distributor to circumvent any laws or regulations of the state of Kansas relating to intoxicating liquor. A supplier shall not directly or indirectly threaten to remove or remove a line or brand from a distributor because of the refusal or failure of the distributor to evade or disobey any laws or regulations of the state of Kansas relating to intoxicating liquor. A supplier shall not, directly or indirectly, threaten to change distributors in retaliation against a distributor who refuses to circumvent any laws or regulations of the state of Kansas relating to intoxicating liquor.

(c) All ownership interest in a distributor's business shall be disclosed to the director.

(1) No person shall have, own or enjoy any ownership interest in, share in the profits from or otherwise participate in the business of any distributor in Kansas unless a full description of the interest is furnished to the director at the time the interest arises. The distributor shall report to the director within 20 days, any change in any interest in the distributor's business including:

(A) Any division of the profits;

(B) Any division of net or gross sales for any purpose whatsoever;

(C) any change in the payment of rents;

(D) any change in the ownership of any lease or building;

(E) any change in the ownership of any corpo-

ration that has any interest in the business or the change of management of that corporation; or

(F) any loss or damage to goods which results in a claim against an insurance policy.

(2) If there is common ownership or financial interest in wholesale businesses licensed to distribute spirits or wine, either directly or indirectly, all of these businesses shall be deemed a controlled ownership group.

(3) The statement of disclosure required by this regulation shall be on a form provided by the director, shall be signed under oath and notarized and shall be an amendment to the licensee's permanent license application on file with the director.

(4) Each license issued by the director shall be valid as long as the licensee is actively engaged in business. If the licensee ceases to be actively engaged in business, the license shall be invalid and the licensee shall immediately notify the director and return the license.

(d) Each supplier and distributor shall file a summary of any franchise agreement with the director. The summary shall contain:

(1) A statement identifying each party entering into the agreement by name, address and license number;

(2) a statement describing each geographic territory agreed upon between the distributor and supplier for which the distributor is to sell to retailers one or more brands of the supplier's alcoholic liquor, cereal malt beverages or non-alcoholic malt beverages;

(3) a map outlining each geographical territory agreed to; and

(4) a statement listing all brands to be covered by the agreement.

(e) No manufacturer, vintner, importer, or other supplier shall grant a franchise for the distribution of a brand to more than one distributor for all or part of any designated territory. For purposes of identification and recognition, multiple franchises for the distribution of spirits or wine issued to one or more persons or to two or more corporations where an interlocking directorate exists or the same individuals are officers or stockholders in more than one of the corporations, shall be considered one franchise.

(f) Each spirits distributor's franchise agreement shall describe the franchise territory by naming each county unit encompassed. A territory shall not be smaller than a single county, but may encompass as few as one or as many as all 105 Kansas counties. Agreements for distribution

throughout the entire state shall not name each county by name.

(g) Each wine and beer distributors' franchise agreement shall describe the franchise territory using readily identifiable geographic boundaries.

(h) The terms, conditions and requirements of this regulation are expressly made a part of the terms of each authority to do business in Kansas granted by the director to suppliers, distillers, manufacturers, importers, producers, shippers, or brokers.

(i)(1) Each supplier, importing into this state to a licensed distributor, shall apply to the director not later than 45 days in advance for a permit to import alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages for which the distributor does not have a franchise to sell.

(2) Each request for a permit shall specifically identify the brand, type and quantity of the alcoholic liquor, cereal malt beverage or non-alcoholic malt beverages to be imported into the state. Alcoholic liquor, cereal malt beverage and non-alcoholic malt beverages imported in accordance with this permit shall not be resold by the distributor.

(3) A copy of the permit issued by the director shall be attached to all records and reports required by K.A.R. 14-14-8 and 14-14-10. (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-306a, 41-332, 41-409, 41-410, and 41-1101; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Jan. 2, 1989; amended July 1, 1991.)

14-14-6. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 1987 Supp. 41-714; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked Jan. 3, 2003.)

14-14-6a. Withdrawal of inventory from the warehouse for sampling. (a) Any distributor may withdraw alcoholic liquor and cereal malt beverage inventory from the distributor's warehouse to provide educational opportunities to any of the following types of licensees in the course of business or at industry seminars:

- (1) Retail liquor stores;
- (2) clubs;
- (3) drinking establishments;
- (4) caterers; or
- (5) hotel drinking establishments.

(b) Any distributor may withdraw alcoholic liquor and cereal malt beverage inventory in the

course of business to provide licensees with information on new product lines. Any distributor may provide each licensee with one individual bottle or one individual can from a new product line. The distributor shall provide these samples either on the distributor's licensed premises or on the premises of the recipient licensee.

(c) No licensee that receives an individual bottle or can from a distributor in the course of business shall sell the item received. Licensees and distributors shall comply with all other laws pertaining to the possession and consumption of alcoholic liquor and cereal malt beverages.

(d) Alcoholic liquor and cereal malt beverage inventory withdrawn for use at industry seminars shall be for licensees and their employees to sample the distributor's product lines. Each alcoholic liquor sample and cereal malt beverage sample offered by the distributor shall be consumed only on the seminar premises and in accordance with Kansas law. Each distributor shall notify the director, using a form available from the director, at least seven days before conducting an industry seminar.

(e) Each distributor shall pay the liquor enforcement tax on the alcoholic liquor and cereal malt beverage inventory when the inventory is withdrawn from the distributor's warehouse, based on the current posted bottle price or case price. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-709; effective Jan. 3, 2003.)

14-14-7. Sales and transfers of alcoholic liquor by distributors authorized, export permits. (a) A distributor may sell any alcoholic liquor pursuant to the issued license to the licensed premise of:

- (1) A distributor;
- (2) a retailer; or to
- (3) a military installation.

(b) A distributor may sell bulk wine and deliver to the licensed premise of a:

- (1) Club;
- (2) drinking establishment; or
- (3) caterer.

(c) A distributor may transfer any alcoholic liquor to another of the distributor's licensed premises. Transfers of alcoholic liquor between a distributor's licensed premises shall be evidenced by proper withdrawal and receiving tickets which shall be subject to inspection by the director.

(d)(1) Export permits may be issued by the director for the shipping of merchandise back to manufacturers when:

(A) Non-posted items are shipped into Kansas in error;

(B) merchandise in inventory is unsaleable and the supplier wants the merchandise returned rather than destroyed;

(C) the distributor does not wish to retain excess merchandise received in error; or

(D) issuing such a permit is deemed appropriate by the director.

(2) Requests to return merchandise shall be submitted to the director on forms prescribed by the director. Each request shall include:

(A) The total number of containers or cases in the shipment;

(B) the name, address and license number of the distributor;

(C) the justification for issuing a permit; and

(D) the name, address and license number of the supplier.

(3) If a distributor has received non-posted merchandise, a request for an export permit shall be submitted within five days of receipt of the merchandise.

(4) At the time of an export shipment, the distributor shall forward to the director:

(A) a copy of the invoice signed by the distributor's agent;

(B) a copy of the bill of lading signed by the carrier's agent; and

(C) an affidavit of proof of claim for credit for a refund on the gallonage tax.

(5) An export permit shall not be issued, or alcoholic liquor consigned, to any person or corporation in another state who is not authorized by that state to receive alcoholic liquor. All shipments shall be made by carrier, common carrier or private carrier.

(e) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 41-211, 41-801, K.S.A. 1989 Supp. 41-306, 41-306a, 41-307, 41-408, 41-701, 41-709; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Aug. 6, 1990.)

14-14-8. Distributor's records required, reports required, filing of affidavits.

(a) Each distributor, before selling or offering to sell any alcoholic liquor to any licensed retailer, club, drinking establishment, or caterer, shall file with the director a written statement sworn to under oath by the distributor, or in case of a corporation, one of its principal officers. In the statement, the distributor shall agree:

(1) It will sell any of the brands or kinds of alcoholic liquor for which it possesses a franchise to any retailer in the geographical territory serviced under the terms of the franchise without discrimination;

(2) that all sales will be made to each retailer in the territory at the same current price; and

(3) for all spirits and wines sold in the state, to file a price list of current prices offered to all retailers, clubs, drinking establishments or caterers with the director.

(b) The price listing required by paragraph (3), above, shall be filed at least every three months and shall include:

(1) The cash price for spirits and wine that are sold by the case or the bottle;

(2) the origin of the shipments;

(3) the price per case or bottle for each size of original packages of each particular brand or kind of spirits or wine; and

(4) any other information the director may require.

(c) Each distributor accepting shipment of alcoholic liquor into the state of Kansas shall furnish the director an invoice, or other commercial document or form approved by the director, covering each consignment of liquor received by the distributor. The invoice document or form shall be mailed at the time shipment is received at the distributor's licensed premises.

(d) Each distributor shall provide the director, between the 1st and 15th day of each calendar month, a return under oath of all alcoholic liquor bought and sold during the preceding calendar month. Such report shall state:

(1) The total amount of liquor purchased;

(2) the names and addresses of the suppliers or distributors from which the alcoholic liquor was purchased;

(3) the quantity of each brand of alcoholic liquor purchased;

(4) the price paid for each brand of alcoholic liquor purchased;

(5) the name and address of each retailer, club, drinking establishment or caterer to which alcoholic liquor was sold;

(6) the quantity of each brand of alcoholic liquor sold; and

(7) the price charged for each brand of alcoholic liquor sold.

(e) Each distributor shall keep upon the licensed premises records of all alcoholic liquor bought and sold, all receipts, all expenditures, all invoices and all sales tickets. All records of each

distributor shall be maintained for three years and shall be available for inspection by the director or any agent or employee of the director or secretary upon request.

(f) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 1987 Supp. 41-409, 41-601, 41-602, 41-1101; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-9. Nonbeverage user licensees records required. Each nonbeverage user shall keep records of all alcoholic liquor purchased by the nonbeverage user's business. The records shall contain the name, address and license number of the licensee from whom it purchased any alcoholic liquor and any other information the director may require. All records of each nonbeverage user shall be maintained for three years and shall be available for inspection by the director or any agent or employee of the director or secretary upon request. This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 41-211; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-10. Manufacturer's records required, reports required, filing of affidavits.

(a) Each supplier shipping alcoholic liquor into the state of Kansas shall furnish the director with an invoice, or other commercial document or form approved by the director, covering each consignment of alcoholic liquor made into this state. The invoice document or form shall be mailed at the time the shipment leaves the manufacturer's warehouse. The invoice, copy of the commercial document or form shall also be mailed to the consignee at the time of shipment.

(b) Each supplier of alcoholic liquor shall keep records of all alcoholic liquor or wine sold by the licensee to a nonbeverage user. The records shall show the quantities of alcoholic liquor and wine sold to any nonbeverage user, the name, address, and license number of the nonbeverage user and any other information the director may require. All records of each supplier shall be maintained for three years and shall be available for inspection by the director or any agent or employee of the director or secretary upon request.

(c) Each supplier, before selling or offering to sell any alcoholic liquor to a distributor, shall file with the director a written statement sworn

to under oath by the supplier, or in the case of a corporation, by one of its principal officers. In the statement, the supplier shall agree:

(1) To sell any of the brands or kinds of alcoholic liquor manufactured or distributed by it to each distributor with which it has a franchise without discrimination;

(2) that all sales will be made to each distributor in this state with which it has a franchise at the same current price; and

(3) for all spirits and wines sold in the state, to file with the director the price list of current prices offered to each distributor in this state with which it has a franchise agreement.

(d) The price listing required by paragraph (3), above, shall be filed at least every three months and shall include:

(1) The cash price for all spirits and wine sold in the state that are sold by the case;

(2) the origin of the shipments;

(3) the price per case for each size of original packages of each particular brand or kind of spirits or wine;

(4) a complete description of the alcoholic liquor to be offered for sale during the months concerned;

(5) the description of spirits and wine in cases including the brand, type, container size, number of containers in each case, actual weight per case and proof of all spirits;

(6) the alcoholic content of all wines;

(7) any other information the director may require; and

(8) the following information if such alcoholic liquor is sold in bulk by the barrel:

(A) The cash price;

(B) the wholly deferred or partly deferred payment price, f.o.b. the manufacturer's warehouse or point of shipment;

(C) the age;

(D) price per proof gallon;

(E) original gauge in bond;

(F) each class and type of particular brand or brands, if any, under which the alcoholic liquors in bulk will be bottled; and

(G) any other information the director may require.

(e) Each manufacturer shall forward by certified mail to each licensed distributor who possesses a franchise for the manufacturer's brands within the state of Kansas, a copy of the price list or amendment on the same date the price list or amendment required by subsection (d), above, is forwarded to the office of the director.

(f) This regulation shall take effect on or after October 1, 1988. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 1987 Supp. 41-402, 41-409, 41-601, 41-602, 41-1101; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988.)

14-14-11. Prohibited conduct of licensees. (a) No manufacturer of alcoholic liquor or cereal malt beverage holding a manufacturer's license issued by the director, manufacturer of alcoholic liquor or cereal malt beverage outside of this state manufacturing alcoholic liquor or cereal malt beverage for sale and distribution within the state, licensed distributor within the state, or their agents, salesmen or representatives shall offer, give or furnish, directly or indirectly, any gifts, prizes, coupons, premiums, rebates, quantity discounts, entertainment, decorations, or the services of any employee, including errands and administrative services, or any other inducement or thing of value of any kind to a licensed retailer, club, drinking establishment or caterer or to an applicant for a retailer, club, drinking establishment or caterer license except as provided in Article 10;

(b) No manufacturer, including a manufacturer outside of this state, that manufactures alcoholic liquor or cereal malt beverage for sale and distribution within this state shall offer, furnish or give, directly or indirectly, any rebates to any distributor, distributor's spouse, agent, salesperson or representative.

(c) A licensee shall not, as a condition for the sale or delivery of alcoholic liquor or cereal malt beverage to any other licensee or to a customer, require that the other licensee or customer purchase or contract to purchase alcoholic liquor or cereal malt beverage of another form, quantity or brand in addition to, or partially in lieu of, that which was specifically ordered or desired by the licensee or customer. Licensees of any class shall not sell or deliver alcoholic liquor or cereal malt beverage in any form or quantity or of any brand to another licensee or to a customer, under any arrangement, agreement or understanding, direct or implied, that the sale or delivery will be made only if the other licensee or customer also buys or accepts delivery of a quantity of alcoholic liquor or cereal malt beverage of another form or brand.

(d) If any licensee refuses to permit the director or any agent or employee of the director to inspect the licensed premises and any alcoholic liquor or cereal malt beverage owned or controlled by the

licensee upon the licensed premises or upon any other premises where the licensee may have liquor stored, the refusal shall be grounds for the revocation of the license.

(e) A manufacturer shall be deemed to have discriminated against licensed distributors, including those possessing a franchise to distribute alcoholic liquor or cereal malt beverage in a geographical territory, if the manufacturer directly or indirectly, or through any agent or employee:

(1) Offers to sell or sells to a distributor alcoholic liquor in any manner that results in a price different than the current price which the manufacturer has offered to all distributors;

(2) requires a licensed distributor to purchase in excess of one case lot of any brand, or kind, or container size of that alcoholic liquor that is sold by the case;

(3) refuses to sell any brand or kind of alcoholic liquor, except beer, to a licensed distributor in any quantity ordered by a distributor in lots of one or more cases when alcoholic liquor is sold to distributors by the case;

(4) refuses to sell for cash at the current price any alcoholic liquor, to a licensed distributor, if such alcoholic liquor is ordered in a lot of one case or more and the price offered to distributors is by the case;

(5) refuses to sell any brand or kind of alcoholic liquor to a licensed distributor unless the licensed distributor purchases or agrees to purchase alcoholic liquor of another kind, form, quantity or brand in addition to, or partially in lieu of, the brand or kind of alcoholic liquor specifically ordered by the licensed distributor; or

(6) fails to fill orders of distributors for alcoholic liquor, other than beer, in the chronological sequence in which orders from distributors are received. This paragraph shall not apply when the manufacturer is operating under a rationing plan approved by the director.

(f) A distributor shall be deemed to have discriminated against licensed retailers, clubs, drinking establishments or caterers if it either directly or indirectly, or by any agent or employee:

(1) Makes an offer to make any secret rebate to or enters into any transaction in any manner whatsoever with any licensed retailer, club, drinking establishment or caterer which would result in, or which has as its purpose the purchase of any alcoholic liquor or cereal malt beverage at a price different than the current price offered to all retailers, clubs, drinking establishments or caterers;

(2) requires a licensed retailer to purchase in one-case lot of any brand, or kind, or container size of alcoholic liquor, except beer;

(3) refuses to sell any brand or kind of alcoholic liquor, except beer, to a licensed retailer for cash at the current price in any quantity ordered by the licensed retailer; or

(4) refuses to sell any brand or kind of alcoholic liquor or cereal malt beverage to a licensed retailer, club, drinking establishment or caterer unless the licensed retailer, club, drinking establishment or caterer purchases or agrees to purchase alcoholic liquor or cereal malt beverage of another kind, quantity, or brand in addition to, or partially in lieu of the brand or kind of alcoholic liquor or cereal malt beverage specifically ordered. (Authorized by K.S.A. 1991 Supp. 41-210; implementing K.S.A. 1991 Supp. 41-402, 41-702, 41-703, 41-1101; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; amended Dec. 21, 1992.)

14-14-12. (Authorized by K.S.A. 1987 Supp. 41-210; implementing K.S.A. 1987 Supp. 41-402, 41-408, 41-701, 41-709, K.S.A. 41-211, 41-405, 41-708, 41-712; effective, T-89-2, Jan. 7, 1988; effective Oct. 1, 1988; revoked May 27, 2005.)

14-14-13. Permit to import small quantities of wine. (a) A permit to import into this state small quantities of wines to be used for bona fide educational and scientific tasting programs may be issued by the director to the Kansas state fair or any bona fide group of grape growers or wine makers. Each organization shall apply for the permit not less than 45 days before the tasting program is to be held. Wines imported in accordance with this permit shall not be resold.

(b) Each request for a permit shall include the following information:

- (1) The date and time of the tasting program;
- (2) the exact location where the tasting program will be held;
- (3) the brand, type and quantity of wine to be imported; and
- (4) a statement that any wine samples offered will be consumed on the premises and in accordance with the provisions of Kansas law.

(c) A copy of the permit issued by the director shall accompany the wine imported into this state at all times.

(d) This regulation shall take effect on or after January 2, 1989. (Authorized by and implementing K.S.A. 1987 Supp. 41-308a as amended by

L. 1988, Vol. 1, Ch. 165, Sec. 1; effective Jan. 2, 1989.)

14-14-14. Transportation of alcoholic liquor and cereal malt beverage by distributors. Alcoholic liquor and cereal malt beverage purchased from and delivered by a distributor shall be delivered to the premises licensed to receive such purchase. (Authorized by K.S.A. 1989 Supp. 41-210; implementing K.S.A. 1989 Supp. 41-306, 41-306a, 41-307; effective Aug. 6, 1990.)

Article 15.—BEER AND CEREAL MALT BEVERAGE KEG REGISTRATION

14-15-1. Definitions. As used in this article of regulations, the following words and phrases shall have the meanings ascribed to them in this regulation: (a) “Beer” means any beverage that contains more than 3.2 percent alcohol by weight and is obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water. This term shall include beer, ale, stout, lager beer, porter, and similar beverages containing more than 3.2 percent alcohol by weight.

(b) “Cereal malt beverage” means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute. This term shall not include any liquor that is more than 3.2 percent alcohol by weight.

(c) “Director” means the director of the division of alcoholic beverage control of the department of revenue.

(d) “Licensee” means any of the following:

(1) Any person or entity licensed to sell alcoholic liquor at retail pursuant to K.S.A. 41-308, and amendments thereto;

(2) any person or entity licensed to manufacture, store, and sell domestic beer pursuant to K.S.A. 41-308b, and amendments thereto; or

(3) any person or entity licensed to sell cereal malt beverages pursuant to K.S.A. 41-2703, and amendments thereto. (Authorized by and implementing L. 2002, Ch. 44, § 5 and § 6; effective Feb. 7, 2003.)

14-15-2. Requirement to affix keg registration tags to certain containers of beer and cereal malt beverage; applicability and instructions. (a) Except as provided in subsection (b), each licensee selling beer or cereal malt beverages to consumers for consumption off the licensed premises shall affix a keg registration tag

to each keg or container having a liquid capacity of four or more gallons, regardless of whether the keg or container is disposable or can be reused.

(b) Kegs or containers having a liquid capacity of four or more gallons that licensees sell to clubs, drinking establishments, hotel drinking establishments, and caterers shall not be required to be registered.

(c) Each licensee shall obtain keg registration tags by submitting a keg tag order form to the director. Keg registration tags shall be free of charge.

(d) Each licensee shall complete a keg registration form for each keg or container to which a keg registration tag is required to be affixed. Each keg registration form shall include the following:

- (1) The date of purchase;
- (2) the name of the licensee selling the keg or container;
- (3) the purchaser's name;
- (4) the purchaser's date of birth;
- (5) the purchaser's residential street address, city, and state;
- (6) the identifying number on the purchaser's driver's license, Kansas nondriver's identification card, or other official identification bearing the purchaser's photograph and signature;
- (7) the purchaser's signature; and
- (8) the smaller perforated portion of the keg registration tag, which bears the keg registration tag number that corresponds to the number on the keg registration tag affixed to the keg or container.

(e) A licensee may complete a single keg registration form for multiple tagged kegs or containers sold to a single purchaser. The smaller perforated portion of the keg registration tag for each keg or container shall be attached to the keg registration form.

(f) If a tagged keg or container purchased singly is returned to the licensee within six months after the date of sale with the keg registration tag affixed, the licensee shall either return the corresponding keg registration form to the purchaser or destroy the form.

(g)(1) If a tagged keg or container purchased singly is not returned to the licensee within six months after the date of sale, the licensee shall retain the corresponding keg registration form for six months after the date of sale and then shall destroy the form.

(2) If a tagged keg or container purchased singly is returned to the licensee without the keg registration tag affixed within six months after the date of sale, the licensee shall retain the corresponding

keg registration form for six months after the date of sale and then shall destroy the form.

(h) Each keg registration form containing smaller perforated portions of multiple keg registration tags shall be returned to the purchaser or destroyed by the licensee if all of the kegs or containers are returned with the keg registration tags affixed within six months of the date of sale. If less than all of these kegs or containers are returned within six months after the date of sale, with or without the keg registration tags affixed, the licensee shall retain the keg registration form and then shall destroy the form after six months from the date of sale.

(i) Each licensee shall destroy the keg registration tag from each tagged keg or container that is returned.

(j) Untagged kegs or containers that are in the possession of anyone except a licensee or a club, drinking establishment, hotel drinking establishment, or caterer shall be presumed to be contraband and may be confiscated by any authorized officer or agent of the director or by any law enforcement official. (Authorized by and implementing L. 2002, Ch. 44, § 5 and § 6; effective Feb. 7, 2003.)

Article 16.—LICENSES; SUSPENSION AND REVOCATION

14-16-1. (Authorized by K.S.A. 41-210, 41-320, 41-702, 41-709, 41-209, 41-211, 41-328; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1988.)

14-16-2. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966; revoked May 1, 1986.)

14-16-3. (Authorized by K.S.A. 41-211, 41-320, 41-201, 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-16-4. (Authorized by K.S.A. 41-211, 79-4104, 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-16-5. (Authorized by K.S.A. 41-211, 41-323, 41-210; effective Jan. 1, 1966; revoked May 1, 1988.)

14-16-6. (Authorized by K.S.A. 41-210; implementing K.S.A. 41-321; effective Jan. 1, 1966; amended May 1, 1985; revoked May 1, 1988.)

14-16-9. (Authorized by K.S.A. 41-210, 41-320, 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked May 1, 1988.)

14-16-10. (Authorized by K.S.A. 1985 Supp. 41-210, K.S.A. 1985 Supp. 41-211, as amended by L. 1986, Ch. 185, Sec. 4; implementing K.S.A. 1985 Supp. 41-320; effective May 1, 1987; revoked May 1, 1988.)

14-16-11. (Authorized by K.S.A. 1985 Supp. 41-211, as amended by L. 1986, Ch. 185, Sec. 4; implementing K.S.A. 1985 Supp. 41-320; effective May 1, 1987; revoked May 1, 1988.)

14-16-12. (Authorized by K.S.A. 1985 Supp. 41-210, K.S.A. 1985 Supp. 41-211, as amended by L. 1986, Ch. 185, Sec. 4; implementing K.S.A. 1985 Supp. 41-320; effective May 1, 1987; revoked May 1, 1988.)

14-16-14. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Involuntary cancellation" means permanent, involuntary termination of any license by the director pursuant to procedures stated in K.A.R. 14-16-15. There shall be no refund for that portion of the license fees paid during any period in which the license was not in use. The licensee, upon showing good cause for renewal or reinstatement of license, may apply for a new license pursuant to the statutory and regulatory requirements for licensing.

(b) "Revocation" means permanent, involuntary termination of any license by the director pursuant to the procedures stated in K.A.R. 14-16-15. There shall be no refund for that portion of the license fees paid during any period in which the license was not in use. The licensee and the licensed premises shall be ineligible for a new license.

(c) "Suspension" means temporary, involuntary termination of any license by the director pursuant to the procedures stated in K.A.R. 14-16-15. There shall be no refund for that portion of the license fees paid during any period in which the license was not in use. The suspension may be set aside by the director when the licensee has shown good cause and is in compliance with statutory and regulatory requirements.

(d) "Voluntary cancellation" means permanent,

voluntary termination of a license upon the request of the licensee. The director shall refund that portion of the license fees paid for any period in which the license was not in use. The licensee may make a new application for a license pursuant to the statutory and regulatory requirements for licensing. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-314, 41-326, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77, 41-2629 as amended by L. 1987, Ch. 182, Sec. 80; effective May 1, 1988.)

14-16-15. Director may revoke, suspend or involuntarily cancel licenses for violations of act or regulations; citation to licensees; hearing. If after citation and hearing the director finds that any licensee is violating or has violated any relevant provision of the liquor control act, the club and drinking establishment act, the provisions of K.S.A. 41-2701 et seq. or regulations adopted pursuant to the authority granted in any of those statutes, the licensee's license may be suspended, revoked or involuntarily canceled. In addition to suspension, revocation or cancellation of a license, the licensee may be fined by the director. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-328 as amended by L. 1987, Ch. 182, Sec. 32, K.S.A. 41-326, 41-702 as amended by L. 1987, Ch. 182, Sec. 47, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77, 41-2633a as amended by L. 1987, Ch. 182, Sec. 84; effective May 1, 1988.)

14-16-16. Proceedings for involuntary cancellation, suspension or revocation of licenses; notice to licensee of time and place of hearing; right of licensee to appear at hearing. (a) All proceedings and hearings for the involuntary cancellation, suspension or revocation of licenses shall be before the director or the director's designee upon a citation issued by the director. The citation shall be in writing and shall state the charges or complaints the licensee is called upon to answer.

(b) The citation shall be served upon the licensee as provided by K.A.R. 14-16-21.

(c) The citations shall state the date, time and place where the proceeding and hearing will be held. The date of the hearing shall not be less than

10 days from the date of the mailing or service of the citation.

(d) The licensee may appear in person and by counsel at the hearing and produce witnesses and evidence that the licensee deems necessary or advisable. (Authorized by K.S.A. 41-201, 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-320 as amended by L. 1987, Ch. 182, Sec. 28, 41-326, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-17. Hearing procedures; prehearing motions. (a) Upon receipt of a citation and notice of hearing pursuant to K.A.R. 14-16-16, any licensee or licensee's counsel may file with the director any prehearing motion authorized to be filed with the Kansas courts in actions pursuant to Chapter 61 of the Kansas Statutes Annotated.

(b) Motions shall be made within the following times:

(1) A motion by the licensee shall be filed within 10 days of receipt of the citation.

(2) Response to any motion of the licensee shall be filed by the agency within 10 days of receipt of a motion.

(3) The motion shall be acted on at least five days prior to the hearing on the citation.

(c) The director may grant such additional time as justice requires.

(d) Requests for continuances and other non-substantive motions may be submitted orally, unless required to be filed in writing by the director. All other motions shall be in writing to the director. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-320 as amended by L. 1987, Ch. 182, Sec. 28, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-18. Prehearing conference; availability; notice. A prehearing conference may be conducted by the director or the director's designee for the purpose of expediting the administrative proceeding. Such a prehearing conference may be conducted by telephone or other electronic means with each party having the opportunity to participate therein. Notice of the time, place and electronic means of conducting any prehearing conference shall be given by the director to all concerned parties. If a prehearing conference is not held, the director or the director's designee

may issue a prehearing order based on the pleadings to regulate the conduct of the proceedings. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-320 as amended by L. 1987, Ch. 182, Sec. 28, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-19. Hearing procedures. The following procedures shall be used at all hearings before the director or the director's designee:

(a) The burden of proving all elements of any alleged offenses shall be upon the agency.

(b) The order for the hearing shall be:

(1) Reading of the citation into the record;

(2) announcement of appearances;

(3) response of licensee to allegations;

(4) presentation of evidence by the agency;

(5) presentation of evidence by the licensee;

(6) rebuttal evidence of the agency;

(7) surrebuttal evidence by the licensee; and

(8) closing arguments for both sides.

(c) The hearing officer may vary from the technical requirements of the rules of evidence when, in the hearing officer's opinion, such variation would be of assistance in determining the facts. Evidence need not be excluded solely because it is hearsay. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-320 as amended by L. 1987, Ch. 182, Sec. 28, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-20. (Authorized by K.S.A. 1991 Supp. 41-210; implementing K.S.A. 1991 Supp. 41-320; effective May 1, 1988; revoked Aug. 10, 1992.)

14-16-21. Service of orders, decisions, directives and notices of director regarding licensees and applicants for licenses; refusal to accept service. (a) All citations, orders, decisions, directives and notices of the director or secretary of revenue issued to or affecting a licensee or an applicant for a license shall be served upon the licensee or applicant by mailing, by certified mail properly addressed, to the licensee or applicant, a copy of the document signed by the director or the director's designee. If the service is to be made on a licensee, the document shall be mailed to the licensee at the address of the licensed premises. If the service is to be made on an applicant for a license, the document shall be

mailed to the applicant at the address shown on the application for the license. No licensee shall refuse to accept or to sign for certified mail from the alcoholic beverage control division.

(b) In lieu of the mailing required by subsection (a), any citation or notice may be served upon the licensee or applicant:

- (1) by the director;
- (2) by any agent or employee of the director; or
- (3) by the sheriff of the county in which the licensed premises are located in the manner provided by the code of civil procedure for the service of summons in civil actions, except for the provisions allowing service by first class mail. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-320 as amended by L. 1987, Ch. 182, Sec. 28, 41-321 as amended by L. 1987, Ch. 182, Sec. 29, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-22. Operation of business while license is involuntarily canceled, suspended or revoked, forbidden; when order of involuntary cancellation, suspension or revocation is effective. Any person whose license has been involuntarily canceled, suspended or revoked shall not operate under such license during the period of involuntary cancellation, suspension or revocation, except as provided by these regulations. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-326, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988.)

14-16-23. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-328 as amended by L. 1987, Ch. 182, Sec. 32, 41-2633a as amended by L. 1987, Ch. 182, Sec. 84; effective May 1, 1988; revoked Dec. 28, 2007.)

14-16-24. (Authorized by K.S.A. 41-203 as amended by L. 1987, Ch. 182, Sec. 5, 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-321 as amended by L. 1987, Ch. 182, Sec. 29, 41-322 as amended by L. 1987, Ch. 182, Sec. 30, 41-2626 as amended by L. 1987, Ch. 182, Sec. 77; effective May 1, 1988; revoked Dec. 28, 2007.)

14-16-25. Imposition of penalties for violations. (a) The director may revoke or suspend the license of any licensee for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation.

(b) In addition to or in lieu of any other civil or criminal penalty for any violation of the liquor control act, the club and drinking establishment act, or any implementing regulation, the director may order a civil fine not exceeding \$1,000 per violation.

(c) The director may order a penalty based upon the schedule specified in subsection (d). Penalties may vary from the schedule based on the presence of aggravating or mitigating circumstances.

(d) The department's "liquor fine and penalty schedule," dated July 16, 2012, is hereby adopted by reference. (Authorized by K.S.A. 41-210 and K.S.A. 41-2634; implementing K.S.A. 41-211, K.S.A. 2011 Supp. 41-328, K.S.A. 2011 Supp. 41-2611, and K.S.A. 41-2633a; effective Sept. 17, 2010; amended Dec. 14, 2012.)

Article 17.—MISCELLANEOUS

14-17-1. Surety bonds form and requirements. All bonds required to be executed under the provisions of the act or the rules and regulations of the director shall be to the state director of alcoholic beverage control for and on behalf of the state of Kansas, and executed by good and sufficient corporate sureties licensed to do business within the state of Kansas. Each said bond shall be countersigned by a Kansas resident agent whose authority to sign said bond shall be evidenced by a duly and properly executed power of attorney, and said power of attorney shall be attached to each said bond at the time of filing the same with the director. (Authorized by K.S.A. 41-211, 41-317, 41-404, 41-408, 41-409, 41-505, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-17-2. Sacramental wine, importation, sale, transportation, and delivery. No license of any kind shall be required of any person to ship wine into this state which is to be used exclusively for sacramental purposes, when such wine is shipped by common carrier and consigned to any bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel of any religious faith or denomination, and the container, barrel, case, or carton thereof is plainly and legibly labeled: "Wine to be used exclusively for sacramental purposes"; and no licenses or

transportation permit, shall be required for the importation and the delivery, transportation, or distribution within this state of any such wine when it is consigned to any such bona fide priest, pastor, bishop, rabbi, preacher or minister of the gospel, and the container, barrel, case, or carton is plainly and legibly labeled as above required. (Authorized by K.S.A. 41-211, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-17-3. Sheriffs' sales of confiscated liquor; sheriff to make report of sales to director. Whenever any identification stamps shall be sold to a sheriff to be placed upon confiscated alcoholic liquors which he has been authorized to sell by a court having authority to issue such an order of sale, the sheriff conducting said sale shall make a return under oath to the director which return shall show: The names and addresses of the person or persons to whom such alcoholic liquor was sold, the quantity of each particular type, brand and kind of alcoholic liquor sold to each purchaser, and if any purchaser is a licensed distributor or retailer the license number of said purchaser shall be shown upon said return. (Authorized by K.S.A. 41-211, 41-306, 41-504, 41-708, 41-1106, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-17-4. Subterfuge in effort to circumvent rules deemed violation. Any act which may be construed as a subterfuge in an effort to circumvent any of these rules and regulations shall be deemed a violation of the rule or regulation attempted to be circumvented. (Authorized by K.S.A. 41-211, 41-722, K.S.A. 1965 Supp. 41-210; effective Jan. 1, 1966.)

14-17-5. Acceptance of hospitality by director and employees. (a) Each person who has a special interest in the sale of alcoholic liquor or who is licensed, inspected or regulated by the alcoholic beverage control division shall not offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of \$100 or more in any calendar year to the director or any agent or employee of the director.

(b) Hospitality in the form of food and beverage shall be generally excluded from the provisions of this regulation and shall not be used to circumvent guidelines described in subsection (a) above.

(c) This regulation shall take effect on or after October 1, 1988. (Authorized by and implementing K.S.A. 1987 Supp. 41-206; effective Oct. 1, 1988.)

14-17-6. Acceptance of hospitality by the director; employees. (a) Personal gifts to the director or any agent or employee of the director of liquor, money, services or any other thing of value from any manufacturer, distributor, wholesaler or retailer of alcoholic liquor, applicant for a license or licensee regardless of the dollar value of the item, shall not be allowed, except as provided for in subsection (b).

(b) The director, or any agent or employee of the director may, in the course of official business, attend conventions, seminars, workshops and other business meetings where food and drink are provided to the director, agent or employee as a participant.

(c) Each agent or employee shall receive prior approval from the director before attending a function where food and drink are provided free of charge or at a reduced cost. (Authorized by and implementing K.S.A. 1988 Supp. 41-206; effective July 3, 1989.)

14-17-7. Determination of Kansas residency. For the purpose of determining whether an individual meets the requirement to be a resident of Kansas for any license issued pursuant to the liquor control act or the club and drinking establishment act, the following requirements shall apply:

(a) An individual shall be deemed to have established residence in Kansas on the date the individual arrives in the state for other than temporary or transitory purposes. Residence in Kansas shall be deemed to have terminated on the date the individual leaves the state and abandons any intention of returning to Kansas.

(b) In evaluating whether an individual intends to be a resident of Kansas, the following factors shall be considered, in order of decreasing importance:

(1) Whether the individual has filed any income tax returns in Kansas as a resident;

(2) whether the individual is registered to vote in Kansas;

(3) whether the individual has a Kansas driver's license or identification card; and

(4) whether the individual owns or rents a residence in Kansas and, if so, whether the utilities are in that individual's name. (Authorized by K.S.A. 41-210; implementing K.S.A. 2007 Supp. 41-311 and K.S.A. 2007 Supp. 41-2623; effective Aug. 29, 2008.)

**Article 18.—CLASS A AND
CLASS B CLUBS**

14-18-1. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, E-81-36, Dec. 10, 1980; revoked May 1, 1981.)

14-18-2. (Authorized by K.S.A. 41-2634; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-3. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-4. (Authorized by K.S.A. 41-2634; implementing K.S.A. 1985 Supp. 41-2637; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended, E-82-22, Dec. 9, 1981; amended May 1, 1982; amended May 1, 1987; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-5. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-6. (Authorized by K.S.A. 41-2609 and K.S.A. 1979 Supp. 41-2634, L. 1979, Ch. 151, Sec. 2; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-7. (Authorized by K.S.A. 1979 Supp. 41-102, 41-803, 41-2610, and 41-2634; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-8. (Authorized by K.S.A. 41-2608, 41-2621 and K.S.A. 1979 Supp. 41-2633, 41-2634; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-9. (Authorized by K.S.A. 1965 Supp. 41-2607, 41-2629, 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-10. (Authorized by K.S.A. 1984 Supp. 41-102, 41-803, 41-2610, 41-2634; implementing K.S.A. 41-2610; effective Jan. 1, 1966; amended Jan. 1, 1969; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1986; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-11. (Authorized by K.S.A. 41-2634; 1979, 41-2633(a); effective Jan. 1, 1966; amended May 1, 1981; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-12. (Authorized by K.S.A. 41-2634; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-13. (Authorized by K.S.A. 41-2634; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-14. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-15. (Authorized by K.S.A. 1968 Supp. 41-2601(b)(2), 41-2634; effective Jan. 1, 1969; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-16. (Authorized by K.S.A. 1968 Supp. 41-2634; effective Jan. 1, 1969; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-17. (Authorized by K.S.A. 41-301, 41-2621, and K.S.A. 1979 Supp. 41-102, 41-2634; effective May 1, 1981; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-18. (Authorized by K.S.A. 1968 Supp. 41-2634; effective Jan. 1, 1969; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-19. (Authorized by K.S.A. 41-301, 41-2621, and K.S.A. 1979 Supp. 41-102, 41-2634; effective May 1, 1981; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-20. (Authorized by K.S.A. 41-2622, 41-2634; effective Jan. 1, 1971; amended Jan. 1, 1974; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-21. (Authorized by K.S.A. 1970 Supp. 41-2634; effective Jan. 1, 1971; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-22. (Authorized by K.S.A. 41-301, 41-2621, and K.S.A. 1980 Supp. 41-102, 41-2634; effective, E-81-36, Dec. 10, 1980; effective May 1, 1981; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-23. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2623, 41-2632; effective Jan. 1, 1974; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-25. (Authorized by K.S.A. 41-301, 41-2621, and K.S.A. 1979 Supp. 41-102, 41-2634; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-26. (Authorized by K.S.A. 41-2602, 41-2603, 41-2604 and K.S.A. 1979 Supp. 41-102, 41-803, 41-2611(c), 41-2623(d), 41-2634; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-28. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2637; effective May 1, 1982; amended May 1, 1983; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-29. (Authorized by K.S.A. 41-2602, 41-2621 and K.S.A. 1979 Supp. 41-2601, 41-2632, 41-2637; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-30. (Authorized by K.S.A. 41-2621 and K.S.A. 1979 Supp. 41-211; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-31. (Authorized by K.S.A. 41-2634; implementing 1985 S.B. 126, Sec. 4; effective, T-86-28, Aug. 19, 1985; effective May 1, 1986, revoked May 1, 1987.)

14-18-32. (Authorized by K.S.A. 41-2624; implementing 1985 S.B. 126, Sec. 4; effective, T-86-28, Aug. 19, 1985; effective May 1, 1986; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-18-33. (Authorized by K.S.A. 41-2624; implementing K.S.A. 1985 Supp. 41-2640 as amended by L. 1986, Chapter 185, Section 7; effective May 1, 1987; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

Article 19.—CLASS A CLUBS

14-19-1. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15,

March 19, 1976; amended Feb. 15, 1977; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-1a. (Authorized by K.S.A. 1980 Supp. 41-2634; effective Jan. 1, 1969; amended Jan. 1, 1970; amended, E-77-15, March 19, 1976; amended May 1, 1977; revoked, E-81-36, Dec. 10, 1980; revoked May 1, 1981.)

14-19-1b. (Authorized by K.S.A. 1980 Supp. 41-2634; effective Jan. 1, 1974; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-81-36, Dec. 10, 1980; revoked May 1, 1981.)

14-19-2. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-3. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-4. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-4a. Liquor pool; storage. All alcoholic liquor attributable to the member's liquor pool shall be stored and maintained in the licensed premises of the club in a safe manner. No such alcoholic liquor shall be stored at a place other than in the area designated as being licensed except upon written approval of the director. The director shall not grant such approval except upon showing extraordinary circumstance requiring off-premises storage and not until the club demonstrates that it has exclusive control of this additional storage area. If approval is given by the director to store pool liquor at a location other than the licensed premises, such approved storage area shall not be a location where individuals may resort to for the consumption of food and/or alcoholic beverages and for entertainment. (Authorized by K.S.A. 41-2613, K.S.A. 1977 Supp. 41-2601, 41-2634; effective May 1, 1978.)

14-19-5. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1970; amended Jan. 1, 1973; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-6 and 14-19-7. (Authorized by K.S.A. 1979 Supp. 41-2634; effective Jan. 1, 1966; revoked, E-80-28, Dec. 12, 1979; revoked May 1, 1980.)

14-19-8. (Authorized by K.S.A. 1976 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-19-9. (Authorized by K.S.A. 1978 Supp. 41-2601, 41-2634; effective Jan. 1, 1966; amended, E-78-9, Feb. 17, 1977; modified, L. 1978, Ch. 452, May 1, 1978; amended, E-79-31, Nov. 21, 1978; amended May 1, 1979; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-19-10. (Authorized by K.S.A. 41-2634, 41-2637; effective Jan. 1, 1966; amended Jan. 1, 1969; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; revoked May 1, 1982.)

14-19-11. (Authorized by K.S.A. 1978 Supp. 41-2601, 41-2634; effective, E-78-9, Feb. 17, 1977; effective May 1, 1978; amended, E-79-31, Nov. 21, 1978; amended May 1, 1979; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-19-12. (Authorized by K.S.A. 1978 Supp. 41-2601, 41-2634; effective, E-78-9, Feb. 17, 1977; effective May 1, 1978; amended, E-79-31, Nov. 21, 1978; amended May 1, 1979; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-19-13. (Authorized by K.S.A. 1978 Supp. 41-2601, 41-2634; effective, E-78-9, Feb. 17, 1977; effective May 1, 1978; amended, E-79-31, Nov. 21, 1978; amended May 1, 1979; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-19-14. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) "Beer" means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water.

The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such an alcoholic content.

(c) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, business trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

(d) "Bulk wine" means wine that is sold to a club, either by a retailer or a distributor, in barrels, casks or bulk containers which individually exceed 20 liters.

(e) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(f) "Director" means the director of the division of alcoholic beverage control of the department of revenue.

(g) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(h) "Guest of member" means an individual who is known to and personally accompanied by a member of a club while on the licensed premises of the club. "Guest of member" shall not include members of the general public admitted to licensed club premises as guests of the club's owner, manager or employee.

(i) "Licensed premises" means those areas described in an application for a club license that are under the control of the applicant and that are intended as the area in which alcoholic liquor or cereal malt beverages are to be served pursuant to the applicant's license.

(j) "Manager" means the manager or assistant manager, or both, of any licensed club who is in charge of the daily operations of the licensed club. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(k) "Member" means an individual who is a corporate stockholder, partner, trust beneficiary or associate and members of the individual's family as provided in the class A club's organizing documents.

(l) “Morals charge” means a charge made in an indictment, information or a complaint alleging crimes which involve:

- (1) prostitution;
- (2) procuring any person;
- (3) solicitation of a child under 18 years of age for any immoral act involving sex;
- (4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;
- (5) rape;
- (6) incest;
- (7) gambling;
- (8) adultery; or
- (9) bigamy.

(m) “Nonprofit fraternal club” means a nonprofit corporation, partnership, business trust or association that:

(1) is a fraternal beneficiary society, order or association operating under the lodge system which provides for the payment of life, sickness, accident or other benefits to its members or their dependents; or

(2) is organized for the exclusive benefit of the members of a fraternity operating under the lodge system.

(n) “Nonprofit social club” means a nonprofit corporation, partnership, business trust or association that:

(1) is organized and operated exclusively for the pleasure, recreation and other nonprofitable use of its shareholders, partners, beneficiaries or members; and

(2) shall not distribute any of its net earnings to any shareholder, partner, beneficiary or member.

(o) “Nonprofit war veterans club” means a nonprofit corporation, partnership, business trust or association that:

(1) is a post or organization of war veterans, an auxiliary unit or society of a post or organization of war veterans or a trust or foundation for a post or organization of war veterans;

(2) requires that 75% of its shareholders, partners, beneficiaries or members be war veterans and substantially all its other members are veterans, widows of veterans or widowers of veterans; and

(3) shall not distribute any of its net earnings to any shareholder, partner, beneficiary or member.

(p) “Person” means any natural person, corporation, association, trust or partnership.

(q) “Retailer” means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(r) “Spirits” means any beverage that contains alcohol obtained by distillation, mixed with water or other substances in solution. The term “spirits” includes brandy, rum, whiskey, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(s) “Wine” means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2601, K.S.A. 1991 Supp. 41-2634; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-19-15. Applications and renewals; documents required. Each application for a class A club license shall be made upon forms prepared by the director and shall contain all information the director deems necessary. Any application which does not contain the required information may be returned to the applicant without the application being considered on its merits.

(a) General requirements. Each application for a class A club license shall be accompanied by the following documents and all other documents the director deems necessary:

(1) A copy of a written lease, with at least nine months remaining in its term from the date the license is issued, or proof of ownership by the applicant of the premises sought to be licensed;

(2) a copy of any management or catering contract in force or a proposed management or catering contract, if applicable;

(3) a description of the club premises. The description may include those areas outside the main service area that are in close proximity to the main service area and are located upon property subject to legal occupation by the applicant, as approved by the director. The description shall state the location of the licensed premises, the approximate dimensions of the licensed premises, enough detail to identify the licensed premises and a depiction of the liquor storage area;

(4) a certified statement from the applicant that the licensed premises are located:

(A) in an area where the zoning regulations of either the city, township or county allow the operation of a club; or

(B) in an area where no zoning regulations have been adopted;

(5) the registration fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(6) the license fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(7) a disclosure statement listing each owner, officer, manager, trustee, director, stockholder owning in the aggregate more than 5% of the common or preferred stock, grantor or beneficiary, and the spouses of each of these individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a club license as provided in K.A.R. 14-19-16; and

(8) a disclosure statement listing all personnel who will be mixing or dispensing alcoholic liquor.

(b) Corporations. In addition to the documents required by subsection (a), each application on behalf of a corporation shall include:

(1) a certified copy of the articles of incorporation as a Kansas domestic not-for-profit corporation;

(2) a copy of the corporate bylaws; and

(3) an appointment of process agent together with a power of attorney authorizing that agent to conduct the business of the club and receive all service of process on behalf of the club. The process agent shall be an individual.

(c) Business trusts or associations. In addition to the documents required by subsection (a), each application on behalf of an unincorporated business trust or association shall include a copy of the constitution, articles of association, declaration of trust, or other documents setting forth the aims and purposes of the business trust or association, setting forth the membership requirements and declaring the county in which the business trust or association is to be located.

(d) Partnerships. In addition to the documents required by subsection (a), each application on behalf of a partnership shall include a copy of the partnership agreement. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2606; 41-2608; 41-2610; 41-2622; 41-2623, as amended by 1992 HB 2719; 41-2625; 41-2634; 41-2637; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-19-16. Requirements for class A club license. (a) Corporations. A corporation shall not be issued a class A club license if any officer,

manager, director, stockholder owning a beneficial interest in the corporation or spouse of these individuals:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the individual;

(5) (A) Appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) is a law enforcement official; or

(C) is an employee of the director.

Paragraph (5), above, shall not apply to an officer of a post home, a congressionally chartered service or fraternal organization or a benevolent association or society thereof;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This shall not apply if the officer's, director's, manager's or stockholder's spouse is ineligible upon the application for renewal;

(8) has had any license or permit issued by the director revoked;

(9) has a beneficial interest in the manufacture, preparation or wholesale or retail sale of alcoholic liquors or a beneficial interest in any other club or drinking establishment licensed by the director. Any officer, manager, director, stockholder or spouse of these individuals may own a beneficial interest in a distributor or retailer if the club purchases no alcoholic liquor from that distributor or retailer; and

(10) has been an officer, manager or director or a stockholder owning a beneficial interest in a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(b) Business trusts or associations. A business trust or association shall not be issued a class A club license if any officer, director, manager, owner who owns a beneficial interest in the business trust or association or a spouse of any of these individuals:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the individual;

(5) (A) Appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) is a law enforcement official; or

(C) is an employee of the director;

Paragraph (5), above, shall not apply to an officer of a post home, a congressionally chartered service or fraternal organization or a benevolent association or society thereof;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This shall not apply if the officer's, director's, manager's or owner's spouse is ineligible upon the application for renewal;

(8) has had any license or permit issued by the director revoked;

(9) has a beneficial interest in the manufacture, preparation or wholesale or retail sale of alcoholic liquors or a beneficial interest in any other club or drinking establishment licensed by the director. Any officer, director, manager, owner or spouse of the same may own a beneficial interest in a distributor or retailer if the club licensed by the director purchases no alcoholic liquor from the distributor or retailer; and

(10) has been an officer, manager, director or stockholder owning a beneficial interest of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(c) Partnerships. A partnership shall not be issued a class A club license if any manager, partner or spouse of a manager or partner:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the partner or manager;

(5) (A) Appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) is a law enforcement official; or

(C) is an employee of the director;

Paragraph (5), above, shall not apply to an officer of a post home, congressionally chartered service or fraternal organization or a benevolent association or society thereof;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This shall not apply if the manager's or partner's spouse is ineligible upon the application for renewal;

(8) has had any license or permit issued by the director revoked;

(9) has a beneficial interest in the manufacture, preparation or wholesale or retail sale of alcoholic liquors or a beneficial interest in any other club or drinking establishment licensed by the director. A manager, partner or spouse of the same may own a beneficial interest in a distributor or retailer if the club licensed by the director purchases no alcoholic liquor from that distributor or retailer;

(10) has been an officer, manager, director or stockholder owning a beneficial interest of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state;

(11) has been a citizen of the United States for less than 10 years. This shall not apply to the spouse of the manager or partner;

(12) has been a resident of the state of Kansas for less than one year immediately preceding the date of application. This shall not apply to the spouse of the manager or partner; and

(13) is not a resident of the county in which the club is to be located. This shall not apply to the spouse of the manager or partner.

(d) Every corporate applicant shall be a Kansas domestic not-for-profit corporation.

(e) For the purpose of determining qualifications under subsections (a), (b) and (c) of this regulation, any person who leases premises to a class A club upon terms which result in the lessor having a beneficial interest in the club's business, shall be deemed to be a partner in the club's business. A lessor shall be deemed to have a beneficial interest in a club's business, if the lessor receives as rent, in whole or in part, a percentage of the club's gross receipts or profits from the sale of alcoholic liquor, other items to be mixed with alcoholic liquor, or club membership fees. Percentage rent provisions that exclude these items shall be subject to review and approval by the director. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2623 as amended by L. 1987, Ch. 182, Sec. 75; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-17. Issuance of license. (a) An annual class A club license shall be issued to each applicant determined by the director to have satisfied the requirements of the club and drinking establishment act and this article of these regulations.

(b) An application for a license may be rejected by the director if:

(1) the applicant's officers, directors, partners, registered agent, managers or owners have previously owned or operated under any type of retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee had been ordered to appear and show cause why the license should not be revoked or suspended;

(2) the application is for premises which were the subject of the order to appear and show cause as set forth in paragraph (1), above, and it appears that the new application for a license is an attempt to avoid any possible remedial action taken by the director against the former licensee;

(3) the applicant's officers, directors, partners, registered agent, managers or owners, are currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(4) the applicant's officers, directors, partners, registered agent, managers or owners have previously owned or operated any retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee was delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(5) the application is for premises which were the subject of the delinquent taxes as set forth in paragraph (3), above, and it appears that the new application for a license is an attempt to avoid payment of the tax. (Authorized by K.S.A. 1989 Supp. 41-2634 and 79-41a03; implementing K.S.A. 1989 Supp. 41-2623 and 79-41a03; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-19-18. Licenses, loss or destruction of; application for and issuance of duplicate.

Whenever any license issued by the director is lost or destroyed before its expiration, the club to which the license was issued may make written application to the director for a duplicate license. The application shall set forth all the facts and circumstances concerning the loss or destruction of the license and shall be sworn to by each person applying for the duplicate. Upon review of the application, a duplicate license may be issued by the director. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-19. Change of club status. A class A club license shall not be converted to either a class B club or a drinking establishment license. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2637 as amended by L. 1987, Ch. 182, Sec. 86; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-20. Refund upon voluntary cancellation. If the license of any club is canceled, except through revocation or suspension, the club shall be eligible for a refund of a portion of the annual license fee. The refund shall be equal to one-twelfth of the annual license fee for each full calendar month of the license year which remains at the time of the cancellation. The refund shall

only be made upon application to the director. (Authorized by K.S.A. 41-2607; implementing K.S.A. 41-2629 as amended by L. 1987, Ch. 182, Sec. 80; 41-2637 as amended by L. 1987, Ch. 182, Sec. 86; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-21. Guests of members; reciprocal members; registration. (a) A club shall only admit members, guests of members, reciprocal members or guests of reciprocal members. Admission of any other individual to the licensed premises is prohibited.

(b) "Reciprocal member" means an individual who belongs to a club which has executed a written reciprocal agreement with the club to which access is sought, as provided by K.A.R. 14-19-23, and has filed the agreement with the director.

(c) Each club that has entered into reciprocal agreements shall keep on the licensed premises a reciprocal guest book in which each reciprocal member shall legibly sign his or her name each time the member enters the club. Each reciprocal member shall show the member's personal address and the name and city address of the club of original membership.

(d) The privileges extended to reciprocal members shall be determined by the written reciprocal agreement. Each guest or reciprocal member shall be entitled to all the privileges of the club as may be provided in the reciprocal agreement. The extension of club privileges to a guest shall end with the departure of the sponsoring club member from the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2637 as amended by L. 1987, Ch. 182, Sec. 86; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-22. Roster of stockholders, partners, beneficiaries or associates. Each club shall maintain upon the licensed premises, a current roster of stockholders, partners, beneficiaries or associates who are entitled to access and use of the licensed premises and to services offered by the licensee club. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2610 as amended by L. 1987, Ch. 182, Sec. 65, 41-2637 as amended by L. 1987, Ch. 182, Sec. 86; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-23. Agreement for reciprocal membership. (a) Any two or more class A clubs

may enter into an agreement which allows members of each club to have access to all other clubs which are parties to the reciprocal agreement.

(b) Each club shall submit two copies of a proposed reciprocal agreement to the director for approval. The agreement shall be properly executed and comply with the club and drinking establishment act. The club shall keep an approved copy of the agreement upon the licensed premises at all times.

(c) Upon severance of any reciprocal agreement each club shall return the approved copy of the agreement to the director with a notification that the agreement has been canceled.

(d) The provisions of this regulation shall not apply to a nationally chartered war veterans club which allows admission of its members to the various posts located within the state. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2637 as amended by L. 1987, Ch. 182, Sec. 86; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-24. Employees; registration of same; prohibitions. (a) Each club shall register with the director all employees who will mix, sell, serve or dispense alcoholic liquor. The registration shall be submitted on forms supplied by the director, within five days after the employee begins work for the club and upon each renewal of the club's license.

(b) A club shall not employ or continue to employ any person:

(1) who is under the age of 18 years to serve alcoholic liquor or cereal malt beverage;

(2) who is under the age of 21 to mix or dispense drinks containing alcoholic liquor or cereal malt beverage;

(3) who is under the age of 21 years and is not supervised by the licensee or an employee who is at least 21 years of age;

(4) who has been convicted of a felony or of any crime involving a morals charge in Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage; or

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage; or

(6) who is a manufacturer, distributor or retailer, or who is an officer, agent, or employee of a

manufacturer, distributor, or retailer, in the capacity of a person registered to mix, serve, sell, or dispense alcoholic liquor. This shall not apply to a distributor or a retailer who is an officer, director or board member of a class A club if the distributor or retailer sells no alcoholic liquor to the class A club. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2610; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-19-25. Purchase of alcoholic liquor and cereal malt beverages; requirements and restrictions. (a) Each club shall purchase alcoholic liquor only from a retailer. However, any club may purchase bulk wine, beer and cereal malt beverages from a distributor.

(b) Any club may receive delivery of alcoholic liquor to its licensed premises from a retailer and delivery of bulk wine, beer and cereal malt beverages from a distributor.

(c) A club shall not purchase alcoholic liquor or beer from any retailer who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A club shall not warehouse any liquor on any retail liquor store premises.

(d) A club shall not purchase bulk wine, beer or cereal malt beverage from any distributor who does not possess a federal wholesaler's basic permit and who does not have on display at the wholesale establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A club shall not warehouse its liquor on any distributor's premises.

(e) Each club, when making alcoholic liquor purchases from retailers or distributors, shall obtain and keep, for a period of not less than three years from the date of purchase, a sales slip that contains the following information:

- (1) The date of purchase;
- (2) the name and address of the retailer or distributor;
- (3) the name and address of the club as it appears on the club license;
- (4) the brand, size, and amount of all alcoholic liquor purchased; and
- (5) the subtotal of the cost of the alcoholic liquor and the total cost of the order including enforcement tax and delivery charge, if any.

(f) Each club shall purchase alcoholic liquor through a registered employee of the licensed

club who shall be at least 21 years of age. The club shall provide to the registered employee identification sufficient to demonstrate to the retailer or distributor who possesses the federal wholesale basic permit that the individual making the purchase is so registered.

(g) Each club shall maintain on the licensed premises all records of all alcoholic liquor purchased. These records shall be available for inspection by the director or any agent or employee of the director or secretary upon request. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-211; 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 41-301; 41-306 as amended by L. 1987, Ch. 182, Sec. 14; 41-307 as amended by L. 1987, Ch. 182, Sec. 17; 41-308 as amended by L. 1987, Ch. 182, Sec. 18; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-26. Licensee's responsibility for conduct of business and employees. Each licensee shall be responsible for the conduct of its business. Each licensee shall be held responsible for all violations of the club and drinking establishment act by the following people while on the licensed premises:

- (a) An employee of the club;
- (b) an employee of any person contracting with the club to provide services or food; and
- (c) any individual mixing, serving, selling or dispensing alcoholic liquor. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-27. Storage of liquor; removal from club premises. (a) Each licensee shall store its liquor only on the licensed premises of the club unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2637 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the

director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the club premises shall be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2637 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2637, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-19-28. Nontaxed liquor and refilling of containers prohibited. (a) Alcoholic liquors shall only be dispensed from or stored in original containers bearing Kansas alcoholic liquor identification stamps. A licensed club shall not refill any such original container with any alcoholic liquor, or any other substance.

(b) A member, guest or reciprocal member may bring bottles onto the club premises upon the following conditions:

(1) A club shall not warehouse any bottles upon the club premises;

(2) each person bringing any bottles onto the

club premises shall remove the bottles when departing from the club premises; and

(3) each bottle shall bear a Kansas alcoholic liquor identification stamp if required by law. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-718 as amended by L. 1987, Ch. 182, Sec. 53; L. 1987, Ch. 182, Sec. 93; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-29. Cereal malt beverages; sale allowed. (a) Any club may sell cereal malt beverages upon the licensed premises if:

(1) The club notifies the director when it obtains a license for the retail sale of cereal malt beverages;

(2) the club notifies the director of each renewal of the license for the retail sale of cereal malt beverages; and

(3) the club dispenses cereal malt beverage only for consumption upon the licensed premises.

(b) Violation of any cereal malt beverage statute shall subject the club to suspension or revocation of its license or to a monetary fine under the procedures referenced of K.A.R 14-16-14 et seq. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2704 as amended by L. 1987, Ch. 182, Sec. 100; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-30. Minimum prices for drinks; how determined. (a) A licensed club shall not sell any drink to any person for less than the acquisition cost of that drink to the club.

(b) The cost of each of the following items shall be included in the acquisition cost of a drink:

(1) All alcoholic liquor contained in the drink; and

(2) any liquid of a non-alcoholic nature contained in the drink.

(c) Any of the following items shall not be required to be included in the acquisition cost:

(1) City service or tap water;

(2) ice;

(3) employee salaries or other usual overhead; and

(4) any other items of clearly negligible value used in the drink.

(d) In determining the minimum price, a club shall not include the drink tax as imposed by K.S.A.

79-41a02. This tax shall be collected in addition to the minimum price for the drink itself. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-31. Clubs charge the same price for the same drink all day; day defined. (a) A class A club shall not sell a drink to any person for less than the price charged for that same drink to all other club patrons on that day. Any particular drink that is offered for sale at any time during the day shall be offered at the same price for the entire day.

(b) The term “day” shall mean from 9:00 a.m. until 2:00 a.m. the following calendar day. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-32. Licensee must pay city or county license tax before making sales. A licensee shall not operate until the licensee has paid the annual occupation or license tax imposed by the city or county in which the licensed premises are located. A licensee shall not sell 3.2 beer without first having obtained a cereal malt beverage license. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2622 as amended by L. 1987, Ch. 182, Sec. 74; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-33. Federal retail stamp. Each club licensee shall purchase from the United States bureau of alcohol, tobacco and firearms a federal retail stamp and shall display that stamp, or proof of payment for the stamp, in public view on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-34. Excise tax shall be current. Each club that fails to register for an excise tax registration number with the director of taxation shall be subject to cancellation of its license or fine by the director. Each club that is delinquent in the payment of its excise taxes levied on alcoholic liquors shall be subject to cancellation of its license or fine by the director. (Authorized by and

implementing 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-35. Suspension and revocation; grounds for; procedure. The license of any class A club may be revoked, canceled or suspended by the director for any one or more of the following reasons, subject to the procedures and other provisions of K.A.R. 14-16-14 et seq.:

(a) The licensee has omitted or misstated a material fact in its application;

(b) the licensee has operated in a manner materially different from that represented in the application;

(c) the licensee no longer meets the criteria for a nonprofit social, fraternal or war veterans club;

(d) the licensee has engaged in a prohibited transaction;

(e) the licensee has violated any provision of the liquor control act, the club and drinking establishment act, the cereal malt beverage act or any regulations adopted pursuant thereto;

(f) there has been a violation of the laws of Kansas pertaining to the sale of alcoholic liquor or cereal malt beverage or a violation of the laws of the United States pertaining to the sale of intoxicating liquor or a violation involving a morals charge;

(g) the licensee, its managing officers or any employee, has purchased and displayed, on the licensed premises a federal wagering occupational stamp or a federal coin operated gambling device stamp issued by the United States treasury department;

(h) the licensee has refused to permit the director or any agent or employee of the director or the secretary to inspect the licensed premises and any alcoholic liquor in the licensee’s possession or under the licensee’s control upon the premises covered by the license, or upon any other premises where the liquor may be stored; or

(i) the licensee has allowed a person who is under the age of 21 years to possess alcoholic liquor while on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; 41-2613 as amended by L. 1987, Ch. 182, Sec. 68; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-36. Public functions upon licensed premises; when allowed; approval of director. (a) A club shall not open any part of its li-

censed premises to the public unless it has first received the written approval of the director. All requests for written approval of the director to open the licensed premises to the public shall be accompanied by a sworn statement containing:

(1) The days of the week and hours of those days for which the application is made;

(2) a description of the exact area of the club to be open to the general public;

(3) the statement that no alcoholic liquor or cereal malt beverage will be sold, dispensed or consumed by anyone in the area described during the time indicated;

(4) the date and time that normal club activities will be resumed in the described areas; and

(5) a description of the type of activity to be conducted and by whom.

(b) Written approval shall not be required for a class A club holding a bona fide bingo license to operate bingo games which are open to the public, pursuant to K.S.A. 79-4703 and amendments thereto. Application for and acceptance of a bingo license by a class A club shall be considered as consent by the class A club licensee to comply with the public functions requirements of this regulation.

(c) The use of the licensed premises by the general public shall not remove the area from the jurisdiction of the director. The licensee may be suspended, revoked or fined for any violations of chapter 41 of the Kansas statutes during any public function held on its licensed premises. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-19-37. Display of license. Each class A club shall display its license in a conspicuous place on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, implementing K.S.A. 41-2612 as amended by L. 1987, Ch. 182, Sec. 67; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-19-38. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence. (a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, "crime of violence" shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

14-19-39. Extension of premises. (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director's approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended. If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area.

(e) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(f) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(g) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(h) The licensee shall maintain, on the licensed premises, a copy of the director's written approval to extend the licensed premises, which shall be deemed to be an essential part of the premises license. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by and implementing K.S.A. 41-2621; effective Sept. 17, 2010.)

14-19-40. Class A clubs; automated devices. (a)(1) "Automated device" shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) "Business day" shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of the licensee's intent to use the automated device. The licensee shall provide this notification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed "active" if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver's license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer's valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer's valid identification to the licensee or licensee's employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dis-

pensed directly to the licensee or the licensee's agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

Article 20.—CLASS B CLUBS

14-20-1. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-2. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-3. (Authorized by K.S.A. 41-2634; effective Jan. 1, 1966; revoked May 1, 1982.)

14-20-4. (Authorized by K.S.A. 1979 Supp. 41-2632, 41-2639; effective, E-80-28, Dec. 12, 1979; effective May 1, 1980; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-5. (Authorized by K.S.A. 1980 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-81-36, Dec. 10, 1980; revoked May 1, 1981.)

14-20-6. (Authorized by K.S.A. 1976 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, E-81-36, Dec. 10, 1980; revoked May 1, 1981.)

14-20-7. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2601; effective Jan. 1, 1966; amended, E-80-28, Dec. 12, 1979; amended May 1, 1980; amended, E-82-13, June 17, 1981; amended May 1, 1982; amended, T-86-28, Aug. 19, 1985; amended May 1, 1986; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-8. (Authorized by K.S.A. 1965 Supp. 41-2634; effective Jan. 1, 1966; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-9. (Authorized by K.S.A. 1976 Supp. 41-2634; effective Jan. 1, 1966; amended, E-77-15, March 19, 1976; amended Feb. 15, 1977; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-10. (Authorized by K.S.A. 41-2634; implementing K.S.A. 1985 Supp. 41-2601(f); ef-

fective May 1, 1987; revoked, T-88-22, July 1, 1987; revoked May 1, 1988.)

14-20-14. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) "Beer" means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation or an infusion or concoction of barley or other grain, malt and hops in water. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such an alcoholic content.

(c) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

(d) "Bulk wine" means wine which is sold to a club either by a retailer or a distributor in barrels, casks or bulk containers which individually exceed 20 liters.

(e) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(f) "Director" means the director of the division of alcoholic beverage control of the department of revenue.

(g) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(h) "Guest of member" means an individual who is known to and personally accompanied by a member of a club while on the licensed premises of the club. "Guest of member" shall not include members of the general public admitted to licensed club premises as guests of the club's owner, manager or employee.

(i) “Food service establishment” has the meaning provided by K.S.A. 36-501 and amendments thereto.

(j) “Licensed premises” means those areas described in an application for a club license that are under the control of the applicant and that are intended as the area in which alcoholic liquor or cereal malt beverages are to be served pursuant to the applicant’s license.

(k) “Manager” means the manager or assistant manager, or both, of any licensed club who is in charge of the daily operations of the licensed club. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(l) “Member” means any individual who has been accepted into membership by a licensed class B club, as provided in the club’s organizing documents, and that individual’s spouse.

(m) “Morals Charge” means a charge made in an indictment, information or a complaint alleging crimes which involve:

- (1) prostitution;
- (2) procuring any person;
- (3) solicitation of a child under 18 years of age for any immoral act involving sex;
- (4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;
- (5) rape;
- (6) incest;
- (7) gambling;
- (8) adultery; or
- (9) bigamy.

(n) “Person” means any natural person, corporation, association, trust or partnership.

(o) “Retailer” means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(p) “Restaurant” means:

(1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 1991 Supp. 41-2642 and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its

gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 1991 Supp. 41-2642 and amendments thereto, a licensed food service establishment.

(q) “Spirits” means any beverage that contains alcohol obtained by distillation, mixed with water or other substances in solution. The term “spirits” includes brandy, rum, whisky, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(r) “Wine” means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including similar beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2601; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-20-15. Applications and renewals; documents required. Each application for a class B club license shall be made upon forms prepared by the director and shall contain all information the director deems necessary. Any application which does not contain the required information may be returned to the applicant without the application being considered on its merits.

(a) General requirements. Each application for a class B club license shall be accompanied by the following documents and all other documents the director deems necessary:

(1) A copy of a written lease, with at least nine months remaining in its term from the date the license is issued, or proof of ownership by the applicant of the premises sought to be licensed;

(2) a copy of any management or catering contract in force or a proposed management or catering contract, if applicable;

(3) a description of the club premises. The description may include those areas outside the main service area that are in close proximity to the main service area and are located upon property subject to legal occupation by the applicant, as approved by the director. The description shall state the location of the licensed premises, the approximate dimensions of the licensed premises, enough detail to identify the licensed premises and a depiction of the liquor storage area;

(4) a certified statement from the applicant that the licensed premises are located:

(A) In an area where the zoning regulations of either the city, township or county allow the operation of a club; or

(B) in an area where no zoning regulations have been adopted;

(5) the registration fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(6) the license fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(7) a disclosure statement listing each owner, officer, manager, trustee, director, stockholder owning a beneficial interest, grantor or beneficiary, and the spouses of any of these individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a club license as provided in K.A.R. 14-20-16; and

(8) a disclosure statement listing all personnel who will be mixing or dispensing alcoholic liquor.

(b) Corporations. In addition to the documents required by subsection (a), each application on behalf of a corporation shall include:

(1) A certified copy of the articles of incorporation as a Kansas domestic for-profit corporation;

(2) a copy of the corporate bylaws that shall require each member of the club who is not a temporary member as provided in K.A.R. 14-20-25:

(A) to be of good moral character;

(B) to pay an annual membership fee of not less than ten dollars; and

(C) to wait 10 days from the date of making application until said member may make use of the licensed premises; and

(3) an appointment of process agent together with a power of attorney authorizing that agent to conduct the business of the club and receive all service of process on behalf of the club. The process agent shall be an individual.

(c) Partnerships. In addition to the documents required by subsection (a), each application on behalf of a partnership shall include a copy of the partnership agreement.

(d) Trusts. In addition to the documents required by subsection (a), each application on behalf of a trust shall include a copy of the declaration of trust or other documents setting forth the aims and purposes of the trust. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2606; 41-2608; 41-2610; 41-2622; 41-2623, as amended by 1992 HB 2719; 41-2625;

41-2641; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-20-16. Requirements for class B club license. (a) A class B club license shall not be issued to any corporation, partnership, trust or individual if any owner, partner, grantor, trustee, beneficiary, officer, manager, director, stockholder owning a beneficial interest in a corporation or spouse of these individuals:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the individual or to the beneficiary of a trust;

(5) (A) appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) is a law enforcement official; or

(C) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This provision shall not apply to the spouse of the individual;

(8) has had any license or permit issued by the director under the club and drinking establishment act revoked; or

(9) has a beneficial interest in the manufacture, preparation or wholesale or retail sale of alcoholic liquors or a beneficial interest in any other club or drinking establishment licensed by the director. This shall not apply to any owner, partner, grantor, trustee, beneficiary, officer, manager, director, stockholder or spouse who owns a beneficial interest in another club or drinking establishment if:

(A) the application is for licensed premises located in a hotel and all of the individual's beneficial interests are in clubs or drinking establishments located in hotels; or

(B) the application is for licensed premises that is a restaurant and all of the individual's beneficial interests are in clubs or drinking establishments that are restaurants.

(b) A corporation shall not be issued a class B club license if any officer, manager, director or stockholder owning a beneficial interest in the corporation has been an officer, manager, director or stockholder owning a beneficial interest in a corporation which:

(1) has had a license revoked under the provisions of the club and drinking establishment act; or

(2) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(c) A partnership, trust or individual shall not be issued a class B club license if any owner, manager, grantor, trustee, beneficiary or partner:

(1) has been a citizen of the United States for less than 10 years;

(2) has been a resident of the state of Kansas for less than one year immediately preceding the date of application; or

(3) is not a resident of the county in which the club is to be located.

(d) Each corporate applicant shall be a Kansas domestic for-profit corporation.

(e) For the purpose of determining qualifications under subsections (a), (b) and (c) of this regulation, any person who provides financing to or leases premises to a class B club upon terms which result in that person having a beneficial interest in the club's business shall be deemed to be a partner in the club's business. A person who provides financing to a class B club shall be deemed to have a beneficial interest in the club's business if the terms for repayment are conditioned on the amount of the club's receipts or profits from the sale of alcoholic liquor, other items to be mixed with alcoholic liquor or club membership fees. A lessor shall be deemed to have a beneficial interest in a club's business if the lessor receives as rent, in whole or in part, a percentage of the licensee's receipts or profits from the sale of alcoholic liquor, other items to be mixed with alcoholic liquor or club membership fees. Financing or percentage rent provisions that exclude these items shall be subject to review and approval by the director. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2623 as amended by 1992 HB 2719; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-20-17. Issuance of license. (a) An annual class B club license shall be issued to each applicant who is determined by the director to have satisfied the requirements of the club and drinking establishment act and this article of these regulations.

(b) An application for a license may be rejected by the director if:

(1) the applicant's officers, directors, partners, registered agent, managers or owners have previously owned or operated any retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee had been ordered to appear and show cause why the license should not be revoked or suspended;

(2) the application is for premises which were the subject of the order to appear and show cause as set forth in paragraph (1), above, and it appears that the new application for a license is an attempt to avoid any possible remedial action taken by the director against the former licensee;

(3) the applicant's officers, directors, partners, registered agent, managers or owners, are currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(4) the applicant's officers, directors, partners, registered agent, managers or owners have previously owned or operated any retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee was delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(5) the application is for premises which were the subject of the delinquent taxes as set forth in paragraph (3), above, and it appears that the new application for a license is an attempt to avoid payment of the tax. (Authorized by K.S.A. 1989 Supp. 41-2634 and 79-41a03; implementing K.S.A. 1989 Supp. 41-2623 and K.S.A. 79-41a03; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-20-18. Licenses, loss or destruction of; application for and issuance of duplicate. Whenever any license issued by the director is lost or destroyed before its expiration, the club to which the license was issued may make written application to the director for a duplicate license. The application shall set forth all the facts and circumstances concerning the loss or destruction of the license

and shall be sworn to by each person applying for the duplicate. Upon review of the application, a duplicate license may be issued by the director. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-19. Change of club status. (a) If a licensee desires to change its license from a class B club to a drinking establishment, the licensee shall make application, at least 45 days prior to the desired date of the change, for the type of license sought and shall voluntarily cancel the current license upon the issuance of the new type license. The licensee shall receive a refund of the license voluntarily canceled as provided by K.A.R. 14-20-20.

(b) If an audit by the director or the secretary finds a class B club with reciprocal agreements has failed to derive at least 50% of its gross receipts from the sale of food, all that class B club's reciprocal agreements shall be canceled. The class B club licensee, upon receipt of notice of cancellation of its reciprocal agreements, shall not admit reciprocal guests to the licensed premises.

(c) If an audit by the director or the secretary finds one of the class B clubs owned by a licensee which holds multiple licenses pursuant to the provisions of K.A.R. 14-20-24, fails to derive at least 50% of its gross receipts from the sale of food, then that class B club's license shall be canceled. The licensee shall have 10 days from receipt of notice of cancellation to advise the director, in writing, of its intent to sell the class B club and the date upon which the sale will be effective. If the effective sale date is within 30 days of the delivery of the licensee's notice of intent to sell, then the licensee's license shall be canceled on the effective date of the sale. If the licensee fails to give a notice of intent to sell or the effective date is longer than 30 days from the receipt of the licensee's notice of intent to sell, the licensee's license shall be canceled 40 days from the date the licensee receives the director's notice of cancellation and the licensee shall discontinue operations under the club and drinking establishment act and surrender its license to the director. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60; 41-2623 as amended by L. 1987, Ch. 182, Sec. 75; L. 1987, Ch. 182, Sec. 87; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-20. Refund upon voluntary cancellation. If the license of any club is canceled, except through revocation or suspension, the club shall be eligible for a refund of a portion of the annual license fee. The refund shall be equal to one-twelfth of the annual license fee for each full calendar month of the license year which remains at the time of the cancellation. The refund shall be made only upon application to the director. (Authorized by K.S.A. 41-2607; implementing K.S.A. 41-2629 as amended by L. 1987, Ch. 182, Sec. 80; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-21. Guests of members; reciprocal members; registration. (a) A club shall only admit members, guests of members, reciprocal members or guests of reciprocal members. Admission of any other individual to the licensed premises is prohibited.

(b) "Reciprocal member" means an individual who belongs to a club which has executed a written reciprocal agreement with the club to which access is sought, as provided by K.A.R. 14-20-23, and has filed the agreement with the director.

(c) Each club that has entered into reciprocal agreements shall keep on the licensed premises a reciprocal guest book, in which each reciprocal member shall legibly sign his or her name each time the member enters the club. Each reciprocal member shall sign his or her name, show their personal address and the name and city address of the club of original membership.

(d) The privileges extended to reciprocal members shall be determined by the written reciprocal agreement. Each guest or reciprocal member shall be entitled to all the privileges of the club as may be provided in the reciprocal agreement. The extension of club privileges to a guest shall end with the departure of the sponsoring club member from the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing L. 1987, Ch. 182, Sec. 87; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-22. Roster of members. The licensee of each club shall maintain a current roster of members who are entitled to access and use of the licensed premises and the services offered by the club. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing L. 1987, Ch. 182, Sec. 87; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-23. Agreement for reciprocal membership. (a) Any two or more class B clubs may enter into an agreement which allows members of each club to have access to all other clubs which are parties to the reciprocal agreement.

(b) Each club shall submit two copies of the proposed reciprocal agreement to the director for approval. The agreement shall be properly executed and comply with the club and drinking establishment act. The club shall keep an approved copy of the agreement upon the licensed premises at all times.

(c) Upon severance of any reciprocal agreement each club shall return the approved copy of the agreement to the director with a notification that the agreement has been canceled. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing L. 1987, Ch. 182, Sec. 87; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-24. Restaurant clubs; criteria for determination; gross receipts affidavit; estimates. (a) For purposes of reciprocity and multiple ownership of class B clubs, a club shall be deemed to be a restaurant if the ratio of food sales on the licensed premises to total gross receipts for all sales made on the licensed premises for a period of not less than 12 months is 50% or greater. Sales of any kind made on permanent public areas that are not a part of the licensed premises shall not be included in any calculation for this purpose. Sales of food or other commodities made on the licensed premises during times that public functions are authorized may be included in all calculations.

(b) Each club licensee requesting restaurant status shall submit accurate figures for food sales, total gross sales, and whatever other pertinent information is requested on forms to be provided by the director at the time the licensee initially requests restaurant status and upon each renewal of the licensee's license.

(c) Each club requesting restaurant status that has been in operation for a period of less than 12 months may submit estimated figures for food sales and total gross receipts. However, a successor corporation taking over an existing club shall not utilize estimates if 40% or more of the successor corporation is owned by persons who were required to meet the licensing qualifications of the existing club. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; imple-

menting K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60; 41-2623 as amended by L. 1987, Ch. 182, Sec. 75; L. 1987, Ch. 182, Sec. 87; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-25. Temporary memberships; granting, records, and billing. (a) (1) Each class B club located on the premises of a "hotel", or "RV resort", or each class B club that enters into a contract with a hotel or RV resort to issue temporary memberships to that hotel's or RV resort's guests, shall keep a record of temporary memberships granted by the club to registered nonresident guests of that hotel or RV resort. The term "hotel" shall have the meaning as provided in K.S.A. 36-501. The term "RV resort" shall have the meaning as provided in L. 1990, Ch. 179, Sec. 5.

(2) Only clubs shall issue temporary memberships. The hotel or RV resort management shall not issue or handle temporary memberships. A temporary membership card shall be issued to each temporary member setting forth, on its face, the effective dates, the name of the club and the name of the member. The hotel or RV resort may handle billings if all funds are accounted to the club and if the hotel or RV resort keeps a permanent record of all charges and payments due to the club which the hotel or RV resort handles.

(3) The hotel or RV resort shall provide to each guest who desires to become a temporary club member a preprinted form or statement on its business letterhead, signed by an authorized employee or official, setting forth the name of the guest, the date or dates on which the bearer is a registered guest at the hotel or RV resort and certifying that the guest does not permanently reside in the same county as the hotel or RV resort or the private club.

(b) Each class B club located on property which is owned or operated by a municipal airport authority shall keep a record of all temporary memberships granted to air travelers. Each temporary membership shall be granted only upon the licensed club premises by club management after receipt of an application form and shall be valid only for the day on which the air traveler's ticket is valid. Each temporary membership card issued shall state on its face the name of the club, the name of the temporary member, the name of the airline and flight number on which that member will be a passenger and the effective date or dates of the membership.

(c) Each class B club located in a racetrack facility where races with parimutuel wagering are conducted under the Kansas parimutuel racing act may establish rules whereby persons may file an application for temporary membership in the club only for the day the person is attending races at the race track facility.

(d) Records of all temporary memberships issued pursuant to subsections (a), (b) and (c) shall be maintained on licensed club premises for a period of one year from date of issuance. (Authorized by K.S.A. 1989 Supp. 41-2634 as amended by L. 1990, Ch. 179, sec. 6; implementing K.S.A. 1989 Supp. 41-2641; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-20-26. Employees; registration of same; prohibitions. (a) Each club shall register with the director all employees who will mix, sell, serve or dispense alcoholic liquor. The registration shall be submitted on forms supplied by the director, within five days after the employee begins work for the club and upon each renewal of the club's license.

(b) A club shall not employ or continue to employ any person:

(1) who is under the age of 18 years to serve alcoholic liquor or cereal malt beverage;

(2) who is under the age of 21 to mix or dispense drinks containing alcoholic liquor or cereal malt beverage;

(3) who is under the age of 21 years and not supervised by the licensee or an employee who is at least 21 years of age;

(4) who has been convicted of a felony or of any crime involving a morals charge in Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage;

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage; or

(6) who is a manufacturer, distributor or retailer, or who is an officer, agent, or employee of a manufacturer, distributor or retailer, in the capacity of a person registered to mix, serve, sell, or dispense alcoholic liquor. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2610 and K.S.A. 1989 Supp. 41-2632; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-20-27. Purchase of alcoholic liquor and cereal malt beverages; requirements and restrictions. (a) Each club shall purchase alcoholic liquor only from a retailer. However, any club may purchase bulk wine, beer and cereal malt beverages from a distributor.

(b) Any club may receive delivery of alcoholic liquor to its licensed premises from a retailer and delivery of bulk wine, beer and cereal malt beverages from a distributor.

(c) A club shall not purchase alcoholic liquor or beer from any retailer who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A club shall not warehouse any liquor on any retail liquor store premises.

(d) A club shall not purchase bulk wine, beer or cereal malt beverage from any distributor who does not possess a federal wholesaler's basic permit and who does not have on display at the wholesale establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A club shall not warehouse its liquor on any distributor's premises.

(e) Each club, when making alcoholic liquor purchases from retailers or distributors, shall obtain and keep on its licensed premises for a period of not less than three years from the date of purchase a sales slip that contains the following information:

(1) The date of purchase;

(2) the name and address of the retailer or distributor;

(3) the name and address of the club;

(4) the brand, size, proof and amount of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor purchased and the total cost of the order including enforcement tax and delivery charge, if any.

(f) Each club shall purchase alcoholic liquor through a registered employee of the licensed club and who shall be at least 21 years of age. The club shall provide to the registered employee identification sufficient to demonstrate to the retailer or distributor who possesses the federal wholesale basic permit that the individual making the purchase on behalf of the club is so registered.

(g) Each club shall maintain on the licensed premises all records of all alcoholic liquor purchased. These records shall be available for inspection by the director or any agent or employee

of the director or secretary upon request. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-211; 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 41-301, 41-306 as amended by L. 1987, Ch. 182, Sec. 13; 41-307 as amended by L. 1987, Ch. 182, Sec. 16; 41-308 as amended by L. 1987, Ch. 182, Sec. 18; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-28. Licensee's responsibility for conduct of business and employees. Each licensee shall be responsible for the conduct of its business. Each licensee shall be held responsible for all violations of the club and drinking establishment act by the following people while on the licensed premises:

- (a) An employee of the club;
- (b) an employee of any person contracting with the club to provide services or food; and
- (c) any individual mixing, serving, selling or dispensing alcoholic liquor. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-29. Storage of liquor; removal from club premises. (a) Each licensee shall store its liquor only on the licensed premises of the club unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2641 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in

each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the club premises shall be removed from the club premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of wine that had been stored in its original unopened container pursuant to K.S.A. 41-2641 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2641, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-20-30. Nontaxed liquor and refilling of containers prohibited. (a) Alcoholic liquor shall only be dispensed from or stored in original containers bearing Kansas alcoholic liquor identification stamps. A licensed club shall not refill any original container with any alcoholic liquor, or any other substance.

(b) A member, guest or reciprocal member may be allowed to bring bottles onto the club premises upon the following conditions:

(1) A club shall not warehouse any bottles upon the club premises;

(2) each person bringing any bottles onto the club premises shall remove the bottles when departing from the club premises; and

(3) each bottle shall bear a Kansas alcoholic liquor identification stamp if required by law. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-718 as amended by L. 1987, Ch. 182,

Sec. 93; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-31. Cereal malt beverages; sale allowed. (a) Any club may sell cereal malt beverages upon the licensed premises if:

(1) The club notifies the director when it obtains a license for the retail sale of cereal malt beverages;

(2) the club notifies the director of each renewal of the license for the retail sale of cereal malt beverages; and

(3) the club dispenses cereal malt beverage only for consumption upon the licensed premises.

(b) Violation of any cereal malt beverage statute shall subject the club to suspension or revocation of its license or to a monetary fine under the procedures of K.A.R. 14-16-14 et seq. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2704 as amended by L. 1987, Ch. 182, Sec. 100; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-32. Minimum prices for drinks; how determined. (a) A licensed private club shall not sell any drink to any person for less than the acquisition cost of that drink to the club.

(b) The cost of each of the following items shall be included in the acquisition cost of a drink:

(1) All alcoholic liquor contained in the drink; and

(2) any liquid of a non-alcoholic nature contained in the drink.

(c) Any of the following items shall not be required to be included in the acquisition cost:

(1) City service or tap water;

(2) ice;

(3) employee salaries or other usual overhead; and

(4) any other items of clearly negligible value used in the drink.

(d) In determining the minimum price, a club shall not include the drink tax as imposed by K.S.A. 79-41a02. This tax shall be collected in addition to the minimum price for the drink itself. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-33. Clubs charge the same price for the same drink all day; day defined. (a) A licensed club shall not sell a drink to any person

for less than the price charged for that same drink to all other club patrons on that day. Any particular drink that is offered for sale at any time during the day shall be offered at the same price for the entire day.

(b) The term "day" shall mean from 9:00 a.m. until 2:00 a.m. the following calendar day. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-34. Licensee must pay city or county license tax before making sales. A licensee shall not operate until the licensee has paid any annual occupation or license tax imposed by the city or county in which the licensed premises are located. A licensee shall not sell 3.2 beer without first having obtained a cereal malt beverage license. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2622 as amended by L. 1987, Ch. 182, Sec. 74; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-35. Federal retail stamp. Private club licensees shall purchase from the United States bureau of alcohol, tobacco and firearms a federal retail stamp and shall display that stamp, or proof of payment for the stamp, in public view on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-36. Excise tax shall be current. Each club that fails to register for an excise tax registration number shall be subject to cancellation of its license or fine by the director. Each club that is delinquent in the payment of its excise taxes levied on alcoholic liquors shall be subject to cancellation of its license or fine by the director. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-37. Suspension and revocation; grounds for; procedure. The license of any class B club may be revoked, canceled or suspended by the director for any one or more of the following reasons, subject to the procedures and other provisions of K.A.R. 14-16-14 et seq.:

(a) The licensee has omitted or misstated a material fact in its application;

(b) the licensee has operated in a manner materially different from that represented in the application;

(c) the licensee has engaged in a prohibited transaction;

(d) the licensee has violated any provision of the liquor control act, the club and drinking establishment act, the cereal malt beverage act or any regulations adopted pursuant thereto;

(e) there has been a violation of the laws of Kansas pertaining to the sale of alcoholic liquor or cereal malt beverage or a violation of the laws of the United States pertaining to the sale of intoxicating liquor or a violation involving a morals charge;

(f) the licensee, its managing officers or any employee, has purchased and displayed, on the licensed premises a federal wagering occupational stamp or a federal coin operated gambling device stamp issued by the United States treasury department;

(g) the licensee has refused to permit the director or any agent or employee of the director or the secretary to inspect the licensed premises and any alcoholic liquor in the licensee's possession or under the licensee's control upon the premises covered by the license, or upon any other premises where the liquor may be stored; or

(h) the licensee has allowed a person who is under the age of 21 years to possess alcoholic liquor while on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182; Sec. 66; 41-2613 as amended by L. 1987, Ch. 182, Sec. 68; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-38. Public functions upon licensed premises; when allowed; approval of director. (a) A club shall not open any part of its licensed premises to the public unless it has first received the written approval of the director. All requests for written approval of the director to open the licensed premises to the public shall be accompanied by a sworn statement containing:

(1) The days of the week and hours of those days for which the application is made;

(2) a description of the exact area of the club to be open to the general public;

(3) the statement that no alcoholic liquor or cereal malt beverage will be sold, dispensed or consumed by anyone in the area described during the time indicated;

(4) the date and time that normal club activities will be resumed in the described areas; and

(5) a description of the type of activity to be conducted and by whom.

(b) The use of the licensed premises by the general public shall not remove the area from the jurisdiction of the director. The licensee may be suspended, revoked or fined for any violations of chapter 41 of the Kansas statutes during any public function held on its licensed premises. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-39. Display of license. Each class B club shall display its license in a conspicuous place on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, implementing K.S.A. 41-2612 as amended by L. 1987, Ch. 182, Sec. 67; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-20-40. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence. (a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, “crime of violence” shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

14-20-41. Extension of premises. (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director’s approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended. If the licensee does not own or lease the area to be included in the temporarily extended premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area.

(e) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(f) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(g) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for

inspection upon request by any law enforcement officer or any officer or agent of the director.

(h) The licensee shall maintain, on the licensed premises, a copy of the director’s written approval to extend the licensed premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by K.S.A. 41-2621; implementing K.S.A. 41-2621 and K.S.A. 2009 Supp. 41-2645; effective Sept. 17, 2010.)

14-20-42. Class B clubs; automated devices. (a)(1) “Automated device” shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) “Business day” shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of the licensee’s intent to use the automated device. The licensee shall provide this notification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed “active” if the access card con-

tains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver's license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer's valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer's valid identification to the licensee or licensee's employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dispensed directly to the licensee or the licensee's agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

Article 21.—DRINKING ESTABLISHMENTS

14-21-1. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) "Beer" means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such an alcoholic content.

(c) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or similar holding in any other form of business organization.

(d) "Bulk Wine" means wine that is sold to a drinking establishment, either by a retailer or a distributor, in barrels, casks or bulk containers which individually exceed 20 liters.

(e) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(f) "Director" means the director of alcoholic beverage control of the department of revenue.

(g) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(h) "Food service establishment" has the meaning provided by K.S.A. 36-501 and amendments thereto.

(i) "Licensed premises" means those areas described in an application for a drinking establishment license that are under the control of the applicant and that are intended as the area in which alcoholic liquor or cereal malt beverages are to be served pursuant to the applicant's license.

(j) "Manager" means the manager or assistant manager, or both, of any licensed drinking establishment who is in charge of the daily operations of the licensed drinking establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(k) "Morals charge" means any charge made in an indictment, information or a complaint alleging crimes which involve:

- (1) prostitution;
- (2) procuring any person;

(3) solicitation of a child under 18 years of age for any immoral act involving sex;

(4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;

(5) rape;

(6) incest;

(7) gambling;

(8) adultery; or

(9) bigamy.

(l) "Person" means any natural person, corporation, partnership, trust or association.

(m) "Restaurant" means:

(1) In the case of a club, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed club premises not less than 50% of its gross receipts from all sales of food and beverages on such premises in a 12-month period;

(2) in the case of a drinking establishment subject to a food sales requirement under K.S.A. 1991 Supp. 41-2642 and amendments thereto, a licensed food service establishment which, as determined by the director, derives from sales of food for consumption on the licensed drinking establishment premises not less than 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period; and

(3) in the case of a drinking establishment subject to no food sales requirement under K.S.A. 1991 Supp. 41-2642 and amendments thereto, a licensed food service establishment.

(n) "Retailer" means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(o) "Spirits" means any beverage that contains alcohol obtained by distillation, mixed with water or other substances in solution. The term "spirits" includes brandy, rum, whiskey, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(p) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including those beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2601; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-21-2. Applications and renewals; documents required. Each application for a drinking establishment license shall be made upon forms prepared by the director and shall contain all information the director deems necessary. Any application which does not contain all required information may be returned to the applicant without the application being considered on its merits.

(a) General requirements. Each application for a drinking establishment license shall be accompanied by the following documents and all other documents the director deems necessary:

(1) A copy of a written lease, with at least nine months remaining in its term from the date the license is issued, or proof of ownership by the applicant of the premises sought to be licensed;

(2) a description of the drinking establishment premises, which shall clearly identify the licensed premises. The description may include those areas outside the main service area that are within close proximity to the main service area and are located within or upon property subject to legal occupation by the applicant, as approved by the director. If the applicant is also a hotel, the applicant may include guest rooms, banquet rooms or other facilities as part of its licensed premises. For the purpose of determining the fee to be paid by an applicant which is also a hotel, the director shall consider the following:

(A) If the hotel describes its licensed premises as a part of the hotel premises that is located on one level, within a single building and contiguous, the license fee shall be \$1,000.00 per year; or

(B) If the hotel describes its licensed premises as more than the area described in paragraph (1) above, the license fee shall be \$3,000.00 per year;

(3) a certified statement from the applicant that the licensed premises are located:

(A) in an area where the zoning regulations of either the city, county or township allow the operation of a drinking establishment; or

(B) in an area where no zoning regulations have been adopted;

(4) the registration fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(5) the license fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(6) a disclosure statement listing each officer, manager, director, trustee, grantor, beneficiary, owner, stockholder owning a beneficial interest in a corporation, partner, and the spouses of these

individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a drinking establishment license as provided in K.A.R. 14-21-3;

(7) a disclosure statement listing all personnel who will be mixing or dispensing alcoholic liquor; and

(8) a statement of gross receipts showing the ratio of food sales to alcoholic beverage sales is not less than 30%, when applicable.

(b) Corporations. In addition to the documents required by subsection (a), each application on behalf of a corporation shall include:

(1) A certified copy of the articles of incorporation as a Kansas domestic for-profit corporation;

(2) a copy of the corporate bylaws; and

(3) an appointment of process agent together with a power of attorney authorizing said agent to conduct the business of the drinking establishment and receive all service of process on behalf of the drinking establishment. The process agent shall be an individual.

(c) Partnerships. In addition to the documents required by subsection (a), each application on behalf of a partnership shall include a copy of the partnership agreement.

(d) Trusts. In addition to the documents required by subsection (a), each application on behalf of a trust shall include a copy of the declaration of trust or other documents setting forth the aims and purposes of the trust. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2606; 41-2608; 41-2610; 41-2622; 41-2623, as amended by 1992 HB 2719; 41-2625; 41-2642; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-21-3. Requirements for drinking establishment license. (a) A drinking establishment license shall not be issued to any corporation, partnership, trust, association or individual if any owner, partner, grantor, trustee, beneficiary, officer, manager, director, stockholder owning a beneficial interest in a corporation or spouse of these individuals:

(1) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the individual or to the beneficiary of a trust;

(5) (A) appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) is a law enforcement official; or

(C) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This shall not apply to the spouse of the individual;

(8) has had any license or permit issued by the director under the club and drinking establishment act revoked; or

(9) has a beneficial interest in the manufacture, preparation or wholesale or retail sale of alcoholic liquors or a beneficial interest in any other club or drinking establishment licensed by the director. This shall not apply to any owner, partner, grantor, trustee, beneficiary, officer, manager, director, stockholder or spouse who owns a beneficial interest in another club or drinking establishment if:

(A) the application is for licensed premises located in a hotel and all of the individual's beneficial interests are in clubs or drinking establishments located in hotels; or

(B) the application is for licensed premises that are a restaurant and all of the individual's beneficial interests are in clubs or drinking establishments which are restaurants.

(b) A corporation shall not be issued a drinking establishment license if any officer, manager, director or stockholder owning a beneficial interest in the corporation has been an officer, manager, director or stockholder owning a beneficial interest in a corporation which:

(1) Has had a license revoked under the provisions of the club and drinking establishment act; or

(2) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(c) A partnership, trust or individual shall not be issued a drinking establishment license if any owner, manager, grantor, trustee, beneficiary or partner:

(1) has been a citizen of the United States for less than 10 years.

(2) has been a resident of the state of Kansas for less than one year immediately preceding the date of application; or

(3) is not a resident of the county in which the drinking establishment is to be located.

(d) Each corporate applicant shall be a Kansas domestic for-profit corporation.

(e) For the purpose of determining qualifications under subsections (a), (b), and (c) of this regulation, any person who provides financing to or leases premises to a drinking establishment upon terms which result in that person having a beneficial interest in the drinking establishment's business, shall be deemed a partner in the drinking establishment's business. A person who provides financing to a drinking establishment shall be deemed to have a beneficial interest in the drinking establishment's business if the terms for repayment are conditioned on the amount of the drinking establishment's receipts or profits from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor. A lessor shall be deemed to have a beneficial interest in a drinking establishment's business, if the lessor receives as rent, in whole or in part, a percentage of the licensee's receipts or profits from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor. Financing or percentage rent provisions that exclude these items shall be subject to review and approval by the director. The restrictions of this subsection shall not be applied if the lessor is a city, county, the state of Kansas or any department or agency thereof. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 41-2623 as amended by 1992 HB 2719; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-21-4. Issuance of license. (a) An annual drinking establishment license shall be issued to each applicant determined by the director to have satisfied the requirements of the club and drinking establishment act and this article of these regulations.

(b) An application for a license may be rejected by the director if:

(1) the applicant, officers, directors, partners, registered agent, trustees, managers, or owners have previously owned or operated any type of retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee had been ordered

to appear and show cause why the license should not be revoked or suspended;

(2) the application is for premises which were the subject of the order to appear and show cause as set forth in paragraph (1), above, and it appears that the new application for a license is an attempt to avoid any possible remedial action taken by the director against the former licensee;

(3) the applicant's officers, directors, partners, registered agent, managers or owners, are currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(4) the applicant, officers, directors, partners, registered agent, trustees, managers or owners have previously owned or operated any type of retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee was delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(5) the application is for premises which were the subject of the delinquent taxes as set forth in paragraph (3), above, and it appears that the new application for a license is an attempt to avoid payment of the tax. (Authorized by K.S.A. 1989 Supp. 41-2634; 79-41a03; implementing K.S.A. 1989 Supp. 41-2623; 79-41a07; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-21-5. Licenses, loss or destruction of; application for and issuance of duplicate.

Whenever any license issued by the director is lost or destroyed before its expiration, the drinking establishment to which the license was issued, may make written application to the director for a duplicate license. The application shall set forth all the facts and circumstances concerning the loss or destruction of such license and shall be sworn to by each person applying for the duplicate. Upon review of the application, a duplicate license may be issued by the director. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-6. Change of drinking establishment status.

(a) If a licensee desires to change the status of its license from a drinking establishment to either a class A or class B club, the licensee shall make application, at least 45 days prior to the desired date of the change, for the type of license sought and shall voluntarily cancel the current license upon the issuance of the new

type license. The licensee shall receive a refund for the license voluntarily cancelled as required by K.A.R. 14-21-7.

(b) If a drinking establishment fails an audit conducted by the director or the secretary to establish that at least 30% of its gross receipts are derived from the sale of food, then that drinking establishment's license as a drinking establishment shall be canceled. The drinking establishment licensee shall have 10 days from the receipt of its notice of cancellation to make application to become a class B club. On the tenth day after receipt of notice of cancellation, the drinking establishment license will be canceled and the drinking establishment shall begin conducting business as a class B club pending the processing of the application for said class B club license. If the application for a class B club license is denied or if the applicant fails to process its application within 30 days, then the applicant shall discontinue operations under the club and drinking establishment act and surrender its license to the director. This provision shall not apply to any drinking establishment located in a county that has eliminated this requirement.

(c) If one of the drinking establishments owned by a licensee which holds multiple licenses pursuant to the provisions of K.A.R. 14-21-8, fails an audit conducted by the director or the secretary to establish that at least 30% of its gross receipts are derived from the sale of food, then that drinking establishment's license as a drinking establishment shall be canceled. The licensee shall have 10 days from receipt of notice of cancellation to advise the director, in writing, of its intent to sell the drinking establishment and the date upon which the sale will be effective. If the effective sale date is within 30 days of the delivery of the licensee's notice of intent to sell, then the license shall be canceled on the effective date of the sale. If the licensee fails to give the notice of intent to sell or the effective date is longer than 30 days from the receipt of the licensee's notice of intent to sell, the licensee's license shall be canceled 40 days from the date the licensee receives the director's notice of cancellation and the licensee shall discontinue operations under the club and drinking establishment act and surrender its license to the director. This provision shall not apply to any drinking establishment located in a county that has eliminated this requirement. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2601, 41-2623; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-21-7. Refund upon cancellation. If the license of any drinking establishment is canceled except through revocation or suspension, the drinking establishment shall be eligible for a refund of a portion of the annual license fee. The refund shall be equal to one-twelfth of the annual license fee for each full calendar month of the license year which remains at the time of the cancellation. The refund shall be made only upon application to the director. (Authorized by K.S.A. 41-2607; implementing K.S.A. 41-2629 as amended by L. 1987, Ch. 182, Sec. 80; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-8. Restaurant drinking establishments; criteria for determination; gross receipts affidavit; estimates. (a) For purposes of multiple ownership of drinking establishments, a licensed drinking establishment shall be deemed a restaurant after a comparison by the director of food sales on the licensed premises to total gross receipts for all sales made on the licensed premises for a period not less than 12 months.

(b) Each drinking establishment licensee requesting restaurant status shall submit accurate figures for food sales, total gross sales, and any other pertinent information. The information shall be submitted on a form provided by the director at the time the licensee initially requests restaurant status, and upon each renewal of the license.

(c) Each drinking establishment requesting restaurant status that has been in operation for a period of less than 12 months may submit estimated figures for food sales and total gross receipts. However, a successor corporation taking over an existing drinking establishment shall not utilize estimates if 40% or more of the successor corporation is owned by persons who were required to meet the license qualifications of the predecessor corporation. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60; 41-2623 as amended by L. 1987, Ch. 182, Sec. 75; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-9. Employees; registration of same; prohibitions. (a) Each drinking establishment shall register with the director all employees who will mix, sell, serve or dispense alcoholic liquor on forms supplied by the director, within five days after each employee begins work for the drinking establishment and upon each renewal of the drinking establishment's license.

(b) A drinking establishment shall not employ or continue to employ any person:

(1) who is under the age of 18 years to serve alcoholic liquor or cereal malt beverage;

(2) who is under the age of 21 to mix or dispense drinks containing alcoholic liquor or cereal malt beverage;

(3) who is under the age of 21 years and not supervised by the licensee or an employee who is at least 21 years of age;

(4) who has been convicted of a felony or of any crime involving a morals charge in Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage;

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor or cereal malt beverage; or

(6) who is a manufacturer, distributor or retailer, or who is an officer, agent, or employee of a manufacturer, distributor or retailer in the capacity of a person registered to mix, serve, sell, or dispense alcoholic liquor. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2610 and K.S.A. 1989 Supp. 41-2632; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-21-10. Purchase of alcoholic liquor and cereal malt beverages; requirements and restrictions. (a) Each drinking establishment shall purchase alcoholic liquor only from a retailer. However, any drinking establishment may buy bulk wine, beer and cereal malt beverages from a distributor.

(b) Any drinking establishment may receive delivery of alcoholic liquor to its licensed premises from a retailer and delivery of bulk wine, beer and cereal malt beverages from a distributor.

(c) A drinking establishment shall not purchase alcoholic liquor or beer from any retailer who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states the licensee is a "Wholesale Liquor Dealer Under Federal Law." A drinking establishment shall not warehouse any liquor on any retail liquor store premises.

(d) A drinking establishment shall not purchase bulk wine, beer or cereal malt beverage from any distributor who does not possess a federal wholesaler's basic permit and who does not have on display at the wholesale establishment a sign

that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A drinking establishment shall not warehouse its liquor on any distributor's premises.

(e) Each drinking establishment, when making alcoholic liquor purchases from retailers or distributors, shall obtain and keep, for a period of not less than three years from the date of purchase, a sales slip that contains the following information:

(1) The date of purchase;

(2) the name and address of the retailer or distributor;

(3) the name and address of the drinking establishment;

(4) the brand, size and amount of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor and the total cost of the order including enforcement tax and delivery charge, if any.

(f) Each drinking establishment shall purchase alcoholic liquor through a registered employee of the licensed drinking establishment who shall be at least 21 years of age. The drinking establishment shall provide to the registered employee identification sufficient to demonstrate to the retailer or distributor who possesses the federal wholesale basic permit that the individual making the purchase is so registered.

(g) Each drinking establishment shall maintain on the licensed premises all records of all alcoholic liquor purchased. These records shall be available for inspection by the director or any agent or employee of the director or secretary upon request. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-211, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 41-301, K.S.A. 41-306 as amended by L. 1987, Ch. 182, Sec. 13; 41-307 as amended by L. 1987, Ch. 182, Sec. 16; 41-308 as amended by L. 1987, Ch. 182, Sec. 18; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-11. Licensee's responsibility for conduct of business and employees. Each licensee shall be responsible for the conduct of its business. Each licensee shall be responsible for all violations of the club and drinking establishment act by the following people while on the licensed premises:

- (a) An employee of the drinking establishment;
- (b) an employee of any person contracting with the drinking establishment to provide services or food; and
- (c) any individual mixing, serving, selling or dispensing alcoholic liquor. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-12. Storage of liquor; removal from drinking establishment premises. (a) Each licensee shall store its liquor only on the licensed premises of the drinking establishment unless the licensee has received prior approval in writing from the director to do otherwise.

(b) Any licensee may store wine purchased by a customer only in the unopened original container on the licensed premises, pursuant to K.S.A. 41-2642 and amendments thereto. The licensee shall be responsible for the contents of each customer's wine storage area.

(c) The wine storage area shall be subject to immediate entry and inspection by any law enforcement officer or any officer or agent of the director. Each licensee shall maintain, on the licensed premises, a key or other means to access the contents of the wine storage area.

(d)(1) The licensee may allow a customer to have access to the customer's wine storage area. An agent or employee of the licensee shall accompany each customer to the customer's wine storage area.

(2) A receipt showing the quantity of each brand of wine purchased shall be maintained in each customer's wine storage area. Each time the customer requests the removal of any wine from the storage area, the licensee or its owner, employee, or agent shall mark the receipt showing the date of removal and the quantity of each brand removed.

(e) No licensee, and no owner, employee, or agent of the licensee, shall make any sales of alcoholic liquor for consumption off the licensed premises. No alcoholic liquor purchased on the drinking establishment premises shall be removed from the drinking establishment premises, except in accordance with this regulation.

(f)(1) A licensee may permit its customers to remove partially consumed bottles of wine from the licensed premises, in accordance with K.S.A. 41-2653 and amendments thereto.

(2) If any customer wishes to remove from the licensed premises a partially consumed bottle of

wine that had been stored in its original unopened container pursuant to K.S.A. 41-2642 and amendments thereto and this regulation, the licensee or its employee shall provide the customer with a copy of the original receipt with a notation that the bottle was removed from the customer's wine storage area on that date.

(g) Any licensee that has extended its licensed premises onto the premises of a special event, as defined by K.S.A. 41-719 and amendments thereto, for which a temporary permit has been issued may allow customers to remove alcoholic liquor from the licensed premises onto the special event premises. Each licensee that extends its licensed premises onto the special event premises shall be liable for any violation of the club and drinking establishment act or these regulations occurring on the special event premises. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2613, K.S.A. 2009 Supp. 41-2642, and K.S.A. 2009 Supp. 41-2653; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-21-13. Nontaxed liquor and refilling of containers prohibited. (a) Alcoholic liquor shall only be dispensed from or stored in original containers bearing Kansas alcoholic liquor identification stamps. A drinking establishment shall not refill any original container with any alcoholic liquor or any other substance.

(b) An individual may be allowed to bring bottles onto the drinking establishment premises upon the following conditions:

(1) A drinking establishment shall not warehouse any bottles upon the drinking establishment premises;

(2) each person bringing any bottles onto the drinking establishment premises shall remove the bottles when departing from the drinking establishment premises; and

(3) each bottle shall bear a Kansas alcoholic liquor identification stamp if required by law. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10; 41-2621 as amended by L. 1987, Ch. 182, Sec. 73; 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-718, L. 1987, Ch. 182, Sec. 93; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-14. Cereal malt beverages; sale allowed. (a) Any drinking establishment may sell cereal malt beverages upon the licensed premises if:

(1) The drinking establishment notifies the director when it obtains a license for the retail sale of cereal malt beverages;

(2) the drinking establishment notifies the director of each renewal of the license for the retail sale of cereal malt beverages; and

(3) the drinking establishment dispenses cereal malt beverage only for consumption upon the licensed premises.

(b) Violation of any cereal malt beverage statute shall subject the drinking establishment licensee to suspension or revocation of its license or to a monetary fine under the procedures of K.A.R. 14-16-14 et seq. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2704 as amended by L. 1987, Ch. 182, Sec. 100; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-15. Minimum prices for drinks; how determined. (a) A licensed drinking establishment shall not sell any drink to any person for less than the acquisition cost of that drink to the drinking establishment.

(b) The cost of each of the following items shall be included in the acquisition cost of a drink:

- (1) All alcoholic liquor contained in the drink; and
- (2) any liquid of a non-alcoholic nature contained in the drink.

(c) Any of the following items shall not be required to be included in the acquisition cost:

- (1) City service or tap water;
- (2) ice;
- (3) employee salaries or other usual overhead; and
- (4) any other items of clearly negligible value used in the drink.

(d) In determining the minimum price, a drinking establishment shall not include the drink tax as imposed by K.S.A. 79-41a02. This tax shall be collected in addition to the minimum price for the drink itself. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-16. Drinking establishments charge the same price for the same drink all day; day defined. (a) A licensed drinking establishment shall not sell a drink to any person for less than the price charged for that same drink to all other drinking establishment patrons on that

day. Any particular drink that is offered for sale at any time during the day shall be offered at the same price for the entire day.

(b) The term "day" shall mean from 9:00 a.m. until 2:00 a.m. the following calendar day. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-17. Licensee must pay city or county license tax before making sales. A licensee shall not operate until the licensee has paid any annual occupation or license tax imposed by the city or county in which the licensed premises are located. A licensee shall not sell 3.2 beer without first having obtained a cereal malt beverage license. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2622 as amended by L. 1987, Ch. 182, Sec. 74; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-18. Federal retail stamp. Each drinking establishment licensee shall purchase from the United States bureau of alcohol, tobacco and firearms a federal retail stamp and shall display that stamp, or proof of payment for the stamp, in public view on the licensed premises. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-19. Excise tax shall be current. Any drinking establishment that fails to register for an excise tax registration number with the director of taxation shall be subject to cancellation of its license or fine by the director. Each drinking establishment that is delinquent in the payment of its excise taxes levied on alcoholic liquors shall be subject to cancellation of its license or fine by the director. (Authorized by and implementing K.S.A. 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-20. Suspension and revocation; grounds for; procedure. The license of any drinking establishment may be revoked, canceled or suspended by the director for any one or more of the following reasons subject to the procedures and other provisions of K.A.R. 14-16-14 et seq.:

(a) The licensee has omitted or misstated a material fact in its application;

(b) the licensee has operated in a manner materially different from that represented in the application;

(c) the licensee has engaged in a prohibited act or transaction;

(d) the licensee has violated any provision of the liquor control act, the club and drinking establishment act, the cereal malt beverage act or any regulations adopted pursuant thereto;

(e) there has been a violation of the laws of Kansas pertaining to the sale of alcoholic liquor or cereal malt beverage or a violation of the laws of the United States pertaining to the sale of intoxicating liquor or a violation involving a morals charge;

(f) the licensee, its managing officers or any employee has purchased and displayed, on the licensed premises a federal wagering occupational stamp or a federal coin operated gambling device stamp issued by the United States treasury department;

(g) the licensee has refused to allow the director or any agent or employee of the director or secretary to inspect the licensed premises and any alcoholic liquor in the licensee's possession or under the licensee's control upon the premises covered by the license or upon any other premises where the liquor may be stored; or

(h) the licensee has allowed a person who is under the age of 21 years to possess alcoholic liquor while on the licensed premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66, 41-2613 as amended by L. 1987, Ch. 182, Sec. 68; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-21-21. Extension of premises. (a) A licensee may permanently or temporarily extend its licensed premises upon written approval by the director.

(b) A licensee shall request the director's approval to extend its licensed premises in writing at least 10 days before the proposed extension.

(c) Each request shall be accompanied by a diagram of the extended premises, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place.

(d) For a temporary extension, the request shall include the dates on which and times during which the premises would be extended.

(e) If the licensee does not own or lease the area to be included in the temporarily extended

premises, the request shall also include written permission from the governing body, owner, or property manager to extend the licensed premises into that area, unless the licensee is requesting an extension into a special event as defined by K.S.A. 41-719 and amendments thereto.

(f) No premises shall be extended permanently into an area for which the licensee does not possess a valid lease or deed.

(g) The boundary of any premises extended beyond the interior of a building shall be marked by a three-dimensional obstacle.

(h) The licensee shall maintain, on the licensed premises, a copy of the diagram showing the extended premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(i) The licensee shall maintain, on the licensed premises, a copy of the director's written approval to extend the licensed premises. The copy shall be available for inspection upon request by any law enforcement officer or any officer or agent of the director.

(j) Each licensee who elects to extend its premises into a special event, as defined by K.S.A. 41-719 and amendments thereto, for which a temporary permit has been issued shall post a copy of the director's written approval to extend the premises at each entrance to the special event area and at each entrance to the drinking establishment.

(k) No licensee, and no owner, employee, or agent of the licensee, shall allow the serving or consumption of alcoholic liquor on extended premises that have not been approved by the director. (Authorized by K.S.A. 41-2621; implementing K.S.A. 41-2621 and K.S.A. 2009 Supp. 41-2645; effective Sept. 17, 2010.)

14-21-22. Denial, revocation, or suspension of license upon request for hearing by governing body of city or county; request; evidence. (a) The governing body of a city or county may request a hearing before the director to determine whether an application for licensure or renewal shall be denied or whether a license issued under the club and drinking establishment act shall be revoked or suspended.

(b) The request shall be submitted in writing by the governing body, on city or county letterhead, to the director and shall be accompanied by evidence that indicates reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license.

(c) The director shall review the evidence presented and determine whether reasonable cause exists to conduct a hearing to deny, revoke, or suspend the license. The director shall notify the governing body of the date and time of the hearing, or denial of the request, in writing as soon as reasonably possible.

(d) The hearing and notices shall be in accordance with the Kansas administrative procedures act (KAPA). The director shall consider the evidence presented by the governing body and the licensee at the hearing and determine whether the license shall be denied, revoked, or suspended.

(e) Evidence to be considered in determining whether a license shall be denied, revoked, or suspended shall include the following:

(1) A crime of violence has occurred in, on, or about the premises, arising from conduct occurring within the licensed premises.

(2) The licensed premises and surrounding areas under relative control of the licensee constitute an abnormal and unreasonable drain on public resources to secure the safety of patrons, local residents, and businesses.

(3) The licensed premises, including surrounding areas under relative control of the licensee, constitute a threat to public health, safety, and welfare.

(4) The governing body has filed one or more nuisance actions against the licensee or the licensed premises.

(5) The governing body or licensee has taken all reasonable remedial steps regarding the situation.

(f) For purposes of this regulation, “crime of violence” shall include arson, murder, manslaughter, rape or sexual assault, armed robbery, assault, and battery, and an attempt to commit any of these crimes. (Authorized by and implementing K.S.A. 2009 Supp. 41-2651; effective Sept. 17, 2010.)

14-21-23. Drinking establishments; automated devices. (a)(1) “Automated device” shall mean any mechanized device capable of dispensing wine directly to a customer in exchange for compensation that a licensee has received directly from the customer.

(2) “Business day” shall mean the hours authorized by state law during which alcohol can be served on the licensed premises.

(b) No licensee shall allow an automated device to be used on its licensed premises without first providing written or electronic notification to the director of the licensee’s intent to use the automated device. The licensee shall provide this no-

tification at least 48 hours before any automated device is used on the licensed premises.

(c) Each licensee offering customer self-service of wine from any automated device shall provide constant video monitoring of the automated device at all times during which the licensee is open to the public. The licensee shall keep recorded footage from the video monitoring for at least 60 days and shall provide the footage, upon request, to any agent of the director or other authorized law enforcement agent.

(d) The compensation required by subsection (a) shall be in the form of a programmable, prepaid access card containing a fixed amount of monetary credit that may be directly exchanged for wine dispensed from the automated device. Access cards may be sold, used, or reactivated only during a business day.

Each access card shall be purchased from the licensee by a customer. A licensee shall not issue more than one active access card to a customer. For purposes of this regulation, an access card shall be deemed “active” if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine.

Each purchase of an access card under this regulation shall be subject to the liquor drink tax imposed by K.S.A. 79-41a02, and amendments thereto.

(e) In order to obtain a prepaid access card from a licensee, each customer shall produce a valid driver’s license, identification card, or other government-issued document that contains a photograph of the individual and demonstrates that the individual is at least 21 years of age. Each access card shall be programmed to require the production of the customer’s valid identification before the access card can be used for the first time during any business day or for any subsequent reactivation as provided in subsection (f). Each access card shall become inactive at the end of each business day.

(f) Each access card shall be programmed to allow the dispensing of no more than 15 ounces of wine to a customer. Once an access card has been used to dispense 15 ounces of wine to a customer, the access card shall become inactive. Any customer in possession of an inactive access card may, upon production of the customer’s valid identification to the licensee or licensee’s employee, have the access card reactivated to allow the dispensing of an additional 15 ounces of wine from an automated device.

This subsection shall not apply to wine dispensed by an automated device if the wine is dispensed directly to the licensee or the licensee's agent or employee. (Authorized by K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5; implementing K.S.A. 2014 Supp. 41-2640, as amended by 2015 HB 2223, sec. 5, and K.S.A. 2014 Supp. 79-41a02; effective, T-14-7-1-15, July 1, 2015; effective Oct. 9, 2015.)

Article 22.—CATERER

14-22-1. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) "Alcoholic liquor" means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) "Beer" means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(c) "Beneficial interest" means any ownership interest by a person or that person's spouse in a business, corporation, partnership, business trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or similar holding in any other form of business organization.

(d) "Bulk wine" means wine that is sold to a caterer either by a retailer or a distributor, in barrels, casks or bulk containers which individually exceed 20 liters.

(e) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(f) "Director" means the director of alcoholic beverage control of the department of revenue.

(g) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 1991 Supp. 41-306, 41-306a, and 41-307, to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell

alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(h) "Event" means any occasion at which a licensed caterer will offer for sale, sell and serve alcoholic liquor.

(i) "Licensed premises" means those areas described in an application for a club or drinking establishment license that are under the control of the applicant and that are intended as the area in which alcoholic liquor or cereal malt beverages are to be served pursuant to the applicant's license.

(j) "Morals charge" means any charge made in an indictment, information or complaint alleging crimes which involve:

- (1) prostitution;
- (2) procuring any person;
- (3) soliciting of a child under 18 years of age for any immoral act involving sex;
- (4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;
- (5) rape;
- (6) incest;
- (7) gambling;
- (8) adultery; or
- (9) bigamy.

(k) "Organization" means any nonprofit charitable organization that conducts charitable activities in the state.

(l) "Permitted premises" means those areas described in the notification of an event that are under the control of the caterer and are intended as the areas in which alcoholic liquor may be served to the public.

(m) "Person" means any natural person, corporation, trust or partnership.

(n) "Principal place of business" means the place from which a caterer will conduct its business, other than events, which is described in the caterer's application.

(o) "Retailer" means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(p) "Spirits" means any beverage that contains alcohol obtained by distillation, mixed with water or other substances in solution. The term "spirits" includes brandy, rum, whiskey, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(q) "Sponsor" means the person or organization which contracts with a caterer to conduct an event.

(r) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including those beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2601; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-22-2. Applications and renewals; documents required. Each application for a caterer's license shall be made upon forms prepared by the director and shall contain all information as the director deems necessary. Any application which does not contain all required information may be returned to the applicant without the application being considered on its merits.

(a) General requirements. Each application for a caterer's license shall be accompanied by the following documents and all other documents the director deems necessary:

(1) a copy of a written lease, with at least nine months remaining in its term from the date the license is issued, or proof of ownership by the applicant of the principal place of business sought to be licensed;

(2) the registration fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted;

(3) the license fee in the form of a certified check, cashier's check, money order or cash. Personal or business checks shall not be accepted; and

(4) a disclosure statement listing each officer, manager, director, trustee, owner, partner, grantor, beneficiary or stockholder owning a beneficial interest in a corporate applicant, and the spouses of these individuals. The disclosure statement shall certify that all the individuals listed are not disqualified from obtaining a caterer's license as provided in K.A.R. 14-22-3.

(b) Corporations. In addition to the documents required under subsection (a), each application on behalf of a corporation shall include:

(1) a certified copy of the articles of incorporation as a Kansas domestic for-profit corporation;

(2) a copy of the corporate bylaws; and

(3) an appointment of process agent together with a power of attorney authorizing said agent to conduct the business of the caterer and receive

all service of process on behalf of the caterer. The process agent shall be an individual.

(c) Partnerships. In addition to the documents required by subsection (a), each application on behalf of a partnership shall include a copy of the partnership agreement.

(d) Trusts. In addition to the documents required by subsection (a), each application on behalf of a trust shall include a copy of the declaration of trust or other documents setting forth the aims and purposes of the trust. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2606, 41-2610, 41-2622, 41-2623 as amended by 1992 HB 2719; 41-2625; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-22-3. Requirements for caterer's license. (a) A caterer's license shall not be issued to any corporation, partnership, trust or individual if any owner, partner, grantor, trustee, beneficiary, officer, manager, director or stockholder owning a beneficial interest in a corporation or spouse of these individuals:

(1) has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age. This shall not apply to the spouse of the individual or to the beneficiary of a trust;

(5)(A) appoints or supervises any law enforcement officer, other than as a member of the governing body of a city or county;

(B) who is a law enforcement official; or

(C) who is an employee of the director;

(6) intends to act as the agent of another in exercising control of the license;

(7) at the time of application for renewal of the license issued by the director would be ineligible for the license upon a first application. This shall not apply to the spouse of the individual;

(8) has had any license or permit issued by the director under the club and drinking establishment act revoked; or

(9) has a beneficial interest in the manufacture, preparation, wholesale or retail sale of alcoholic liquors.

(b) A corporation shall not be issued a caterer's license if any officer, manager, director or stockholder owning a beneficial interest in the corporation has been an officer, manager, director or stockholder owning a beneficial interest in a corporation which:

(1) has had a license revoked under the provisions of the club and drinking establishment act; or

(2) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(c) A partnership, trust or individual shall not be issued a caterer's license if any owner, manager, grantor, trustee, beneficiary or partner:

(1) has been a citizen of the United States for less than 10 years; or

(2) has been a resident of the state of Kansas for less than one year immediately preceding the date of application.

(d) Each corporate applicant shall be a Kansas domestic for-profit corporation.

(e) For the purpose of determining qualifications under subsections (a), (b) and (c) of this regulation, any person who provides financing to or leases premises to a caterer upon terms which result in that person having a beneficial interest in the caterer's business, shall be deemed to be a partner in the caterer's business. A person who provides financing to a caterer shall be deemed to have a beneficial interest in the caterer's business if the terms for repayment are conditioned on the amount of the caterer's receipts or profits from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor. A lessor shall be deemed to have a beneficial interest in a caterer's business, if the lessor receives as rent, in whole or in part, a percentage of the caterer's receipts or profits from the sale of alcoholic liquor or other items to be mixed with alcoholic liquor. Financing or percentage rent provisions that exclude these items shall be subject to review and approval by the director. The restrictions of this paragraph shall not be applied if the lessor is a city, county, the state of Kansas or any department or agency thereof. (Authorized by K.S.A. 1991 Supp. 41-2634; implementing K.S.A. 1991 Supp. 41-2623 as amended by 1992 HB 2719; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended, T-14-11-9-92, Nov. 9, 1992; amended Dec. 21, 1992.)

14-22-4. Issuance of license. (a) An annual caterer's license shall be issued to each applicant determined by the director to have satisfied the requirements of the club and drinking establishment act and this article of these regulations.

(b) An application for a license may be rejected by the director if:

(1) the applicant, officers, directors, partners, registered agents, trustees, managers or owners have previously owned or operated any type of retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee had been ordered to appear and show cause why the license should not be revoked or suspended;

(2) the application is for premises which were the subject of the order to appear and show cause as set forth in paragraph (1), above, and it appears that the new application for a license is an attempt to avoid any possible remedial action taken by the director against the former licensee;

(3) the applicant's officers, directors, partners, registered agent, managers or owners, are currently delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(4) the applicant, officers, directors, partners, registered agent, trustees, managers or owners have previously owned or operated any type of retail liquor, club, drinking establishment or caterer's license, and at the time the previous license was surrendered, the licensee was delinquent in payment of any excise or enforcement tax, fees or fines to the State of Kansas; or

(5) the application is for premises which were the subject of the delinquent taxes as set forth in paragraph (3), above, and it appears that the new application for a license is an attempt to avoid payment of the tax. (Authorized by K.S.A. 1989 Supp. 41-2634 and K.S.A. 79-41a03; implementing K.S.A. 1989 Supp. 41-2605, 41-2623 and K.S.A. 79-41a07; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-22-5. Licenses, loss or destruction of; application for and issuance of duplicate.

Whenever any license issued by the director is lost or destroyed before its expiration, the caterer to whom the license was issued, may make written application to the director for a duplicate license. The application shall set forth all the facts and circumstances concerning the loss or destruction of the license and shall be sworn to by each person applying for the duplicate. Upon review of the ap-

plication, a duplicate license may be issued by the director. The caterer may request additional certified copies of its license for the purpose of conducting more than one function at a time at which the license is required to be displayed. Upon payment of the cost thereof, the director may issue such additional copies or duplicates of a caterer's license as it appears is necessary. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-6. Events; filings; notice; food sales required. (a) Each caterer, under this article, may offer for sale, sell and serve alcoholic liquor for consumption at an event.

(b) Each caterer shall notify the director not less than 10 days in advance of each event at which the caterer will sell alcoholic liquor by the individual drink.

(c) For each event to be catered in an incorporated city, the caterer shall file with the law enforcement agency for the city in which the event will be held, a notice that an event will be held. The notice shall contain that information required by subsection (e).

(d) For each event to be catered outside an incorporated city, the caterer shall file with the sheriff of the county in which the event will be held, a notice that an event will be held. The notice shall contain that information required by subsection (e).

(e) Each notice required by subsections (c) or (d) shall contain:

(1) a copy of the catering contract, in force or proposed, with the sponsor of an event, if applicable;

(2) a clear description of the event premises which shall be in enough detail that the event premises are identifiable;

(3) disclosure of all personnel who will be mixing or dispensing alcoholic liquor at the event; and

(4) a statement of the dates the event will be conducted and the hours of operation on each date.

(f) The licensee shall prominently display at each event, upon a poster or other device located at the entrance to the event premises:

(1) the caterer's name;

(2) the caterer's license;

(3) the name of the sponsor; and

(4) a copy of the notice required by subsections (c) or (d).

(g) A caterer shall not:

(1) conduct an event upon licensed premises unless the caterer also holds the license for the licensed premises;

(2) conduct an event for longer than seven days, unless the director first approves the longer duration;

(3) deny access to an event to any law enforcement officer;

(4) operate an event between the hours of 2:00 A.M. and 6:00 A.M.; or

(5) sell cereal malt beverage or non-alcoholic malt beverages at an event.

(h) For each event, the caterer shall keep records for three years which:

(1) demonstrate the ratio of food sales to alcoholic beverage sales is not less than 30% in a 12 month period. This shall not apply to events conducted in a county which has eliminated this requirement;

(2) demonstrate that all excise taxes have been paid; and

(3) demonstrate that all sales taxes have been paid. (Authorized by K.S.A. 41-2634, 79-3618, 79-41a03; implementing K.S.A. 1989 Supp. 41-2613, K.S.A. 1989 Supp. 41-2614, 41-2634, K.S.A. 79-3609, and K.S.A. 79-41a07 as amended by L. 1990, Ch. 179, Sec. 7; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1990; amended July 1, 1991.)

14-22-7. Refund upon voluntary cancellation. If a caterer's license is cancelled, except through revocation or suspension, the licensee shall be eligible for a refund of a portion of the annual license fee. The refund shall be equal to one-twelfth of the annual license fee for each full calendar month of the license year that remains at the time of cancellation. The refund shall be made only upon application to the director. (Authorized by and implementing K.S.A. 41-2607, 41-2629 as amended by L. 1987, Ch. 182, Sec. 80; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-8. Drinking establishments/caterer criteria for determination; gross receipts affidavit; estimates. Any drinking establishment may also obtain a license as a caterer under the provisions of the club and drinking establishment act and these regulations. Each person seeking both licenses shall comply with all the provisions of the club and drinking establishment act and these regulations and complete such forms required by the director. Each dual license holder shall main-

tain separately the records for the events it caters from those for the drinking establishment. Sales of food or beverage at a catered event shall not be included in the sales of the drinking establishment for the purposes of determining the gross receipts ratio of the drinking establishment. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing 41-2623 as amended by L. 1987, Ch. 182, Sec. 75 and L. 1987, Ch. 182, Sec. 89 and 90; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-9. Employees; registration of same; those prohibited. (a) Each caterer shall register the caterer's employees who will mix, sell, serve, or dispense alcoholic liquor with the director, on forms supplied by the director, within five days after the employee begins work for the caterer and upon each renewal of the caterer's license.

(b) A caterer shall not employ or continue to employ any person:

(1) who is under the age of 18 years to serve alcoholic liquor;

(2) who is under the age of 21 years to mix or dispense drinks containing alcoholic liquor;

(3) who is under the age of 21 years and is not supervised by the licensee or an employee who is at least 21 years of age;

(4) who has been convicted of a felony or of any crime involving a morals charge in Kansas, any other state or the United States to dispense, mix or serve alcoholic liquor;

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor; or

(6) who is a manufacturer, distributor or retailer or an employee of a manufacturer, distributor or retailer in the capacity of a person registered to mix, serve, sell or dispense alcoholic liquor. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2610 and K.S.A. 1989 Supp. 41-2632; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended July 1, 1991.)

14-22-10. Purchase of alcoholic liquor; requirements and restrictions. (a) Each caterer shall purchase alcoholic liquor only from a retailer. However, any caterer may purchase bulk wine and beer from a distributor.

(b) Any caterer may receive delivery of alcoholic liquor from a retailer and delivery of bulk

wine or beer from a distributor to its principal place of business.

(c) A caterer shall not purchase alcoholic liquor or beer from any retailer who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A caterer shall not warehouse any liquor on any retail liquor store premises in accordance with K.A.R. 14-13-9(h).

(d) A caterer shall not purchase wine or beer from any distributor who does not possess a federal wholesaler's basic permit and who does not have on display at the wholesale establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." A caterer shall not warehouse any liquor on any distributor's premises.

(e) Each caterer, when making alcoholic liquor purchases from retailers or distributors, shall obtain and keep, for a period of not less than three years from the date of purchase, a sales slip that contains:

(1) The date of purchase;

(2) the name and address of the retailer or distributor;

(3) the name and address of the caterer;

(4) the brand, size and amount of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor and the total cost of the order including enforcement tax and delivery charge, if any.

(f) Each caterer shall purchase alcoholic liquor through a registered employee of the licensed caterer who shall be at least 21 years of age. The caterer shall provide to the registered employee identification sufficient to demonstrate to the retailer or distributor who possesses the federal wholesale basic permit that the individual making the purchase on behalf of the caterer is so registered.

(g) Each caterer shall maintain at its principal place of business all records of all alcoholic liquor purchased. These records shall be available for inspection by the director or any agent or employee of the director or secretary upon request. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 41-211, 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 41-301, K.S.A. 41-306 as amended by L. 1987, Ch. 182, Sec. 13, 41-307 as amended by L. 1987, Ch. 182, Sec. 16, 41-308 as amended by L. 1987, Ch. 182, Sec. 18, 41-2611 as amended by L.

1987, Ch. 182, Sec. 66, 41-2621 as amended by L. 1987, Ch. 182, Sec. 73, 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-11. Caterer's responsibility for conduct of business and employees. Each caterer shall be responsible for the conduct of each event catered. Each caterer shall be responsible for all violations of the club and drinking establishment act by the following people while on the event premises:

- (a) An employee of the caterer;
- (b) an employee of any person contracting with the caterer to provide services or food at an event; or
- (c) any person serving or mixing alcoholic liquor at an event. (Authorized by and implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-12. Storage of liquor. (a) At the time of application for a caterer's license, each caterer shall inform the director as to the location of the liquor storage area that the caterer plans to use at its principal place of business. A caterer shall not store its liquor in any place other than the principal place of business of the caterer unless the caterer has received prior approval from the director. For each event, the caterer shall make a record of the amount of unused alcoholic liquor and its disposition and keep the record with those records required by K.A.R. 14-22-10(g).

(b) Each caterer holding a license as a drinking establishment shall keep all alcoholic liquor intended for use at catered functions in separate storage facilities from that intended for use in the drinking establishment. (Authorized by and implementing K.S.A. 1989 Supp. 41-2634 effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Aug. 6, 1990.)

14-22-13. Removal of liquor from event premises prohibited; alcoholic liquor sales by caterer and drinking establishment licensees. A caterer shall not sell alcoholic liquor for removal from or consumption off of the event premises. The removal of alcoholic liquor sold by the caterer from the premises of an event or from the principal place of business of the caterer, other than transportation to an event, is prohibited. A caterer who also holds a license as a drinking establishment may sell alcoholic liquor upon the drinking establishment's licensed premises. (Au-

thorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing L. 1987, Ch. 182, Sec. 89; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-14. Nontaxed liquor and individual alcoholic liquor on event premises prohibited. A caterer shall dispense alcoholic liquor from original containers bearing Kansas alcoholic liquor identification stamps. Any individual may be allowed to bring bottles onto the event premises upon the following conditions:

- (a) A caterer shall not warehouse any bottles upon the event premises;
- (b) each person bringing any bottles onto the event premises shall remove the bottles when departing from the event premises;
- (c) each bottle shall bear a Kansas alcoholic liquor identification stamp if required by law. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10 and 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-718 as amended by L. 1987, Ch. 182, Sec. 53, L. 1987, Ch. 182, Sec. 93; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-16. Minimum prices for drinks; how determined. (a) A licensed caterer shall not sell any drink to any person for less than the acquisition cost of that drink to the caterer.

(b) The cost of each of the following items shall be included in the acquisition cost of a drink:

- (1) All alcoholic liquor contained in the drink; and
- (2) any liquid of a non-alcoholic nature contained in the drink.

(c) Any of the following items shall not be required to be included in the acquisition cost:

- (1) City service or tap water;
- (2) ice;
- (3) employee salaries or other usual overhead; and
- (4) any other items of clearly negligible value used in the drink.

(d) In determining the minimum price, a caterer shall not include the drink tax as imposed by K.S.A. 79-41a02. This tax shall be collected in addition to the minimum price for the drink itself. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-17. Caterers charge the same price for the same drink all day; day defined. (a) A caterer shall not sell a drink to any person for less than the price charged for that same drink to all other patrons on that day. Any particular drink that is offered for sale at any time during the day shall be offered at the same price for the entire day.

(b) The term “day” shall mean from 6:00 a.m. until 2:00 a.m. the following calendar day. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2639, 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-18. Federal retail stamp. Each caterer licensee shall purchase from the United States bureau of alcohol, tobacco and firearms a federal retail stamp and shall display that stamp, or proof of payment for the stamp, in public view at the caterer’s principal place of business. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-19. Excise tax shall be current. Any caterer that fails to register for an excise tax registration number with the director of taxation shall be subject to cancellation of its license or fine by the director. Any caterer that is delinquent in the payment of its excise taxes levied on alcoholic liquors shall be subject to cancellation of its license or fine by the director. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10, 79-41a03 as amended by L. 1987, Ch. 182, Sec. 119; implementing K.S.A. 41-211; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-22-20. Suspension and revocation; grounds for; procedure. The license of any caterer may be revoked, canceled or suspended by the director for any one or more of the following reasons, subject to the procedures and other provisions of K.A.R. 14-16-14 et seq.:

(a) The caterer has omitted or misstated a material fact in the caterer’s application;

(b) the caterer has operated in a manner materially different from that represented in the application;

(c) the caterer has engaged in a prohibited act or transaction;

(d) the caterer has violated any provision of the liquor control act, the club and drinking estab-

lishment act, or any regulations adopted pursuant thereto;

(e) there has been a violation of the laws of Kansas pertaining to the sale of alcoholic liquor or cereal malt beverage or a violation of the laws of the United States pertaining to the sale of intoxicating liquor or a violation involving a morals charge upon the caterer’s principal place of business or at an event;

(f) the caterer, its managing officers or any employee has purchased and displayed, on the event premises or at the principal place of business a federal wagering occupational stamp or a federal coin operated gambling device stamp issued by the United States treasury department;

(g) the caterer has refused to allow the director or any agent or employee of the director or secretary to inspect the permitted premises, any alcoholic liquor upon the permitted premises or any records required to be kept by these regulations; or

(h) the caterer has allowed a person who is under the age of 21 years to possess alcoholic liquor while on the permitted premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66, effective, T-88-22, July 1, 1987; effective May 1, 1988.)

Article 23.—TEMPORARY PERMITS

14-23-1. Definitions. As used in this article of these regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation:

(a) “Alcoholic liquor” means alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor shall not include any cereal malt beverage.

(b) “Beer” means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water. The term beer includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

(c) “Beneficial interest” means any ownership interest of a person or that person’s spouse in a business, corporation, partnership, business trust, association or other form of business organization

which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

(d) "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any liquor which is more than 3.2% alcohol by weight.

(e) "Director" means the director of the division of alcoholic beverage control of the department of revenue.

(f) "Distributor" means those persons licensed by the director, pursuant to K.S.A. 41-306 as amended by L. 1987, Ch. 182, Sec. 14; 41-307 as amended by L. 1987, Ch. 182, Sec. 17; L. 1987, Ch. 182, Sec. 15; and 41-2713 et seq., to sell or offer for sale alcoholic liquor, spirits, wine, beer or cereal malt beverage to any person authorized by law to sell alcoholic liquor, spirits, wine, beer or cereal malt beverage at retail.

(g) "Event" means the occasion for which the applicant has received a temporary permit as required in these regulations and at which the applicant may offer for sale, sell and serve alcoholic liquor to the general public.

(h) "Licensed premises" means those facilities which have been licensed pursuant to the club and drinking establishment act as a club or a drinking establishment.

(i) "Morals charge" means a charge made in an indictment, information or a complaint alleging crimes which involve:

- (1) Prostitution;
- (2) procuring any person;
- (3) solicitation of a child under 18 years of age for any immoral act involving sex;
- (4) possession or sale of narcotics, marijuana, amphetamines or barbiturates;
- (5) rape;
- (6) incest;
- (7) gambling;
- (8) illegal cohabitation;
- (9) adultery;
- (10) bigamy; or
- (11) a crime against nature.

(j) "Organization" means any nonprofit charitable organization conducting charitable activities in the state.

(k) "Permit Holder" means a person granted a permit as required in this Article 23 of these regulations.

(l) "Permitted Premises" means the area in which alcoholic liquor is to be served pursuant

to the temporary permit as described in the application.

(m) "Person" means any natural person, corporation, partnership or association.

(n) "Retailer" means a person licensed by the director to sell at retail, or offer for sale at retail, alcoholic liquor for consumption off the licensed premises of the retailer.

(o) "Spirits" means any beverage that contains alcohol obtained by distillation, mixed with water or other substance in solution. The term "spirits" includes brandy, rum, whiskey, gin or other spirituous liquors, and liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(p) "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including those beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2601 as amended by L. 1987, Ch. 182, Sec. 60, L. 1987, Ch. 182, Sec. 91; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-2. Applications; documents required.

(a) Each application for a temporary permit shall be submitted upon forms prescribed by the director and shall contain all information the director deems necessary. Any application that does not contain all required information may be returned to the applicant.

(b) Each application shall be accompanied by the permit fee.

(c) Each application shall be accompanied by a diagram of the premises covered by the temporary permit. The diagram shall clearly show the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor would take place. (Authorized by K.S.A. 41-2634; implementing K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-23-3. Requirements for temporary permit.

(a) Corporations. A corporation shall not be issued a temporary permit if any officer, manager, director or stockholder owning a beneficial interest in the corporation:

(1) has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality, or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age;

(5) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the permit;

(7) has had any license or permit issued by the director revoked;

(8) has been an officer, manager, director or a stockholder owning a beneficial interest in a corporation which:

(A) has had a license revoked under the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(b) Associations. An association shall not be issued a temporary permit if any manager, officer, director, owner or members with a beneficial interest in the association:

(1) has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality, or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age;

(5) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the permit;

(7) has had any license or permit issued by the director revoked;

(8) has been an officer, manager, director or a stockholder owning a beneficial interest in a corporation which:

(A) has had a license revoked under the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(c) Partnerships. A partnership shall not be issued a temporary permit if any partner:

(1) has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality, or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age;

(5) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the permit;

(7) has had any license or permit issued by the director revoked;

(8) has been an officer, manager, director or stockholder owning a beneficial interest in a corporation which:

(A) has had a license revoked under the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(d) Individuals. An individual shall not be issued a temporary permit if the individual:

(1) has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(3) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality, or has forfeited bond to appear in court to answer charges for any of those crimes;

(4) is not at least 21 years of age;

(5) is an employee of the director;

(6) intends to act as the agent of another in exercising control of the permit;

(7) has had any license or permit issued by the director revoked;

(8) has been an officer, manager, director or a stockholder owning a beneficial interest in a corporation which:

(A) has had a license revoked under the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state. (Authorized by K.S.A. 1987 Supp. 41-2634, 41-2645; implementing K.S.A. 1987 Supp. 41-2623, 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 26, 1988.)

14-23-4. Issuance of permit. (a) A temporary permit shall be issued to each applicant determined by the director to have satisfied the requirements of the club and drinking establishment act and this article of these regulations.

(b) An application for a temporary permit may be rejected by the director if:

(1) the applicant, or any officer, director, partner, registered agent, trustee, manager or owner of the applicant has previously owned or operated any type of temporary permit, club, drinking establishment or caterer's license, and at the time the previous temporary permit or license was surrendered, the temporary permit holder or licensee had been ordered to appear and show cause why the temporary permit or license should not be revoked or suspended;

(2) the applicant has been granted four permits in the current calendar year;

(3) the applicant has designated an area for an event which was the subject of the order to appear and show cause as set forth in paragraph (1), above, and it appears that the new application for a temporary permit covering the premises is an attempt to avoid any possible remedial action taken by the director against the former licensee;

(4) the applicant has had a license or permit revoked under the club and drinking establishment act or has been convicted of a violation of the club and drinking establishment act, the liquor control act, K.S.A. 41-2701 et seq. or K.S.A. 79-41a01 et seq.; or

(5) the application is not filed with the director at least 14 days prior to the event. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing 1989 Supp. K.S.A. 41-2645 as amended by L. 1990, Ch. 179, Sec. 8; effective, T-88-22, July 1, 1987; effective May 1, 1988; effective July 1, 1990; amended July 1, 1991.)

14-23-5. Events; filings; notice; prohibitions. (a) Each temporary permit holder shall be allowed to offer for sale, sell, and serve alcoholic liquor for consumption at an event in accordance with the club and drinking establishment act and

these regulations. Each temporary permit holder shall be allowed to sell wine in the unopened, original container at the state fair.

(b) Each temporary permit holder shall prominently display at each event upon a poster or other device located at the entrance to the permitted premises all of the following:

(1) The temporary permit;

(2) the name of the agent of the organization who is in charge of the event;

(3) a diagram of the premises covered by the temporary permit, clearly showing the boundaries of the premises, entrances to and exits from the premises, and the area in which the service of alcoholic liquor will take place; and

(4) for a special event, as defined by K.S.A. 41-719 and amendments thereto, the business names of all drinking establishments that have elected to extend their licensed premises into the event area.

(c) A temporary permit holder shall not perform any of the following:

(1) Conduct an event upon licensed premises;

(2) conduct an event lasting longer than three days, except that the holder of the temporary permit for the state fair may conduct an event for the duration of the state fair;

(3) deny access to an event to any law enforcement officer;

(4) sell or serve alcoholic liquor between the hours of 2:00 A.M. and 9:00 A.M.;

(5) sell cereal malt beverages at an event;

(6) make any sales of alcoholic liquor at an event for consumption off the permitted premises, except as provided in this regulation; or

(7) refill any original container with alcoholic liquor or any other substance.

(d)(1) An individual permit holder shall be present at all times during an event or designate another individual who will be responsible for the conduct of the event in the permit holder's absence.

(2) An organization that is a permit holder shall designate one or more agents who shall be present at all times during an event and who shall be responsible for the conduct of the event. (Authorized by K.S.A. 41-2634; implementing K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-23-6. Refund upon voluntary cancellation. Temporary permit fees shall not be refunded by the director upon cancellation of a permit or event, regardless of the reason. (Authorized by and implementing K.S.A. 41-2607, 41-2629 as

amended by L. 1987, Ch. 182, Sec. 80, L. 1987, Ch. 182, Sec. 91; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-7. Employees; prohibitions. Each temporary permit holder shall not employ or use the service of any person:

(a) Who is under the age of 18 years to serve alcoholic liquor;

(b) who is under the age of 21 years to mix or dispense drinks containing alcoholic liquor;

(c) who is under the age of 21 years and not supervised by the permit holder or an employee who is at least 21 years of age;

(d) who has been convicted of a felony or of any crime involving a morals charge to dispense, mix or serve alcoholic liquor; or

(e) who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state or the United States, to dispense, mix or serve alcoholic liquor. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, L. 1987, Ch. 182, Sec. 91; implementing K.S.A. 41-2610 as amended by L. 1987, Ch. 182, Sec. 65; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-8. Purchase of alcoholic liquor; requirements and restrictions. (a) Each temporary permit holder shall purchase alcoholic liquor only from a retailer or a farm winery.

(b) Temporary permit holders shall not receive delivery of alcoholic liquor from a retailer or a farm winery.

(c) Temporary permit holders shall not purchase alcoholic liquor from any retail liquor licensee who does not possess a federal wholesaler's basic permit and who does not have on display at the retail establishment a sign that states that the licensee is a "Wholesale Liquor Dealer Under Federal Law." Temporary permit holders shall not warehouse any liquor on the premises of any retail liquor store or farm winery. All liquor purchased on any one day shall be picked up at the retail liquor store or farm winery on that same day.

(d) Each temporary permit holder, when making alcoholic liquor purchases from a retailer or farm winery, shall obtain and keep for at least one year from the date of purchase a sales slip that contains the following information:

(1) The date of purchase;

(2) the name and address of the retailer or farm winery;

(3) the name and address of the permit holder as it appears on the permit;

(4) the brand, size, proof, and amount of all alcoholic liquor purchased; and

(5) the subtotal of the cost of the alcoholic liquor and the total cost of the order, including enforcement tax. (Authorized by K.S.A. 41-210, K.S.A. 41-211, K.S.A. 41-2634, and K.S.A. 2009 Supp. 41-2645; implementing K.S.A. 2009 Supp. 41-2645 and K.S.A. 2009 Supp. 79-41a03; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-23-9. Permit holder's responsibility for conduct at event. Each permit holder shall be responsible for the conduct at an event. The permit holder shall be responsible for all violations of the club and drinking establishment act by the following people while on the permitted premises:

(a) An employee of the permit holder;

(b) any individual serving or mixing alcoholic liquor at an event; or

(c) any employee of any person contracting with the permit holder to provide services or food in connection with an event. (Authorized by L. 1987, Ch. 182, Sec. 91; implementing K.S.A. 41-2604, L. 1987, Ch. 182, Sec. 91; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-10. Removal of liquor from event premises prohibited; boundary requirement.

(a) No permit holder shall sell alcoholic liquor for removal from or consumption off the licensed premises, except that liquor may be removed to a drinking establishment that has extended its premises into the special event area in accordance with K.S.A. 41-2645 and amendments thereto.

(b) The boundary of any premises covered by a temporary permit shall be marked by a three-dimensional obstacle. (Authorized by K.S.A. 41-2634; implementing K.S.A. 41-2604 and K.S.A. 2009 Supp. 41-2645; effective, T-88-22, July 1, 1987; effective May 1, 1988; amended Sept. 17, 2010.)

14-23-11. Nontaxed liquor; individual bringing alcoholic liquor on to permitted premises. (a) At an event, alcoholic liquor shall be dispensed from original containers bearing Kansas alcoholic liquor identification stamps.

(b) Any individual may be allowed to bring bottles onto the event premises upon the following conditions:

(1) A permit holder shall not warehouse any bottles upon the event premises;

(2) each individual bringing any bottles onto the event premises shall remove the bottles when departing from the event premises; and

(3) each bottle shall bear a Kansas alcoholic liquor identification stamp if required by law. (Authorized by K.S.A. 41-210 as amended by L. 1987, Ch. 182, Sec. 10 and 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-718 as amended by L. 1987, Ch. 182, Sec. 53 and L. 1987, Ch. 182, Sec. 91, L. 1987, Ch. 182, Sec. 93; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-12. Minimum prices for drinks; how determined. (a) A permit holder shall not sell a drink to any person for less than the acquisition cost of that drink to the permit holder.

(b) The cost of each of the following items shall be included in the acquisition cost of a drink:

(1) All alcoholic liquor contained in the drink; and

(2) any liquid of a non-alcoholic nature contained in the drink.

(c) Any of the following items shall not be required to be included in the acquisition cost:

(1) City service or tap water;

(2) ice;

(3) employee salaries or other usual overhead; and

(4) any other items of clearly negligible value used in the drink. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-13. Charge the same price for the same drink all day; day defined. (a) A permit holder shall not sell a drink to any person for less than the price charged for that same drink to all other persons on that day. Any particular drink that is offered for sale at any time during the day shall be offered at the same price for the entire day.

(b) The term "day" shall mean from 9:00 a.m. until 2:00 a.m. the following calendar day. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2640 as amended by L. 1987, Ch. 182, Sec. 94; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

14-23-14. (Authorized by K.S.A. 1989 Supp. 41-2634; implementing K.S.A. 1989 Supp. 41-2611; effective, T-88-22, July 1, 1987; effective May 1, 1988; revoked Aug. 6, 1990.)

14-23-15. Suspension and revocation; grounds for; procedure. The director may revoke a permit or fine a permit holder for any one or more of the following reasons, subject to the procedures and other provisions of K.A.R. 14-16-14 et seq.:

(a) The permit holder has omitted or misstated a material fact in its application;

(b) the permit holder has operated in a manner materially different from that represented in the application;

(c) the permit holder has engaged in a prohibited act or transaction;

(d) the permit holder has violated any provision of the liquor control act, the club and drinking establishment act or any regulation adopted pursuant thereto;

(e) there has been a violation of the laws of Kansas pertaining to the sale of alcoholic liquor or cereal malt beverage or a violation of the laws of the United States pertaining to the sale of intoxicating liquor or a violation involving a morals charge;

(f) the permit holder, its managing officers or any employee has purchased and displayed, on the permitted premises, a federal wagering occupational stamp or a federal coin operated gambling device stamp issued by the United States treasury department;

(g) the permit holder refuses to allow the director or any agent or employee of the director or secretary to inspect the permitted premises, any alcoholic liquor upon the permitted premises or any records required to be kept by these regulations; or

(h) the permit holder has allowed a person who is under the age of 21 years to possess alcoholic liquor while on the permitted premises. (Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2611 as amended by L. 1987, Ch. 182, Sec. 66; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

Article 24.—WINERY SHIPPING PERMITS

14-24-1. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

14-24-2. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

14-24-3. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

14-24-4. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

14-24-5. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

14-24-6. (Authorized by and implementing K.S.A. 2006 Supp. 41-348 and 41-349; effective Dec. 28, 2007; revoked Sept. 17, 2010.)

**Article 25.—OFF-PREMISES CEREAL
MALT BEVERAGE RETAILERS**

14-25-1. Definitions. As used in this article of the division’s regulations, unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) “Alcoholic liquor” has the meaning specified in K.S.A. 41-102, and amendments thereto.

(b) “Beer” has the meaning specified in K.S.A. 41-102, and amendments thereto.

(c) “Cereal malt beverage” has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(d) “Director” means the director of the division of alcoholic beverage control in the department of revenue.

(e) “Distributor” has the meaning specified in K.S.A. 41-102, and amendments thereto.

(f) “Inventory” means a retailer’s entire or partial stock of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(g) “Licensed premises” means those areas described in an application for a retailer’s license that are under the control of the applicant and are intended as the area in which cereal malt beverage or beer containing not more than six percent alcohol by volume is to be sold for consumption off the licensed premises or stored for later sale.

(h) “Person” means any natural person, corporation, partnership, trust, or association.

(i) “Retailer” means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than six percent alcohol by volume for use or consumption off the licensed premises. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-25-2. Trade practices; applicability.

(a) Each action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau of the department of the treasury shall be considered good faith compliance with this article of the division’s regulations, unless the director has issued a contrary interpretation pertaining to the subject of the memoranda.

(b) The trade practice regulations of the alcohol and tobacco tax and trade bureau of the department of the treasury, as adopted by reference in K.A.R. 14-10-17, shall apply to each retailer, as defined in K.A.R. 14-25-1. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-25-3. Retailer’s responsibility for conduct of business and employees.

Each retailer shall be responsible for the conduct of the retailer’s business. Each retailer shall be responsible for all violations of the cereal malt beverage act and this article of the division’s regulations by any person selling cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-25-4. Recordkeeping.

(a) Each retailer purchasing cereal malt beverage or beer containing not more than six percent alcohol by volume from a licensed distributor shall obtain a numbered invoice or purchase order that contains the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and

(7) the subtotal of the cost of the cereal malt beverage or beer containing not more than six percent alcohol by volume purchased and the total cost of the order including delivery charge, if any.

(b) The retailer shall keep a copy of each sales receipt involving the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales receipt involving sales made to customers required by this regulation for at least three years from the date on which the cereal malt beverage or beer containing not more than six percent alcohol by volume was sold.

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the initial application, on the licensed premises and shall make a copy available for inspection upon request.

(e) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, the secretary, or any law enforcement officer upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format within seven business days upon request. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-25-5. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory. (a) If a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another active licensee.

(b) The application to transfer the retailer's inventory shall be submitted on forms prescribed by the director and shall contain the following:

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred inventory; and
- (4) the quantity, brand, and type of each container or package of cereal malt beverage or beer containing not more than six percent alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer inventory under the provisions of subsection

(a) if the selling retailer owes either of the following:

- (1) Any applicable tax; or
- (2) any fines imposed pursuant to applicable law.

(e) The director or any employee or agent of the director may seize and sell any inventory located on the premises subject to a retailer's license if the director determines that the inventory has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the inventory has been abandoned:

- (1) The licensee no longer occupies the building and has left inventory in the building.
- (2) The licensee has been evicted and has made no attempt to collect the inventory.
- (3) Attempts to contact the licensee to determine the licensee's plans for the inventory have been unsuccessful.

(4) The presence of the inventory in the building poses a threat to the public health, safety, and welfare or to the orderly regulation of the market.

(f) Upon the director's determination that the inventory has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the inventory. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the inventory, the director may seize and sell the inventory.

(g) The proceeds from the sale of any inventory specified in subsection (e) shall be deposited into the state general fund. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-25-6. Prohibited conduct of retailer.

(a) A retailer shall not permit gambling or the possession of any gambling or gaming device on the licensed premises.

(b) A retailer shall not, as a condition for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume to a customer, require that the customer purchase or contract to purchase cereal malt beverage or beer containing not more than six percent alcohol by volume of another form, quantity, or brand in addition to or partially in lieu of that specifically desired by the customer.

(c) A retailer shall not sell or deliver cereal malt beverage or beer containing not more than six percent alcohol by volume of a particular form or brand to a customer under any arrangement, agreement, or understanding, direct or implied,

such that the sale will be made only if the customer also buys a quantity of cereal malt beverage or beer containing not more than six percent alcohol by volume of another form or brand.

(d) A retailer shall not refuse to permit the director, any agent or employee of the director, or any law enforcement officer to inspect the licensed premises and any cereal malt beverage or beer containing not more than six percent alcohol by volume in the retailer's possession or under the retailer's control upon the licensed premises or upon any other premises where the retailer has stored any cereal malt beverage or beer containing not more than six percent alcohol by volume.

(e) A retailer shall not make any false or misleading representations with respect to any cereal malt beverage or beer containing not more than six percent alcohol by volume on the licensed premises or in connection with a sales transaction relating to brand, type, proof, or age of any cereal malt beverage or beer containing not more than six percent alcohol by volume. A retailer shall not deceive or attempt to deceive a customer by removing or changing any label or sanitation cover from a container or package of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(f) A retailer shall not sell or remove any cereal malt beverage or beer containing not more than six percent alcohol by volume from the licensed premises on any day other than a legal day for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume at retail, after the legal closing hour or before the legal opening hour.

(g) A retailer shall not, directly or indirectly, offer or furnish any gifts, prizes, premiums, rebates, or similar inducements with the sale of any cereal malt beverage or beer containing not more than six percent alcohol by volume, nor shall any retailer directly or indirectly offer, furnish, or sell any cereal malt beverage or beer containing not more than six percent alcohol by volume at less than its cost plus applicable tax, except according to the following:

(1) Any retailer may include in the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume any goods included by the manufacturer in packaging with the cereal malt beverage or beer containing not more than six percent alcohol by volume. Goods included by the manufacturer shall be packaged with one or more original packages of cereal malt beverage or beer containing not more than six percent alcohol

by volume in such a manner as to be delivered to the consumer as a single unit. A retailer shall not sell or give away goods included by a manufacturer that are not packaged as a single unit with the original package of cereal malt beverage or beer containing not more than six percent alcohol by volume as shipped by the manufacturer.

(2) Any retailer may distribute consumer advertising specialty items, subject to the limitations imposed by this regulation. For the purposes of this regulation, consumer advertising specialty items shall be limited to the following: ashtrays, bottle or can openers, corkscrews, matches, printed recipes, informational pamphlets, cards and leaflets, blotters, postcards, posters, printed sports schedules, pens, pencils, and other items of minimal value as approved by the director. Each consumer advertising specialty item shall contain advertising material relating to a brand name of cereal malt beverage or beer containing not more than six percent alcohol by volume or to the operation of the retailer distributing the consumer advertising specialty item. No charge may be made for any consumer advertising specialty item or any purchase required in order to receive any consumer advertising specialty item.

(h) A retailer shall not open or permit to be opened, on the licensed premises, any container or original package containing cereal malt beverage or beer containing not more than six percent alcohol by volume, unless the retailer is also licensed as an on-premises retailer.

(i) A retailer shall not permit the drinking of alcoholic liquors or cereal malt beverage on or about the licensed premises, unless the retailer is also licensed as an on-premises retailer.

(j) A retailer shall not allow an intoxicated person to frequent, loiter, or be employed upon the licensed premises. A retailer's employee shall not be intoxicated while on duty for the retailer.

(k) A retailer shall not accept or receive from any agent or employee of any licensed distributor any cash rebate or thing of value, or enter into or be a party to any agreement or transaction with any licensed distributor, directly or indirectly, that would result in, or have as its purpose, the purchase of any cereal malt beverage or beer containing not more than six percent alcohol by volume by the retailer at a price less than the listed price that has been filed by the distributor in the office of the director.

(l) A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more

than six percent alcohol by volume to any person under 21 years of age. A retailer shall not sell, give, or deliver any cereal malt beverage or beer containing not more than six percent alcohol by volume to any person if the retailer knows or has reason to know that the cereal malt beverage or beer containing not more than six percent alcohol by volume is being obtained for a person under 21 years of age.

(m) A retailer shall not purchase or sell any cereal malt beverage or beer containing not more than six percent alcohol by volume on credit. A retailer shall not enter into any transaction or scheme the purpose of which is to buy or sell cereal malt beverage or beer containing not more than six percent alcohol by volume on credit. The following transactions shall be considered to be buying or selling cereal malt beverage or beer containing not more than six percent alcohol by volume on credit:

- (1) Taking or giving a postdated check;
- (2) giving an insufficient funds check;
- (3) taking a check with knowledge that there are insufficient funds to pay the check upon presentment;
- (4) accepting delivery from a distributor without making payment for the cereal malt beverage or beer containing not more than six percent alcohol by volume when delivered or before delivery; and
- (5) allowing any cereal malt beverage or beer containing not more than six percent alcohol by volume to be removed from the licensed premises without receiving payment for the cereal malt beverage or beer containing not more than six percent alcohol by volume.

(n) A retailer shall not fail to make the reports or keep the records required by this article of the division's regulations.

(o) A retailer shall not refill a package of cereal malt beverage or beer containing not more than six percent alcohol by volume and shall not sell cereal malt beverage or beer containing not more than six percent alcohol by volume in anything other than the original package. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

Article 26.—ON-PREMISES CEREAL MALT BEVERAGE RETAILERS

14-26-1. Definitions. As used in this article of the division's regulations, unless the context clearly requires otherwise, each of the following

terms shall have the meaning specified in this regulation:

(a) "Alcoholic liquor" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(b) "Beer" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(c) "Cereal malt beverage" has the meaning specified in K.S.A. 41-2701, and amendments thereto.

(d) "Director" means the director of the division of alcoholic beverage control in the department of revenue.

(e) "Distributor" has the meaning specified in K.S.A. 41-102, and amendments thereto.

(f) "Food establishment" has the meaning specified in K.S.A. 65-656, and amendments thereto.

(g) "Inventory" means a retailer's entire or partial stock of cereal malt beverage or beer containing not more than six percent alcohol by volume.

(h) "Licensed premises" means those areas described in an application for a cereal malt beverage retailer license issued pursuant to K.S.A. 41-2702, and amendments thereto, that are under the control of the applicant and that are intended as the area in which cereal malt beverage or beer containing not more than six percent alcohol by volume is to be served pursuant to the applicant's license.

(i) "Person" means any natural person, corporation, partnership, trust, or association.

(j) "Retailer" means any person who is licensed under the Kansas cereal malt beverage act and who sells or offers for sale any cereal malt beverage or beer containing not more than six percent alcohol by volume for use or consumption on the licensed premises. For the purposes of this article of the division's regulations, this term shall not include any cereal malt beverage retailer also licensed as a drinking establishment, pursuant to the Kansas club and drinking establishment act. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-2. Trade practices; applicability.

(a) Each action taken by an industry member or retailer in accordance with interpretive memoranda issued by the alcohol and tobacco tax and trade bureau of the department of the treasury shall be considered good faith compliance with this article of the division's regulations, unless the director has issued a contrary interpretation pertaining to the subject of the memoranda.

(b) The trade practice regulations of the alcohol and tobacco tax and trade bureau of the depart-

ment of the treasury, as adopted by reference in K.A.R. 14-10-17, shall apply to each retailer, as defined in K.A.R. 14-26-1. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-3. Retailer's responsibility for conduct of business and employees. Each retailer shall be responsible for the conduct of the retailer's business. Each retailer shall be responsible for all violations of the cereal malt beverage act and this article of the division's regulations by the following people while on the licensed premises:

- (a) Any employee of the retailer;
- (b) the employee of any person contracting with the retailer to provide services or food; and
- (c) any individual mixing, serving, selling, or dispensing cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-4. Refusal of right to enter or inspect licensed premises prohibited. No retailer shall refuse to permit the director, any agent or employee of the director, or any law enforcement officer to perform the following:

- (a) Enter or inspect the licensed premises; and
- (b) inspect any cereal malt beverage or beer containing not more than six percent alcohol by volume in the retailer's possession or under the retailer's control on the licensed premises or on any other premises where the retailer has stored any cereal malt beverage or beer containing not more than six percent alcohol by volume. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-5. Minimum prices for drinks; acquisition cost. (a) A retailer shall not sell any drink to any person for less than the acquisition cost of that drink to the retailer.

(b) In determining the minimum price of each drink, a retailer shall not include any applicable tax. All tax shall be collected in addition to the minimum price for the drink itself.

(c) The cost of each of the following items shall be included in the acquisition cost of each drink:

- (1) All cereal malt beverage or beer containing not more than six percent alcohol by volume; and
- (2) any nonalcoholic liquid. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-6. Recordkeeping. (a) Each retailer purchasing cereal malt beverage or beer containing not more than six percent alcohol by volume from a licensed distributor shall obtain a numbered invoice or purchase order that contains the following information:

- (1) The date of purchase;
- (2) the name, address, and license number of the retailer;
- (3) the name, address, and license number of the distributor;
- (4) the name of the individual making the purchase for the retailer;
- (5) the brand, size, and amount of each brand purchased;
- (6) the unit cost and total price for each brand and size; and
- (7) the subtotal of the cost of the cereal malt beverage or beer containing not more than six percent alcohol by volume purchased and the total cost of the order including delivery charge, if any.

(b) The retailer shall keep a copy of each sales receipt for the sale of cereal malt beverage or beer containing not more than six percent alcohol by volume made to a customer.

(c) The retailer shall keep a copy of each invoice, purchase order, or sales ticket required by this regulation for at least three years from the date on which the cereal malt beverage or beer containing not more than six percent alcohol by volume was sold.

(d) The retailer shall keep a copy of the diagram of the licensed premises, as submitted with the initial application, on the licensed premises and shall make a copy available for inspection upon request.

(e) The records required by this regulation shall be available for inspection by the director, any agent or employee of the director, the secretary, or any law enforcement officer upon request.

(1) Each record required by this regulation shall be maintained on the retailer's licensed premises for at least 90 days after the sale. These records may be maintained in electronic format and shall be capable of being printed immediately upon request.

(2) After 90 days, all records required by this regulation may be stored and maintained off the licensed premises and shall be provided in electronic or paper format within seven business days upon request. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-7. Storage of cereal malt beverage or beer containing not more than six percent alcohol by volume; removal from licensed premises.

(a) Each retailer shall store its cereal malt beverage and beer containing not more than six percent alcohol by volume only on the licensed premises of the retailer, unless the retailer has received prior approval in writing from the director to do otherwise.

(b) No retailer, and no owner, employee, or agent of the retailer, shall sell any cereal malt beverage or beer containing not more than six percent alcohol by volume for consumption off the licensed premises, unless the retailer also has a valid license to sell or offer for sale cereal malt beverage and beer containing not more than six percent alcohol by volume for consumption off the licensed premises.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume that has been purchased on the licensed premises and has been opened and sold for consumption on the licensed premises shall be removed from the licensed premises. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

14-26-8. Transfer of retailer's inventory; application for permission; seizure and sale of abandoned inventory.

(a) If a retailer's license has expired or been surrendered or revoked, that retailer may apply to the director for permission to transfer the retailer's inventory to another licensee.

(b) The application to transfer the retailer's inventory shall be submitted on forms prescribed by the director and shall contain the following:

- (1) The retailer's name and license number;
- (2) the purchaser's name and license number;
- (3) the gross sale price of the transferred inventory; and
- (4) the quantity, brand, and type of each container or package of cereal malt beverage or beer

containing not more than six percent alcohol by volume to be transferred.

(c) No cereal malt beverage or beer containing not more than six percent alcohol by volume in the possession of a retailer shall be transferred under the provisions of subsection (a) unless the director has granted written permission.

(d) The director may deny an application to transfer inventory under the provisions of subsection (a) if the retailer owes either of the following:

- (1) Any applicable tax; or
- (2) any fines imposed pursuant to applicable law.

(e) The director or any employee or agent of the director may seize and sell any inventory located on the premises subject to a retailer's license if the director determines that the inventory has been abandoned by the licensee. The director may consider any of the following criteria in making a determination that the inventory has been abandoned:

(1) The licensee no longer occupies the building and has left inventory in the building.

(2) The licensee has been evicted and has made no attempt to collect the inventory.

(3) Attempts to contact the licensee to determine the licensee's plans for the inventory have been unsuccessful.

(4) The presence of the inventory in the building poses a threat to the public health, safety, and welfare or to the orderly regulation of the market.

(f) Upon the director's determination that the inventory has been abandoned, the director shall notify the retailer, in writing, of the director's intent to seize and sell the inventory. If, within seven calendar days after the date of the director's notice, the retailer has not notified the director that the retailer intends to maintain possession of the inventory, the director may seize and sell the inventory.

(g) The proceeds from the sale of any inventory specified in subsection (e) shall be deposited into the state general fund. (Authorized by and implementing K.S.A. 2017 Supp. 41-212; effective June 7, 2018.)

Agency 15

Athletic Commission

Editor's Note:

Pursuant to the Kansas sunset law, the Athletic Commission was abolished on July 1, 1979, see K.S.A. 74-7202. For current regulations on this subject, see Agency 128, Department of Commerce—Kansas Athletic Commission.

Editor's Note:

There are filed, stamped hardcopies of temporary regulations 15-1-1 through 15-84-4 effective, E-77-4, Jan. 13, 1976, that are not reflected in this history.

Articles

- 15-1. ORGANIZATION OF COMMISSION. (*Not in active use.*)
- 15-2. CONTROL AND JURISDICTION OVER CONTEST. (*Not in active use.*)
- 15-3. WRESTLING EXHIBITIONS. (*Not in active use.*)
- 15-4. PAPERS. (*Not in active use.*)
- 15-5. OFFICIALS. (*Not in active use.*)
- 15-6. PERMITS. (*Not in active use.*)
- 15-7. LICENSES AND FEES. (*Not in active use.*)
- 15-8. GOOD ORDER. (*Not in active use.*)
- 15-9. ENCROACHMENT OF DATES. (*Not in active use.*)
- 15-10. ANNOUNCEMENTS. (*Not in active use.*)
- 15-11. BETTING. (*Not in active use.*)
- 15-12. RENEWALS. (*Not in active use.*)
- 15-13. CHARITY BOUTS. (*Not in active use.*)
- 15-14. REVOCATION OF LICENSES. (*Not in active use.*)
- 15-15. FAILURE TO APPEAR. (*Not in active use.*)
- 15-16. SUBSTITUTIONS. (*Not in active use.*)
- 15-17. TICKETS. (*Not in active use.*)
- 15-18. PROMPT APPEARANCE OF CONTESTANTS IN RING. (*Not in active use.*)
- 15-19. COSTUMES. (*Not in active use.*)
- 15-20. DRESSING ROOMS. (*Not in active use.*)
- 15-21. RING. (*Not in active use.*)
- 15-22. USE OF GREASE. (*Not in active use.*)
- 15-23. CORRECT NAMES. (*Not in active use.*)
- 15-24. STOPPING A MATCH OR EXHIBITION. (*Not in active use.*)
- 15-25. ACCIDENTAL INJURY. (*Not in active use.*)
- 15-26. PENALTIES. (*Not in active use.*)
- 15-27. FALLS AND DECISIONS. (*Not in active use.*)
- 15-28. SUSPENSIONS. (*Not in active use.*)
- 15-29. TEMPORARY DELAYS. (*Not in active use.*)
- 15-30. CONCESSIONS. (*Not in active use.*)
- 15-31. MISCELLANEOUS. (*Not in active use.*)
- 15-32. PAPERS. (*Not in active use.*)
- 15-33. OFFICIALS. (*Not in active use.*)
- 15-34. PERMITS. (*Not in active use.*)
- 15-35. LICENSES AND FEES. (*Not in active use.*)
- 15-36. GOOD ORDER. (*Not in active use.*)

ATHLETIC COMMISSION

Articles

- 15-37. *ENCROACHMENT OF DATES. (Not in active use.)*
- 15-38. *ANNOUNCEMENTS. (Not in active use.)*
- 15-39. *BETTING. (Not in active use.)*
- 15-40. *SHAM AND COLLUSIVE EXHIBITIONS. (Not in active use.)*
- 15-41. *CHARITY BOUTS. (Not in active use.)*
- 15-42. *REVOCATION OF LICENSES. (Not in active use.)*
- 15-43. *FAILURE TO APPEAR. (Not in active use.)*
- 15-44. *SUBSTITUTIONS. (Not in active use.)*
- 15-45. *TICKETS. (Not in active use.)*
- 15-46. *PROMPT APPEARANCE OF CONTESTANTS IN RING. (Not in active use.)*
- 15-47. *CONTESTANTS. (Not in active use.)*
- 15-48. *USE OF GREASE. (Not in active use.)*
- 15-49. *CORRECT NAMES. (Not in active use.)*
- 15-50. *CONTRACTS. (Not in active use.)*
- 15-51. *BONDS. (Not in active use.)*
- 15-52. *FOULS. (Not in active use.)*
- 15-53. *KNOCKDOWNS. (Not in active use.)*
- 15-54. *FORFEITS. (Not in active use.)*
- 15-55. *NUMBER AND LENGTH OF ROUNDS. (Not in active use.)*
- 15-56. *SCORING DECISIONS. (Not in active use.)*
- 15-57. *DRESSING ROOMS. (Not in active use.)*
- 15-58. *WEIGHTS AND CLASSES. (Not in active use.)*
- 15-59. *WEIGHING TIME. (Not in active use.)*
- 15-60. *RING, ROPES, HEIGHTS, OBSTRUCTIONS. (Not in active use.)*
- 15-61. *GONG. (Not in active use.)*
- 15-62. *WATER BUCKETS; BOTTLES. (Not in active use.)*
- 15-63. *GLOVES. (Not in active use.)*
- 15-64. *SCALES, PROTECTING APPARATUS, SHOES. (Not in active use.)*
- 15-65. *BANDAGES. (Not in active use.)*
- 15-66. *DECISIONS. (Not in active use.)*
- 15-67. *PENALTIES. (Not in active use.)*
- 15-68. *SUSPENSIONS. (Not in active use.)*
- 15-69. *RENEWALS. (Not in active use.)*
- 15-70. *CONCESSIONS. (Not in active use.)*
- 15-71. *MISCELLANEOUS. (Not in active use.)*
- 15-72. *OFFICIALS. (Not in active use.)*
- 15-73. *ANNOUNCERS. (Not in active use.)*
- 15-74. *REFEREES. (Not in active use.)*
- 15-75. *JUDGES AND CHIEF JUDGES. (Not in active use.)*
- 15-76. *TIMEKEEPER AND KNOCKDOWN JUDGES. (Not in active use.)*
- 15-77. *SECONDS. (Not in active use.)*
- 15-78. *CONTESTANTS. (Not in active use.)*
- 15-79. *PHYSICIANS. (Not in active use.)*
- 15-80. *INSPECTORS, INSPECTOR-AT-LARGE. (Not in active use.)*
- 15-81. *MANAGERS. (Not in active use.)*
- 15-82. *AGENTS AND MATCHMAKERS. (Not in active use.)*
- 15-83. *SPONSORING ORGANIZATIONS. (Not in active use.)*
- 15-84. *KANSAS ALL-SPORTS HALL OF FAME. (Not in active use.)*

**Article 1.—ORGANIZATION
OF COMMISSION**

15-1-1 and 15-1-2. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

**Article 2.—CONTROL AND
JURISDICTION OVER CONTEST**

15-2-1 to 15-2-4. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 3.—WRESTLING EXHIBITIONS

15-3-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 4.—PAPERS

15-4-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 5.—OFFICIALS

15-5-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 6.—PERMITS

15-6-1 and 15-6-2. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 7.—LICENSES AND FEES

15-7-1 to 15-7-6. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 8.—GOOD ORDER

15-8-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

**Article 9.—ENCROACHMENT
OF DATES**

15-9-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 10.—ANNOUNCEMENTS

15-10-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

Article 11.—BETTING

15-11-1. (Authorized by K.S.A. 74-2902; effective May 1, 1979; revoked, L. 1981, Ch. 407, May 1, 1981.)

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Agency 16

Attorney General

Editor's Note:

Certain Secretary of State powers, duties, rules and regulations and functions concerning the address confidentiality program and the charitable organizations and solicitations act were transferred to the Attorney General on July 1, 2021. See Agency 7, Articles 42 and 44 regulations and L. 2021, Ch. 110.

Articles

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- 16-2. DEFINITIONS.
- 16-3. APPLICATIONS FOR PRIVATE DETECTIVE LICENSE.
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Article 1.—PRIVATE DETECTIVES AND AGENCIES

16-1-1 to 16-1-6. (Authorized by K.S.A. 75-7b18(b); effective, E-77-23, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1982.)

16-1-7. Fees. (a) The following fees shall be charged:

- (1) Application forms and materials \$15.00
- (2) Application for initial private detective license or agency license \$250.00
- (3) Application for initial private detective license by an officer, director, partner, or associate of private detective agency..... \$100.00
- (4) Renewal of a private detective license or agency license..... \$175.00

- (5) Renewal of private detective license by an officer, director, partner, or associate of a private detective agency..... \$100.00
- (6) Application for initial firearm permit..... \$50.00
- (7) Renewal of firearm permit \$50.00
- (8) Application for initial firearm trainer certificate..... \$100.00
- (9) Renewal of firearm trainer certificate..... \$100.00
- (10) Duplicate license \$5.00

(b) All fees shall be submitted by personal check, money order, cashier's check, certified check, or credit card. (Authorized by K.S.A. 2003 Supp. 75-7b22; implementing K.S.A. 2003 Supp. 75-7b04, K.S.A. 2003 Supp. 75-7b05, as amended by L. 2004, ch. 139, sec. 1, K.S.A. 2003 Supp. 75-7b07, as amended by L. 2004, ch. 139, sec. 2, K.S.A.

2003 Supp. 75-7b17, as amended by L. 2004, ch. 139, sec. 4, K.S.A. 2003 Supp. 75-7b21, as amended by L. 2004, ch. 139, sec. 5, and K.S.A. 2003 Supp. 75-7b22; effective Nov. 6, 1998; amended Feb. 11, 2005.)

Article 2.—DEFINITIONS

16-2-1. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b01; effective May 1, 1982; amended April 12, 1996; revoked Nov. 6, 1998.)

16-2-1a. Definitions. (a) “Associates” means persons who share ownership of a private detective agency that is not incorporated or established as a legal partnership.

(b) “Capper” or “runner” means a person acting on behalf of an attorney who coordinates a staged automobile accident or acts as a decoy or lure for the purpose of swindling or any other fraudulent purpose.

(c) “Firearms trainer” means a person certified by the attorney general to train private detective applicants for a firearm permit in the handling of firearms and the lawful use of force.

(d) “Independent private detective” means a person who engages in detective business but who is not employed by a licensed private detective agency and who does not regularly employ any other person to engage in detective business.

(e) “License” means a certificate and card, issued by the attorney general upon proper application, testing, and approval, authorizing a person to engage in Kansas in detective business as a private detective or private detective agency.

(f)(1) “Special commission” means any type of identification issued by a law enforcement agency or law enforcement officer that grants any temporary or permanent law enforcement authority, including any of the following:

- (A) Deputy;
- (B) special deputy;
- (C) special assistant;
- (D) reserve officer; or
- (E) special officer.

(2) A special commission shall not include a commission issued by a law enforcement agency that identifies the holder as a private detective or private security officer, or as a retired or honorary law enforcement officer, but that does not grant any law enforcement authority. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b01, as amended by L. 1998, ch. 183, sec. 1; effective Nov. 6, 1998.)

Article 3.—APPLICATIONS FOR PRIVATE DETECTIVE LICENSE

16-3-1. Procedure. (a) An applicant for a private detective license or a private detective agency license shall be required to appear at a time and location designated by the attorney general for a written examination and oral interview.

(b) An applicant who fails to pass the written examination may retake the examination two times at a scheduled examination date.

(1) The first reexamination shall occur within 30 days after notice of the results of the original exam is provided to the applicant.

(2) A second reexamination shall occur within 30 days after notice of the results of the first reexamination is provided to the applicant.

(3) An applicant who does not successfully pass the examination after three attempts shall be denied a license to engage in detective business.

(c) An applicant denied a license as a private detective or detective agency for failure to pass the written examination within three attempts shall not make application under the provisions of the Kansas private detective licensing act within 12 months following the denial of the license.

(d) The certificates of reference submitted by an applicant for a private detective license or a private detective agency license shall be dated within four months of the date the application is received by the attorney general.

(e) An applicant for a private detective license or a private detective agency license shall provide information concerning discharge from the United States military service in relation to the applicant and any officer, director, partner, or associate of the applicant.

(f) An applicant for a private detective license or a private detective agency license shall submit two classifiable sets of the applicant’s right- and left-hand fingerprints on forms provided by the attorney general. The applicant shall have fingerprints taken by an officer or employee of a law enforcement agency. The name of the law enforcement agency and the name of the person taking the fingerprints shall be clearly identified on the form. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b04, as amended by L. 1998, ch. 183, sec. 3, and K.S.A. 75-7b20; effective May 1, 1982; amended Feb. 13, 1995; amended Nov. 6, 1998.)

16-3-2. Renewal. (a) An applicant for renewal of a private detective license or a private

detective agency license shall provide verification of a surety bond, insurance or deposit as required by K.S.A. 75-7b11 and amendments thereto.

(b) An applicant for renewal of a private detective license or a private detective agency license shall provide information as requested in the renewal application which pertains to acts and conduct prohibited by K.S.A. 75-7b08 and K.S.A. 75-7b13 and amendments thereto. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b07; effective May 1, 1982; amended Feb. 13, 1995.)

16-3-3. Additional qualifications for private detectives. In addition to the qualifications established in K.S.A. 75-7b04 and amendments thereto, an applicant for a private detective license or a private detective agency license shall:

(a) be a high school graduate or have earned a graduate equivalency degree;

(b) not be incompetent, incapacitated or impaired by reason of mental condition, deficiency or disease; and

(c) not evidence current addiction to, dependence on or abuse of alcohol or a controlled substance as defined in K.S.A. 65-4101 and amendments thereto. Such evidence may include, but is not limited to conviction of any crime involving the possession, use, consumption or self-administration of alcohol or any controlled substance as defined in K.S.A. 65-4101 and amendments thereto. (Authorized by K.S.A. 75-7b04 and K.S.A. 75-7b18; implementing K.S.A. 75-7b04; effective Feb. 13, 1995.)

Article 4.—CONTINUING EDUCATION

16-4-1. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b15; effective May 1, 1982, revoked Feb. 13, 1995.)

16-4-2. Continuing professional education requirements. (a) Commencing December 31, 2006, each applicant for renewal of a private detective license that expires on December 31 of the year of its issuance and is renewed every two years thereafter shall have completed eight hours of acceptable continuing professional education obtained within the biennial renewal period before submitting the renewal application.

(b) For each individual whose initial private detective license is issued on or after July 1, 2004, for renewal of the license the individual shall have completed eight hours of acceptable continuing

professional education before submitting the renewal application.

(c) The standards used to determine acceptable continuing professional education shall include the following:

(1) One hour shall equal 50 minutes of participation in a group or self-study program. One-half hour shall equal 25 minutes of participation in a group or self-study program.

(2) The hours devoted to actual preparation time by an instructor or speaker for formal programs shall be computed at a maximum of up to twice the number of continuing education credits that a participant would be entitled to receive.

(3) The hours served as an instructor or speaker shall be included to the extent that the hours contribute to the professional competence of the applicant. Repeated presentations of the same program shall not be counted unless the instructor or speaker demonstrates that the program content was substantially changed and the change required significant additional study or research. (Authorized by and implementing K.S.A. 75-7b18 and K.S.A. 2003 Supp. 75-7b07, as amended by L. 2004, Ch. 139, § 2; effective Feb. 11, 2005.)

16-4-3. Continuing professional education programs; requirements. (a) Any program designed to allow a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by self-study may be approved for continuing education credit if the program meets the following conditions:

(1) The program is a formal program of learning that requires attendance and meets either of the following requirements:

(A) Maintains or improves the professional competence of the applicant in providing detective business services; or

(B) maintains or improves the applicant's ability to operate and manage a detective business.

(2) An outline of the program is prepared in advance and provided to the applicant.

(3) The program is at least 50 minutes in length.

(4) The program is conducted by a person qualified in the subject area.

(5) A record of registration and attendance is retained.

(b) The following types of programs shall qualify as acceptable continuing education if they meet the requirements of subsection (a):

(1) Programs offered by the Kansas association of licensed investigators, the Kansas association of private investigators, or any other state or national organization or association of private detectives or investigators;

(2) programs offered by any individual, organization, association, or commission that provides education or training in the subjects identified in paragraph (a)(1)(A) or (B);

(3) university or college credit courses. Each semester hour of credit shall equal 15 hours of continuing education credit. Each quarter hour of credit shall equal 10 hours of continuing education credit; and

(4) university or college noncredit courses. These courses shall qualify for continuing professional education credit that equals the number of actual, full 50-minute class hours attended.

(c) Any individual self-study program that allows a participant to learn a particular subject without the major involvement of an instructor may be eligible for continuing education credit if all of the following conditions are met:

(1)(A) The program is offered by the Kansas association of licensed investigators, the Kansas association of private investigators, or any other state or national organization or association of private detectives or investigators; or

(B) the program is offered by any individual, organization, association, or commission that provides education or training in the subjects identified in paragraph (a)(1)(A) or (B).

(2) The program requires registration.

(3) The program includes a final examination.

(4) The participant scores at least 70 percent on the final examination.

(5) The participant provides a certificate of satisfactory completion.

(d) The amount of credit for self-study programs shall be determined as follows:

(1) Self-study programs may be approved for one hour of continuing education credit for each 50 minutes of participation and one-half hour for each 25-minute period of participation.

(2) The amount of credit shall not exceed the number of recommended hours assigned by the program sponsor.

(e) The training required by K.A.R. 16-6-1 shall not qualify as acceptable continuing professional education. (Authorized by and implementing K.S.A. 75-7b18 and K.S.A. 2003 Supp. 75-7b07, as amended by L. 2004, Ch. 139, § 2; effective Feb. 11, 2005.)

16-4-4. Continuing professional education; documentation. (a) When applying for renewal of the private detective license, each applicant shall provide one copy of all documents evidencing completion of each program of continuing professional education obtained within the biennial renewal period before the applicant's submission of the renewal application. Each document evidencing program completion shall include the following information:

(1) The individual, organization, school, or sponsor conducting the program;

(2) the location of the program attended;

(3) the title of the program, or a brief description of the program;

(4) the dates attended or the date on which the program was completed; and

(5) the number of minutes in which the applicant participated.

(b) Any applicant may be required by the attorney general to verify the information specified in subsection (a) or to provide additional information as a part of the renewal application. (Authorized by and implementing K.S.A. 75-7b18 and K.S.A. 2003 Supp. 75-7b07, as amended by L. 2004, Ch. 139, § 2; effective Feb. 11, 2005.)

Article 5.—FIREARM TRAINERS

16-5-1. Individuals deemed personally qualified and knowledgeable. (a) An applicant for a firearm trainer certificate shall be considered personally qualified to train private detectives in the handling of firearms upon successful completion of approved firearms training meeting either of these criteria:

(1) Within two years before application for a firearm trainer certificate; or

(2) within five years before application for a firearm trainer certificate if the applicant has also had subsequent experience training persons in the handling of firearms within two years before application.

(b) Training shall be approved if the applicant for a firearm trainer certificate successfully completed a minimum of 40 clock hours of education and training through any combination of law enforcement, military, or private firearm courses that included education and training in the following:

(1) Firearms fundamentals and safety;

(2) marksmanship fundamentals and safety procedures;

(3) instruction in daylight, dim light, and darkness shooting;

(4) care, cleaning and maintenance of firearms;

(5) instruction in basic firearms retention and disarming techniques;

(6) shooting proficiency demonstrated with a firearm; and

(7) teaching or instructing abilities.

(c) An applicant for a firearm trainer certificate shall provide verification of the successful completion of approved firearm training by providing the following:

(1) A copy of the original certificate of completion of the course or courses; and

(2) a copy of the training course agenda, a statement from the course instructor or instructors, or an affidavit from the applicant that verifies the education and training requirements.

(d) An applicant for a firearm trainer certificate shall be considered personally qualified to train private detectives in the lawful use of force upon verification of successful completion of 10 clock hours of formal classroom or course instruction on the lawful use of force.

(e) In order to establish that an applicant for a firearm trainer certificate is a person of good character and reputation, an applicant shall meet either of these requirements:

(1) Be licensed as a private detective; or

(2) (A) Provide affidavits from five or more reputable citizens who have known the applicant for a period of at least five years and who are not related to the applicant by blood or marriage, attesting that the applicant is a person of good moral character and reputation; and

(B) provide two classifiable sets of the applicant's right- and left-hand fingerprints on forms provided by the attorney general, one of which shall be submitted to the Kansas bureau of investigation and one of which shall be submitted to the federal bureau of investigation for a fingerprint check to determine any criminal history of the applicant. The applicant shall have fingerprints taken by an officer or employee of a law enforcement agency. The name of the law enforcement agency and the name of the person taking the fingerprints shall be clearly identified on the form. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b21, as amended by L. 1998, ch. 183, sec. 13; effective May 1, 1982; amended April 12, 1996; amended Nov. 6, 1998.)

16-5-2. (Authorized by K.S.A. 75-7b18; im-

plementing K.S.A. 1981 Supp. 75-7b21; effective May 1, 1982; revoked Feb. 13, 1995.)

16-5-3. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 1981 Supp. 75-7b21; effective May 1, 1982; revoked Feb. 13, 1995.)

16-5-4. Plan of operation of training. (a) Each applicant for a firearm trainer certificate shall submit a proposed plan of operation for training private detectives in the handling of firearms and the lawful use of force to the attorney general for approval.

(1) The plan of operation shall be tailored to private detective business and be sufficiently detailed to enable the attorney general to evaluate the content of the plan.

(2) The applicant shall include a descriptive list of all materials and aids proposed to be used in the training and instruction.

(3) For an applicant for an initial firearm permit the plan of operation shall consist of a minimum of 16 clock hours of education and training.

(4) For an applicant for renewal of a firearm certificate the plan of operation shall consist of 8 clock hours of training and education.

(5) The plan of operation shall include the following:

(A) training and instruction which cover the following areas:

(i) instruction in lawful use of force by a private detective, including concepts of civil liability and criminal culpability;

(ii) weapons fundamentals and safety;

(iii) marksmanship fundamentals and safety procedures;

(iv) care, cleaning and maintenance of weapons;

(v) familiarization instruction in basic weapon retention and disarming techniques;

(vi) familiarization instruction in daylight, dim-light and darkness shooting; and

(vii) instruction and shooting exercises with semi-automatic pistols or revolvers;

(B) a written examination which requires the trainee to obtain a 70 percent pass score and covers the areas listed in paragraph (a)(5)(A)(i), (ii), (iii), (v), and (vi); and

(C) a daylight course of fire which requires the trainee to fire 35 out of 50 rounds into the center mass portion of the national rifle association TQ-19 target in a static position. The firing shall be from positions specified by the certified firearm trainer and from distances that vary as specified

by the certified firearm trainer from a minimum of three feet to a maximum of 75 feet.

(b) The plan of operation may provide for a trainer to excuse a trainee from firing with a particular hand when the trainee has demonstrated to the trainer a disability with that hand or arm.

(c) An applicant for a firearm trainer certificate shall be afforded the opportunity to correct any deficiencies in the plan of operation which are identified by the attorney general.

(d) After the plan of operation has been approved by the attorney general, a firearm trainer shall submit any proposed modifications to the attorney general for approval. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b21; effective May 1, 1982; amended April 12, 1996.)

16-5-5. Notice of completion. (a) Firearms trainers shall furnish notice to the attorney general through the Kansas bureau of investigation when an applicant for a firearm permit or an applicant for renewal of a firearm permit has completed a firearm training course within 10 days of the date the training course was completed.

(b) The notice shall be in a form prescribed by the attorney general and shall include:

- (1) the name of the applicant for a firearm permit;
- (2) the name of the firearm trainer;
- (3) the firing range proficiency of the applicant;
- (4) the make and serial number of the firearm used to qualify;
- (5) the dates the training course was given;
- (6) the applicant's written examination score; and
- (7) whether the applicant failed or successfully completed the training course.

(c) A copy of this notice shall be given to the applicant and a copy shall be retained by the firearm trainer. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17; effective May 1, 1982; amended April 12, 1996.)

Article 6.—FIREARM PERMITS

16-6-1. Training in the handling of firearms. (a) A firearm permit shall not be granted unless, within six months before submission of the application for the permit, the applicant has met the following requirements:

(1) Satisfactorily completed a minimum of 16 clock-hours of education and training in the areas listed in K.A.R. 16-5-4(a)(5)(A) from a certified firearms trainer who is other than the applicant;

(2) passed the written examination specified in K.A.R. 16-5-4(a)(5)(B); and

(3) satisfied the course of fire requirement specified in K.A.R. 16-5-4(a)(5)(C).

(b) Notwithstanding subsection (a), an initial firearm permit may be granted to an applicant who meets both of the following requirements:

(1) Completes law enforcement training pursuant to K.S.A. 75-7b17(a)(2) and amendments thereto; and

(2) provides a certificate attesting to the satisfactory completion of this law enforcement training.

(c) A firearm permit shall not be renewed unless, within each of the two years before expiration of the permit, the applicant has met the following requirements:

(1) Satisfactorily completed a minimum of two-clock hours of training in any of the areas listed in K.A.R. 16-5-4(a)(5)(A) by a certified firearms trainer who is other than the applicant; and

(2) satisfied the course of fire requirement specified in K.A.R. 16-5-4(a)(5)(C).

(d) Firearm permits shall be granted only for the firearm or firearms for which the applicant has satisfactorily completed a course of fire from a firearms trainer as specified in K.A.R. 16-5-4(a)(5)(C).

(e) Notwithstanding subsection (d), an initial firearm permit shall be granted to each applicant for an initial firearm permit who complies with subsection (b), except that the applicant shall notify the Kansas bureau of investigation of each firearm for which the firearm permit is issued.

(f) Each holder of a firearm permit shall notify the attorney general through the Kansas bureau of investigation within 72 hours of any change of or additional firearm that the permit holder intends to carry. The permit holder shall qualify with this firearm by successfully completing a course of fire as specified in K.A.R. 16-5-4(a)(5)(C) within 30 days of changing or adding a firearm. (Authorized by and implementing K.S.A. 2003 Supp. 75-7b17, as amended by L. 2004, Ch. 139, § 4, and K.S.A. 75-7b18; effective May 1, 1982; amended April 12, 1996; amended Nov. 6, 1998; amended April 7, 2000; amended Feb. 11, 2005.)

16-6-2. Demonstrates a need. To demonstrate a need to carry a firearm in order to protect the licensee's life or property or to protect the life or property of a client, an applicant for a firearm permit shall be required to submit a writ-

ten statement which describes the type of private detective business in which the applicant engages or intends to engage and the specific reasons the applicant believes carrying a firearm is necessary for that type of detective business. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17; effective Feb. 13, 1995.)

16-6-3. Firearm permit badge. A private detective who holds a firearm permit may obtain a firearm permit badge and a badge holder upon written request to the attorney general through the Kansas bureau of investigation and upon payment to the attorney general through the Kansas bureau of investigation for reimbursement of the cost of the badge and the badge holder. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17, as amended by L. 1998, ch. 183, sec. 12; effective Nov. 6, 1998.)

Article 7.—CRIME VICTIMS ASSISTANCE GRANTS

16-7-1. (Authorized by and implementing HB 2200, Sec. 29; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989; revoked Jan. 11, 2002.)

16-7-2. (Authorized by 1989 HB 2200, Sec. 29; implementing 1989 HB 2200, Sec. 29, Sec. 32; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989; revoked Jan. 11, 2002.)

16-7-3 through 16-7-4. (Authorized by 1989 HB 2200, Sec. 29; implementing 1989 HB 2200, Sec. 29, Sec. 32; effective, T-16-8-22-89, Aug. 22, 1989; effective Dec. 20, 1989; revoked Jan. 11, 2002.)

16-7-5 through 16-7-8. (Authorized by 1989 HB 2200, Sec. 29; implementing 1989 HB 2200, Sec. 29, Sec. 32; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989; revoked Jan. 11, 2002.)

16-7-9. (Authorized by and implementing 1989 HB 2200, Sec. 29; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989; revoked Jan. 11, 2002.)

Article 8.—ROOFING CONTRACTORS

16-8-1. Definitions. For the purpose of the act and this article, each of the following terms shall have the meaning specified in this regulation:

(a) “Act” means Kansas roofing registration act.

(b) “Applicant” means a person applying for an initial registration certificate or the renewal or reinstatement of a registration certificate.

(c) “Conviction” shall include the following, whether the penalty has been imposed, reduced, or suspended, unless the conviction has been legally expunged:

- (1) An unvacated adjudication of guilt;
- (2) a plea of guilty or nolo contendere accepted by the court; and
- (3) a deferred judgment, diversion, or probation agreement.

(d) “Direct supervision” means that the registered roofing contractor is overseeing the person being supervised and is physically present at the work site.

(e) “Roofing material” shall include cedar, cement, metal, and composition shingles; wood shakes; cement and clay tile; built-up roofing; single-ply roofing materials; fluid-type roofing systems; spray urethane foam; asphalt; protective or reflective materials; deck coatings; sheet metal; and tar.

(f) “Roofing services” shall include the following services on any type of roof:

- (1) Installation or repair of any roofing material;
- (2) installation or repair of roof sheathing;
- (3) installation, application, or repair of roof dampproofing or weatherproofing, roof insulation panels, or other roof insulation systems, including work incidental to the installation or application;
- (4) repair of structural damage to an existing roof-support system; and
- (5) installation or repair of skylights.

(g) “Valid registration certificate” means a roofing contractor registration certificate issued by the attorney general that has not been suspended or revoked. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,124 and 50-6,124; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-2. Initial application. Each person seeking an initial registration certificate shall submit an application that includes the following:

(a) An initial application form provided by the attorney general and fully completed by the applicant;

(b)(1) If the applicant is a natural person, a copy of a current state or federal government-issued photographic identification that demonstrates that the applicant is at least 18 years old; or

(2) if the applicant is a business entity, a copy of a current state or federal government-issued pho-

tograph identification for each designated agent who will act as a roofing contractor for the entity that demonstrates that each designated agent is at least 18 years old;

(c) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(d) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an affidavit of exemption, or a copy of a valid self-insurance permit issued by the Kansas department of labor;

(e) a current and valid tax clearance certificate from the Kansas department of revenue;

(f) if the applicant is a nonresident contractor, a current and valid appointment of the Kansas secretary of state as legal agent for service of process;

(g) payment of the initial registration certificate fee specified K.A.R. 16-8-6; and

(h) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate state agency in each such state showing whether the applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action taken against the registration, certificate, permit, or license. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 50-6,125; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-3. Renewal application. Each person seeking renewal of a registration certificate shall submit a renewal application that includes the following:

(a) A renewal form provided by the attorney general and fully completed by the applicant;

(b) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(c) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an

affidavit of exemption, or a copy of a valid self-insurance permit issued by the Kansas department of labor;

(d) a current and valid tax clearance certificate from the Kansas department of revenue;

(e) payment of the applicable fee or fees specified in K.A.R. 16-8-6; and

(f) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate state agency in each such state showing whether applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action taken against the registration, certificate, permit, or license. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-4. Suspension, revocation, and reinstatement. (a) Any registration certificate may be revoked or suspended by the attorney general upon finding that the registered roofing contractor has violated any provision of the act or this article.

(b) Each roofing contractor seeking to reinstate a revoked registration certificate shall submit a reinstatement application that includes the following:

(1) A reinstatement application form provided by the attorney general and fully completed by the applicant;

(2) a copy of the applicant's current and valid certificate of liability insurance in an amount of at least \$500,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas or a nonadmitted insurer eligible to write excess coverage on Kansas risks as permitted by Kansas law;

(3) a copy of the applicant's current and valid certificate of workers' compensation insurance under the Kansas workers' compensation act, an affidavit of exemption, or a copy of a current and valid self-insurance permit issued by the Kansas department of labor;

(4) a current and valid tax clearance certificate from the Kansas department of revenue;

(5) payment of the reinstatement fee specified in K.A.R. 16-8-6; and

(6) if the applicant holds or has held a registration, certificate, permit, or license as a roofing contractor issued by any other state, current and certified documentation from the appropriate

state agency in each such state showing whether applicant is in good standing, has pending disciplinary proceedings, or has had disciplinary action taken against the registration, certificate, permit, or license.

(c) A reinstatement application shall not be submitted until all terms and conditions specified in the revocation order have been fulfilled.

(d) A roofing contractor shall not be required to apply for annual renewal while that roofing contractor's registration certificate is suspended.

(1) If the suspension is lifted in the same fiscal year as that in which the suspension was ordered, the roofing contractor shall pay the renewal fee for a suspended registration certificate specified in K.A.R. 16-8-6 at the time of the next renewal.

(2) If the suspension was ordered in a previous fiscal year, the suspension shall not be lifted until the roofing contractor submits an application for renewal in accordance with K.A.R. 16-8-3, accompanied by payment of the renewal fee for a suspended registration certificate specified in K.A.R. 16-8-6, and the attorney general approves the application. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,132 and 50-6,133; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-5. Incomplete applications. (a) If an incomplete application for an initial registration certificate or for renewal or reinstatement of a registration certificate is submitted to the attorney general, the applicant may be notified by the attorney general that the application will be held in abeyance for 30 days. If the applicant fails to provide all missing information, documents, and fees within 30 days of this notification, the application shall be deemed abandoned, and all fees accompanying the application shall be retained by the attorney general and shall not be refunded to the applicant.

(b) The timeline specified in the act for issuance of a registration certificate shall not begin until the date on which a complete application is received in the office of the attorney general. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,125, 50-6,130, and 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-6. Fees. (a) Each applicant shall pay the following fee or fees, as applicable:

- (1) Initial registration certificate \$250

- (2) Renewal of a registration certificate..... \$250
- (3) Renewal of a suspended registration certificate \$500
- (4) Reinstatement of a revoked registration certificate \$750
- (5) Late renewal fee..... \$250
- (6) Change of name or address \$25

(b) The renewal fee for a suspended registration certificate shall be paid at the time specified in K.A.R. 16-8-4.

(c) If a person submits a complete application for an initial registration certificate to the attorney general on or after January 1 and the attorney general issues the registration certificate on or before April 30 of that year, the applicant shall pay a prorated initial registration certificate fee of \$125 instead of the initial registration certificate fee specified in subsection (a). (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,128, 50-6,130, 50-6,131, and 50-6,132; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

16-8-7. Status of registration. (a) If a registered roofing contractor ceases to be active as a roofing contractor, the roofing contractor shall notify the office of the attorney general within 10 days, and the roofing contractor's registration certificate shall be suspended by the attorney general pursuant to K.S.A. 2013 Supp. 50-6,131, and amendments thereto. This suspension shall not constitute a suspension for cause requiring payment of additional renewal fees. The suspended registration certificate shall be classified as "inactive." The roofing contractor shall not engage in business as a roofing contractor while that person's registration certificate is inactive. Any registration certificate may be returned to active status as follows:

(1) In the same fiscal year as that in which the registration certificate was initially classified as inactive, if the roofing contractor notifies the office of the attorney general at least 10 days before resuming business as a roofing contractor; or

(2) in a subsequent fiscal year, if the roofing contractor submits a complete renewal application to the office of the attorney general as specified in K.A.R. 16-8-3. However, the certificate shall not be deemed active until the renewal application is approved by the attorney general.

(b) If a roofing contractor's registration certificate is lost or stolen, the roofing contractor shall notify the office of the attorney general within 10 days after discovery of the fact.

(c) Each change in ownership of at least 50 percent of a business entity shall constitute a change in the legal status of the business requiring a new registration certificate pursuant to the act.

(d) If a registration certificate has been issued to a business entity for use by a group of designated roofing contractors and any designated roofing contractor in that group ceases to be an agent or employee of the entity, the entity shall notify the office of the attorney general within 10 days.

(e) Any business entity may designate new employees to act as roofing contractors under the entity's existing registration certificate by submitting an addendum to the entity's application, on a form provided by the attorney general, to the attorney general. (Authorized by K.S.A. 2013 Supp. 50-6,124; implementing K.S.A. 2013 Supp. 50-6,127 and 50-6,131; effective, T-16-6-28-13, July 1, 2013; effective Oct. 25, 2013.)

Article 9.—COLLECTION OF DEBTS OWED TO DISTRICT COURTS AND RESTITUTION

16-9-1. (Authorized by and implementing K.S.A. 1996 Supp. 75-719; effective July 11, 1997; revoked Dec. 16, 2016.)

Article 10.—CHILD RAPE PROTECTION

16-10-1. Definitions. As used in this article, the following terms shall have the meanings specified in this regulation:

(a) "Abortion" has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(b) "K.B.I." means the Kansas bureau of investigation.

(c) "Fetal tissue" means any tissue, organs, or body parts obtained from a dead human embryo or fetus after an abortion.

(d) "Medical care facility" has the meaning specified in K.S.A. 65-425, and amendments thereto. (Authorized by and implementing L. 2005, Ch. 149, § 3; effective, T-16-7-11-05, July 11, 2005; effective Nov. 18, 2005.)

16-10-2. Preservation and submission of fetal tissue. (a) Each physician who performs an abortion on a minor who is younger than 14 years of age shall perform, or shall ensure that the physician's staff performs, the following steps:

(1) Keep at least one fetal tissue collection kit provided by the K.B.I. on hand at all times and obtain replacement kits from the K.B.I. as needed; and

(2) collect, preserve, and ship fetal tissue using one of these fetal tissue collection kits.

(b) The document titled "Kansas bureau of investigation fetal tissue collection kit instructions," dated October 26, 2005, is hereby adopted by reference. In accordance with the kit instructions and within two hours after completing the abortion, each physician shall perform, or shall ensure that the physician's staff performs, the following:

(1) Complete the evidence custody receipt form provided by the K.B.I. and contained in the kit;

(2) collect the amount and type of tissue prescribed by the kit instructions;

(3) preserve, secure, and label the tissue specimen as instructed;

(4) ship the tissue specimen and the original of the evidence custody receipt form to the K.B.I. within the time limit and in the manner specified by the kit instructions; and

(5) mail a copy of the evidence custody receipt form by first-class mail to the appropriate law enforcement department as follows:

(A) The city police department, if the abortion is performed within the city limits; or

(B) the county sheriff's department, if the abortion is performed outside the city limits.

(c) The evidence custody receipt form shall contain the following information in plain, legible printing or typeface:

(1) The name, address, and telephone number of the medical care facility or other location where the abortion is performed;

(2) the name, address, and telephone number of the physician performing the abortion;

(3) the name, date of birth, residential address, and telephone number of the minor upon whom the abortion is performed;

(4) the name, residential address, and telephone number of the parent or legal guardian of the minor upon whom the abortion is performed;

(5) the date and time when the tissue specimen is collected;

(6) the date on which the tissue specimen is shipped;

(7) the signature of the person collecting the tissue specimen; and

(8) the signature of the person shipping the tissue specimen. (Authorized by and implementing L. 2005, Ch. 149, § 3; effective, T-16-7-11-05, July 11, 2005; effective Nov. 18, 2005.)

16-10-3. Disposal of fetal tissue. When fetal tissue collected pursuant to K.A.R. 16-10-2 is no

longer needed for evidentiary purposes, the fetal tissue shall be shipped by the K.B.I. to the medical care facility or other location at which the abortion was performed. The physician who performed the abortion shall ensure that all returned fetal tissue is properly handled and disposed of in accordance with K.A.R. 28-29-27. (Authorized by and implementing L. 2005, Ch. 149, § 3; effective, T-16-7-11-05, July 11, 2005; effective Nov. 18, 2005.)

Article 11.—PERSONAL AND FAMILY PROTECTION ACT

16-11-1. Definitions. As used in this article and in the act, the following terms shall have the meanings specified in this regulation:

(a) “Act” means the personal and family protection act, K.S.A. 75-7c01 et seq. and amendments thereto.

(b) “Completed application” means a current application for a license to carry a concealed handgun, as required by the act, that meets the following requirements:

(1) Contains the following:

(A) All necessary signatures; and

(B) a legible and fully responsive reply to every question and request for information; and

(2) is accompanied by all required attachments.

(c) “Full frontal-view photograph” means a passport photograph or other color photograph that is equivalent to a passport photograph in the following respects:

(1) Fairly represents the physical appearance of the applicant’s head and shoulders;

(2) is taken with the applicant directly facing the camera; and

(3) shows the applicant’s head and shoulders in an area of the picture that is at least two inches square.

(d) “Intimate partner” means any of the following:

(1) The spouse of a licensee;

(2) a former spouse of a licensee;

(3) an individual who is a parent of a licensee’s child; or

(4) an individual who cohabitates or has cohabitated with a licensee.

(e) “Place of worship” means any building owned or leased by a religious organization and used primarily as a place for religious worship and other activities ordinarily conducted by a religious organization, whether that building is called a church, temple, mosque, synagogue, or chapel, or a similar name.

(f) “State office” means the interior of any of the following buildings:

(1) Those buildings named in K.S.A. 21-4218 and amendments thereto;

(2) the following buildings located in Topeka, Kansas:

(A) The memorial building, 120 SW 10th;

(B) the Forbes office building #740;

(C) the division of printing plant, 201 NW MacVicar;

(D) the state office building located at 3440 SE 10th Street;

(E) the Dillon house, 404 SW 9th Street;

(F) the Curtis state office building, 1000 SW Jackson; and

(G) the state office building located at 700 SW Harrison; and

(3) all other state-owned or state-leased buildings in which firearm possession is prohibited by posting as provided in K.A.R. 1-49-11. (Authorized by K.S.A. 2009 Supp. 75-7c16; implementing K.S.A. 2009 Supp. 75-7c05, as amended by L. 2010, Ch. 140, §5, 75-7c07, as amended by L. 2010, Ch. 140, §7, 75-7c10, as amended by L. 2010, Ch. 140, §9, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

16-11-2. Instructor certification standards. (a) Each applicant for certification by the attorney general as an instructor of handgun safety and training courses shall apply on a form prescribed by the attorney general.

(b) Except as provided in subsection (e), each applicant shall meet all of the following requirements:

(1) Meet all of the concealed carry license requirements of K.S.A. 75-7c04(a) and amendments thereto, except for those requirements in paragraph (a)(1);

(2) except for individuals certified before the effective date of this regulation, complete an attorney general instructor orientation course within six months of certification; and

(3) agree to teach at least one class during each 12-month period commencing on the date of certification.

(c) In addition to meeting the requirements of subsection (b) and except as provided in subsection (h), each applicant shall meet one of the following certification requirements:

(1) Be currently certified as a firearms trainer or firearms instructor by any of the following organizations:

(A) The attorney general, pursuant to K.S.A. 75-7b21 and amendments thereto;

(B) any city, county, state, or federal law enforcement agency;

(C) the United States armed services;

(D) the Kansas law enforcement training center; or

(E) any organization that certifies firearms instructors, if the organization's certification program is determined by the attorney general to be substantially equivalent to any of the instructor certification programs identified in paragraph (c) (1); or

(2) be currently certified by the national rifle association in any of the following firearms instructor certification categories:

(A) "Pistol instructor";

(B) "personal protection instructor";

(C) "police firearms instructor";

(D) "law enforcement security firearms instructor";

(E) "law enforcement tactical handgun instructor"; or

(F) "law enforcement handgun/shotgun instructor."

Each applicant shall submit a copy of one of the certification documents identified in this subsection with the completed application form. Each certification document shall contain a certification expiration date.

(d) Each applicant shall pay a certification application fee in the amount of \$100.

(e) Each applicant who holds a license issued by the attorney general to carry a concealed handgun pursuant to the act shall be certified by the attorney general to instruct handgun safety and training courses if the applicant has satisfied the requirements of subsections (b) through (d).

(f) Any applicant who is currently certified as an instructor by the national rifle association to teach a handgun safety and training course described in K.S.A. 75-7c04(b)(1)(D)(ii), and amendments thereto, may be approved by the attorney general to instruct that course if a determination is made by the attorney general that the requirements for instructor certification established by the national rifle association meet or exceed the requirements of paragraph (b)(1) and subsection (c). Approval granted pursuant to this provision shall be conditioned upon the instructor's compliance with the requirements of K.A.R. 16-11-3.

(g) Subject to notice and an opportunity for a hearing, certification or approval may be with-

drawn by the attorney general for either of the following reasons:

(1) Failure to comply with the eligibility requirements specified in subsection (b) or (c); or

(2) failure to remain in compliance with K.A.R. 16-11-3.

(h) Each law enforcement officer certified by the commission on peace officers' standards and training who was certified by the attorney general as an instructor of handgun safety and training on or before the effective date of this regulation shall be exempt from compliance with the certification requirement in subsection (c). (Authorized by and implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

16-11-3. Handgun safety and training course; instructors. (a) Each instructor certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f), to instruct handgun safety and training courses shall comply with the following standards:

(1) Use only the handgun safety and training courses approved by the attorney general as provided in K.A.R. 16-11-4;

(2) use only examinations approved by the attorney general; and

(3) require trainees to display firing proficiency by successfully completing the shooting requirement established in K.A.R. 16-11-4.

(b) Upon the conclusion of each handgun safety and training course, the instructor of that course shall provide each trainee who successfully completes the course with one of the following documents:

(1) An affidavit signed by the instructor that attests to the successful completion of the course by the applicant; or

(2) a certificate of completion on a form approved by the attorney general.

(c) Each instructor shall forward a list of each trainee who successfully completed a training course taught by that instructor to the office of the attorney general within 10 days of the date on which the training course concludes. Each list shall meet all of the following requirements:

(1) Identify the instructor by name and driver's license number;

(2) contain the date of the training course; and

(3) identify each trainee by name and by any state-issued identification card number specified in K.S.A. 75-7c03, and amendments thereto.

(d) For each course an instructor teaches, the instructor shall retain the following records for at least five years from the date on which the course concludes:

(1) A record of the date, the time, and the location of the course;

(2) a record of the name of each trainee enrolled in the course and of each trainee's state-issued identification card number, as specified in K.S.A. 75-7c03 and amendments thereto;

(3) for each trainee, documentation showing whether the trainee completed the training course specified in K.A.R. 16-11-4; and

(4) a record of the examination results for each trainee, including the results of the firing proficiency test.

(e) Each instructor shall notify the attorney general, in writing, within 10 days of any of the following occurrences:

(1) Changes in the instructor's mailing address;

(2) the expiration, suspension, or revocation of the certification used to meet the certification standard in K.A.R. 16-11-2(c); and

(3) any other circumstance that would make the instructor ineligible for certification pursuant to the standards required in K.A.R. 16-11-2.

(f) If an instructor certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f), fails to comply with the requirements of this regulation, the instructor's certification or approval may be withdrawn by the attorney general upon notice and an opportunity for a hearing. (Authorized and implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

16-11-4. Handgun safety and training course. (a) Except as provided in K.S.A. 75-7c03(d) and amendments thereto and subsection (d) of this regulation, each applicant for a license to carry a concealed handgun shall successfully complete either of the following handgun safety and training courses that have been approved by the attorney general when taught by one or more instructors certified by the attorney general, or approved by the attorney general pursuant to K.A.R. 16-11-2(f):

(1) The attorney general's "concealed carry handgun license program lesson plan," dated July 1, 2006 and amended on October 19, 2006, which is hereby adopted by reference; or

(2) any handgun course described in K.S.A. 75-7c04(b)(1)(D)(ii), and amendments thereto, that is determined by the attorney general to be substantially equivalent to the course identified in paragraph (a)(1). Internet, online, correspondence, and self-study courses shall not be approved.

(b) To "successfully complete" means to obtain a passing score of 100% on an examination approved by the attorney general and to display proficiency with a handgun by shooting at least 18 hits out of 25 rounds on a designated portion of a target approved by either the Kansas commission on peace officers' standards and training or an equivalent body as determined by the attorney general.

(c) Each applicant shall provide to the sheriff of the county in which the applicant resides the documentation of completion of the handgun safety and training course provided to the applicant by the certified instructor as required by K.A.R. 16-11-3(b).

(d) A retired law enforcement officer as defined in K.S.A. 21-3110, and amendments thereto, shall not be subject to this regulation if the retired law enforcement officer was certified by the Kansas commission on peace officers' standards and training or similar body from another jurisdiction not more than eight years before the retired officer submits the application for licensure. (Authorized by K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, and 75-7c16; implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, 75-7c05, as amended by L. 2010, Ch. 140, §5, and 75-7c16; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

16-11-5. Application procedure. (a) Each applicant for a license to carry a concealed handgun pursuant to the act shall submit to the sheriff of the county in which the applicant resides a completed application in accordance with K.S.A. 75-7c05, and amendments thereto, and these regulations.

(b) Except for military applicants and their dependents, an applicant shall be considered to be a resident of the state only if the applicant possesses either a valid Kansas driver's license or a valid Kansas nondriver's identification card.

(c) Within seven days of receiving an application, each sheriff shall submit the following to the attorney general:

(1) A copy of the applicant's completed application for licensure; and

(2) the application fee established by K.S.A. 75-7c05, and amendments thereto.

(d)(1) Within seven days of receiving an application, each sheriff shall submit one full set of the fingerprints of the applicant as follows:

(A) To the Kansas bureau of investigation (KBI), electronically; or

(B) to the attorney general on an applicant card provided by the federal bureau of investigation (FBI).

(2) Each fingerprint submission, whether submitted electronically or using the applicant card, shall contain the originating agency identifier (ORI) assigned to the office of attorney general by the FBI and shall indicate that the fingerprinting is for concealed carry licensing pursuant to the act.

(e) A state and national criminal history records check shall be promptly completed by the KBI.

(f) The 90-day timeline specified in K.S.A. 75-7c05, and amendments thereto, for issuance or denial of a license shall begin on the date when all of the following items are received by the attorney general:

(1) A completed application;

(2) the cashier's check, personal check, or money order submitted in accordance with K.S.A. 75-7c05(b), and amendments thereto;

(3) a photocopy of the appropriate documentation described in K.S.A. 75-7c05(b), and amendments thereto; and

(4) a full frontal-view photograph of the applicant as described in K.S.A. 75-7c05(b), and amendments thereto.

(g) The document titled "concealed handgun license sheriff's or chief's voluntary report pursuant to personal and family protection act," dated July 1, 2006, is hereby adopted by reference. In accordance with the voluntary report, within 45 days of the date on which a sheriff receives any application from a resident of that county, the sheriff or the chief law enforcement officer of any other law enforcement agency in that county may provide information that, when corroborated through public records and combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. (Authorized by K.S.A. 2009 Supp. 75-7c16; implementing K.S.A. 2009 Supp. 75-7c04, as amended by L. 2010, Ch. 140, §4, 75-7c05, as amended by L. 2010, Ch. 140, §5, and 75-7c16;

effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; amended Jan. 14, 2011.)

16-11-6. (Authorized by L. 2006, Ch. 32, §4, as amended by L. 2006, Ch. 210, §2, and L. 2006, Ch. 32, §16; implementing L. 2006, Ch. 32, §4, as amended by L. 2006, Ch. 210, §2; effective, T-16-7-5-06, July 5, 2006; effective Nov. 27, 2006; revoked Jan. 14, 2011.)

16-11-7. Concealed carry signs. (a) For the purposes of this regulation, the terms "state or municipal building," "state," and "municipal" shall have the meaning specified in K.S.A. 2013 Supp. 75-7c20, and amendments thereto.

(b) No license issued pursuant to or recognized under the personal and family protection act shall authorize the licensee to carry a concealed handgun into any building other than a state or municipal building if the building is conspicuously posted with one of the following:

(1) Signs that include the graphic in the document titled "buildings other than state and municipal buildings: signage adopted by the Kansas attorney general," dated June 20, 2013, which is hereby adopted by reference; or

(2) signs posted in accordance with K.A.R. 16-13-1(d).

(c) No license issued pursuant to or recognized under the personal and family protection act shall authorize the licensee to carry a concealed handgun into any state or municipal building if the governing body or, if no governing body exists, the chief administrative officer for that state or municipal building has performed the following:

(1) Either installed adequate security measures or temporarily exempted the state or municipal building from K.S.A. 2013 Supp. 75-7c20, and amendments thereto; and

(2) either posted signs in accordance with K.A.R. 16-13-1(d) or conspicuously posted signs that include the graphic and text in any of the following documents, which are hereby adopted by reference:

(A) "State and municipal buildings: signage adopted by the Kansas attorney general," dated June 20, 2013;

(B) "state and municipal buildings: signage adopted by the Kansas attorney general," dated July 10, 2013; or

(C) "state and municipal buildings: signage adopted by the Kansas attorney general," dated September 26, 2013.

The top of the text shall be at least one inch but no more than two inches below the graphic. The text shall be in black letters and shall be no smaller than the text below the graphic in any of the documents adopted in this subsection. The text “State or Municipal Building, 2013 HB 2052 EXEMPT” or “State or Municipal Building, EXEMPT” shall be printed in boldface.

(d) “Conspicuously posted,” when used to describe any sign adopted in this regulation, shall mean that the sign meets the following requirements:

- (1) Has a white background;
 - (2) includes the graphic design that is contained in the documents adopted in this regulation and that meets the following requirements:
 - (A) Depicts the handgun in black ink;
 - (B) depicts the circle with a diagonal slash across the handgun in red ink; and
 - (C) is at least six inches in diameter;
 - (3) contains no text or other markings within the one-inch area surrounding the graphic design;
 - (4) contains no text other than the text specified in the documents adopted in paragraph (c)(2) or in K.A.R. 16-13-1(d);
 - (5) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;
 - (6) is posted at the eye level of an adult, which shall mean that the entire sign is between four feet and six feet from the ground;
 - (7) is posted not more than 12 inches to the right or left of each exterior public and nonpublic entrance to the building; and
 - (8) is legible. Each sign that becomes illegible shall be replaced immediately.
- (e) Except as provided in K.A.R. 16-13-1, signs posted in accordance with subsections (b) through (d) of this regulation shall also prohibit the unconcealed carry of firearms within a building to the extent allowed by law.

(f) Signs that meet the requirements of this regulation may be obtained by contacting the office of the attorney general or may be reproduced from the web site of the office of the attorney general. (Authorized by K.S.A. 2013 Supp. 75-7c10 and 2014 HB 2578, § 5; implementing 2014 HB 2578, § 5, K.S.A. 2013 Supp. 75-7c10, and K.S.A. 2013 Supp. 75-7c20, as amended by 2014 Sen. Sub. for HB 2140, § 5; effective Nov. 27, 2006; amended Jan. 14, 2011; amended, T-16-6-28-13, July 1, 2013; amended, T-16-7-16-13, July 16, 2013; amended Nov. 8, 2013; amended, T-16-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

16-11-8. Restraining order; effect of; procedure. (a) For purposes of this regulation, the terms in this subsection shall be defined as follows:

(1) “Director” means the director of the concealed carry unit of the attorney general’s office.

(2) “Restraining order” means a court order that meets all of the following requirements:

(A) Is issued by a Kansas district court or a court in another state or jurisdiction that is entitled to full faith and credit in this state;

(B) is issued after a hearing at which the licensee received actual notice and had an opportunity to participate;

(C) restrains the licensee from harassing, stalking, or threatening an intimate partner or the child of the licensee or intimate partner or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(D)(i) Includes a finding that the licensee represents a credible threat to the physical safety of the intimate partner or child; or

(ii) explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

(b) Within 24 hours of a sheriff’s receipt of any restraining order, the sheriff shall determine whether the restraining order has been issued against a person who holds a concealed carry license.

(c) Whenever a sheriff determines that a restraining order has been issued against a person who holds a concealed carry license, the sheriff shall immediately notify the director by faxing or e-mailing the restraining order to the director.

(d) Within eight working hours of the director’s receipt of the restraining order from a sheriff, the following actions shall be taken by the director:

(1) Verification of whether the restraining order meets the requirements of paragraph(a)(2); and

(2) if the director verifies that the restraining order has been issued against a person who holds a concealed carry license, issuance of a written order suspending the concealed carry license of the person named as the subject of the restraining order. The order shall be effective immediately upon issuance.

(e) The order of suspension shall be served by the director on the concealed carry license holder by United States mail at the address on record at the concealed carry unit. In addition, the subject of

the restraining order may be notified by telephone or e-mail, or both, by the director that the individual's concealed carry license has been suspended.

(f) The order of suspension shall include a notice that the concealed carry license holder may, within 10 calendar days of receipt of the written order of suspension, submit a written request for a hearing to the director.

(g) Upon the director's receipt of a written request for a hearing, a hearing shall be arranged by the director to occur within 30 calendar days. However, for good cause shown, the hearing may be continued to a later date.

(h) The presiding officer at the hearing shall be the attorney general or a designee of the attorney general.

(i) The licensee shall have the burden of proving that the licensee is not the subject of the restraining order or that the order does not meet the requirements of paragraph (a)(2).

(j) Notification of each license suspension shall be provided electronically to the Kansas department of revenue.

(k) Each concealed carry license that was suspended pursuant to this regulation shall be reinstated by the director upon the director's receipt of a certified copy of a court order that dissolves the restraining order, if the person remains otherwise eligible for the concealed carry license. (Authorized by and implementing K.S.A. 2009 Supp. 75-7c07, as amended by L. 2010, Ch. 140, §7; effective Dec. 29, 2006; amended Jan. 14, 2011.)

Article 12.—BATTERER INTERVENTION PROGRAM REQUIREMENTS AND CERTIFICATION

16-12-1. Scope. The regulations in this article shall provide for the certification of, and shall set the standards for the services and programs required of, certified batterer intervention programs, including the following: (a) Any certified batterer intervention program providing the domestic violence offender assessment pursuant to K.S.A. 12-4509, K.S.A. 21-5414, K.S.A. 21-6604, or K.S.A. 22-2909, and amendments thereto; and

(b) any program operating or providing services as a batterer intervention program, domestic violence or abuse intervention program, or domestic violence educational program for those convicted of a domestic violence-designated offense or as part of a diversion agreement in a complaint alleging a domestic violence offense, as defined in

K.S.A. 21-5111 and amendments thereto. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 1 and 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-2. Definitions. Words or phrases used in this article or in the batterer intervention program certification act but not defined in this regulation shall have the same definition as specified in the batterer intervention program certification act or in K.S.A. 21-5111, and amendments thereto. Each of the following terms, as used in this article, shall have the meaning specified in this regulation: (a) "Batterer" means any person who uses a pattern of abusive and coercive behavior to dominate and control an intimate partner, a former intimate partner, a household member, or a family member.

(b) "Continuing education" means formally organized programs or activities that are designed for and have content intended to enhance the knowledge, skill, values, ethics, and ability to practice as an "agent or employee thereof," as defined by L. 2012, ch. 162, sec. 13 and amendments thereto.

(c) "Controlled substance" means any drug, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111, and 65-4113, and amendments thereto.

(d) "Remedial or other requirements" means either of the following:

(1) Completion of additional education or training for agents or employees to address the concerns identified by the attorney general; or

(2) changes to the structure of the program to address the concerns identified by the attorney general.

(e) "Supervisee" means an agent or employee of a certified batterer intervention program who receives instruction or direction for the purpose of development of responsibility, skill, knowledge, attitudes, and ethical standards of practice in batterer intervention services from a batterer intervention program director, program supervisor, or program coordinator.

(f) "Unprofessional conduct," for an agent or employee who is not licensed by the behavioral sciences regulatory board, means any of the following acts:

(1) Obtaining or attempting to obtain a certification or temporary permit by means of fraud,

bribery, deceit, misrepresentation, or concealment of a material fact;

(2) failing to notify the attorney general within 10 days, unless the person shows good cause, that any one of the following conditions applies to an agent or employee:

(A) Had a professional license, credential, permit, registration, or certification limited, conditioned, qualified, restricted, suspended, revoked, refused by the proper regulatory authority in Kansas or of another state, territory, or the District of Columbia. A certified copy of the action taken by the jurisdiction shall be conclusive evidence of this action;

(B) has voluntarily surrendered a professional license, credential, permit, registration, or certification while a complaint or investigation is pending by the proper regulatory authority;

(C) has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for misfeasance, malfeasance, or nonfeasance; or

(D) has been convicted of a felony;

(3) knowingly allowing another individual to use one's permit or certification unlawfully;

(4) impersonating another individual holding a permit or certification;

(5) having been convicted of a crime resulting from or relating to the provision of certified batterer intervention services;

(6) furthering the certification or permit application of another person who is known to be unqualified with respect to character, education, or other relevant eligibility requirements according to K.A.R. 16-12-4;

(7) knowingly aiding or abetting anyone who does not have certification or a permit to represent that individual as a person who does have certification or a permit;

(8) failing or refusing to cooperate in a timely manner with any request from the attorney general for a response or assistance with respect to the attorney general's investigation of any report of an alleged violation of the batterer intervention program certification act or any law filed against any agent or employee or any other applicant. It shall be prima facie evidence of failing or refusing to cooperate within this subsection if a person takes longer than 30 days to provide the requested response, information, or assistance, unless the person shows good cause;

(9) offering to perform or performing services outside the scope of one's training, education, and competency;

(10) treating any offender, victim, or supervisee in a cruel manner, including the intentional infliction of pain or suffering;

(11) discriminating against any offender, victim, or supervisee on the basis of color, race, gender, religion, national origin, age, or disability;

(12) failing to provide each offender with a description of services, consultation, reports, fees, billing, intervention regimen, or schedule, or failing to reasonably comply with these descriptions;

(13) failing to inform each offender or supervisee of any financial interests that might accrue to the provider from referral to any other service or from the use of any tests, books, or apparatus;

(14) failing to inform each offender, victim, and supervisee of the purposes for which information is obtained, the manner in which the information may be used, and the limits of confidentiality regarding the provision of batterer intervention services;

(15) revealing information, a confidence, or secret of any victim, or failing to protect the confidences, secrets, or information contained in a victim's records, except when at least one of the following conditions is met:

(A) Disclosure is required by law;

(B) disclosure is authorized by law because the confidential information shows that the person could seriously harm an individual or the public; or

(C) the provider, or the provider's employee or agent, is a party to a civil, criminal, or disciplinary investigation or action arising from the batterer intervention program practice, in which case disclosure shall be limited to that action;

(16) failing to protect the confidences of, secrets of, or information concerning other persons when providing an offender with access to that offender's records;

(17) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(18) using alcohol or illegally using any controlled substance while performing duties or services as a batterer intervention provider;

(19) making sexual advances toward, engaging in physical intimacies or sexual activities with, or exercising undue influence over any person who, within the past 24 months, has been a victim or offender receiving batterer intervention services, or a victim or offender's known family members;

(20) exercising undue influence over any victim, offender, or supervisee, including promoting sales

of services or goods, in a manner that will exploit the person or persons for the purpose of financial gain, personal gratification, or advantage of oneself or a third party;

(21) directly or indirectly offering or giving to a third party or soliciting, receiving, or agreeing to receive from a third party any fee or other consideration for the referral of the victim or offender;

(22) permitting any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant providing batterer intervention services;

(23) soliciting or assuming professional responsibility for offenders served by another batterer intervention program without informing and attempting to coordinate continuity of offender services with that program;

(24) making claims of professional superiority that one cannot substantiate;

(25) guaranteeing that satisfaction or a cure will result from the performance of professional services;

(26) claiming or using any secret or special method of intervention or techniques that one refuses to divulge to the attorney general;

(27) continuing or ordering tests, procedures, interventions, or services not warranted by the condition or best interests of the offender;

(28) failing to maintain for each offender and victim a record that conforms to the following minimal standards:

(A) Contains a unique identifying number or other method for specific identification of the offender and victim;

(B) indicates the offender's initial reason for seeking the provider's services;

(C) contains specific information concerning the offender's condition, including the Kansas attorney general domestic violence offender assessment, affidavits, police reports, and other documents related to criminal activity as allowed by law and available to the provider;

(D) summarizes the intervention, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each;

(E) documents the offender's progress during the course of intervention;

(F) contains only those terms and abbreviations that are comprehensible to similar professional practitioners;

(G) indicates the date and nature of any professional service that was provided; and

(H) describes the manner and process by which the professional relationship terminated;

(29) taking credit for work not performed personally, whether by giving inaccurate or misleading information or by failing to disclose accurate or material information;

(30) making or filing a report that one knows to be erroneous, incomplete, or misleading;

(31) failing to retain offender's records for at least two years after the date of termination of the professional relationship, unless otherwise provided by law;

(32) failing to exercise supervision over any supervisee;

(33) failing to inform an offender if services are provided or delivered under supervision or direction;

(34) engaging in, or attempting to engage in, any relationship in which the objectivity or competency of the provider may become impaired or compromised due to any of the following present, previous, or future relationships with a victim, offender, or supervisee:

(A) Familial;

(B) sexual;

(C) emotional; or

(D) financial; or

(35) using without a temporary permit or certification, or continuing to use after the expiration of a permit or certification, any title or abbreviation prescribed by the attorney general for use only by those with a current temporary permit or certification.

(g) "Unprofessional conduct," for an agent or employee who is licensed by the behavioral sciences regulatory board, means any of the following acts:

(1) Any determination by the behavioral sciences regulatory board of a violation of laws or regulations related to one's licensure. A certified copy of the action taken by the behavioral sciences regulatory board shall be sufficient evidence of this action;

(2) obtaining or attempting to obtain a certification or temporary permit by means of fraud, bribery, deceit, misrepresentation, or concealment of a material fact;

(3) failing to notify the attorney general of any complaint, investigation, or finding regarding the licensee within 10 days, unless the person shows good cause;

(4) failing to notify the attorney general within 10 days, unless the person shows good cause, that any one of the following conditions applies to the licensee:

(A) Has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for misfeasance, malfeasance, or nonfeasance; or

(B) has been convicted of a felony;

(5) knowingly allowing another individual to use one's temporary permit or certification unlawfully;

(6) impersonating another individual holding a temporary permit or certification;

(7) having been convicted of a crime resulting from or relating to the provision of certified batterer intervention program services;

(8) furthering the certification or permit application of another person who is known to be unqualified with respect to character, education, or other relevant eligibility requirements;

(9) knowingly aiding or abetting anyone who does not have certification or a permit to represent that individual as a person who does have certification or a permit;

(10) failing or refusing to cooperate in a timely manner with any request from the attorney general for a response or assistance with respect to the attorney general's investigation of any report of an alleged violation of the batterer intervention program certification act or any law filed against any agent or employee or any other applicant. It shall be prima facie evidence of failing or refusing to cooperate within this subsection if a person takes longer than 30 days to provide the requested response, information, or assistance, unless the person shows good cause or receives an extension by the attorney general;

(11) revealing information, a confidence, or secret of any victim, or failing to protect the confidences, secrets, or information contained in a victim's records, unless one of these conditions is met:

(A) Disclosure is required by law;

(B) disclosure is authorized by law because the confidential information shows that the person could seriously harm an individual or the public; or

(C) the provider, or the agent or employee of the provider, is a party to a civil, criminal, or disciplinary investigation or action arising from the batterer intervention program practice, in which case disclosure shall be limited to that action;

(12) claiming or using any secret or special method of intervention or techniques that one refuses to divulge to the attorney general;

(13) failing to maintain for each offender and victim a record that conforms to the following minimal standards:

(A) Contains a unique identifying number or other method for specific identification of the offender and victim;

(B) indicates the offender's initial reason for seeking the provider's services;

(C) contains specific information concerning the offender's condition, including the "Kansas attorney general domestic violence offender assessment form," affidavits, police reports, and other documents related to criminal activity as allowed by law and available to the provider;

(D) summarizes the intervention, tests, procedures, and services that were obtained, performed, ordered, or recommended and the findings and results of each;

(E) documents the offender's progress during the course of intervention;

(F) contains only those terms and abbreviations that are comprehensible to similar professional practitioners;

(G) indicates the date and nature of any professional service that was provided; and

(H) describes the manner and process by which the professional relationship terminated; or

(14) using without a temporary permit or certification, or continuing to use after the expiration of a permit or certification, any title or abbreviation prescribed by the attorney general for use only by those with a current permit or certification. (Authorized by L. 2012, ch. 162, secs. 5, 11; implementing L. 2012, ch. 162, secs. 5, 6, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-3. Training and continuing education. Each holder of a temporary permit or certificate shall submit proof of training and continuing education hours to the attorney general for approval. (a) Each batterer intervention program agent or employee thereof shall meet the following requirements:

(1) Complete the training as required in "the essential elements and standards of batterer intervention programs in Kansas," which is adopted in K.A.R. 16-12-4; and

(2) complete 12 hours of documented and approved continuing education as required in "the essential elements and standards of batterer intervention programs in Kansas," during each two-year certification period. Continuing education hours accumulated in excess of the requirement shall not be carried over to the next renewal period.

(b) One hour of training or continuing education credit shall consist of at least 50 minutes of classroom instruction or at least one clock-hour of other types of acceptable training or continuing education experiences listed in subsection (c). One-half hour of training or continuing education credit may be granted for each 30 minutes of acceptable training or continuing education. Credit shall not be granted for less than 30 minutes.

(c) Acceptable training and continuing education, subject to approval, whether taken within the state or outside the state, shall include the following:

(1) An academic course at an institution that is nationally or regionally accredited for education or training, if the content is clearly related to the enhancement of a batterer intervention program agent's or employee's practice, values, ethics, skills, or knowledge and the course is taken for academic credit. Each agent or employee shall be granted 15 training or continuing education hours for each academic credit hour that is successfully completed. The maximum number of allowable training or continuing education hours shall be 15;

(2) an academic course at an institution that is nationally or regionally accredited for education or training, if the content is clearly related to the enhancement of a batterer intervention program agent's or employee's practice, values, ethics, skills, or knowledge and the course is audited. Each agent or employee shall receive training or continuing education credit on the basis of the actual contact time that the agent or employee spends attending the course, up to a maximum of 15 hours per academic credit hour. The maximum number of allowable training or continuing education hours shall be 15;

(3) a seminar, institute, conference, workshop, or nonacademic course oriented to the enhancement of a batterer intervention program agent's or employee's practice, values, ethics, skills, or knowledge; and

(4) an activity oriented to the enhancement of a batterer intervention program agent's or employee's practice, values, ethics, skills, or knowledge, consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading, if a posttest is successfully completed. The maximum number of allowable training or continuing education hours shall be 15.

(d) Approval of training or continuing education credit shall not be granted for the second or any

subsequent identical program if the programs are completed within the same renewal period.

(e) Training or continuing education credit shall not be granted for the following:

(1) In-service training, if the training is for job orientation or job training or is specific to the employing agency; and

(2) any activity for which the agent or employee cannot demonstrate that the program's goals and objectives are to enhance the practice, values, ethics, skills, or knowledge in batterer intervention.

(f) Each agent or employee shall maintain individual, original training or continuing education records for at least two years. These records shall document the agent's or employee's attendance at, participation in, or completion of each training or continuing education activity.

(g) Each of the following forms of documentation may be submitted as proof that an agent or employee has completed that training or continuing education activity:

(1) An official transcript or other document indicating the agent's or employee's passing grade for an academic course taken at an institution that is nationally or regionally accredited;

(2) a statement signed by the instructor of an academic course indicating the number of actual contact hours that the agent or employee attended for an audited academic course from an institution that is nationally or regionally accredited;

(3) a signed statement from the provider of a seminar, institute, conference, workshop, or course indicating that the agent or employee attended the training or continuing education program; and

(4) for each videotape, audiotape, computerized interactive learning module, or telecast that the agent or employee utilized for training or continuing education purposes, a written statement from the agent or employee specifying the media format, content title, presenter or sponsor, content description, length, activity date, and copy of the agent's or employee's completed posttest or score. (Authorized by and implementing L. 2012, ch. 162, secs. 5, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-4. Program requirements. Each holder of a temporary permit, initial certification, renewal certification, or certification reinstatement shall perform the following: (a) Adopt and follow the standards, elements, and other pro-

gram requirements described in the document titled “the essential elements and standards of batterer intervention programs in Kansas,” dated December 17, 2012, by the Kansas attorney general’s office, which is hereby adopted by reference except for the acknowledgements, table of contents, philosophy and purpose, and theoretical overview of batterer intervention programs; and

(b) submit the attorney general’s document titled “certified batterer intervention program statistical report” with the required information. This document, dated June 13, 2012, is hereby adopted by reference. The “certified batterer intervention program statistical report” shall be completed and submitted to the attorney general on or before January 5 and July 5 in each year of certification or the first business day following these deadlines if the deadlines fall on a weekend or state or federal holiday. (Authorized by and implementing L. 2012, ch. 162, secs. 5, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-5. Domestic violence offender assessment. (a) The document titled “Kansas attorney general domestic violence offender assessment form,” dated March 3, 2011, by the Kansas attorney general is hereby adopted by reference. This document is also known as “KDVOA.”

(b) Except as specified in subsection (c), the KDVOA shall be completed by one of the following: an individual who is licensed to practice in Kansas as a psychologist, baccalaureate social worker, master social worker, specialist clinical social worker, marriage and family therapist, addiction counselor, clinical addiction counselor, clinical marriage and family therapist, professional counselor, clinical professional counselor, master’s level psychologist, or clinical psychotherapist.

(c) Any person who is not licensed as provided in subsection (b) and who is completing the KDVOA as an employee of or volunteer for a batterer intervention program before January 1, 2013 may continue to complete these assessments on and after January 1, 2013 if the person remains an employee of or volunteer for the same program and the program remains a certified batterer intervention program. Whenever the person is no longer an employee of or volunteer for the program in which the person was employed or volunteering before January 1, 2013, the person shall not be allowed to complete the KDVOA for any

certified batterer intervention program without meeting the license requirements in subsection (b). (Authorized by K.S.A. 2011 Supp. 75-755 and L. 2012, ch. 162, sec. 11; implementing K.S.A. 2011 Supp. 21-6604, as amended by L. 2012, ch. 162, sec. 16, and L. 2012, ch. 162, secs. 1, 5; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-6. Temporary permit; application.

Each applicant seeking a temporary permit shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for a temporary permit shall include the following: (a) The applicant’s full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications specified in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4;

(f) payment of the temporary permit application fee of \$50.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for temporary permit, including the following:

(1) A copy of completed certificates documenting domestic violence-specific training hours for each agent or employee thereof;

(2) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(3) a copy of the core curriculum to be used in batterer intervention services. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-7. Initial certification; application.

Each applicant seeking initial certification shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for initial certification shall include the following: (a) The applicant’s full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications specified in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4;

(f) payment of the initial application fee of \$100.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for initial certification, including the following:

(1) A copy of completed certificates documenting training hours as required by “the essential elements and standards of batterer intervention programs in Kansas” for each agent or employee thereof;

(2) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board;

(3) a copy of the core curriculum to be used in batterer intervention services;

(4) demonstration by the applicant of attempts to establish a cooperative relationship with key agencies, as described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4; and

(5) a copy of release of information and offender agreement forms. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-8. Renewal certification; application. Each applicant seeking renewal certification shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for renewal certification shall include the following: (a) The applicant’s full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the educational and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4;

(f) payment of the renewal application fee of \$100.00; and

(g) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for renewal certification that are required by the attorney general, including the following:

(1) A copy of completed certificates documenting continuing education hours as required by “the essential elements and standards of batterer intervention programs in Kansas” for each agent or employee thereof;

(2) a copy of completed certificates documenting training hours as required in “the essential elements and standards of batterer intervention programs in Kansas” for any new agent or employee not included in a previous application for certification;

(3) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(4) demonstration by the applicant of attempts to establish a cooperative relationship with key agencies, as described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-9. Certification reinstatement; application. Each applicant seeking certification reinstatement shall submit an application, on a form provided by the attorney general, to the attorney general. The completed application for certification reinstatement shall include the following: (a) The applicant’s full name and residential address;

(b) the name under which the applicant intends to do business and the business address;

(c) a statement of the general nature of the business in which the applicant intends to engage;

(d) a statement of the education and work experience of the applicant and any agent or employee thereof;

(e) a statement that the applicant has met any other qualifications described in “the essential elements and standards of batterer intervention

programs in Kansas,” which is adopted in K.A.R. 16-12-4;

(f) payment of the reinstatement application fee of \$100.00;

(g) a statement regarding the reason requiring reinstatement of certification; and

(h) any other information, evidence, statements, or documents necessary to determine the qualifications of an applicant for reinstatement, including the following:

(1) A copy of completed certificates documenting continuing education hours as required by “the essential elements and standards of batterer intervention programs in Kansas” for each agent or employee thereof;

(2) a copy of completed certificates documenting training hours as required in “the essential elements and standards of batterer intervention programs in Kansas” for any new agent or employee not included in a previous application for certification;

(3) proof of current licensure for each agent or employee required to be licensed by the behavioral sciences regulatory board; and

(4) demonstration by the applicant of attempts to establish a cooperative relationship with key agencies, as described in “the essential elements and standards of batterer intervention programs in Kansas,” which is adopted in K.A.R. 16-12-4. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 2, 4; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

16-12-10. Evaluating and monitoring certified batterer intervention programs. For the purposes of evaluating and monitoring certified batterer intervention programs, the applicant, holder of a temporary permit, or holder of a certificate shall give the attorney general access to the following:

(a) The applicant’s or holder’s program;

(b) observation of groups or assessment services;

(c) offender and victim files, records, or documents related to the provision of batterer intervention services;

(d) contact information of community members or third parties who could provide information related to services provided in the capacity of a batterer intervention program;

(e) offenders who are receiving or have received services from the program;

(f) contact information for victims or family members, with their written permission, associated with the offenders who are receiving or have received services from the batterer intervention program; and

(g) any other information identified as necessary in evaluating and monitoring the program. (Authorized by L. 2012, ch. 162, sec. 11; implementing L. 2012, ch. 162, secs. 8, 11; effective, T-16-6-28-12, June 28, 2012; effective, T-16-10-25-12, Oct. 26, 2012; effective Jan. 25, 2013.)

Article 13.—OPEN CARRY SIGNS

16-13-1. Open carry signs. (a) For the purposes of this regulation, the terms “state or municipal building,” “state,” and “municipal” shall have the meaning specified in K.S.A. 2013 Supp. 75-7c20, and amendments thereto.

(b) Signs posted in accordance with K.A.R. 16-11-7 shall also prohibit the unconcealed carry of firearms within a building to the extent allowed by law.

(c) Except as otherwise provided by law, it shall be unlawful to carry an unconcealed firearm into a building that is posted at each exterior entrance with a sign that meets the following requirements:

(1) Contains the sentence “The open carrying of firearms in this building is prohibited” with the word “prohibited” printed in underlined boldface. The text shall be in black ink and no smaller than the text in the document titled “open carry prohibited: signage adopted by the Kansas attorney general,” dated June 16, 2014, which is hereby adopted by reference;

(2) has a white background;

(3) has a red border in the shape of an octagon that encloses the text specified in paragraph (c)(1) and is no smaller than the border in the document titled “open carry prohibited: signage adopted by the Kansas attorney general”;

(4) contains no text or markings other than the text and markings specified in this subsection;

(5) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;

(6) is posted “at the eye level of an adult,” which shall mean that each sign is entirely between four feet and six feet from the ground;

(7) is posted not more than 12 inches to the right or left of all entrances to the building; and

(8) is legible. Each sign that becomes illegible shall be replaced immediately.

(d)(1) Except as otherwise provided by law, it shall be unlawful to carry a concealed handgun into a building that allows the unconcealed carry of firearms if the building is posted at each exterior entrance with a sign that meets the following requirements:

(A) Contains the text and graphic contained in one of the following:

(i) The document titled “buildings other than state or municipal buildings: signage to allow open carry but prohibit concealed carry,” adopted by the Kansas attorney general and dated June 16, 2014, which is hereby adopted by reference;

(ii) the document titled “K.S.A. 2013 Supp. 75-7c20-exempt state or municipal buildings: signage to allow open carry but prohibit concealed carry,” adopted by the Kansas attorney general and dated June 16, 2014, which is hereby adopted by reference; or

(iii) the document titled “all buildings: supplemental signage to allow open carry but prohibit concealed carry,” adopted by the Kansas attorney general and dated June 17, 2014, which is hereby adopted by reference and shall be posted immediately above appropriate signs posted pursuant to K.A.R. 16-11-7;

(B) has a white background;

(C) depicts the graphic in accordance with K.A.R. 16-11-7(d)(2);

(D) contains no text or markings other than the text and markings specified in this subsection;

(E) is visible from the exterior of the building and is not obstructed by doors, sliding doorways, displays, or other postings;

(F) is posted “at the eye level of an adult,” which shall mean that each sign is entirely between four feet and six feet from the ground;

(G) is posted not more than 12 inches to the right or left of all entrances to the building; and

(H) is legible. Each sign that becomes illegible shall be replaced immediately.

(2) The text of each sign shall be in black letters and shall be no smaller than the text contained in the applicable document adopted in this subsection. The text “OPEN CARRY ALLOWED, CONCEALED CARRY PROHIBITED” shall be in capital letters, and the top of the text shall be at least one inch but no more than two inches above the graphic. The word “allowed” in the phrase “open carry allowed” and the word “prohibited” in the phrase “concealed carry prohibited” shall be printed in underlined boldface. The text “State or Municipal Building,

2013 HB 2052 EXEMPT” or “State or Municipal Building, EXEMPT” shall be printed in boldface and shall be at least one inch but no more than two inches below the graphic.

(e) Signs that meet the requirements of this regulation may be obtained by contacting the office of the attorney general or may be reproduced from the web site of the office of the attorney general. (Authorized by K.S.A. 2014 Supp. 75-7c10 and 75-7c24; implementing K.S.A. 2014 Supp. 75-7c10, 75-7c20 and 75-7c24; effective, T-16-6-30-14, July 1, 2014; effective Oct. 24, 2014.)

Article 14.—SCRAP METAL DEALERS’ REGISTRATION AND HEARING PROCEDURE

16-14-1. Fees. Each applicant or registrant shall pay one of the following nonrefundable fees, as applicable, for registration of each place of business for which a registration is sought:

- (a) Scrap metal dealer’s initial registration certificate \$350
- (b) Annual renewal of a scrap metal dealer’s registration certificate \$350

(Authorized by K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2019 Supp. 50-6,112a, as amended by L. 2019, ch. 66, sec. 10; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015; amended Oct. 2, 2020.)

16-14-2. Initial application. (a) Each person seeking an initial registration certificate shall submit an application that consists of the following:

- (1) An initial application form provided by the attorney general and fully completed by the applicant;
- (2) payment of the initial registration certificate fee specified in K.A.R. 16-14-1; and
- (3) a copy of the applicant’s current state or federal government-issued photographic identification.

(b) An application for an initial registration certificate shall be deemed incomplete if the application fails to include all information required by the application form and if the applicant fails to submit the items required in paragraphs (a)(2) and (3). If the applicant fails to provide all missing information, documents, and the applicable fee within 30 days of notification by the attorney general that the application is incomplete, the application shall be deemed abandoned, and all fees

accompanying the application shall be retained by the attorney general and shall not be refunded to the applicant. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112a, as amended by L. 2015, ch. 96, sec. 15; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-3. Computation of time. (a) In computing any period of time prescribed by the scrap metal theft reduction act or this article concerning registration, the day of the action or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday, or legal holiday, in which event the period shall include the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) Unless otherwise specified in this article, each of the following terms shall have the meaning specified in this subsection:

(1) "Day" means calendar day and not business day. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(2) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(3) "Legal holiday" shall include any day designated as a holiday by any Kansas statute or regulation.

(c) If the attorney general's office is not open to the public on the last day of any time period prescribed by this article, the time period shall be extended until the next business day on which the attorney general's office is open for business. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-4. Hearings. Any applicant or registered scrap metal dealer may request a hearing on an order denying, suspending, or revoking that individual's application or registration by submitting a written request for a hearing to the attorney general's office within 15 days of the date of service of the order denying, suspending, or revoking the registration. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-5. Notice of hearing. The time and place of each hearing shall be set at least 10 days before the hearing. Notice of the hearing shall be

provided to all parties. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-6. Service of order or notice. (a) Service of an order or notice shall be made upon each party and, if any, each party's attorney of record by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice by first-class mail to the person at the person's last known address. Service shall be presumed if the attorney general, or the attorney general's designee, delivers a written certificate of service. Delivery of a copy of an order or notice to a person shall mean handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence with a responsible person who works or resides there. Service by mail shall be complete upon mailing.

(b) Whenever a party has the right or is required to perform an action within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-7. Hearing procedure. The following provisions shall apply at each hearing:

(a) The proceedings shall be conducted by the attorney general or the attorney general's designee.

(b) To the extent necessary for full disclosure of all relevant facts and issues, each party shall have the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(c) Nonparties may be given an opportunity by the attorney general or the attorney general's designee to present oral or written statements. Each party shall be given an opportunity to challenge or rebut these statements. On motion of any party, the statements shall be required by the attorney general or the attorney general's designee to be given under oath or affirmation.

(d) The hearing may occur by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(e) The hearing shall be recorded at the expense of the attorney general's office. The attorney general's office shall not be required at its own expense to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense and subject to any reasonable conditions that the attorney general's office may establish, may cause a person other than the attorney general's office to prepare a transcript from the record or cause additional recordings to be made during the hearing.

(f) Each hearing shall be open to public observation, except to the limited extent as determined by the attorney general or the attorney general's designee, that it is necessary to close parts of the hearing pursuant to any provision of law requiring confidentiality or expressly authorizing closure. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-8. Evidence. (a) At each hearing, the parties shall not be bound by technical rules of evidence, and the parties shall have reasonable opportunity to be heard and to present evidence. The attorney general or the attorney general's designee shall act reasonably and without partiality. The rules of privilege recognized by law shall be followed by the attorney general or the attorney general's designee. Evidence shall not be required to be excluded solely because the evidence is hearsay.

(b) All testimony of parties and witnesses shall be given under oath or affirmation. The power to administer an oath or affirmation for that purpose shall reside with the attorney general or the attorney general's designee.

(c) Any statements presented by nonparties in accordance with this article may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, the parties shall be given an opportunity to compare the copy with the original if the original is available.

(f) Official notice may be taken of the following:

(1) Any matter that could be judicially noticed in Kansas courts;

(2) the record of other proceedings before the attorney general or the attorney general's designee;

(3) technical or scientific matters within the specialized knowledge of the attorney general's office; and

(4) codes or standards that have been adopted by an agency of the United States, of Kansas, or of another state or by a nationally recognized organization or association.

(g) The parties shall be notified before or during the hearing, or before the issuance of any order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source thereof, including any staff memoranda and data. The parties shall be afforded an opportunity to contest and rebut the matters or material so noticed. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-9. Default. If the party requesting a hearing defaults by failing to attend or participate in a hearing or any other stage of an adjudicative proceeding, the request for a hearing shall be dismissed and the order denying, suspending, or revoking the registration shall become final. (Authorized by L. 2015, ch. 96, sec. 1; implementing K.S.A. 2014 Supp. 50-6,112c, as amended by L. 2015, ch. 96, sec. 17; effective, T-16-8-10-15, Aug. 10, 2015; effective Dec. 4, 2015.)

16-14-10. Submission of required information. (a) Each scrap metal dealer shall submit the information required by K.S.A. 2019 Supp. 50-6,110, and amendments thereto, by entering the required information into the database.

(b) Failure to timely submit the information required by K.S.A. 2019 Supp. 50-6,110 and amendments thereto, shall be grounds for suspension of the scrap metal dealer's registration pursuant to K.S.A. 2019 Supp. 50-6,112c, and amendments thereto.

(c) Any scrap metal dealer may submit a written application to the attorney general to request additional time to comply with subsection (a). Each application shall include documentation of one of the following:

(1) No satellite-based or land-based internet service providers offer internet service to either the scrap metal dealer's residence or the scrap metal dealer's place of business.

(2) Compliance with subsection (a) would result in extreme hardship. (Authorized by K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2, and 50-6,110, as amended by 2020 S Sub for HB 2137, sec. 4; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016; amended Oct. 2, 2020.)

16-14-11. Definitions. As used in this article of the attorney general's regulations and in the scrap metal theft reduction act, K.S.A. 2019 Supp. 50-6,109 et seq. and amendments thereto, each of the following terms shall have the meaning specified in this regulation:

(a) "Database" means the online central repository approved by the Kansas bureau of investigation to be used by each scrap metal dealer to submit the information required by K.S.A. 2019 Supp. 50-6,110, and amendments thereto.

(b) "Licensed business" means a sole proprietorship, general partnership, limited partnership, limited liability partnership, corporation, or limited liability company that lawfully operates out of a fixed business location and that is reasonably expected to generate regulated scrap metal at the fixed business location in the ordinary course of business due to the nature of the products or services offered. (Authorized by K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2; implementing K.S.A. 2018 Supp. 50-6,109a, as amended by L. 2019, ch. 66, sec. 2, and 50-6,110, as amended by 2020 S Sub for HB 2137, sec. 4; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016; amended Oct. 2, 2020.)

Article 15.—BAIL ENFORCEMENT AGENT LICENSING

16-15-1. Definitions. For purposes of these regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Attorney general" means the Kansas attorney general and the attorney general's designees.

(b) "Authorization" means a registration, certificate, permit, licensure, or other documented approval that allows an applicant or a licensee to act as a bail enforcement agent or bounty hunter in another jurisdiction.

(c) "Conviction" means any of the following, whether the penalty has been imposed, reduced, suspended, deferred, or otherwise withheld, unless the conviction has been expunged:

(1) An unvacated adjudication of guilt;

(2) a plea of guilty or nolo contendere accepted by the court; or

(3) a deferred judgment or probation agreement.

(d) "Encumbered" means that the issuing authority for an authorization has fined, censured, limited, conditioned, suspended, revoked, or taken any other similar action or penalty against the authorization, whether done publicly or privately.

(e) "Expunged" shall have the meaning consistent with the definition of "expungement" in K.S.A. 21-5111, and amendments thereto, which shall include substantially similar processes from other jurisdictions.

(f) "Jurisdiction" means any of the following:

(1) Kansas, or any other state of the United States, and any department or branch of that state's government, or any agency, authority, institution, or other instrumentality thereof;

(2) municipality, which shall mean any county, township, city, school district, or other political or taxing subdivision of Kansas, or any other state of the United States, or any agency, authority, institution, or other instrumentality thereof;

(3) the District of Columbia;

(4) any territory of the United States; or

(5) any district, province, territory, or state of any foreign country.

(g) "License" means a bail enforcement agent license issued by Kansas.

(h) "Licensee" means a person who holds a license. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e06; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

16-15-2. Application for license. (a) Except as otherwise provided by law, each person wanting to engage in activities as a bail enforcement agent, which is commonly known as a bounty hunter, shall submit an application to the attorney general on the form prescribed by the attorney general.

(b) The application shall be available electronically on the attorney general's web site. A printed copy of the application, the bail enforcement agent licensing act, and these regulations may be obtained from the attorney general for a fee of \$15.

(c) Each applicant shall meet the following requirements:

(1) Complete the entire application under penalty of perjury;

(2) have notarized those portions of the application required to be notarized; and

(3) make complete and correct statements in the application.

(d) The applicant's fingerprints shall be taken at a law enforcement agency. The fingerprint card shall include the name of the person who took the applicant's fingerprints.

(e) An application shall be deemed incomplete and shall not be considered for approval by the attorney general if the application fails to include any of the following:

(1) All signatures and information required by the application;

(2) payment of all required fees as specified in K.A.R. 16-15-3; or

(3) all attachments required by the application.

(f) Each application that remains incomplete for at least 30 days following the attorney general's request for the applicant to provide any missing information shall be deemed abandoned and shall be withdrawn from consideration.

(g) Each applicant shall include the following with the application:

(1) The applicant's full name, date of birth, residential address, business address, and name of the applicant's current employer or employers;

(2) in accordance with K.A.R. 16-15-3, payment of the following:

(A) The initial licensure fee; and

(B) the fee for the criminal history records check;

(3) a photocopy of the applicant's driver's license or other government-issued identification card from the applicant's state of residence;

(4) two color, passport-size photographs of the applicant taken within the preceding 30 days. Each photograph shall depict a full-frontal view of the applicant's head;

(5) a statement of the applicant's employment history;

(6) one classifiable set of the applicant's fingerprints taken by a federal, state, or municipal law enforcement agency;

(7) if the applicant has a criminal history, a statement of the applicant's entire criminal history including, pursuant to K.S.A. 12-4516 and K.S.A. 2016 Supp. 21-6614 and amendments thereto, any criminal history that has been expunged;

(8) a copy of the criminal history waiver form that was completed by the applicant before getting the applicant's fingerprints taken by a law enforcement agency;

(9)(A) If the applicant holds or has held an authorization to act as a bail enforcement agent in a jurisdiction other than Kansas, a copy of any current or prior authorizations held by the applicant or, if the prior authorization is no longer in the possession of the applicant, a description of who the authorizing entity was and a date as to when the authorization was last valid; and

(B) if any current or prior authorization has been encumbered by the authorizing entity, an explanation as to why that authorization was encumbered and a certified copy of any document ordering or establishing that encumbrance. The certified copy shall be submitted by the authorizing entity directly to the attorney general; and

(10) a statement that the applicant does not meet the criteria for denial of licensure under K.S.A. 2016 Supp. 75-7e03, and amendments thereto, and does not meet the criteria for any encumbrance pursuant to K.S.A. 2016 Supp. 75-7e06, and amendments thereto.

(h) Each applicant shall be responsible for the payment of any other expenses required in order to complete the application requirements specified in this regulation. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e06, and 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

16-15-3. Fees. (a) The following fees shall be submitted in full to the attorney general when required:

(1) An initial licensure fee of \$200, less the materials fee if that fee was previously paid;

(2) a renewal of licensure fee of \$175, less the materials fee if that fee was previously paid;

(3) in accordance with K.A.R. 16-15-2 or 16-15-4, a fee of \$57 for the criminal history records check; and

(4) a materials fee of \$15 if the applicant or licensee requests a printed copy of any of the application or renewal application materials before submitting an application.

(b) All fees, whether paid in full or part, associated with any complete or incomplete application shall be nonrefundable.

(c) Payment of application fees and renewal application fees shall be submitted by personal check, cashier's check, or money order and shall be payable to the attorney general. An applicant or licensee who has previously had a personal check submitted to the attorney general that was returned unpaid for any reason shall not be

allowed to pay any required fees with a personal check.

(d) A fee of \$15 shall be charged to any licensee for a duplicate license. Each licensee requesting a duplicate license shall submit a notarized affidavit attesting to the circumstances surrounding the license being lost or stolen. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e03, 75-7e05, and 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

16-15-4. License renewal. (a) Any license issued under the bail enforcement agent licensing act may be renewed every two years from the license issuance date.

(b) Fingerprints and the photographs of a licensee shall not be required in a renewal application, unless these items have already been on file with the attorney general for more than four years.

(c)(1) Each renewal application shall be submitted on the form prescribed by the attorney general and shall be complete before the license shall be eligible for renewal by the attorney general.

(2) A renewal application shall be deemed incomplete and shall not be considered for approval if the applicant fails to include any of the following:

(A) All signatures and information required by the renewal application;

(B) payment of all required fees as provided in K.A.R. 16-15-3; or

(C) all attachments required by the renewal application.

(3) A complete renewal application shall be deemed submitted according to either of the following:

(A) If mailed, the date of the last postmark on the complete renewal application; or

(B) if filed in person, the last file-stamped date applied to the complete renewal application by the attorney general.

(d) If a licensee has not submitted a complete renewal application within 30 days of the license expiration date, that license shall be considered abandoned and shall not be renewed. Any abandoned license may be reissued only after the individual successfully completes the initial application process specified in K.A.R. 16-15-2.

(e) Upon submitting a renewal application, each licensee shall notify the attorney general of the following:

(1) Any new authorizations that have been obtained by that licensee;

(2) any authorizations that have lapsed or otherwise expired; and

(3) if not already submitted to the attorney general, any authorization that has been encumbered by the issuing jurisdiction. (Authorized by K.S.A. 2016 Supp. 75-7e07; implementing K.S.A. 2016 Supp. 75-7e05, 75-7e08; effective, T-16-6-29-16, July 1, 2016; effective Oct. 21, 2016.)

Article 16.—SKILL DEVELOPMENT TRAINING COURSE

16-16-1. Definitions. (a) “Campus police officer” shall mean a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222, and amendments thereto.

(b) “Law enforcement officer” and “police officer” shall mean a full-time or part-time salaried officer or employee of the state, a county, or a city whose duties include the prevention or detection of crime and the enforcement of criminal or traffic law of Kansas or of any Kansas municipality. These terms shall include a campus police officer.

(c) “Law enforcement officer primarily assigned to a school” shall mean any of the following:

(1) A campus police officer;

(2) a school resource officer; or

(3) a law enforcement officer jointly designated by a superintendent and the head of a law enforcement agency.

(d) “School district” shall mean a unified school district organized under the laws of Kansas.

(e) “School resource officer” shall mean a law enforcement officer or police officer who is employed by a local law enforcement agency and is assigned to a school district through an agreement between the local law enforcement agency and the school district.

(f) “Superintendent” shall mean the superintendent of schools appointed by the board of education of a school district.

(g) “Superintendent’s designee” shall mean a person who is appointed by the superintendent and who is licensed by the Kansas state board of education and employed by the superintendent’s school district but is not a law enforcement officer. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

16-16-2. Curriculum. There is hereby created a skill development training course, which shall include the following curriculum:

(a) Information on adolescent development;
 (b) risk and needs assessments;
 (c) mental health;
 (d) diversity;
 (e) youth crisis intervention;
 (f) substance abuse prevention;
 (g) trauma-informed responses; and
 (h) other evidence-based practices in school policing to mitigate student juvenile justice exposure. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

16-16-3. Training requirement. (a) Each law enforcement officer primarily assigned to a school and each superintendent or superintendent's designee shall be required to successfully complete a skill development training course, pursuant to K.A.R. 16-16-2, that has been developed and either provided or authorized by the Kansas law enforcement training center according to the following, whichever is later:

(1) On or before June 30, 2018; or
 (2) within one year of being designated as a law enforcement officer primarily assigned to a school or employed by a school district as a superintendent or superintendent's designee.

(b) Nothing in this regulation shall require a law enforcement officer primarily assigned to a school or a superintendent or superintendent's designee to complete more than one skill development training course.

(c) Each law enforcement officer primarily assigned to a school and each superintendent or superintendent's designee shall submit proof of successful completion of a skill development training course, pursuant to K.A.R. 16-16-2, that was developed and either provided or authorized by the Kansas law enforcement training center to that individual's respective certification or licensing agency. (Authorized by and implementing L. 2016, ch. 46, §14; effective Dec. 16, 2016.)

**Article 17.—COMMERCIAL DRIVER'S
 LICENSE: TRAINING IN HUMAN
 TRAFFICKING IDENTIFICATION
 AND PREVENTION**

16-17-1. Training course approval for providers. (a) For purposes of this regulation, "human trafficking" shall have the meaning specified in K.S.A. 2017 Supp. 21-5426, and amendments thereto, and shall include "commercial sexual exploitation of a child" as specified in

K.S.A. 2017 Supp. 21-6422, and amendments thereto.

(b) No person or entity shall provide a training course on human trafficking identification and prevention pursuant to K.S.A. 2017 Supp. 8-2,157, and amendments thereto, unless the office of the attorney general has issued a letter of approval for that training course.

(c) Each person or entity seeking approval of a training course on human trafficking identification and prevention shall submit an application to the office of the attorney general, human trafficking identification and prevention training approval, in Topeka, Kansas. The application shall include at least the following information:

(1) (A) The name and address of the person or entity;

(B) the name and title of the person submitting the application on behalf of the person or entity, with the person's signature and a statement certifying that the information and materials submitted will be used in the training course for which approval is being sought; and

(C) the name, title, and telephone number of the contact person for course approval matters; and

(2) a copy of all training materials. The training materials shall include at least the following:

(A) Written materials or video materials, or both;

(B) a definition of "human trafficking" consistent with subsection (a);

(C) strategies on what to look for and how to identify potential victims of human trafficking; and

(D) information on how and to whom to report suspected human trafficking.

(d) After a training course on human trafficking identification and prevention has been approved, new or revised written or video training materials shall not be used until an application for approval of the new or revised training materials has been submitted to and approved by the office of the attorney general pursuant to this regulation. (Authorized by and implementing K.S.A. 2017 Supp. 8-2,157; effective March 9, 2018.)

**Article 18.—ELDER AND DEPENDENT
 ADULT ABUSE PREVENTION COUNCIL**

16-18-1. Definitions. Each of the following terms, as used in this article of the attorney general's regulations, shall have the meaning specified in this regulation:

(a) “ANE unit” means the abuse, neglect, and exploitation of persons unit created in the office of the attorney general pursuant to K.S.A. 75-723, and amendments thereto.

(b) “Chairperson” means the person from the ANE unit who serves as the council’s chairperson.

(c) “Council” means the elder and dependent adult abuse prevention council, which shall advise and may make recommendations to the ANE unit and the attorney general.

(d) “Multidisciplinary team” and “MDT” mean a group of individuals who have background, education, or experience in one or more disciplines or fields of study in preventing, detecting, and investigating abuse, neglect, or exploitation of elder or dependent adults. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

16-18-2. Membership; meetings. (a) The elder and dependent adult abuse prevention council is hereby established by this regulation. The council shall consist of the following members appointed by the attorney general:

(1) A representative from the ANE unit, who shall serve as the chairperson;

(2) a representative from the medicaid fraud and abuse division of the attorney general’s office;

(3) a representative from the consumer protection division of the attorney general’s office;

(4) a representative of the attorney general, who shall serve as the prevention and education outreach coordinator;

(5) a representative of the attorney general, who shall serve as the MDT and elder or dependent adult victim coordinator;

(6) a representative from the Kansas department for aging and disability services (KDADS), who shall be appointed in consultation with and agreement of the secretary of KDADS;

(7) a representative from the Kansas department for children and families (DCF), who shall be appointed in consultation with and agreement of the secretary of DCF;

(8) a representative from the Kansas department of health and environment (KDHE), who shall be appointed in consultation with and agreement of the secretary of KDHE;

(9) a representative of the governor, who shall be appointed in consultation with and agreement of the governor;

(10) a prosecutor from a district attorney’s office, who shall be appointed in consultation with the Kansas county and district attorneys association;

(11) a county attorney, who shall be appointed in consultation with the Kansas county and district attorneys association;

(12) a law enforcement officer or police officer certified by the Kansas commission on peace officers’ standards and training, who shall be appointed in consultation with the Kansas sheriffs’ association, the Kansas association of chiefs of police, or the Kansas peace officers association;

(13) a representative from the medical services industry who is experienced in matters involving elder or dependent adult abuse;

(14) a representative from the financial services industry who is experienced in matters involving elder or dependent adult abuse;

(15) two representatives from advocacy organizations who are experienced in the prevention of elder or dependent adult abuse; and

(16) other individuals as deemed necessary by the attorney general to serve on the council.

(b) The council shall meet at least quarterly upon call of the chairperson and shall maintain minutes of each meeting. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

16-18-3. Duties. (a) The council shall advise and may make recommendations to the ANE unit and the attorney general to assist the ANE unit with the statutory duty of the ANE unit pursuant to K.S.A. 2018 Supp. 75-723, and amendments thereto.

(b) To fulfill its duties, the council may perform the following:

(1) Take testimony or gather and receive information;

(2) establish subcommittees or working groups on particular topics, which may be composed exclusively of members of the council or may, at the discretion of the chairperson, include persons who are not members of the council;

(3) assist in developing local or regional MDTs to prevent, detect, and investigate abuse, neglect, or exploitation of elder or dependent adults;

(4) coordinate and engage in prevention activities for education, outreach, and awareness, including the development of a publicly available clearinghouse of information on elder or dependent adult abuse prevention; and

(5) undertake any other tasks as may be requested by the attorney general.

(c) The council shall comply with the Kansas open meetings act and the Kansas open records act.

(d) The council shall have the authority to request legal counsel and any other staff for its support from the attorney general.

(e) The council shall submit to the ANE unit and the attorney general an annual report on the council's work, recommendations, and anticipated activities. (Authorized by and implementing K.S.A. 2018 Supp. 75-723; effective July 19, 2019.)

**Article 19.—VICTIM INFORMATION
AND NOTIFICATION EVERYDAY
ADVISORY BOARD**

16-19-1. Definitions. Each of the following terms, as used in this article of the attorney general's regulations, shall have the meaning specified in this regulation:

(a) "Board" means the advisory board appointed by the attorney general.

(b) "Chairperson" means the VINE coordinator.

(c) "VINE coordinator" means the person appointed by the attorney general to oversee the implementation and operation of the VINE system throughout the state.

"VINE system" means the Kansas victim information and notification everyday system, which allows victims of crime and the general public to use the telephone, a mobile application, or the internet to search for information regarding the custody status of an offender housed in a Kansas county jail and to register to receive notification by telephone, text message, or electronic mail, or any combination of these, whenever the offender's custody status changes. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

16-19-2. Membership; meetings. (a) The board is hereby established by this regulation. The board shall consist of the following members appointed by the attorney general:

(1) The VINE coordinator, who shall serve as the chairperson;

(2) a representative of the Kansas sheriffs' association, who shall be appointed in consultation with and agreement of the Kansas sheriffs' association;

(3) a representative from a victim advocacy organization; and

(4) up to two other individuals as deemed necessary by the attorney general.

The board shall meet upon the call of the chairperson and shall maintain minutes of each meet-

ing. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

16-19-3. Duties. (a) The board shall make recommendations for the implementation and operation of the VINE system to the attorney general.

(b) To fulfill its duties, the board shall have the authority to perform the following:

(1) Take testimony or gather and receive information;

(2) establish subcommittees or working groups on particular topics, which may be composed exclusively of members of the board or may, at the discretion of the chairperson, include persons who are not members of the board;

(3) coordinate and engage in activities for education, outreach, and awareness of the services provided through the VINE system; and

(4) undertake any other tasks as may be requested by the attorney general.

(c) The board and members of established subcommittees or working groups shall comply with the Kansas open meetings act and the Kansas open records act.

(d) The board shall have the authority to request legal counsel and any other staff for its support from the office of the attorney general. (Authorized by and implementing K.S.A. 75-771; effective March 6, 2020.)

**Article 20.—KANSAS OPEN
MEETINGS ACT**

16-20-1. Compliance with the Kansas open meetings act during an emergency declaration. (a) This regulation shall be in effect only as follows:

(1) During a state of disaster emergency lawfully declared by the governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state, or federal law;

(2) in the territory affected by any such declaration; and

(3) to the extent that emergency responses required pursuant to any such declaration prevent or impede the ability of any of the following:

(A) Members of a public body or agency subject to the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, to conduct meetings by physically gathering in person;

(B) members of the public to attend or observe public meetings by physically attending the meetings; or

(C) a combination of both paragraph (a)(3)(A) and paragraph (a)(3)(B).

(b) All requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, shall remain in force and effect during any emergency declared as described in paragraph (a) (1) unless expressly suspended by order of the governor pursuant to K.S.A. 48-925(c)(1), and amendments thereto, or other applicable provision of K.S.A. 48-925, and amendments thereto. No order of the governor shall be construed to suspend any requirement of the Kansas open meetings act, unless the order meets the following conditions:

(1) Expressly cites and invokes K.S.A. 48-925(c)(1), and amendments thereto, and any other specific provision of K.S.A. 48-925, and amendments thereto, from which the order draws authority;

(2) expressly references the Kansas open meetings act and the specific provisions thereof that the governor intends to suspend during the state of disaster emergency; and

(3) makes plain and unequivocal the intent of the governor to suspend any such requirement.

(c) Any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, that a meeting be “open to the public” through the use of a telephone or other medium for interactive communication if the requirements of subsection (e) are met.

(d) As used in this regulation, “medium for interactive communication” shall include teleconference, videoconference, internet conference, television broadcast, or any other method that permits the public to listen to the meeting and also to observe the meeting if the method allows for visual observation.

(e) Each public body or agency conducting an open meeting utilizing solely a telephone or another medium for interactive communication rather than by members of the body or agency gathering in person at a physical location shall meet the following requirements:

(1) Use a medium for interactive communication that, at a minimum, allows members of the public, without cost, to listen to the meeting and, if available, also allows video observation of the meeting;

(2) comply with all requirements of the Kansas open meetings act, except any temporarily suspended by the governor as provided by subsection (b), including requirements for notice;

(3) if the medium for interactive communication allows, provide an alternative means to access the meeting for members of the public who do not have internet access that also complies with the requirements issued pursuant to any emergency declaration;

(4) provide directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(5) if the medium for interactive communication does not permit easy identification of the individual speaker, require each member of the public body or agency, staff, or presenter to state the individual’s name and title, if any, each time the individual begins speaking or voting so that the individual can be readily identified by remote listeners or observers;

(6) require all participants to ensure that microphones, phones, or other electronic devices are muted when the participants are not speaking so that the ability of remote listeners or observers to hear the proceedings is not unnecessarily impeded;

(7) describe at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(8) describe at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(9) before any meeting, provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(10) clearly state each motion before the public body votes and announce the results of the final vote; and

(11) when not otherwise established by the agency or by ordinance or resolution of the public body, pass a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for the public body or agency.

(f) To the extent that emergency responses required pursuant to the emergency declaration prevent or impede the ability of the public to physically attend a public meeting, any public body or agency may comply with the requirement of K.S.A. 75-4318(a), and amendments thereto, by meeting in person but limiting physical access of the public to the place where the meeting occurs if the public body or agency meets the following requirements:

(1) Complies with all requirements of the Kansas open meetings act, except any requirements suspended by the governor as provided by subsection (b), including requirements for notice;

(2)(A)(i) Broadcasts the meeting live on television or the internet; and

(ii) provides members of the public with the ability to access the meeting by telephone without cost; or

(B) uses any other method other than the methods specified in paragraphs (f)(2)(A)(i) and (ii) that permits the public to listen to or observe the meeting without cost;

(3) provides directions describing how members of the public will be able to electronically access, listen to, or observe the open meeting;

(4) if the medium for interactive communication does not permit easy identification of the individual speaker, requires each member of the public body or agency, staff, or presenter to state the individual's name and title, if any, each time the individual begins speaking or voting so that the individual can be readily identified by remote listeners or observers;

(5) describes at the beginning of the meeting whether public comment will be allowed and what process will be used to identify any individual who wishes to comment, if permitted;

(6) describes at the beginning of the meeting the process that will be used for a closed or executive meeting pursuant to K.S.A. 75-4319, and amendments thereto;

(7) before any meeting, provides electronic or paper copies of an agenda, if any, to any individual requesting the agenda;

(8) states each motion before the public body votes and announces the results of the final vote; and

(9) when not otherwise established by the agency or by ordinance or resolution of the public body, passes a motion that clearly identifies and authorizes by delegation each member of the public body or staff who will be permitted to sign any binding document for any public body or agency.

(g) Nothing in this regulation shall require any public body or agency to provide members of the public with the opportunity for public comment.

(h) Nothing in this regulation shall require any public body or agency to take action to prevent any member of the public from physically attending any public meeting. (Authorized by K.S.A. 75-762; implementing K.S.A. 75-4317 and 75-4318; effective, T-16-3-25-20, March 25, 2020; effective Sept. 11, 2020.)

Agency 17

Office of the State Bank Commissioner

Articles

- 17-1. DEFINITIONS.
- 17-8. FINANCIAL MODERNIZATION.
- 17-9. INVESTMENT SECURITIES.
- 17-10. *RESERVES. (Not in active use.)*
- 17-11. DOCUMENTATION REQUIREMENTS.
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- 17-22. APPLICATION FEES.
- 17-23. TRUST SUPERVISION.
- 17-24. MORTGAGE BUSINESS.
- 17-25. CREDIT SERVICES ORGANIZATIONS.

Article 1.—DEFINITIONS

17-1-1. Definitions. As used in article 1 through article 23 of these regulations, “commissioner” means the Kansas state bank commissioner. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-701; effective Aug. 9, 1996.)

Article 8.—FINANCIAL MODERNIZATION

17-8-1. Financial subsidiaries. (a) Before acquiring an interest in a financial subsidiary pursuant to K.S.A. 9-1101(29), and amendments thereto, or engaging in a new activity in an existing financial subsidiary of the bank, the bank shall provide a written notice to the commissioner that contains the following information:

(1) If acquiring an interest in a financial subsidiary, a description of the transactions through which the bank proposes to acquire control of, or an interest in, the financial subsidiary, and the percentage of ownership proposed;

(2) the name and main office address of the financial subsidiary;

(3) a description of the current and proposed activities of the financial subsidiary; and

(4) if the proposal relates to an initial affiliation with a company engaged in insurance activities, a description of the type of insurance activities that the company is engaged in or plans to conduct, the name of each state where the company holds an insurance license, and the name of the state insurance regulatory authority that issued the license.

(b) A notice filed with the commissioner shall be deemed approved on the 15th calendar day after receipt of a complete notice unless before that time the commissioner notifies the bank of any of the following:

(1) The acquisition of the interest in the financial subsidiary or the proposed new activity in an existing financial subsidiary is approved.

(2) The notice will require additional review.

(3) The bank is not approved to acquire the interest in the financial subsidiary or to engage in the proposed new activity in an existing financial subsidiary.

(c) The aggregate consolidated total assets of all financial subsidiaries of a bank shall not exceed

45 percent of the consolidated total assets of the parent bank.

(d) If the commissioner finds that any financial subsidiary is being operated in either an illegal or an unsafe and unsound manner, the bank may be ordered by the commissioner to take appropriate remedial action or to divest itself of its interest in the financial subsidiary. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1101; effective Oct. 3, 2003.)

Article 9.—INVESTMENT SECURITIES

17-9-1. Investment securities; definitions.

For the purposes of K.S.A. 1995 Supp. 9-1101(6) and this article: (a) “investment security” means an investment made for the account of the bank which is a marketable obligation evidencing indebtedness in the form of a bond, note, or debenture, commonly known as an investment security. The term shall not include, and nothing in this article shall be construed as permitting a bank to purchase, investments which are predominantly speculative in nature or which are in default as to principal and interest; and

(b) “marketable obligation” means an investment that:

(1) may be sold with reasonable promptness at a readily determinable price which corresponds reasonably to its fair value; and

(2) is supported by adequate evidence that the obligor will be able to perform all obligations in connection with the security including the ability to meet all debt service requirements. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-2. Investment securities; limitation.

The percentage limitations contained in K.S.A. 1995 Supp. 9-1101(6) shall be determined on the basis of the par or face value, or cost of the security, whichever is less, and not on the market value. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-3. Investment securities; ledger and records. (a) The bank shall maintain a central listing showing the following for each investment security:

- (1) par value;
- (2) cost;
- (3) interest rate;
- (4) purchase and maturity dates; and

(5) name of the issuer.

(b) The bank shall retain the following additional information for each investment security:

(1) all credit information and risk documentation necessary to show compliance with K.A.R. 17-9-1; and

(2) original invoices of any sales and purchases. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-4. Investment securities; amortization of premium. A bank shall not purchase an investment security for its own account at a price exceeding par unless the bank provides for the regular amortization of the premium paid in accordance with generally accepted accounting principles (GAAP). (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-5. Investment securities; conversion. (a) The purchase of investment securities convertible into stock at the option of the issuer shall be prohibited.

(b) A bank may purchase investment securities convertible into stock at the option of the holder or with stock purchase warrants attached if it is apparent that the price paid for an otherwise eligible security fairly reflects the investment value of the security itself and does not include any speculative value based upon the presence of a stock purchase warrant or conversion option. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-6. Investment securities; acquisition through debt previously contracted. The restrictions and limitations contained in article 9 of these regulations shall not apply to investment securities acquired: (a) through foreclosure on collateral;

(b) in good faith by way of compromise of a doubtful claim; or

(c) to avoid loss in connection with a debt previously contracted. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-7. Investment securities; repurchase. (a) Subject to the limitation in subsection (b) of this regulation, a bank may purchase and sell investment securities under a repurchase agreement if one or more of the following provisions is part of the repurchase agreement:

(1) the bank has the option or right to require the seller of the securities to repurchase them from the bank at a price stated in the agreement, or at a price subject to determination under the terms of the agreement, but in no case less than the value at the time of the repurchase;

(2) the seller or the seller's nominee reserves the right or the option to repurchase the securities for a price stated or at a price subject to determination under the terms of the agreement, but in no case shall the option be for an amount less than the value at the time of the initial purchase;

(3) the bank selling securities has an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement; or

(4) the seller or a third party guarantees the bank against loss on resale of the securities.

(b) The total amount that any bank has committed to repurchase at any one time from the state of Kansas or its political subdivisions shall not exceed a sum equal to 10 times the bank's capital and surplus. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and K.S.A. 9-1131; effective Aug. 9, 1996.)

17-9-8. Investment securities; trustee.

Where the investment security is issued under a trust agreement, the agreement shall provide for a trustee independent of the obligor. The trustee shall be a bank or trust company. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-9. Investment securities; no transaction as principal. Except with the prior approval of the commissioner, a bank shall not participate as a principal in the marketing of investment securities. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

17-9-10. Investment securities; requests for rulings. (a) Any bank may request a determination by the commissioner whether a security which the bank holds or desires to purchase for its own account qualifies as an investment security.

(b) Any request shall be accompanied by information sufficient to enable the commissioner to make a determination. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

Article 10.—RESERVES

17-10-1. (Authorized by K.S.A. 9-1001; K.S.A. 1969 Supp. 9-1713; effective Jan. 1, 1970; revoked Aug. 9, 1996.)

Article 11.—DOCUMENTATION REQUIREMENTS

17-11-1 to 17-11-8. (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

17-11-9. (Authorized by K.S.A. 9-1713 and implementing K.S.A. 9-1101 and 9-1131; effective Jan. 1, 1966; amended May 1, 1978; amended, T-84-14, July 1, 1983; amended May 1, 1984; revoked Aug. 9, 1996.)

17-11-10 to 17-11-12. (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

17-11-13. Stockholders' meetings. Minutes shall be made of each stockholders' meeting of a bank or trust company. The minutes shall show any action taken by the stockholders, including the election of all directors. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1114; effective Jan. 1, 1966; amended Aug. 9, 1996.)

17-11-14. Directors' meetings. (a) Minutes shall be made of each directors' meeting of a bank or trust company. The minutes shall show any action taken by the directors.

(b) In addition to any other actions the board may take, the following specific actions shall be taken by the board of directors and noted in the minutes:

(1) Election of all officers, showing their titles, salaries, and bonuses, if any;

(2) approval of all loans, including overdrafts. The board may establish a committee with authority to approve loans. The board shall approve a report from the committee summarizing all loans made since the board's last meeting;

(3) review and approval of the directors' examination or audit required under K.S.A. 9-1116, and amendments thereto;

(4) annual approval of all bank policies;

(5) review of all state and federal regulatory examination reports received since the board's last meeting;

(6) annual approval of fidelity bond and bank casualty insurance;

(7) approval of bank income and expenses and securities transactions;

(8) review and ratification of any committee reports; and

(9) approval of dividends and a review that the dividends are in compliance with K.S.A. 9-910, and amendments thereto. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-911, K.S.A. 2000 Supp. 9-1114, K.S.A. 2000 Supp. 9-1115, and K.S.A. 9-1116; effective Jan. 1, 1966; amended Sept. 20, 1996; amended Jan. 18, 2002.)

17-11-15. Loans; records. Each bank or trust company shall maintain a central listing which shows the following: (a) the indebtedness of each borrower;

(b) the note number;

(c) the origination date of the loan;

(d) the amount; and

(e) the maturity date. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)

17-11-16. Bonds; records. (a) Each bank or trust company shall maintain a central listing showing the following for each bond:

(1) par value;

(2) cost;

(3) interest rate;

(4) purchase date;

(5) maturity date; and

(6) name of the issuer.

(b) In addition, each bank or trust company shall maintain and keep on file for each bond:

(1) all credit information and risk documentation;

(2) original invoices of sales and purchases; and

(3) descriptive circulars or other descriptive material, giving complete information as to the bond issue. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)

17-11-17. Bank-owned real estate; records. (a) Each bank or trust company shall maintain the following records for real estate owned by the bank or trust company:

(1) the insurance coverage on the real estate, including the amount of insurance and the expiration date;

(2) the legal description of the property;

(3) the cost of alterations; and

(4) proof of the payment of real estate taxes.

(b) In addition to the above requirements, the bank shall maintain the following records for bank-owned real estate obtained through foreclosure or debt settlement:

(1) the name of the original debtor;

(2) the total amount of indebtedness for which the real estate was acquired;

(3) the cost of acquisition; and

(4) the fair market value supported by an accurate appraisal performed not later than 90 days following the date of acquisition of the property. Thereafter, the fair market value shall be supported by an annual appraisal or appraisal update.

(A) Any appraisal required by subsection (b)(4) may be performed by any of the following:

(i) a certified or licensed appraiser;

(ii) two officers or directors of the bank; or

(iii) some other qualified individual.

(B) As used in subsection (b)(4), "appraisal update" shall mean a review of the property and the existing appraisal to determine the current fair market value and to make adjustments to the bank's valuation of the property if necessary. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1102; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

17-11-18. Loans; documentation requirements. (a) Except as specified in this subsection, each bank shall maintain complete and current credit information, not older than 15 months, for each borrower for whom the total amount of the following exceeds \$100,000:

(1) All loans made to the borrower; and

(2) all loans attributable to the borrower pursuant to K.S.A. 9-1104, and amendments thereto. This requirement shall not apply if all loans made or attributable to the borrower are adequately secured.

(b) Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall be met:

(1) For each real estate loan in excess of \$25,000 but less than \$50,000, the bank shall complete one of the following tasks:

(A) The bank shall verify in writing that a lien search of the records of the county register of deed's office was conducted and the bank's lien position was determined. This verification of a lien search shall be on file with the bank.

(B) The bank shall obtain and maintain on file either an attorney's written title opinion or a title insurance policy.

(C) For a non-purchase-money mortgage that is not a refinancing of an existing first mortgage, the bank shall obtain an insurance policy fully insuring the bank against loss of the mortgage priority position. The bank shall maintain a copy of the policy and any other supporting information on file.

(2) For each real estate loan of \$50,000 or more, an attorney's written title opinion or a title insurance policy shall be on file with the bank.

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improvements against fire and windstorm shall be on file with the bank for any loan in excess of \$25,000.

(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file with the bank for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank shall retain a copy of the filed financing statement. In other cases, the bank shall maintain all documents related to the loan. (Authorized by K.S.A. 2013 Supp. 9-1713; implementing K.S.A. 2013 Supp. 9-1101, K.S.A. 9-1130, and K.S.A. 2013 Supp. 9-1713; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002; amended May 30, 2003; amended May 3, 2013; amended July 11, 2014.)

17-11-19. Charged-off assets; records. (a) Each bank or trust company shall maintain a central listing of any assets charged off the books of the bank or trust company. The central listing shall include a subsidiary ledger for each debtor, showing the date of charge-off, the description of the asset, the amount charged off, and any recoveries.

(b) The bank or trust company shall retain the central listing for 10 years after the last payment is received, or 10 years after the date of the charge-off if no payments have been received. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended Aug. 9, 1996; amended Jan. 18, 2002.)

17-11-20. (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

17-11-21. Appraisals and evaluations. (a) Except for those transactions that meet the requirements of subsection (b) or (c), an accurate appraisal of all real estate mortgaged to secure principal debt of \$25,000 or more to a bank shall be made by an appraiser who is licensed or certified by the state in which the property is located and who is independent of the transaction.

(b) Two officers or directors, or a qualified individual who is independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate-related transactions:

(1) Real estate mortgaged to secure principal debt of \$250,000 or less;

(2) business loans of \$1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or

(3) renewals or refinancing of loans, in any amount, secured by real estate, if either of the following conditions is met:

(A) There is no advancement of new monies other than funds necessary to cover reasonable closing costs; or

(B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new monies.

(c) Neither an appraisal nor an evaluation shall be required for the following types of real estate-related transactions:

(1) Loans that are well supported by income or other collateral if real estate is taken as additional collateral solely in an abundance of caution;

(2) loans to acquire or invest in real estate if a security interest is not taken in real estate;

(3) liens taken on real estate to protect rights to, or control over, collateral other than real estate;

(4) real estate operating leases that are not the equivalent of a purchase or sale; or

(5) real estate-related loans that have met all appraisal requirements necessary to be sold to, or insured by, a United States government agency or a United States government-sponsored agency.

(d) Each individual who conducts an appraisal or evaluation shall view the premises, make a written statement of value, and sign and file the statement with the bank.

(e) Despite any other provisions of this regulation, an appraisal or evaluation may be required by the commissioner if it is deemed necessary to

address safety and soundness concerns. (Authorized by K.S.A. 2013 Supp. 9-1713; implementing K.S.A. 2013 Supp. 9-1101 and 9-1713; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Oct. 19, 1992; amended Jan. 25, 1993; amended Sept. 20, 1993; amended Sept. 19, 1994; amended Aug. 9, 1996; amended Jan. 18, 2002; amended July 11, 2014.)

17-11-22. Insurance on bank property. The insurable tangible property of a bank or trust company shall be insured for at least seventy per cent of its actual value against loss from fire, wind-storm and tornado. (Authorized by L. 1965, ch. 81; effective Jan. 1, 1966.)

17-11-23. Other assets; records. Each bank or trust company shall maintain a central listing showing the following on any personal property taken in payment of a debt: (a) a complete description of the property; (b) the date of acquisition; (c) the name of the original debtor; (d) the total amount of indebtedness for which the personal property was acquired; and (e) the cost of acquisition. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1112 and 9-2103; effective Aug. 9, 1996.)

Article 12.—TRANSACTIONS

17-12-1. Daily transactions. (a) Each transaction affecting the assets, liabilities, or fiduciary assets held by the bank or trust company shall be shown in detail.

(b) The books and records shall be designed to allow the tracing of any transaction from origin to final entry.

(c) Books and records shall be posted daily covering all transactions for the preceding day, except for the final entries which are made at some other regular stated interval. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Jan. 27, 1992; amended Aug. 9, 1996.)

17-12-2. Daily statement. A summary of all transactions showing the assets, liabilities and net worth of the bank or trust company shall be prepared daily for each bookkeeping day and kept on file at the bank or trust company. Additionally, a summary of all transactions relating to fiduciary assets shall be prepared at least monthly and kept on file at the bank or trust company. (Autho-

rized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

Article 14.—DEPOSIT OF PUBLIC FUNDS; REVENUE BOND APPROVAL

17-14-1. Revenue bonds; approval. The commissioner may approve, as security for the deposit of public funds pursuant to K.S.A. 9-1402, revenue bonds of any municipal corporation or quasi-municipal corporation, except for bonds issued under K.S.A. 12-1740 to 12-1749 and bonds secured by revenues of a utility which has been in operation for less than three years. Revenue bonds may be approved subject to the following conditions: (a) Such bonds shall be issued pursuant to the laws of Kansas, and the commissioner shall be furnished a copy of the approving legal opinion of a recognized bond attorney.

(b) The rates, fees or charges fixed for the use of services rendered by a utility (as defined by K.S.A. 10-1201) shall be sufficient to:

- (1) pay the cost of operation, improvement, and maintenance of the utility;
- (2) provide an adequate depreciation fund; and
- (3) pay the principal of and interest upon the bonds when due.

(c) Such bonds shall have a debt service coverage for the term of the issue of at least 140%, except that debt service may go as low as 125% in a future year or years, provided:

- (1) There is a rate covenant in the ordinance stating that rates, fees and charges shall be raised if necessary to have at least 125% debt service coverage; or
- (2) The issue has a rating of A or better in a nationally recognized rating publication.

(d) The municipality shall forward a certified statement of the annual audit required by K.S.A. 10-1208 to the State Bank Commissioner within thirty (30) days of completion, of the same.

(e) The auditor or certifying officer shall make a certified statement that they shall notify the State Bank Commissioner within thirty (30) days of the completion of the audit in any year the coverage of the annual debt service falls below 140% and shall explain what steps have been taken to correct the deficiency.

(f) The municipality shall submit a certified copy of the minutes of the meeting of the local governing body that approved the authority to

issue the bond resolution, and shall also submit a certified copy of the Bond Resolution. (Authorized by K.S.A. 9-1402, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; amended Jan. 27, 1992.)

Article 15.—RECORDS

17-15-1. Records; retention period. Each bank or trust company shall retain the following records for the periods indicated:

TYPE OF RECORD	RETENTION RECORD
ADMINISTRATIVE	
Attachments and/or garnishments.....	2 years after close
NOTE: Legal documents and copies of returns and correspondence should be filed after case closed with general correspondence.	
Bank examiner's reports.....	5 years
NOTE: These are the property of the supervisory authorities, whose approval should be obtained prior to destruction.	
Charged-off asset records.....	Permanent
Court case records (foreclosed real estate, etc.).....	2 years after close
Insurance records	
(a) Schedules of fire and other insurance, also records of premium payments and of amounts recovered.....	3 years
(b) Casualty liability policies expired—P.L. & P.D., O.L. & T., etc.....	2 years
(c) Windstorm, fire, theft, etc., policies expired.....	2 years
(d) Bankers Blanket Bonds.....	6 years
Minute books of meetings (stockholders, directors, committees, etc.).....	Permanent
ACCOUNTING AND AUDITING	
Accrual and bond amortization records.....	1 year
Audit reports.....	3 years
Audit work papers.....	3 years
Bank Call Reports.....	5 years
Budget work sheets.....	Optional
Consolidated financial statements.....	5 years
Daily reserve computation.....	1 year
Difference record.....	2 years
Income and dividend report.....	5 years
Reconcilements of bank (due to) deposits..	1 year
Reconcilements register (due from).....	1 year
Reports to directors.....	5 years
Reports to executive committee.....	5 years
Securities vault "in and out" tickets.....	1 year
Tax records.....	7 years
NOTE: Copies of schedules and returns to taxing authorities for tax purposes, notices of assessment by taxing authorities and documentary proceedings in appeal therefrom.	

TYPE OF RECORD	RETENTION RECORD
CAPITAL	
Capital stock certificates, records of, or stubs of.....	Permanent
Capital stock ledger.....	Permanent
Dividend checks.....	5 years after paid
Dividend register.....	5 years after all checks are paid
Proxies.....	3 years
Receipts for stock certificates.....	Permanent
NOTE: Where bank secures a receipt it is recommended that it be affixed to stub of certificate book.	
CERTIFICATES OF DEPOSIT	
Certificates.....	5 years after paid
Ledger cards.....	2 years after close
Register.....	2 years
CHECKING ACCOUNTS—INDIVIDUALS AND FIRMS	
Account analysis	
Analysis work sheets or cards.....	1 year
Average balance cards.....	Optional
Interest computation records.....	Optional
Service charge records.....	Optional
Bookkeepers' daily lists of checks charged in total (short lists).....	1 year
Check book orders.....	Optional
Check paid (Microfilm copy-front and back).....	5 years
Copies of advices of deposit.....	1 year
Daily report of overdrafts.....	Optional
Deposit tickets.....	5 years
NOTE: Return with statement after microfilm	
Individual ledgers.....	5 years after last entry
Individual ledger journals.....	1 year
Partnership agreement and authority.....	5 years
Reports of accounts opened and closed.....	Optional
Resolutions.....	5 years after close
Signature cards.....	5 years after close
Statement mailing order.....	2 years after close
Statement stubs	
(a) If accounts are analyzed direct from statement stubs, the stubs should be retained in lieu of work sheets or cards.....	2 years
(b) If microfilm is used as a ledger record, stubs should be retained.....	Optional
Statements—Microfilm copy.....	5 years
Stop payment orders.....	1 year
Undelivered statements and cancelled checks.....	5 years
CHRISTMAS CLUB	
Checks (cancelled).....	1 year after paid
Check register.....	1 year
Coupons (deposit tickets).....	1 year

TYPE OF RECORD	RETENTION RECORD	TYPE OF RECORD	RETENTION RECORD
Journal	Optional	Loans made journal.....	5 years
Ledger cards or sheets	1 year	Loan paid journal	2 years
Pass books.....	Cancel by perforation and return to customer or take up book and destroy.	Note and Disclosure Statements	4 years from the date of transaction or 2 years from the date of final entry, whichever is later.
Signature cards.....	1 year	Note or discount tickler	Optional
Trial balances.....	Optional	Note register.....	2 years
Withdrawal receipts	1 year	Rebate receipts.....	1 year after close
COLLECTIONS		Resolutions	5 years after close
Collection receipts, carbons of	2 years	Trial balances.....	Optional
Collection register	2 years	CUSTOMER SERVICE	
Coupon cash letters, outgoing	1 year	Brokers' confirmations	3 years
Coupon envelopes.....	Optional	Brokers' invoices.....	3 years
Customers' file copies	1 year	Brokers' statements.....	3 years
Department blotters.....	2 years	Night depository agreement	1 year after close
Incoming collection letters	1 year	Night depository receipts.....	1 year after close
Installment contract or note records	2 years after close	Safekeeping records and receipts	5 years after close
COMMERCIAL LOANS		Securities buy and sell orders	2 years
Collateral cards.....	Optional	DUE FROM BANKS	
Collateral receipts	5 years	Advices from correspondents	1 year
Collateral register.....	5 years	Bank statements	5 years
Credit files (closed).....	5 years	Drafts.....	5 years after paid
Daily reports.....	Optional	Draft register.....	5 years
Debit and credit tickets.....	1 year	NOTE: Affidavits, bonds of indemnity, and all pertinent information pertaining to issuance of duplicate checks.....	
Journal		Reconcilements register.....	1 year
(a) If the journal is a by product of posting the liability ledger.....	Optional	DUE TO BANKS	
(b) If the journal is used as book of original entry, with descriptions	5 years	Copies of advices.....	1 year
Liability ledger	5 years	Country bank ledger	5 years
Loan applications	5 years	Incoming cash letter memos for credit	1 year
Loan committee minutes	5 years	Incoming cash letters for remittance.....	1 year
Margin cards.....	Optional	Proof sheets	1 year
Note or discount register		Reconcilement verification	1 year
(a) If the register is a by product of posting the liability ledger.....	Optional	Reconcilement register	1 year
(b) If the register is used as a book of original entry, with description.....	5 years	Reports of accounts, opened and closed	6 months
Note and discount tickler.....	Optional	Resolutions	5 years after close
Receipts for coupons removed from collateral.....	5 years	Signature cards.....	5 years after close
Resolutions	5 years	Trial balances.....	1 year
Statement of borrower under federal regulations (Regulations U, W, Z, etc.)	5 years	Undelivered statements and cancelled checks	5 years
CONSUMER CREDIT		GENERAL	
Borrowers' statements.....	5 years	Applications for travelers checks	1 year
Correspondence, general.....	3 years	Central file cards	Optional
Coupons, loan deposits	1 year	Change-of-address orders.....	Optional
Coupons, loan payments.....	1 year	Check book orders	Optional
Credit applications (closed or rejected)	5 years	Code books (not returned).....	Destroy
Credit folder containing applications, etc. ..	5 years after close	General correspondence.....	3 years
Disbursement vouchers, cash receipts	5 years after close	Incoming mail envelopes	Optional
Loan deposit ledger cards.....	5 years after close	Paid bills, statements and invoices	5 years
Loan ledger cards.....	5 years after close	Protest notices	1 year

TYPE OF RECORD	RETENTION RECORD	TYPE OF RECORD	RETENTION RECORD
Receipts for check books	Optional	PERSONNEL	
Requisition for supplies	Optional	Attendance record.....	3 years
Stenographers notebooks and mechanical device records; extra copies of letters if other copies are retained.....	Optional	Records of employees:	
Telegram, cable and radiogram copies	3 years	Application for employment, reference records, reports and certificates of examination, service records, efficiency tests and other similar data	6 years after termination
Vault records, openings and closings.....	1 year	Application of those not employed	6 years
Wire transfer debit and credit entries	1 year	Salary ledger	3 years
GENERAL LEDGER		Salary receipts.....	3 years
Daily statement of condition.....	Permanent	NOTE: Retain final receipt in personnel folder.	
General journal		PROOF, CLEARINGS AND TRANSIT	
(a) If the journal is a byproduct of posting the general ledger.....	1 month	Clearinghouse settlements sheets.....	3 months
(b) If the journal is used as book of original entry, with descriptions	5 years	Copies of advices of corrections	6 months
General ledger sheets.....	Permanent	Department or tellers' proof sheets	6 months
General ledger tickets (debits and credits) ...	5 years	Deposit proof sheets or tapes	1 year
INTERNATIONAL DEPARTMENT		Inclearings envelopes, proof sheets or tapes	1 year
Cable copies	5 years	Microfilm	2 years
Cable requisitions.....	5 years	Outclearings proof sheets or tapes	6 months
Foreign collection register.....	5 years	Outgoing cash letters, transit	6 months
Foreign draft applications.....	5 years	Proof sheets, transit.....	6 months
Foreign exchange remittance sheets or books	5 years after issue	REAL ESTATE LOANS	
Foreign mail transfer applications.....	5 years	Journal (debits and credits).....	2 years
Foreign mail transfer carbons.....	5 years	Ledger cards	5 years
Letter of credit applications.....	5 years	Loan credit files.....	5 years after close
Letter of credit ledger sheets.....	5 years	Mortgage credits	1 year
Travelers check applications	2 years	Remittances	1 year
Travelers check register	2 years	Tellers' blotter	2 year
INVESTMENTS		REGISTERED MAIL	
Bond ledger sheets.....	5 years	Marine insurance books	3 years
Brokers' confirmations	2 years	Registered mail (incoming) record.....	3 years
Brokers' invoices.....	2 years	Registered mail (outgoing) record.....	3 years
Brokers' statements.....	3 years	Return receipt cards.....	3 years
Descriptive literature on securities disposed of.....	2 years	SAFE DEPOSIT VAULT	
OFFICIAL CHECKS AND DRAFTS		Access tickets.....	2 years
Carbon copy official check register	1 month after paid	Cancelled signature cards	2 years after close
Cashier checks.....	5 years after paid	Copies of rent receipts.....	2 years
Certified checks or receipts	5 years after paid	Correspondence	2 years after close
NOTE: If not delivered or returned to depositor, photograph and destroy checks and then retain film.		Leases or contracts, close accounts	2 years after close
Certified check register.....	5 years	Ledger record of account.....	Optional
Drafts (cancelled).....	5 years after paid	SAVINGS ACCOUNTS	
Expense checks (cancelled)	3 years after paid	Withdrawals.....	5 years
Expense vouchers or invoices	6 years	Deposits.....	5 years
Money orders, bank or personal.....	5 years	Journal	1 year
Money order registers	2 years	Ledger cards or sheets	5 years after last entry
Receipts for certified checks.....	5 years after date	Window bookkeeping machine control tapes	1 year
Requisitions		Pass books.....	Destroy
(a) If all information including name of purchase is recorded on register.....	Optional	Reports of accounts, opened and closed	Optional
(b) If no detail is transcribed on register..	5 years	Resolutions	5 years after close

TYPE OF RECORD	RETENTION RECORD	TYPE OF RECORD	RETENTION RECORD
Signature cards.....	5 years after close	Minute books, trust committee and trust investment committee.....	Permanent
Trial balances, nonautomated.....	Optional	Original trust entries (daily debits and credits and multiple forms).....	2 years
Trial balances, automated		Paid invoices: tradesman, professional (excluding attorney) and miscellaneous.....	3 years
(a) If statement or account history record retained.....	Optional	NOTE: In probate accounts retain three years after expiration of time of appeal from order closing account	
(b) If no alternative record.....	5 years	Probate slips.....	Destroy original when account is closed. Destroy duplicate after circulation.
Withdrawal affidavits.....	3 years	Registered mail report.....	3 years
TELLERS		Registration journals.....	Until closed
Cash item record.....	1 year	Rent collection, mortgage and land contract collection (file accountant's copy)...	5 years
Return item register.....	1 year	Signature files.....	Until closed
Tellers' cash books.....	Optional	Stock transfer change-of-address authority...	1 year
Tellers' cash tickets, originals and carbon copies.....	1 month	Stock transfer memos.....	1 year
Tellers' recapitulation.....	1 month	Stock transfer receipts.....	3 years
Tellers' machine tapes.....	1 month	Stockholders list.....	Optional
Tellers' blotter, journal or proof.....	2 years	Supporting papers to transfers.....	10 years
Tellers' exchange tickets.....	3 months	NOTE: Except recorded instruments and agreement from banks—return to transferor.	
TRUST RECORDS		Surety bonds.....	10 years
Advices of payment		Tax returns	
Securities department bond and coupon collections.....	1 year	Ad valorem tax returns.....	5 years after filing
Amortization schedules.....	Destroy when securities are disposed of	Estate tax returns.....	15 years after filing
Buy and sell orders.....	1 year	Federal and state income tax returns.....	15 years after filing
Cancelled bond and cancelled coupons.....	Return to issuing corporation or cremate, retaining receipt or cremation certificate until account is closed	Intangible tax returns.....	5 years after filing
Cash trial balances.....	6 months	Social security returns.....	5 years after filing
Corporate trust ledger.....	7 years	Tellers' daily blotter.....	18 months
Correspondence		Transfer instructions.....	5 years
Corporate trust (bond issues).....	3 years	Transfer journal tapes.....	2 years
Dividend.....	3 years	Transfer tax waivers.....	Until closed
General.....	3 years	Trust checks.....	Until closed
Irregular transfers.....	3 years	Trust register.....	Until closed
Cost cards, securities.....	5 years	Vouchers, probate trust.....	3 years after expiration of time of appeal from order closing account.
Coupon collections records.....	18 months		
Coupon envelopes.....	Optional	MINIMUM EDP RECORD RETENTION SCHEDULE	
Daily statement of trust department.....	5 years	TYPES OF RECORDS	RETENTION PERIOD
Dividend check tapes (adding machine).....	Optional	CHECKING ACCOUNTS	
Dividend record cards (closed).....	5 years	Trial balance.....	1 month
Dividend and coupon ledger.....	Until closed	Conversion (initial entry) run.....	*2 years (or 3 months)
Dividend and interest disbursement checks.....	5 years	Transaction journal.....	*2 years (or 3 months)
Dividend and interest disbursement list.....	Optional	Master file change.....	6 months
Document files.....	Until closed		
Fee cards.....	Until closed		
Journal sheets, accounting division and stock transfer.....	5 years		
Ledger records: asset ledger, cash ledger, investment ledger, stock transfer ledger and mutual income foundation.....	5 years after close		
Listing for Form 1099.....	1 year after filing		

TYPES OF RECORDS	RETENTION PERIOD
New and closed accounts.....	3 months
Unposted items.....	3 months
Zero balances.....	1 month
Large balance changes.....	1 month
Overdrafts.....	3 months
Stop payments.....	6 months
Service charges.....	1 month
Uncollected funds.....	1 month
Customer statement.....	5 years
SAVINGS ACCOUNTS	
Daily transactions journal.....	6 months
Daily transactions list of accounts active since last trial.....	1 week
Exception report.....	1 year
Closed accounts, control.....	6 months
Current active accounts.....	3 years
Annual statistical analysis.....	Optional
Interest report.....	6 months
1099 listing, summary.....	Optional
Opened and closed accounts.....	6 months
Trial balance.....	Optional (if statement or account history retained, otherwise 5 years)
Savings statement-microfilm.....	5 years
INSTALLMENT LOANS	
Daily payment journal.....	2 years
Trial balance (if only complete history on borrower).....	5 years
New loan report.....	2 years
Loan paid report.....	2 years
Past-due report.....	Optional

(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1701; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993.)

Article 16.—CHARTER APPLICATIONS

17-16-1. Application; filing. (a) An application for a certificate of authority and any supplemental information shall be filed by submitting an original and nine copies to the office of the state bank commissioner.

(b) The application shall be filed at least 14 calendar days before the board's regular meeting date in order to be included on the agenda for that meeting. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

17-16-2. Application; contents. Each application for a certificate of authority shall contain

the following information: (a) The name and address of the proposed bank or trust company;

(b) the names and addresses of the organizers, proposed officers, proposed directors, and shareholders of the proposed bank or trust company;

(c) a detailed financial statement for the organizers, proposed officers, and proposed directors, and for any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company. The financial information shall be fewer than 90 days old and shall be certified by the owners;

(d) a statement of the character, qualifications, and experience of the organizers, proposed officers, and proposed directors, and of any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company, including the number and type of any criminal convictions;

(e) a statement of fact by the applicant to support a finding of public need for the proposed bank or trust company in the community where it will be located;

(f) a list of the names and addresses of each state bank, national bank, savings and loan association, credit union or trust company, and their branches, located within a radius of 25 miles of the site of the proposed bank or trust company. If the proposed bank or trust company is to be located in a metropolitan area with a population of 100,000 or more, as defined by the office of the state bank commissioner, the listing required by this subsection may, at the discretion of the commissioner, be limited to a five-mile radius of the site of the proposed bank or trust company; and

(g) an affidavit of publication of notice that the applicant intends to file an application for a certificate of authority. The notice shall meet the following requirements:

(1) Be published in a newspaper of general circulation in the city where the proposed bank or trust company is to be located, or if there is no such official newspaper, in an official newspaper for the county in which the city is located;

(2) be in the form prescribed by the board;

(3) be published on the same day for two consecutive weeks, with the second publication appearing at least 14 calendar days before any action taken by the board; and

(4) contain a statement that any interested party may submit, in writing, comments in support of or

opposition to the application. Any comment letter of support or opposition shall be filed with the office of the state bank commissioner not later than 10 calendar days after the second publication. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1801, as amended by L. 2001, ch. 87, §13, and K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002.)

17-16-3. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

17-16-4. Comment letters; notification of the applicant. The applicant shall be notified of the receipt of any comment letters and furnished a copy of those letters. The applicant may provide a written response to the board regarding any comment letters within 10 calendar days following the date the applicant was furnished copies of the comment letters. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Aug. 9, 1996.)

17-16-5 to 17-16-6. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

17-16-7. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; revoked Aug. 9, 1996.)

17-16-8. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993; revoked Aug. 9, 1996.)

17-16-9. Application; consideration by the board. (a) After considering the application, including any comment letters and the applicant's response to comment letters, the board shall determine whether to approve or deny the application.

(b) The state banking board shall not be required to make any determination unless the board has had at least 10 calendar days to consider any comment letters or the applicant's response to such letters. (Authorized by K.S.A. 9-1713; imple-

menting K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

Article 17.—FINANCIAL FUTURES CONTRACTS

17-17-1. Limitation on engaging in futures. A bank's authority to engage in financial futures contracts, pursuant to K.S.A. 1995 Supp. 9-1101 shall be limited to using the contracts as a hedge. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-2. Definitions. As used in this article: (a) "contract" means a financial futures contract; and

(b) "hedging" means a purchase or sale made as protection against a known risk and not primarily for income or profit. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; amended, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-3. Adoption of policy by bank. (a) The board of directors shall establish a written policy to engage in financial futures contracts. Policy objectives and limitations shall be specific enough to outline permissible contract strategies and their relationship to other banking activities.

(b) Record keeping systems shall be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-4. Notice to commissioner. A bank shall notify the commissioner of the bank's intention to engage in financial futures contracts before commencement of the activity. The bank shall include the following information in the notice: (a) a copy of the written policy of the bank, established by the board of directors, pursuant to K.A.R. 17-17-3;

(b) the background and experience of all persons authorized to buy and sell contracts;

(c) the trading limits to be imposed upon all persons authorized to buy and sell contracts;

(d) the conditions, if any, which permit deviations from trading limits;

(e) the bank personnel responsible for authorizing any deviations in trading limits;

(f) the procedures developed to prevent unauthorized trading;

(g) copies of forms, in blank, which inform management of the daily contract activity; and

(h) copies of internal record keeping forms, in blank, which reflect the bank's daily contract activity with regard to:

(1) the maturity of each outstanding contract and the type and value of the corresponding cash transaction;

(2) the maturity date of each contract;

(3) the current market price and value of each contract;

(4) the outstanding gross futures position;

(5) the open position;

(6) the amount of money held in margin accounts;

(7) any maturity gaps existing between the maturity date of the contract and the completion dates of the corresponding cash transaction;

(8) the profit or loss for each corresponding cash and futures transaction;

(9) the aggregate profit or loss for all relevant cash and futures transactions; and

(10) the type and amount of each expected cash transaction that did not materialize. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-5. Monthly review of contracts. The board of directors, a duly authorized committee or the bank's internal auditors shall review financial futures contract positions on a monthly basis to ascertain conformance with the bank's written policy. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-6. Maintenance of ledger accounts or registers. (a) Each bank engaging in financial futures contracts shall maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities.

(b) The bank's registers and supporting journals shall, at a minimum, include the following:

(1) the type, whether the position is long or short, and the amount of each contract;

(2) the maturity date of each contract;

(3) the current market price and cost of each contract;

(4) the amount of money held in margin accounts; and

(5) an identification of the asset or liability being hedged. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-7. Review of contracts; market valuation. (a) Except for financial futures contracts described in K.A.R. 17-17-8, the bank shall review each open position and shall determine the market value at least monthly, regardless of whether the bank is required to deposit margin in connection with a given contract.

(b) The bank shall value each contract on the basis of either market or the lower of cost or market, at the option of the bank.

(1) The bank shall recognize any losses resulting from monthly contract valuation as a current expense item. Any bank that values contracts on a market basis shall recognize gains as current income items.

(2) In the event the above described contracts result in the acquisition of securities, the bank shall record these securities on a basis consistent with that applied to the contracts, meaning either market or the lower of cost or market. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-8. Hedging of mortgage banking operations. (a) The bank shall account for financial futures contracts associated with bona fide hedging of mortgage banking operations in accordance with generally accepted accounting principles applicable to the activity.

(b) As used in this regulation, "contracts associated with bona fide hedging of mortgage banking operations" means the origination and purchase of mortgage loans for resale to investors or the issuance of mortgage-backed securities. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-9. Effect on bank's financial condition. The financial reports of any bank engaging in financial futures contracts shall disclose in an explanatory note any financial futures contract activity

that materially affects the bank's financial condition. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

17-17-10. Internal controls; reporting. To assure adherence to bank policy and prevent unauthorized trading and other abuses, each bank engaging in financial futures contracts shall establish internal controls including monthly reports to management, segregation of duties, and internal audit programs. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

Article 18.—OPEN-END INVESTMENT COMPANIES

17-18-1 to 17-18-3. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; revoked Aug. 9, 1996.)

17-18-4. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

Article 19.—BANK SUBSIDIARIES ENGAGED IN SECURITIES ACTIVITIES

17-19-1. Organization; application approval. (a) Prior to its organization to engage in securities activities in this state, each bank subsidiary shall make application to and obtain approval from the state bank commissioner and the state banking board. Each application shall contain all required information as prescribed by the commissioner and the state banking board.

(b) Upon filing an application to form a bank subsidiary to engage in securities activities, the following criteria shall be considered by the commissioner and the state banking board prior to granting authority:

(1) the financial standing, general business experience and character of the organizers and incorporators;

(2) the character, qualifications and experience of the officers of the proposed bank subsidiary;

(3) the public need for the proposed bank subsidiary;

(4) the prospects for success of the proposed bank subsidiary; and

(5) any other factors the commissioner or the state banking board deems relevant to the applicant.

(c) Each expense incurred in making any examination and investigation of an application to form a bank subsidiary to engage in securities activities shall be paid by the applicant, who shall pay \$1,000 to the commissioner to defray such expense. The commissioner may require an additional payment not to exceed \$4,000 at any time deemed necessary. Any unused portion of such payment shall be refunded.

(d) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon finding any violation of the state banking department regulations.

(e) Each bank subject to revocation of authority to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be afforded the right to a hearing pursuant to the Kansas administrative procedure act. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

17-19-2. Registration and licensing; violations; examination. (a) Prior to engaging in securities activities, each bank subsidiary shall comply with registration and licensing requirements of the appropriate federal and state securities regulatory agencies. Each bank subsidiary shall maintain on file with the Kansas banking department copies of all required registration documents, together with copies of each license or registration documents issued to the bank subsidiary by each regulatory agency.

(b) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon notification of any violation of federal or state securities laws or regulations.

(c) Any denial of an application or revocation of authority for a bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be made by the commissioner, subject to confirmation by the state banking board.

(d) Each bank subsidiary found to be in violation of any federal or state securities law or regulation shall notify the commissioner of each violation within 10 days of such finding. Each notice shall include all material facts surrounding such violation including:

(1) identification of parties involved;

(2) date of violation;

- (3) nature of violation; and
- (4) penalties assessed.

(e) The expense, including salaries, travel expenses, supplies and equipment, of each examination of a bank subsidiary deemed necessary by the bank commissioner after receiving notification as required by subsection (d) of this regulation shall be paid by the bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

17-19-3. Wholly-owned subsidiary; leasing; employees; office location. (a) Each bank subsidiary engaged in securities activities shall be a wholly-owned subsidiary of the parent bank.

(b) Any parent bank may lease or sell office space to its subsidiary engaged in securities activities; provided the lease or sale is of a bona fide nature and represents a fair market value in the community market place. Office space leased or sold by a parent bank to its subsidiary engaged in securities activities shall be separate and distinct from the office space of the parent bank.

(c) Each bank subsidiary engaged in securities activities may employ parent bank employees provided those employees are fairly compensated by the bank subsidiary.

(d) Each bank subsidiary engaged in securities activities shall locate no office outside the state of Kansas unless the prior approval of the bank commissioner and the state banking board is obtained. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

17-19-4. Capital; lending limit. The aggregate of unsecured loans and capital investments to each bank subsidiary by each parent bank shall not exceed 15 percent of the total amount of capital stock paid in and unimpaired and the unimpaired surplus fund of the parent bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

Article 20.—EMPLOYMENT

17-20-1. Employment; security background check. (a) Each Deputy Commissioner, Special Assistant or other employee necessary to properly discharge the duties of the office shall submit to a security background check prior to being employed in such position.

(b) Upon the commencement of the interview process, every candidate shall be given written notice that a security background check is required.

(c) The security background check shall be limited to criminal history record information as provided by K.S.A. 22-4701 et seq. and amendments thereto.

(d) If the criminal history record information reveals convictions of crimes of dishonesty, such conviction(s) may be used to disqualify a candidate for any position within the Office of the State Bank Commissioner.

(e) If the criminal history record information is used to disqualify a candidate, the candidate shall be informed in writing of that decision.

(f) Upon determining whether to hire or disqualify a candidate, the candidate's criminal history record information report shall be destroyed. The candidate's personnel file shall only contain a statement that a security background check was performed and the date thereof. (Authorized by and implementing K.S.A. 75-3135; effective Jan. 27, 1992.)

Article 21.—BANK HOLDING COMPANIES; APPLICATION FOR THE ACQUISITION OF A KANSAS BANK OR BANK HOLDING COMPANY

17-21-1. Definitions. For purposes of this article, the terms used shall have the meanings attributed to them by K.S.A. 1995 Supp. 9-519 and K.S.A. 1995 Supp. 9-701. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)

17-21-2. Application. (a) With the approval of the commissioner, any bank holding company may acquire control of one or more Kansas banks or Kansas bank holding companies.

(b) A bank holding company shall be deemed to be acquiring control of a Kansas bank or Kansas bank holding company if, as a result of the proposed acquisition:

(1) the company, directly or indirectly or acting through one or more persons, will own, control or have the power to vote 25 percent or more of any class of voting securities of a Kansas bank or Kansas bank holding company;

(2) the company will control in any manner the election of a majority of the directors or trustees of a Kansas bank or Kansas bank holding company; or

(3) the commissioner determines that the company directly or indirectly will exercise a con-

trolling influence over management or policies of a Kansas bank or Kansas bank holding company.

(c) Each request for approval to acquire control of a Kansas bank or Kansas bank holding company shall be made by filing an application in the form required by the commissioner.

(1) A separate application and fee shall be filed for each bank or bank holding company to be acquired.

(2) The applicant holding company shall bear any additional costs of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)

17-21-3. Contents of application. (a) Each applicant shall respond accurately and fully to all questions contained in the application form provided by the commissioner.

(b) Upon submitting an application, each applicant shall provide the commissioner with the following additional information:

(1) a statement by the applicant demonstrating that the proposed acquisition is in the interest of the public and of the depositors and creditors of the bank to be acquired or any bank subsidiaries of the bank holding company to be acquired;

(2) a copy of all cease and desist orders, memorandums of understanding or other formal or informal actions taken by any federal or state regulator, under which the applicant or any of the applicant's subsidiaries or affiliates has operated within the 18 months preceding the application;

(3) a copy of the most recent regulatory examination of any bank or trust company subsidiary or affiliate of the applicant if a composite rating of "3," "4," or "5" was received;

(4) a copy of the most recent report of examination of the bank holding company prepared by the federal reserve bank or the applicant's state regulator. If the commissioner is not satisfied that the information provided gives adequate assurance that the bank or banks to be acquired will be operated safely and soundly, the commissioner may conduct an examination of the applicant or any of its subsidiaries or affiliates for the purpose of augmenting such information. The applicant shall bear the cost of any examination;

(5) all information required by K.S.A. 1995 Supp. 9-1722; and

(6) an analysis demonstrating that the acquisition will not cause the applicant to exceed limitations imposed by K.S.A. 1995 Supp. 9-520(a)

regarding concentrations of deposits. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

17-21-4. Filing of application. (a) Within 14 calendar days of the date any agreement to purchase a bank or bank holding company is entered into, a notice of intent to submit an application pursuant to K.S.A. 1995 Supp. 9-532 shall be filed with the commissioner.

(b) The application shall be filed within 90 calendar days after an agreement has been entered into. At the discretion of the commissioner, failure to file an application within 90 calendar days may be grounds for rejection of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended Aug. 9, 1996.)

17-21-5. When complete. An application filed pursuant to K.S.A. 9-532 shall be complete when: (a) the materials described in K.S.A. 1995 Supp. 9-533, K.S.A. 1995 Supp. 9-536 and K.A.R. 17-21-3 have been filed with the commissioner; and

(b) the board of governors of the federal reserve system or the appropriate federal reserve bank acting on delegated authority, and the commissioner have determined that no further information shall be required to complete the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532, and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

17-21-6. Concurrent jurisdiction. (a) Examinations of the applicant, its subsidiaries and its affiliates may be conducted by the commissioner. The applicant shall bear the cost of any examination.

(b) The applicant's state and federal regulators may be provided with copies of reports of examinations and other information compiled by the commissioner. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-537; effective Aug. 10, 1992; amended Aug. 9, 1996.)

17-21-7. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-524; effective Aug. 10, 1992; revoked Aug. 9, 1996.)

17-21-8. Application; request for additional information. An application filed pursuant to K.S.A. 1995 Supp. 9-532 may be returned by the commissioner if the applicant does not respond in

writing within 20 calendar days of a written request by the commissioner for additional information. If the commissioner returns the application, the application shall be deemed withdrawn and the applicant shall forfeit the filing fee. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532 and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

Article 22.—APPLICATION FEES

17-22-1. Application fees. (a) At the time of filing any application described below, the applicant shall remit to the office of the state bank commissioner the following nonrefundable fee:

- | | |
|--|---------------------|
| (1) Bank or trust company charter..... | \$2,500 |
| (2) New branch bank..... | 1,000 |
| (3) Relocation | |
| (A) Main office or branch relocation | 1,000 |
| (B) Short-form main office relocation | 500 |
| (C) Interchange of main office and branch | 500 |
| (D) Main office relocation with existing
location retained as a branch | 1,000 |
| (E) Short-form main office relocation
with existing location retained as a
branch..... | 500 |
| (4) Merger, consolidation, or transfer of
assets and liabilities | 1,000 |
| (5) Change of control | |
| (A) General..... | 1,000 |
| (B) Bona fide gift or inheritance..... | 500 |
| (C) Formation of one-bank holding company
and associated exchange of stock..... | 500 |
| (6) Conversion to state charter | no fee |
| (7) Bank service corporation..... | 500 |
| (8) Fiduciary activities | |
| (A) Fiduciary powers | no fee |
| (B) Trust branch established pursuant to
K.S.A. 9-1135 | 500 |
| (C) Trust service desk established pursuant
to K.S.A. 9-2107..... | 500 |
| (D) Trust service office established pursuant
to K.S.A. 9-2108..... | 500 |
| (E) Contracting trustee agreement established
pursuant to K.S.A. 9-2107 | 500 |
| (9) Money order license | 100, |
| | plus \$10 per agent |
| (10) Change of name..... | 250 |
| (11) Revenue bond pledgibility | 200 |
| (12) Letter of good standing | 50 |
| (13) Administrative appeals pursuant to
K.S.A. 9-2108(i), K.S.A. 9-2107(l),
or K.S.A. 9-1135(j)..... | 1,000 |

(b) The statutory procedures governing the applications described in paragraph (a)(2), paragraph (a)(3)(A), (C), (D) or (E), and paragraph (a)(8)(B), (C), or (D) above may require a public hearing. If a hearing is required, the applicant shall pay an additional nonrefundable fee of \$400 to defray the expenses of the hearing.

(c) The applicant shall pay any additional cost associated with any examination or investigation if the state bank commissioner determines that an on-site examination of the financial institutions or trust companies that are parties to the application is necessary. (Authorized by K.S.A. 9-1713, 9-1127c, 9-1601, 9-812, and K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107; implementing K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1115, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107 and K.S.A. 9-1127c, 9-1601, and 9-812; effective Oct. 19, 1992; amended Aug. 16, 1993; amended Oct. 31, 1994; amended Nov. 14, 1997; amended April 28, 2000.)

Article 23.—TRUST SUPERVISION

17-23-1. Definitions. For the purposes of article 23, the following definitions shall apply. (a) “Account” means the trust, estate or other fiduciary relationship that has been established with a bank or trust company.

(b) “Bank” means a corporation as defined in K.S.A. 9-701(a) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, “bank” shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(c) “Cash management vehicle” means any checking, savings or money market account that is used to accumulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) “Collective investment fund” means funds held by a bank or trust company as fiduciary and invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under the uniform transfers to minors act, K.S.A. 38-1701 et seq., and

amendments thereto, or any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq. and amendments thereto, or pursuant to any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities that are subject to the transactions.

(h) "Fiduciary" means, unless otherwise defined in the operative agreement between the parties, a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and shall include a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, custodian under any state law substantially similar to the uniform transfers to minors act or the uniform gifts to minors act as published by the national conference of commissioners on uniform state laws, conservator of estates, assignee, receiver, managing agent, custodian or any other similar capacity in which the person or entity has investment authority or investment discretion.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments; to review investment decisions made by others; or to provide investment advice or counsel to others.

(l) "Investment discretion," with respect to an account, means that the bank or trust company is authorized to determine what securities or other property will be purchased or sold by or for the account.

(m) "Managing agent" means the fiduciary relationship assumed by the bank or trust company upon the creation of an account that names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(n) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, either in specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(o) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" shall not include any of the following:

(1) A deposit or share account in a federally or state insured depository institution;

(2) a loan participation;

(3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) currency;

(5) any note, draft, bill of exchange, or bankers acceptance that has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) units of a collective investment fund;

(7) interests in a variable amount or a note as defined in paragraph (c)(2)(B) of K.A.R. 17-23-11; or

(8) U.S. savings bonds.

(p) "Trust committee" means the board of directors or any committee charged, by the board of directors, with the responsibility for adminis-

tration and supervision of a bank trust department or the trust activities of a trust company. The “trust committee” may assign responsibility to other committees or individuals, as is necessary and appropriate.

(q) “Trust company” means those companies as defined in K.S.A. 9-701(b) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, “trust company” shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(r) “Trust department” means that group or groups of officers and employees of a bank or trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank or trust company, whether or not the group or groups are so named. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, 9-1602, 9-1603, 9-1605, 9-1606, 9-1607, 9-1608, 9-1609, 9-1610, 9-1611, 9-1612, 9-2101, 9-2102, 9-2104, 9-2105, 9-2106, K.S.A. 2000 Supp. 9-1604, 9-2107, as amended by L. 2001, ch. 5, §48, and 9-2111, K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1, and 9-2108, as amended by L. 2001, ch. 5, §49; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-2. Adoption of policies and procedures with respect to brokerage placement practices. (a) Each bank or trust company exercising investment discretion, as defined in subsection (r) of K.A.R. 17-23-1, with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations.

(b) Written policies and procedures shall address, where appropriate:

(1) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons, including the factors considered in these determinations;

(2) any acquisition of services or products, including research services, in return for brokerage commissions;

(3) the allocation of research or other services among accounts, including those which did not generate commissions to pay for the research or other services;

(4) the need, in appropriate instances, to make disclosures concerning the policies and procedures to prospective and existing customers; and

(5) the prohibition of excessive trading in portfolios. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-3. Administration of fiduciary powers. (a) The board of directors shall be responsible for the proper exercise of fiduciary powers by the bank or trust company.

(1) All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank or trust company in the exercise of its fiduciary powers, shall be the responsibility of the board.

(2) In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the bank’s or trust company’s fiduciary powers it may consider proper to assign to any of the following designees:

- (A) Director;
- (B) officer;
- (C) employee; or
- (D) committee.

(b) If a trust committee is designated pursuant to paragraph (a) (2), the trust committee shall supervise the fiduciary activities of a bank or trust company and shall meet the following criteria.

(1) The trust committee shall consist of at least three directors, at least one of which shall not be an officer of the bank or trust company.

(2) The trust committee shall keep complete minutes of its actions and make periodic reports to the board of directors of its actions.

(c) A fiduciary account shall not be accepted without the prior approval of the board, or the board’s designee. A written record shall be made of each fiduciary account acceptance and of the relinquishment or closing out of any fiduciary account. Upon the acceptance of an account, a prompt verification shall be made to determine that assets received have been properly placed on accounting records and documented. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in fiduciary accounts for which the bank or trust company

has investment discretion, are reviewed to determine the advisability of retaining or disposing of these assets.

(d) All officers and employees taking part in the operation of a bank trust department or trust company shall be bonded.

(e) Each bank or trust company exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to render an opinion upon fiduciary matters and to advise the bank or trust company.

(f) Each bank or trust company exercising fiduciary powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. These policies and procedures, in particular, shall ensure that bank trust departments and trust companies do not use material inside information in connection with any decision or recommendation to purchase or sell any security. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1114, K.S.A. 9-1601, K.S.A. 9-1602, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-4. Books and accounts. (a) Each bank or trust company exercising fiduciary powers shall retain fiduciary records which shall be kept separate and distinct from other records of the bank or trust company.

(b) Each such bank or trust company shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(c) Each bank or trust company shall keep a record of all written complaints and related correspondence concerning any fiduciary account.

(d) A bank or trust company shall retain the records required by this article for:

(1) a period of three years from the later of:

(A) termination of the fiduciary account relationship to which the records relate;

(B) termination of litigation relating to such account; or

(C) the next examination; or

(2) a longer minimum retention period if one is prescribed by K.A.R. 17-15-1 and amendments thereto. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-5. Audit of trust activities. (a) The board of directors, or an audit committee designated by the board of directors, shall make a thorough examination of the books, records, funds and securities held by the bank trust department or trust company, in a fiduciary capacity, at each of the quarterly meetings and the result of such examination shall be recorded in detail.

(b) If the board, or the designated committee, selects an auditor, the auditor's findings shall be reported directly to the board.

(c) In lieu of the required four quarterly examinations, the board of directors, or an audit committee designated by the board of directors, may accept one annual audit by a certified public accountant or an independent auditor approved by the commissioner. All audit reports and findings shall be reported to the board of directors. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1116; effective Feb. 28, 1994.)

17-23-6. Funds awaiting investment or distribution. (a) Funds held by a bank or trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(1) Each bank or trust company exercising fiduciary powers shall adopt and follow written policies and procedures intended to provide that a prudent rate of return, available for trust-quality, short-term investments, is obtained upon funds so held, consistent with the requirements of the governing instrument and local law.

(2) These policies and procedures shall take into consideration all relevant factors, including the following:

(A) The anticipated return that could be obtained while the cash remains uninvested or undistributed;

(B) the cost of investing the funds;

(C) the anticipated need for the funds; and

(D) the costs and operational complexities of implementing and maintaining the investments for the bank or trust company.

(b) Funds held in trust by a bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in the commercial or savings or other departments of the bank.

(1) If the deposits, per account, exceed current federal deposit insurance corporation (F.D.I.C.)

limits, the bank shall first set aside, under control of the trust department, as collateral security, direct obligations of the United States and other obligations fully guaranteed by the United States as to principal and interest, or any other security available for pledging by commercial banks under Kansas state law.

(2) The securities that are deposited or substituted as collateral shall at all times be at least equal in market value to the amount of trust funds deposited, to the extent that the deposit exceeds F.D.I.C. insurance limits. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1603, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-7. Investment of funds held as fiduciary. Funds held by a bank or trust company in a fiduciary capacity shall be invested in accordance with any one or more of the following: (a) the instrument establishing the fiduciary relationship;

(b) any order of the probate or other court; or

(c) any and all Kansas statutes and regulations applicable, including but not limited to K.S.A. 17-5004, K.S.A. 9-1609, and K.A.R. 17-23-11 and amendments thereto. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1611, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-8. Self-dealing. (a) Unless lawfully authorized by the instrument creating the relationship, by court order or by the laws of the state of Kansas, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested in stock or obligations of, or property acquired from any of the following:

(1) The bank or trust company, or its directors, officers, or employees, or individuals with whom there exists such a connection;

(2) organizations in which there exists an interest that might affect the exercise of the best judgment of the bank or trust company in acquiring the property; or

(3) affiliates of the bank or trust company, or their directors, officers or employees.

(b)(1) A bank or trust company shall not lend, sell, or otherwise transfer assets of a fiduciary account for which a bank or trust company has investment discretion to the bank or trust company or any of its directors, officers, or employees, or to affiliates of the bank or trust company or any of

their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank or trust company, unless any of the following conditions is met:

(A) The transaction is lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(B) legal counsel advises the bank or trust company in writing that the bank or trust company has incurred, in its fiduciary capacity, a contingent or potential liability, and the bank or trust company desires to relieve itself from the contingent or potential liability. In this case, the bank or trust company, upon the consummation of the sale or transfer of assets, shall make reimbursement in cash at the greater of book or market value of the assets to the fiduciary account;

(C) the transaction is authorized as is provided in paragraph (b)(8)(B) of K.A.R. 17-23-11; or

(D) the transaction is required in writing by the state bank commissioner.

(2) Notwithstanding paragraph (b)(1), a bank or trust company may lend funds held in trust to participants and beneficiaries of employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. §1108, as in effect on December 17, 1999, which is hereby adopted by reference.

(c) Except as provided in subsection (b) of K.A.R. 17-23-6, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested by the purchase of stock or obligations of the bank or trust company or its affiliates unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(1) If the retention of stock or obligations of the bank or trust company or its affiliates is authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders.

(2) If the exercise of rights or receipts of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A bank or trust company may sell assets held by it as fiduciary in one account to itself as fidu-

ciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(e) A bank or trust company may make a loan to an account from the funds belonging to another account, if the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(f) A bank or trust company may make a loan to an account and may take as security assets of the account, if the transaction is fair to the account.

(g) Except with the specific written approval of its board of directors, a bank or trust company shall not permit any of its current officers or employees to retain any compensation for acting as a cofiduciary with the bank or trust company in the administration of any account undertaken by it. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1609, K.S.A. 9-1611, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-9. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002; revoked Feb. 21, 2020.)

17-23-10. Surrender of fiduciary powers. Any bank or trust company which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the state bank commissioner a certified copy of the resolution of its board of directors signifying such a desire. Upon receipt of such resolution, the state bank commissioner may make an investigation. If the commissioner is satisfied that the bank or trust company has been discharged from all fiduciary duties which it has undertaken, a letter to the bank or trust company certifying that it is no longer authorized to exercise fiduciary powers shall be issued by the commissioner. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1604, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-11. Collective investment. (a) Funds held by a bank or trust company as fiduciary may be invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company

in its capacity as trustee, executor, administrator, conservator, or as custodian under any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the American law institute; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under the internal revenue code.

(b) Collective investment funds, as defined in subsection (d) of K.A.R. 17-23-1, shall be administered as follows.

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to herein as "the plan," which shall be approved by a resolution of the bank or trust company board of directors or by a committee authorized by the board.

(A) "The plan" shall contain appropriate provisions not inconsistent with the rules and regulations of the state bank commissioner as to the manner in which the fund is to be operated, including provisions relating to the following:

(i) The investment powers and a general statement of the investment policy of the bank or trust company with respect to the fund;

(ii) the allocation of income, profits, and losses;

(iii) fees and expenses that will be charged to the fund and to participating accounts;

(iv) the terms and conditions governing the admission or withdrawal of participations in the fund;

(v) the auditing of accounts of the bank or trust company with respect to the fund;

(vi) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;

(vii) the expected frequency for income distribution to participating accounts;

(viii) the minimum frequency for valuation of assets of the fund;

(ix) the period following each such valuation date during which the valuation may be made, which in usual circumstances shall not exceed 10 business days;

(x) the basis upon which the fund may be terminated; and

(xi) any other matters that may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value deter-

mined in good faith by the fund trustees may be used.

(C) A copy of “the plan” shall be available at the principal office of the bank or trust company for inspection during all business hours, and upon request a copy of “the plan” shall be furnished to any person.

(2) Property held by a bank or trust company in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under any provision of the internal revenue code may be invested in collective investment funds, subject to the provisions herein contained pertaining to these funds, and may qualify for tax exemption pursuant to section 584 of the internal revenue code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of paragraph (a)(2) of this regulation if the fund qualifies for tax exemption under revenue ruling 56-267 and following rulings.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank or trust company as fiduciary in a participation in a collective investment fund is proper, the bank or trust company may consider the collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) Each bank or trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets at least once every three months. However, in the case of a fund described in paragraph (a)(2) above that is invested primarily in real estate or other assets that are not readily marketable, the bank or trust company shall determine the value of the fund’s assets at least once each year.

(A) Participation shall not be admitted to or withdrawn from the fund except according to the following:

- (i) On the basis of the valuation; and
- (ii) according to the valuation date.

(B) Participation shall not be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valua-

tion date in the fiduciary records of the bank or trust company and approved in the manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in real estate or other assets that are not readily marketable, the bank or trust company may require a prior notice period not to exceed one year, for withdrawals.

(5)(A) Each bank or trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank or trust company. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(B) Each bank or trust company administering a collective investment fund shall at least once during a period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the following:

- (i) The cost and current market value of each investment;
- (ii) a statement for the period since the previous report showing purchases, with cost;
- (iii) sales, with profit or loss and any other investment changes;
- (iv) income and disbursements; and
- (v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund’s value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the bank or trust company shall make reference to the performance of funds other than those administered by the bank or trust company.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may also be

furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank or trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this regulation may be given publicity, solely in connection with the promotion of the fiduciary services of the bank or trust company.

(E) Except as provided in this regulation, the bank or trust company shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. However, all distributions on any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(A) A bank or trust company shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it shall not lend money to a fund, sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including time or savings deposits, of the bank or trust company or any of its affiliates. However, these deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this regulation, funds held by a bank or trust company as fiduciary for its own employees may be invested in a collective investment fund. A bank or trust company shall not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank or trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which the withdrawal can be effected. An unsecured advance to an account holding a participation shall not be deemed to constitute the acquisition of an interest by a bank or trust company until the time of the next valuation date arrives.

(B) Any bank or trust company administering a collective investment fund may purchase from the fund for its own account any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank or trust company elects to purchase the investment, it shall do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank or trust company administering the fund.

(10) A bank or trust company administering a collective investment fund shall have the exclusive management of it, except as prudence may allow delegation.

(A) The bank or trust company may charge a fee for the management of the collective investment fund if the fractional part of the fee proportionate to the interest of each participant does not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations that would have been charged to the participant if no assets of the participant had been invested in participations in the fund.

(B) The bank or trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(11) A bank or trust company administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in this fund in any form.

(12) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank or trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(13) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation satisfies each of the following requirements.

(A) Investments shall be limited to bonds, notes, or other evidences of indebtedness payable

on demand, including variable amount notes, or having a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations, and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a bank or trust company as fiduciary may be invested collectively, to the extent not prohibited by state law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of these companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund";

(2)(A) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(B) on a short-term basis in a variable amount note of a borrower of prime credit, if the note is maintained by the bank or trust company on its premises and is utilized by it only for investment of moneys held in fiduciary accounts.

The bank or trust company shall not participate in the loans or obligations authorized under paragraphs (c)(2)(A) and (B) and shall not have an interest in any investment therein except in its capacity as fiduciary;

(3) in a common trust fund maintained by the bank or trust company for the collective investment of cash balances received or held by a bank or trust company in its capacity as trustee, executor, administrator, or guardian, which the bank or trust company considers to be individually too small to be invested separately to advantage:

(A)(i) The total investment for such fund shall not exceed \$100,000;

(ii) the number of participating accounts shall be limited to 100; and

(iii) no participating account may have an interest in the fund in excess of \$10,000;

(B) in applying these limitations, if two or more accounts are created by the same person or persons and one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one;

(C) a fund shall not be established or operated under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation;

(4) in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation; or

(5) in any other manner that is approved in writing by the state bank commissioner. (Authorized by K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-12. Record-keeping for securities transactions. Each bank or trust company effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years. (a) There shall be chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show:

(1) the account or customer for which each such transaction was effected;

(2) the description of the securities;

(3) the unit and aggregate purchase or sale price, if any; and

(4) the trade date and the name or other designation of the broker, dealer or other person from whom purchased or to whom sold.

(b) There shall be account records for each customer which shall reflect:

(1) all purchases and sales of securities;

(2) all receipts and deliveries of securities;

(3) all receipts and disbursements of cash with respect to transactions in securities for such accounts; and

(4) all other debits and credits pertaining to transactions in securities.

(c) There shall be a separate memorandum or order ticket for each order to purchase or sell securities, whether executed or canceled, which shall include:

(1) the account or accounts for which the transaction was effected;

(2) whether the transaction was a market order, limit order or subject to special instructions;

(3) the time the order was received by the trader or other bank or trust company employee responsible for effecting the transaction;

(4) the time the order was placed with broker or dealer; or if there was no broker or dealer, the time the order was executed or canceled;

(5) the price at which the order was executed; and

(6) the price that the broker or dealer utilized.

(d) There shall be a record of each broker or dealer selected by the bank or trust company to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year. Nothing contained in this paragraph shall require a bank or trust company to maintain the records required by this regulation in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-13. Form of notification for securities transactions. Each bank or trust company effecting a securities transaction for a customer shall maintain for at least three years and except as provided in K.A.R. 17-23-14, shall mail or otherwise furnish to such customer either of the following types of notifications: (a)(1) a copy of the confirmation of a broker or dealer relating to the securities transactions; and

(2) if the bank or trust company is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a written agreement between the bank or trust company and the customer, a statement of the source and amount of any remuneration to be received; or

(b) a written notification disclosing:

(1) the name of the bank or trust company;

(2) the name of the customer;

(3) whether the bank or trust company is acting

as an agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;

(4) the date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of the customer and the identity, price and number of shares or units, or principal amount in the case of debt securities, of the security purchased or sold by such a customer;

(5) the amount of any remuneration received or to be received by the bank or trust company from the customer in connection with the transaction;

(6) the source and amount of any other remuneration to be received by the bank or trust company in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank or trust company and the customer.

In the case of U.S. government securities, federal agency obligations and municipal obligations, this paragraph (b)(6) shall apply only with respect to remuneration received by the bank or trust company in an agency transaction; and

(7) the name of the broker or dealer utilized; or where there is no broker or dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)

17-23-14. Time of notification for securities transactions. The time for mailing or otherwise furnishing the written notification described in K.A.R. 17-23-13 shall be five business days from the date of the transaction, or if a broker or dealer is utilized, within five business days from the receipt by the bank or trust company of the broker or dealer's confirmation. However, the bank or trust company may elect to use the following alternative procedures if the transaction is effected for the following types of securities. (a) For accounts, except periodic plans, for which the bank or trust company does not exercise investment discretion, the bank or trust company and the customer may agree in writing to a different arrangement as to the time and content of the notification. The agreement shall make clear the customer's right to receive the written notification within the prescribed time period at no additional cost to the customer.

(b) For accounts, except collective investment funds, for which the bank or trust company exercises investment discretion in other than an agency capacity, the bank or trust company shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account, mail or otherwise furnish to the person the written notification within a reasonable time. The bank or trust company may charge that person a reasonable fee for providing this information.

(c) Unless otherwise provided in the account agreement, for accounts for which the bank or trust company exercises investment discretion in an agency capacity, the following requirements shall be met:

(1) The bank or trust company shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank or trust company at the end of that period and all debits, credits, and transactions in the customer's account during that period; and

(2) if requested by the customer, the bank or trust company shall mail or otherwise furnish to the customer within a reasonable time the written notification described in K.A.R. 17-23-13. The bank or trust company may charge a reasonable fee for providing this information.

(d) For a collective investment fund, the provisions of K.A.R. 17-23-11 shall apply.

(e)(1) For a periodic plan, the bank or trust company shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the following information:

(A) The funds and securities in the custody or possession of the bank or trust company;

(B) all service charges and commissions paid by the customer in connection with the transaction; and

(C) all other debits and credits of the customer's account involved in the transaction.

(2) Upon the written request of any customer, the bank or trust company shall furnish the information described in K.A.R. 17-23-13. However, any information relating to remuneration paid in connection with the transaction shall not be required to be provided to the customer when paid by a source other than the customer. The bank or trust company may charge a reasonable fee for providing this information. (Authorized by K.S.A.

2000 Supp. 9-1713; implementing K.S.A. 9-1601 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

17-23-15. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994; revoked Jan. 18, 2002.)

17-23-16. Location of trust documents. (a) Unless an exception is granted by the commissioner, all of the original governing instruments establishing a fiduciary relationship with a bank or trust company shall be permanently maintained and located at one site, which shall be one of the following:

- (1) The main bank or trust company location;
- (2) an approved branch or trust service office; or
- (3) another site approved by the commissioner.

(b) The following factors shall be considered by the commissioner in determining whether to grant an exception:

(1) The cost to the bank or trust company to maintain all original governing instruments at one site;

(2) the additional burden to the bank or trust company to maintain all original governing instruments at one site; and

(3) the effect that storage at separate locations will have on the ability of the commissioner, or the commissioner's designees, to efficiently conduct an examination of the bank or trust company.

(c) All other records shall be stored at any main bank or trust company location, an approved branch or trust service office, or another site approved by the commissioner.

(d) For purposes of examination, the bank or trust company shall make available original governing instruments and other records as deemed necessary by the commissioner to complete an examination. (Authorized by K.S.A. 9-1713 and K.S.A. 9-1130; implementing K.S.A. 9-1603, 9-1130, and K.S.A. 1999 Supp. 9-2103; effective Feb. 28, 1994; amended April 28, 2000.)

Article 24.—MORTGAGE BUSINESS

17-24-1. Signed acknowledgment; contents. Before a licensee enters into any contract for the provision of services or receives any compensation or promise of compensation for a mortgage loan, the licensee shall acquire from the customer a signed acknowledgment containing only the following items: (a) The name and address of the mortgage business;

(b) the name and position of the individual presenting the acknowledgment to the customer for a signature;

(c) a statement in at least 10-point boldface letters that reads as follows: “(name of licensee) is a mortgage business licensed with the Kansas Office of the State Bank Commissioner in accordance with the laws of the state of Kansas. This license does not represent an endorsement or recommendation of the licensee’s products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603”; and

(d) the original signature of the customer or customers and the date on which the signature or signatures were attached. (Authorized by K.S.A. 9-2208 and 9-2209; implementing K.S.A. 9-2208; effective, T-17-4-9-99, April 9, 1999; effective July 16, 1999; amended Oct. 3, 2003.)

17-24-2. Mortgage business fees. At the time of filing any application pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, each applicant, licensee, or registrant shall remit to the office of the state bank commissioner the following applicable nonrefundable fees:

- (a) New or renewal application for each principal place of business \$400
- (b) New or renewal application for each branch office..... \$300
- (c) Application for new registration as a loan originator \$100
- (d) Renewal registration as a loan originator..... \$50

(Authorized by K.S.A. 2013 Supp. 9-2209; implementing K.S.A. 9-2204, K.S.A. 2013 Supp. 9-2205, and K.S.A. 9-2215; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001; amended Oct. 2, 2009; amended Sept. 26, 2014.)

17-24-3. Prelicensing and continuing education; requirements. (a) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall complete at least 20 hours of prelicensing professional education (PPE) approved in accordance with subsection (c), which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal, which shall include at least the following:

- (1) Three hours of federal law and regulations;
- (2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(c) Each PPE and each CPE course shall first be approved by the office of the state bank commissioner (OSBC), or its designee, before granting credit.

(d) In addition to the specific topic requirements in subsections (a) and (b), PPE and CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(e) One PPE or CPE hour shall consist of at least 50 minutes of approved instruction.

(f) Each request for PPE or CPE course approval shall be submitted on a form approved by the OSBC. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 9-2201 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the commissioner. Each registrant shall ensure that PPE or CPE credit has been properly submitted to the OSBC and shall maintain verification records in the form of completion certificates or other documentation of attendance at approved PPE or CPE courses.

(h) Each CPE year shall begin on the first day of January and shall end on the 31st day of December each year.

(i) A registrant may receive credit for a CPE course only in the year in which the course is taken. A registrant shall not take the same approved course in the same or successive years to meet the annual requirements for CPE.

(j) Each registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 9-2205 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A registrant who is an instructor of an approved continuing education course may receive credit for the registrant's own annual continuing education requirement at the rate of two hours of credit for every one hour taught. (Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9; effective March 1, 2002; amended Oct. 2, 2009.)

17-24-4. Record retention. (a) In any mortgage transaction in which the licensee does not close the mortgage loan in the licensee's name, the licensee shall retain the following documents, as applicable, for at least 36 months following the loan closing date, or if the loan is not closed, the loan application date:

- (1) The application;
- (2) the good faith estimate;
- (3) the early truth-in-lending disclosure statement;
- (4) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;
- (5) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, the total appraised value of the real estate as reflected in the most recent records of the tax assessor of the county in which the real estate is located, or, for a nonpurchase money real estate transaction, the estimated market value as determined through an acceptable automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto;
- (6) the signed Kansas acknowledgment as required by K.S.A. 9-2208(b), and amendments thereto;
- (7) the adjustable rate mortgage (ARM) disclosure;
- (8) the home equity line of credit (HELOC) disclosure statement;
- (9) the affiliated business arrangement disclosure;
- (10) evidence that the special information booklet, consumer handbook on adjustable rate mortgages, home equity brochure, reverse mortgage booklet, or any suitable substitute was delivered in a timely manner;
- (11) the certificate of counseling for home equity conversion mortgages (HECMs);

(12) the loan cost disclosure statement for HECMs;

(13) the notice to the borrower for HECMs;

(14) phone log or any correspondence with associated notes detailing each contact with the consumer;

(15) any documentation that aided the licensee in making a credit decision, including a credit report, title work, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(16) the settlement statement; and

(17) all paid invoices for appraisal, title work, credit report, and any other closing costs.

(b) In any mortgage transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, the licensee shall retain both the documents required in subsection (a) and the following documents, as applicable, for at least 36 months from the mortgage loan closing date:

- (1) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;
 - (2) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;
 - (3) any credit insurance requests and insurance certificates;
 - (4) the note and any other applicable contract addendum or rider;
 - (5) a copy of the filed mortgage or deed;
 - (6) a copy of the title policy or search;
 - (7) the assignment of the mortgage and note;
 - (8) the initial escrow account statement or escrow account waiver;
 - (9) the notice of the right to rescind or waiver of the right to rescind, if applicable;
 - (10) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), as amended and in effect on October 1, 2009, if applicable;
 - (11) the mortgage servicing disclosure statement and applicant acknowledgement;
 - (12) the notice of transfer of mortgage servicing;
 - (13) any interest rate lock-in agreement or float agreement; and
 - (14) any other disclosures or statements required by law.
- (c) In any mortgage transaction in which the licensee owns the mortgage loan or the servicing rights of the mortgage loan and directly or indirectly undertakes collection of payments or enforcement of rights against debtors, the licensee

shall retain the documents required in subsections (a) and (b) and the following documents, as applicable, for at least 36 months from the final entry to each account:

(1) A complete payment history, including the following:

- (A) An explanation of transaction codes, if used;
- (B) the principal balance;
- (C) the payment amount;
- (D) the payment date;
- (E) the distribution of the payment amount to the following:

- (i) Interest;
- (ii) principal;
- (iii) late fees or other fees; and
- (iv) escrow; and
- (F) any other amounts that have been added to, or deducted from, a consumer's account;

(2) any other statements, disclosures, invoices, or information for each account, including the following:

(A) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, or both, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(B) annual escrow account statements and related escrow account analyses;

(C) notice of shortage or deficiency in escrow account;

(D) loan modification agreements;

(E) forbearance or any other repayment agreements;

- (F) subordination agreements;
- (G) foreclosure notices;
- (H) evidence of sale of foreclosed homes;
- (I) surplus or deficiency balance statements;
- (J) default-related correspondence or documents;

(K) the notice of the consumer's right to cure;

(L) any property insurance advance disclosure;

(M) force-placed property insurance;

(N) notice and evidence of credit insurance premium refunds;

(O) deferred interest;

(P) suspense accounts;

(Q) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(R) any other product or service agreements; and

(3) documents related to the general servicing activities of the licensee, including the following:

(A) Historical records for all adjustable rate mortgage indices used;

(B) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(C) a log of all accounts in which foreclosure activity has been initiated;

(D) a log of all credit insurance claims and accounts paid by credit insurance; and

(E) a schedule of servicing fees and charges imposed by the licensee or a third party.

(d) In addition to meeting the requirements specified in subsections (a), (b), and (c), each licensee shall retain for at least the previous 36 months the documents related to the general business activities of the licensee, which shall include the following:

(1) The business account check ledger or register;

(2) all financial statements, balance sheets, or statements of condition;

(3) all escrow account ledgers and related deposit statements as required by K.S.A. 9-2213, and amendments thereto;

(4) a journal of mortgage transactions as required by K.S.A. 9-2216a and amendments thereto;

(5) all lease agreements for Kansas locations; and

(6) a schedule of the licensee's fees and charges.

(Authorized by K.S.A. 9-2209, as amended by 2009 SB 240, §9; implementing K.S.A. 2008 Supp. 9-2208, K.S.A. 9-2213, and K.S.A. 2008 Supp. 9-2216, as amended by 2009 SB 240, §12; effective Oct. 31, 2003; amended Oct. 2, 2009.)

17-24-5. Prelicensure testing. (a) On and after July 31, 2010, each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the commissioner's designee for developing and administering the qualified written test shall be the nationwide mortgage licensing system and registry.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics;

(2) federal laws and regulations pertaining to mortgage origination;

(3) state laws and regulations pertaining to mortgage origination; and

(4) federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c)(1) An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of at least 75 percent.

(2) An applicant may retake a test three consecutive times, with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(4) A registrant who fails to maintain a valid license for five years or longer shall retake the test, not including any time during which the individual is a registered loan originator, as defined in section 1503 of title V, S.A.F.E. mortgage licensing act of 2008, P.L. 110-289. (Authorized by and implementing K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9; effective Oct. 2, 2009.)

17-24-6. Bond requirements. Each applicant for a new or renewal Kansas mortgage business act license shall submit a bond in the following amounts: (a) For any applicant who maintains a bona fide office, \$50,000.00 or, if the applicant or licensee originated or made more than \$50,000,000.00 in Kansas mortgage loans during

the previous calendar year, \$75,000.00; or (b) for each applicant or licensee who does not maintain a bona fide office, \$100,000.00 or, if the applicant or licensee originated more than \$50,000,000.00 in Kansas mortgage loans during the previous calendar year, \$125,000.00. (Authorized by K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9, and K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, §10; implementing K.S.A. 2008 Supp. 9-2211, as amended by 2009 SB 240, §10; effective Oct. 2, 2009.)

Article 25.—CREDIT SERVICES ORGANIZATIONS

17-25-1. Registration and renewal fees.

When filing any application or renewal pursuant to the Kansas credit services organization act, K.S.A. 50-1116 et seq. and amendments thereto, each applicant or registrant shall remit to the office of the state bank commissioner the applicable nonrefundable fee, as follows:

- (a) Application for initial registration..... \$400
- (b) Renewal application for registration \$150

(Authorized by K.S.A. 50-1118 and K.S.A. 50-1128; implementing K.S.A. 50-1118; effective April 4, 2008; amended Sept. 26, 2014.)

Agency 18

Employee Award Board

Editor's Note:

Agency 18 was originally assigned to The Kansas State Board of Review. In 1966, the Kansas Supreme Court deemed the Board of Review and its regulations, 18-1-1 through 18-1-16, unconstitutional. The state laws creating and governing the board were repealed in L. 1968, Ch. 111. Agency 18 was reassigned to the current agency and subject matter in 1986.

Articles

- 18-1. EMPLOYEE SERVICE AWARDS.
- 18-2. EMPLOYEE SUGGESTION AWARDS.

Article 1.—EMPLOYEE SERVICE AWARDS

18-1-1. Definition. As used in these regulations, award board and board shall mean the employee award board. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-1-2. Service award. (a) All classified and unclassified employees shall be eligible for service awards for 10, 20, 30 and 40 years of service with the state. Recipients shall be actively employed on the state payroll at the time of the award, except that in the case of retired employees the board may make exceptions.

(b) Each agency shall be responsible for determining eligibility of its employees for service awards. The award board reserves the right to formally approve or disapprove an agency's determination of length of service.

(1) For classified employees, length of service shall be counted in the same manner as it is counted in determining length of service under K.A.R. 1-2-46, or in a manner that has been approved by the board.

(2) For unclassified employees, service shall be counted insofar as possible in the same manner as for classified employees.

(c) Each agency shall notify the award board of the number of each type of award to be given by the agency during the fiscal year which begins July 1. Such information shall be prepared on a schedule and in a form prescribed by the board.

(d) The board shall provide each agency with the service awards for their employees in accordance with procedures established by the award board.

(e) Each agency shall arrange for and conduct a presentation ceremony for the purpose of appropriately recognizing and acknowledging the eligible employees for their service dedication to Kansas state government.

(f) Nothing in this regulation shall prevent an agency from having a system of recognizing employees for length of service in addition to the system outlined in this regulation. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

Article 2.—EMPLOYEE SUGGESTION AWARDS

18-2-1. Eligibility to receive award. (a) All state employees, including employees retired under provisions of K.S.A. 74-4901 et seq., shall be eligible to receive cash awards except employees who are members of the award board and employees excluded under L. 1986, Chapter 320, Section 4.

(b) Except as provided in Subsection (a), the immediate supervisor of an employee to whom a cash award is made shall be awarded an additional amount subject to provisions of L. 1986, Chapter 320, Section 1 (a). A supervisory cash award shall not be given when a cash award is approved for a retired employee. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-2. Acceptable suggestions. An acceptable suggestion shall:

- (a) Reduce costs, duplication, time, waste, or accidents;
- (b) increase productivity or job interest;
- (c) improve services, job performance, public relations, or employee morale;

(d) simplify procedures, methods, forms, tools, or organizations; or

(e) conserve human resources, material, money, energy, or natural resources. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-3. Non-acceptable suggestions. (a) Suggestions related to the following subjects shall not be accepted for consideration:

(1) Suggestions which correct a condition that exists only because established procedures are not being followed;

(2) suggestions which have been considered or for which awards have been granted previously;

(3) suggestions which do not propose a method or way to make the improvement;

(4) suggestions which are developed as part of the duties of an employee's position. In determining suggestion acceptability, the employee's job description, assigned duties, and normal performance requirements of his or her position shall be considered in determining whether the suggestion is within or outside his or her job responsibilities;

(5) suggestions concerning routine maintenance of buildings, equipment or grounds which may be reported through regularly established channels. Where sustained complaints have not resulted in correction, the board may consider such a suggestion for an award;

(6) personal complaints or criticisms;

(7) suggestions requiring legislative action. However, if a suggestion which requires legislative action is judged as having merit, the board may forward it to the legislative coordinating council and inform the suggester of this action. If legislation is passed implementing the idea, the suggestion may be considered for an award by the board;

(8) suggestions which were under active consideration by management prior to having been made;

(9) anonymous suggestions; and

(10) suggestions for which the employee received a patent.

(b) Under special circumstances, the award board may authorize exceptions to the provisions of Subsection (a) in this regulation. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-4. Suggestion submission; evaluation; approval. (a) All suggestions shall be sub-

mitted to the board in a form prescribed by the board.

(b)(1) Each acceptable suggestion shall be transmitted by the board to the head of the agency or the several agencies identified in the proposed suggestion as implementers of the suggestion and any other agencies as determined by the board. The suggester's name shall not be disclosed by the board while the suggestion is under evaluation.

(2) The agency shall evaluate the suggestion and submit to the board a report of the results of the evaluation. The report shall include a description of the effect of the suggestion on operations, estimated cost reduction or avoidance, whether the suggestion will be implemented by the agency and a recommendation as to the type and amount of any award. The report may include information about improvements in service, public relations or employee morale expected to result from implementation of the suggestion. The board may use the information in the report and any other information it deems appropriate in considering a suggestion.

(c)(1) A suggestion shall be considered adopted when approved by a majority of the board.

(2) An employee whose suggestion is not adopted may provide additional information and request the board to reconsider its decision. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-5. Types of award; payment of award. (a) An award for an adopted suggestion may consist of a certificate only, or a certificate plus a cash payment. The amount of a cash payment shall be limited by the provisions of L. 1986, Chapter 320, Section 5 (b). The award board may also give medals or other appropriate insignia.

(b) If it can be determined that the first year's savings were underestimated, a supplemental award may be given to the suggester. It is the responsibility of the suggester to bring such instances to the attention of the board. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-6. Determination of cash awards for suggestions with intangible benefits. The type of award and the cash amount, if appropriate, shall be determined by the board for suggestions with intangible benefits when the monetary value of the suggestions cannot readily be determined

within the limits prescribed by K.A.R. 18-2-5(a). Intangible benefits may be defined to include awards to promote the suggestion awards program. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct. 1, 1986; effective May 1, 1987.)

18-2-7. Suggestion property rights. (a) Once an award is granted and accepted, the suggestion shall be considered the property of the state of Kansas. (Authorized by and implementing L. 1986, Ch. 320; effective, T-87-24, Oct 1, 1986; effective May 1, 1987.)

Agency 19

Governmental Ethics Commission

Editor's Note:

Effective July 1, 1998, the Kansas Commission on Governmental Standards and Conduct was redesignated as the Governmental Ethics Commission. Rules and regulations of the Kansas Commission on Governmental Standards and Conduct were by law specifically retained in force and effect and became the rules and regulations of the Governmental Ethics Commission until amended or revoked by the successor commission.

Editor's Note:

Effective July 1, 1991, the Kansas Commission on Governmental Standards and Conduct was created to replace the Kansas Public Disclosure Commission. Rules and regulations of the Kansas Public Disclosure Commission were by law specifically retained in force and effect and became the rules and regulations of the Kansas Commission on Governmental Standards and Conduct until amended or revoked by the successor commission.

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Article 1.—GENERAL PROVISIONS

19-1-1. Definitions. (a) “Advisory opinion” means a formal opinion issued by the commission as provided by relevant law.

(b) “Chairperson” means the chairperson of the commission appointed by the governor, or in the event of the chairperson’s absence, the vice-chairperson or any other commissioner as may be designated by the remaining members of the commission.

(c) “Commission” means the Kansas commission on governmental standards and conduct created by relevant law, or as the context indicates, any lesser number of members.

(d) “Commission’s attorney” means an attorney employed by the commission to assist the commission in carrying out the provisions of relevant law.

(e) “Executive director” means the executive director appointed by the commission.

(f) “Formal record” means all the filings and submittals in a matter or proceeding and all notices or agency orders initiating the matter or proceeding. If a hearing is held, the formal record shall include:

- (1) The designation of the presiding member;
- (2) The transcript of hearing if one is kept;
- (3) All exhibits received in evidence;
- (4) All exhibits offered but not received in evidence;
- (5) All offers of proofs, motions, stipulations, subpoenas, proofs of service, and the corresponding determinations made by the commission;
- (6) Certifications to the commission; and
- (7) Anything else upon which action of the presiding member or commission may be based will constitute a formal record. This does not include any proposed testimony or exhibits or the work product of the commission or its staff not offered or received in evidence.

(g) “Hearing commissioners” means the commissioners designated by the chairperson to conduct a pre-hearing, hearing or rehearing, or to proceed with any matter before the commission.

(h) “Party” means the complainant, respondent, and any other person authorized by the commission to intervene in any proceeding.

(i) “Petitioner” means a person seeking relief, including an advisory opinion, and not otherwise designated in this section.

(j) “Pleading” means any application, complaint, petition, answer, reply, or other similar document filed with the commission.

(k) “Presiding member” means the chairperson or any member of the commission, duly designated to preside at hearings, conferences, or other proceedings.

(l) “Relevant law” means K.S.A. 25-4142 et seq. and K.S.A. 46-215 et seq., including related amendments, supplemental legislation, and rules and regulations. In addition, in the context of requests for advisory opinions and related matters, “relevant law” shall include K.S.A. 75-4301 et seq., including related amendments, supplemental legislation, and rules and regulations.

(m) “Respondent” means any person against whom a complaint has been filed alleging an unlawful practice within the meaning of relevant law.

(n) “Treasurer” means an acting treasurer duly appointed under relevant law, and the treasurer of record at any particular point in time irrespective of whether the individual still serves as the treasurer. Only individuals, as opposed to non-natural persons, may serve as treasurers. (Authorized by K.S.A. 1991 Supp. 25-4119a and 46-253; implementing K.S.A. 1991 Supp. 25-4143 and K.S.A. 46-215; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended June 22, 1992.)

19-1-2. Construction. These rules shall be liberally construed to accomplish the purposes of relevant law and the policies of the commission including the just and expeditious determination of the issues presented. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-1-3. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-1-4. Appointment of acting executive director. Whenever it is necessary to appoint an acting executive director without delay, the chairperson may make such appointment, subject to the ratification or rejection of the commission at the next meeting. The rejection of such appointment shall not affect any of the actions of the acting executive director in the interim. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-1-5. Pleadings or other documents filed with the commission. (a) General. All pleadings or other documents shall be mailed first-class with postage prepaid or delivered personally to the office of the commission. The pleadings or other documents shall clearly designate the file number, if any, designated by the commission; state a document title where appropriate; indicate their purpose, identify any commission document to which they are in response, and state the name, address and title of the party or petitioner.

(b) Noncompliance and rejection. In any proceeding when the commission finds a pleading or other document does not comply with these rules, the commission shall:

(1) decline to accept the document for filing and return it, or

(2) accept it for filing and make procedural corrections, or

(3) accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(c) The commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any document filed.

(d) Signature and effect. Each pleading or other document shall be signed by the petitioner or interested party or by his or her attorney, and shall show the office and post-office address. The signature of the person on any pleading or document filed constitutes a certificate that the person:

(1) has read it, and knows the contents;

(2) executing the pleading or other document, if executed in any representative capacity, has been subscribed and executed in the capacity specified upon it with full power and authority so to do;

(3) believes the contents to be true as stated. (Authorized by K.S.A. 1980 Supp. 25-4119a, 46-253; implementing K.S.A. 1980 Supp. 25-4121, 46-255; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1981.)

19-1-6. Copies of pleadings or other documents. The petitioner or party filing any pleading or other document shall file the original thereof with the commission. The commission may require the filing of such additional copies as it may need or desire. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-1-7. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-1-8. Service. (a) Service of an original complaint, a notice of hearing, five (5) and thirty (30) day notices pursuant to 1981 Kansas Session Laws, Chapter 171, Sec. 1 *et seq.*, and Sec. 42 *et seq.*, a civil penalty assessment order, and a finding of fact and report shall be by certified mail, return receipt requested. The notice will be mailed to the person's principal residence, principal place of business or any other address as appears on any document filed pursuant to relevant law. Except as otherwise provided by relevant law, the commission shall serve other required orders, notices and documents by first-class mail with postage prepaid. Service may be in person.

(b) All pleadings or other documents shall be served upon all petitioners or parties in the proceeding by the one filing the same on the date when filed or tendered for filing with the commission. This service shall be made by delivering in person or by mailing first class, properly addressed with postage prepaid, copies to each petitioner or party. An original complaint shall be served on the respondent by the commission.

(c) When any petitioner or party is represented by an attorney who has entered a general entry of appearance, subsequent service shall be upon this attorney.

(d) The date of service shall be the day when the pleading or other document served is deposited in the United States mail or is delivered in person, except as provided in K.A.R. 19-1-9(a). When service is by certified mail, return receipt requested, the date of service shall be the date of delivery shown on the return receipt. A certificate of service shall be attached to the original of each pleading or other document filed, except those originating with the commission. (Authorized by and implementing K.S.A. 25-4119a and 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-1-9. Time. (a) Timely filing required. Reports or documents required or permitted to be filed under K.A.R. 19-1 to K.A.R. 19-8, inclusive, must be received for filing at the commission's office within the time limits, if any, for such filing. The

date of receipt at the office of the commission and not the date of deposit in the mails is determinative.

(b) Computation of time. Except as otherwise provided by law, in computing any period of time prescribed or allowed, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday, or a "legal holiday" as defined in K.S.A. 60-206, in which event the period shall run until the end of the next day which is neither Saturday, Sunday, nor a legal holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-1-10. Representation. (a) Appearance in person or by attorney. An individual may appear in his or her own behalf. A member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association in presenting any matter to the commission. A person may be represented by an attorney authorized to practice before the supreme court of Kansas.

(b) Contemptuous conduct. Contemptuous conduct at any hearing shall be ground for exclusion from such hearing. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-1-11. Commission decisions. Except as otherwise provided by relevant law, all orders, opinions, or findings of fact issued by the commission shall be signed by the chairperson. The decision of any committee of hearing commissioners shall be by majority vote. A concurring vote of five members of the commission shall be required for any decision of the commission as a whole. (Authorized by and implementing K.S.A. 1991 Supp. 25-4119a and 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended June 22, 1992.)

19-1-12. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-1-13. Alternative procedures. Upon finding in a specific proceeding that the just and expeditious determination of a matter requires simplification, alteration, or non-application of any or all of K.A.R. 19-1 to K.A.R. 19-8, inclusive, or the adoption of supplemental procedures, the commission or any committee thereof may utilize such alternative procedures as are reasonable and necessary and consistent with the relevant law and which do not jeopardize the rights of any party. Except when alternative procedures are adopted at a prehearing conference, hearing or rehearing with all petitioners or parties or their representatives present, notice of the adoption of alternative procedures shall be served on them. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 2.—ADVISORY OPINION REQUESTS

19-2-1. (Authorized by K.S.A. 1980 Supp. 25-4119a, 46-253, 75-4303a; implementing K.S.A. 1980 Supp. 25-4120, 46-254; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1981.)

19-2-2. Advisory opinion. (a) Each advisory opinion request shall be submitted in writing and shall contain the full name, address, and telephone number of the applicant, a statement of how the applicant may be subject to relevant law, and a description of the opinion requested in sufficient detail to allow an opinion to be expressed on it.

(b) Only those advisory opinion requests received in the commission's office 10 or more days before the commission's next regularly scheduled commission meeting shall be considered at that meeting, unless the commission finds that a longer or shorter period of time is necessary.

(c) Advisory opinion requests may be amended or withdrawn by the applicant. If the commission finds that the commission lacks jurisdiction, the advisory opinion request shall be denied. If denied, a copy of the order denying issuance of an advisory opinion and stating the grounds for that denial shall be issued by the commission and caused to be served upon the applicant. (Authorized by K.S.A. 2002 Supp. 25-4119a, K.S.A. 46-253, K.S.A. 2002 Supp. 75-4303a; implementing K.S.A. 25-4159, 46-254, K.S.A. 2002 Supp. 75-4303a; effective, E-76-

52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended Jan. 23, 2004.)

19-2-3. (Authorized by K.S.A. 25-4119a, 46-253 and K.S.A. 1981 Supp. 75-4303a; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1982.)

Article 3.—INVESTIGATIONS

19-3-1. Investigation. The commission may authorize the executive director to investigate any matter required to be reported by any person under the relevant law, or any matter to which the relevant law applies irrespective of whether a civil penalty has been assessed or a complaint has been filed in relation to it. Whenever an investigation does not disclose facts sufficient to warrant further action, the commission may, for good cause, issue to the person or persons investigated a report concerning the findings of the commission. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4158 and 46-260; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-3-2. Reviews and audits. (a) Reviews and audits may be conducted by the executive director of any matter which is required to be reported or filed under the provisions of relevant law. Such reviews and audits shall employ generally accepted auditing standards and provisions as adapted to relevant law. Such reviews and audits may include:

(1) identification of persons required to file statements, reports or other documents;

(2) desk review of filed statements, reports and other documents;

(3) review or confirmation of receipts, expenditures, gifts, honoraria or payments; and

(4) audits of records and accounts required to be maintained or to be made available to the commission.

(b) If at the conclusion of any review or audit there appear to be material errors or omissions in any statement, report or other document, such action as is provided by relevant law shall be taken by the executive director in order to assure their correction. This action shall be reported by the executive director to the commission. A report on each completed audit shall be prepared by the ex-

ecutive director for the commission. A copy of the memorandum shall be issued by the commission to the person audited. (Authorized by and implementing K.S.A. 1991 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992.)

19-3-3. Preliminary inquiry. Whenever any matter is brought to the attention of a member of the commission or the executive director which appears to raise an issue of a violation of the relevant law, the executive director is authorized to conduct a preliminary inquiry on the issue of whether there are facts sufficient to support the appearance of a violation. At the conclusion of a preliminary inquiry, the executive director shall report to the commission. The commission shall thereafter determine whether further investigation is required. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4158 and 46-260; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

Article 4.—NONCOMPLIANCE WITH FILING PROVISIONS

19-4-1. Campaign finance notice of failure to file and notice of errors or omissions.

(a) The executive director shall, as soon as practicable, serve notice as provided in K.A.R. 19-1-8 on any treasurer who has failed to file a receipts and expenditures report on the due date. A copy of the notice shall be promptly transferred to the office of the secretary of state for inclusion in the public record of the person or committee the treasurer represents and shall also be sent to the appropriate candidate or chairperson by first class mail. Any treasurer shall, within five (5) days of the date of service, file the required report with the office of the secretary of state.

(b) The executive director shall, as soon as practicable, serve notice on any treasurer whose receipts and expenditures report contains material errors or omissions. A copy of the notice shall be promptly transferred to the office of the secretary of state for inclusion in the public record of the person or committee the treasurer represents and shall also be sent to the appropriate candidate or chairperson by first class mail. Any treasurer shall, within thirty (30) days of the date of service, file an amended report correcting the material errors or omissions

with the office of the secretary of state. The executive director may serve additional notices on any treasurer concerning these reports or amendments. The procedures for original notices shall control the process in regard to additional notices.

(c) Upon service of this notice, the treasurer may contact the executive director for guidance or clarification concerning the material error or omission. If substantial issues remain unresolved after that conference, the treasurer may, within ten (10) days, request a hearing before the commission concerning the material errors or omissions. This hearing shall be conducted pursuant to K.A.R. 19-7-1 through 19-7-16, to the extent that the section is applicable, at the next regularly scheduled commission meeting unless a continuance is granted by the chairperson. Notice of the date of hearing shall be served on the treasurer. The determination of the hearing commissioners shall be final. Failure to request the hearing or failure to attend the hearing without just cause shall constitute an admission of the validity of the determination of the material errors or omissions.

(d) The executive director may, upon the filing by a treasurer of a report as required by this section, notify the office of the secretary of state that the treasurer has complied with the requirements of any notice served upon the treasurer. This notice shall be included in the public record of the person or committee the treasurer represents. This notice shall not be construed as affecting any matter other than the matter to which it is addressed.

(e) In any case where a complaint may be filed, notice provided for by this section is not a prerequisite for pursuing a complaint. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4148; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982.)

19-4-2. Notice on other statements, reports, or documents. As soon as practicable, notice may be filed by the executive director as provided in K.A.R. 19-1-8 on any person who has failed to file on the appropriate date any other statement, report or document required by relevant law. Notice may also be served on any person whose statement, report, or other document or amendments contains material errors or omissions. This notice may include a statement of the right or duty of the person served to amend the statement, report, or other document. In addition,

the notice may state that the person may request a hearing under the same circumstances as those set forth in K.A.R. 19-4-1(c). (Authorized by K.S.A. 1991 Supp. 25-4119a and 46-253; implementing K.S.A. 1991 Supp. 25-4152 and 46-280; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended June 22, 1992.)

Article 4a.—CIVIL PENALTY ASSESSMENT

19-4a-1. Civil penalty. (a) In any civil penalty assessment case under relevant law, the filing will be considered timely if deposited in the mail addressed to the office of secretary of state by certified or registered mail on or before the day it is due.

(b) Any person who is assessed a civil penalty for failing to comply with the registration, filing, and reporting provisions within five (5) days of notice may make written application for a waiver of the penalty within thirty (30) days after receipt of a civil penalty assessment order. Upon receipt of a written application for waiver, the commission shall schedule a public hearing within thirty (30) days in order to receive an explanation from the person as to why the document was not filed in a timely manner. Upon a finding of good cause, the commission may waive at any time any imposed civil penalty.

(c) If a person fails to pay a civil penalty within thirty (30) days of the final date on which a request for a waiver can be made, the commission shall forward this information to the attorney general or appropriate county or district attorney for collection.

(d) Civil penalties provided for in this section shall not be deemed the exclusive remedies for violations of relevant law. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4152 and 46-280; effective May 1, 1980; amended May 1, 1981; amended May 1, 1982.)

Article 5.—COMPLAINTS

19-5-1. Filing of complaint. (a) Any complainant shall sign and file with the commission a verified complaint in writing. Assistance in drafting and filing complaints shall be available through the commission and its staff.

(b) If a commissioner files a complaint, that commissioner shall be disqualified from the com-

mission's consideration of the complaint. The commissioner shall have the rights, duties, and liabilities of a party to a proceeding thus initiated.

(c) The executive director shall file a complaint following the completion of an investigation conducted pursuant to K.A.R. 19-3, if in the executive director's judgment there is probable cause to believe that a provision of relevant law has been violated.

(d) The executive director shall file a complaint when any person has failed to file any report at the time and in the manner required by relevant law, unless the executive director finds that for good cause a complaint should not be filed. In either case, the executive director shall report to the commission at its next meeting. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4160 and 46-255; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-5-2. Form and content of complaint.

The complaint shall be in writing on a form obtained at the commission office. The original complaint shall be signed and verified before a notary public or other person duly authorized by law to take acknowledgments. A complaint shall contain the full name and address of the complainant and the full name and address of the respondent. The complaint shall also contain simple and concise statements of the facts or information and belief upon which the allegation of a violation is based. It shall include, where known, the dates and places of occurrences that are described and the names of the participants and the section or sections of law which are alleged to have been violated. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4160 and 46-255; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-5-3. Amendment and withdrawal. The commission or the complainant shall have the power to reasonably amend the complaint as a matter of right at any time before hearing thereon, and thereafter at the discretion of the presiding member. The respondent and the complainant shall be notified of any such amendment in writing by the commission. The complaint may be withdrawn by the complainant at any time before a final determination of probable cause. After service of a

notice of hearing, the complainant may request and the commission shall decide whether or not a complaint may be withdrawn. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-5-4. Service of complaint. A copy of the complaint and any amendments shall be promptly served by the commission on the respondent. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-5-5. Respondent's review of evidence. After a verified complaint has been filed with the commission, the respondent shall be entitled to examine and make copies of all evidence in the possession of the commission relating to the complaint; provided that those matters which do not constitute evidence, including the work product of the commission or its staff, need not be provided to the respondent. The materials shall be provided in a timely manner by the executive director, after approval by the commission's attorney. (Authorized by K.S.A. 25-4119a and 46-253; implementing K.S.A. 25-4163 and 46-257; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-5-6. Sufficiency of complaint. Upon acceptance of a complaint for filing, the commission shall determine whether the complaint alleges facts, directly or upon information and belief, sufficient to constitute a violation of relevant law. If the complaint is found to be sufficient, the commission shall promptly conduct or cause to be conducted a preliminary investigation of the alleged violation. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-5-7. Probable cause. At the conclusion of a preliminary investigation, the commission shall determine whether probable cause exists for believing the allegations of the complaint. The commission shall give the respondent an opportunity, in person or through counsel, to submit a written statement prior to the determination. If the commission determines that probable cause does exist, the complaint and any amendments thereto shall become a public record and the com-

mission shall fix a time for a hearing in the matter which shall be not more than thirty (30) days after a final determination of probable cause is made. Notice of this determination shall be sent to all parties. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-5-8. Preservation of records. Books, papers, documents, or records of any form which are relevant to the scope of any investigation as defined in the complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specifically orders otherwise. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-5-9. Dismissal before hearing. (a) Dismissal. If the commission finds that it lacks jurisdiction or that probable cause does not exist, the complaint shall be dismissed with or without prejudice to the respondent.

(b) Service. When a complaint is dismissed before hearing, the commission shall issue and cause to be served upon each party a copy of the order dismissing the complaint, and stating the grounds and conditions of such dismissal. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 6.—DISCLOSURE AND CONFIDENTIAL PROCEDURES

19-6-1. Nondisclosure and public record.

(a) (1) Except as otherwise provided by relevant law and as provided in K.A.R. 19-5-5, the following shall be confidential:

(A) All records, complaints, and documents of the commission and all reports filed with, submitted to, or made by the commission; and

(B) all records and transcripts of investigations, inquiries, and hearings of the commission under K.S.A. 46-215 et seq. and K.S.A. 25-4142 et seq. and amendments thereto.

(2) The items specified in this subsection shall not be open to inspection by any individual other than a member of the commission, an employee of the commission, or a state officer or employee designated to assist the commission.

(b) Nothing contained in this regulation shall prohibit any disclosure that is reasonable and necessary to investigate any matter. The following shall be public records and open to public inspection:

(1) Each complaint and any amendments after a determination that probable cause exists;

(2) each answer and any amendments with the consent of the respondent;

(3) any matter presented at a public meeting or public hearing; and

(4) each report of the commission stating a final finding of fact.

(c) Any person subject to an investigation and any respondent may release any report or order issued pursuant to K.A.R. 19-3-1 or K.A.R. 19-5-9 and may comment on the report or order. The confidentiality requirements of relevant law shall be met by all members of the commission and its staff. (Authorized by K.S.A. 2008 Supp. 25-4119a, K.S.A. 46-253; implementing K.S.A. 25-4161, 25-4165, 46-256, and 46-259; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended Feb. 12, 2010.)

19-6-2. Executive session. The commission shall meet in executive session to consider those matters required by relevant law to be confidential. Attendance shall be limited to commission members, authorized staff, and such witnesses or other persons and their respective counsel as are allowed by the commission, at the time scheduled for their appearance. Any party may request at any time during the course of a public proceeding that the commission close the proceedings to the public. For good cause found within the meaning of the relevant law requiring confidentiality, the commission may adjourn into executive session for consideration of those matters required to be kept confidential. The commission upon its own motion for such purpose and upon such a finding may adjourn a public proceeding into an executive session. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-6-3. Communication with commission.

Except as expressly permitted herein, parties and their representatives shall not initiate private communications with a commissioner in regard to the case involved, nor shall commissioners privately communicate with the parties or their represen-

tatives or witnesses. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 7.—PROCEEDINGS

19-7-1. Answer. The respondent against whom a verified complaint, as the same may have been amended, is filed and on whom a notice of hearing has been served, may file a written verified answer in person or through an attorney within ten (10) days from the service of the notice of hearing. The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent or a denial of any knowledge or information thereof sufficient to form a belief and a statement of any matter constituting a defense. Any allegation in the complaint which is not denied or admitted in the answer in the above manner, shall be deemed admitted. The answer or any part thereof may be amended as a matter of right at any time prior to ten (10) days before a public hearing and thereafter in the discretion of the presiding member on application duly made therefore. The commission may proceed, notwithstanding any failure of the respondent to file an answer within the time provided herein, to hold a hearing at the time and place specified in the notice of hearing and may make its findings of fact and enter its report and order upon the testimony taken at the hearing. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-2. Waiver of hearing. In any proceeding, if the petitioners or parties waive hearing, the commission may dispose of the matter upon the basis of the pleadings or submittals and the investigation. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-3. Pre-hearing conference. (a) General. In order to facilitate the hearing procedure, conferences may be held with the petitioners or between the parties with the approval or at the direction of the presiding member. The meetings are to be held before the presiding member as time and the nature of the proceeding permit. At any such conference, the following may be considered:

(1) The simplification of the issues.

(2) The exchange and acceptance of service of exhibits proposed to be offered into evidence.

(3) The admission or stipulations of facts not remaining in dispute.

(4) The authenticity of documents which might properly shorten the hearing.

(5) The limitation of the number of witnesses.

(6) The discovery or production of evidence.

(7) Such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

(b) Failure of a participant to attend such conference, after being served with due notice of the time and place thereof, shall constitute a waiver of all objections to the agreements reached, if any, and any order or ruling made at the pre-hearing conference.

(c) Authority of presiding member. The presiding member at any conference may dispose of by ruling, without the consent of the petitioners or parties, any procedural matters which the presiding member is authorized to rule on, and which it appears may appropriately and usefully be disposed of at that stage. The rulings of the presiding member made at the conference shall control the subsequent course of the hearing, unless modified by the hearing commissioners. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-4. Hearings, appointment of presiding member. (a) Who shall conduct, appointment of presiding member. Hearings and rehearings shall be conducted by hearing commissioners designated by the chairperson. Such commissioners may consist of the commission as a whole or a committee thereof. If a committee of hearing commissioners is appointed, it shall consist of not less than three (3) members, not more than a majority shall be of the same political party. One hearing commissioner shall be designated as presiding member by the chairperson. The hearing commissioners and presiding member shall be designated when a final determination of probable cause is made or in a reasonable time thereafter. The hearing commissioners shall have full authority to review and overrule any decision of the presiding member regarding the procedure of the preconference hearing, hearings, and rehearings, including decisions to admit or exclude testimony or other evidence, and to rule upon all motions and objections.

(b) Order of procedure. In hearings, the petitioner, complainant, or other party having the burden of proof, as the case may be, shall open and close, unless otherwise directed by the presiding member. In proceedings where the evidence is peculiarly within the knowledge or control of another participant, the order or presentation may be varied by the presiding member.

(c) Presentation by the petitioners or parties. Petitioners or parties shall have the right of presentation of evidence, cross-examination, objection and motion. The taking of evidence and subsequent proceedings shall proceed with all reasonable diligence and with the least practicable delay. When objections to the admission or exclusion of evidence before the presiding member are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and shall not be taken to rulings thereon.

(d) Oral examination. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(e) Fees of witnesses. Witnesses subpoenaed by the commission shall be paid the same fees and mileage as are paid for like services in civil actions in the district court.

(f) Duties of the presiding member. Duties of the presiding member include, but are not limited to, the following:

- (1) administer the oath;
- (2) rule on proof;
- (3) regulate the hearing;
- (4) exclude people from the hearing;
- (5) hold conferences for simplification of issues;
- (6) dispose of procedural requests;
- (7) authorize and set times for filing of briefs;
- (8) grant continuances;
- (9) and take any other action consistent with the purpose of relevant law administered by the commission and consistent with these rules.

(g) Stipulations. Written stipulations may be introduced in evidence, if signed by the persons who seek to be bound by them, or by their attorneys. Oral stipulations may be made on the record at open hearings or rehearings.

(h) Waiver of objections. Any objection not timely made before the presiding member shall be deemed waived unless the failure or neglect to urge such objection shall be excused for good cause by the presiding member.

(i) Continuances and adjournments. The presiding member may postpone a scheduled hearing

or continue a hearing from day to day or adjourn it to a later day or to a different place by announcement at the hearing or by appropriate notice to all petitioners or parties.

(j) Burden of proof. Affirmative findings of fact by the commission shall be based on clear and convincing evidence. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-5. Subpoenas. (a) Issuance. Subpoenas for the attendance of witnesses or for the production of evidence, unless directed by the commission upon its own motion, will issue only upon application in writing to the commission or the presiding member, except that during a hearing, such application may be made orally on the record. Such applications shall specify as nearly as may be the general scope of the testimony or evidence sought, including as to evidence, specification as nearly as may be, of the documents desired. The presiding member shall sign subpoenas issued pursuant to this section or when convenient or necessary may direct the executive director to sign subpoenas on the presiding member's behalf.

(b) Service and return. If service of subpoena is made by a sheriff or like officer or his deputy, such service shall be evidenced by his return thereof. If made by another person, such person shall make affidavit thereof, describing the manner in which service was made, and shall return such affidavit. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served, or to a person of suitable age and discretion residing in that person's dwelling, house, or usual place of abode, or to an agent authorized by appointment or by law to receive service of process for the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned forthwith to the office of the commission or, if so directed on the subpoena, to the presiding member before whom the person named in the subpoena is required to appear. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-6. Depositions. The testimony of any witness may be taken by deposition by a party upon approval by the hearing commissioners or

the presiding member any time before the hearing is closed. Unless notice is waived, no deposition shall be taken unless at least ten (10) days notice is given to all parties. The procedures utilized in the Kansas Code of Civil Procedure relative to depositions shall be utilized herein except as modified by these rules. No part of a deposition shall constitute a part of the formal record in the proceeding, unless received in evidence. Deponents and the notarial officers taking such depositions shall be entitled to the same fees as are paid for like services in civil actions before the district courts. The fees shall be paid by the party at whose instance the depositions are taken. When the party at whose instance the depositions are taken is a member of the commission or its staff, the commission shall pay such fees. Upon written application requesting deposition by written questions, the presiding member may for good cause permit such a deposition according to such terms and scope as directed by said presiding member. (Authorized by K.S.A. 1980 Supp. 25-4119a, 46-253; implementing K.S.A. 1980 Supp. 25-4124, 46-257; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1981.)

19-7-7. Motions. All motions, except those made at a pre-hearing conference, hearing or re-hearing shall be in writing. The presiding member is authorized to rule upon any motion except a motion made before or during a hearing which would involve or constitute a final determination of the proceeding or a motion pursuant to K.A.R. 19-1-13. A presiding member may refer any motion to the hearing commissioners or commission for ultimate determination. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-8. Evidence. In any proceeding before the hearing commissioners or a presiding member, relevant and material evidence shall be admissible, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of any probative value. The presiding member shall rule on the admissibility of all evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding. The production of further evidence upon any issue may be ordered. Direct testimony of any witness may be offered

as an exhibit, or as prepared written testimony to be copied into the transcript. Cross-examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated. Whenever in the circumstances of a particular case it is deemed necessary or desirable, the hearing commissioners or the presiding member may direct that testimony to be given upon direct examination shall be reduced to exhibit form or to the form of prepared written testimony. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-9. Briefs. Upon application to the presiding member, any party may as a matter of right file briefs. The presiding member shall set limits on the length of briefs, fix the time for the filing and service of briefs and set the order in which such briefs shall be filed, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved. Briefs shall contain, where applicable: (1) a concise statement of the case; (2) an abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears; and (3) proposed findings and conclusions and, if desired, a proposed form of order together with the reasons and authorities therefore, separately stated. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-10. Recording and transcript. (a) Recording of proceedings. Public hearings and executive sessions shall be recorded as directed by the commission. Such record shall be the sole official record. Such recording and any transcripts from the hearing shall include a verbatim report of the hearings and nothing shall be omitted from them except as directed by the presiding member or hearing commissioners or by the commission.

(b) Copies. Petitioners or parties may obtain copies of the public portion of the record. They may obtain the portion of the record from an executive session as the commission may specifically allow to a petitioner or party depending on his or her participation in the executive session or consistent with K.A.R. 19-5-5, and consistent with the confidentiality requirement of relevant law. Cop-

ies of the records may be obtained from the official reporter upon payment of the reporter's fees or as allowed by the commission upon payment of the appropriate fee. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-11. Settlement. The petitioners or parties may stipulate for settlement of the case and the commission may issue a report and order on such stipulation. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-12. Proposals by the petitioners or parties. There may be presented by petitioners or by each of the parties, as allowed or directed by the presiding member, proposed findings and conclusions. The reasons, and proposed forms of orders may be presented also. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-13. Recommended report. If a hearing is held by a committee of the commission, the presiding member thereof shall present, as soon as practicable, a recommended report adopted by a majority of the committee to the commission as a whole. Copies of the recommended report shall be served on the petitioners or parties. Dissenting recommendations may also be filed by a hearing commissioner. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-14. Appeal, briefs and oral argument to entire commission. Any petitioner or party may make exceptions to the recommended report and by motion request an opportunity to present an oral argument to the entire commission. An oral argument motion shall be filed within ten (10) days from the date of service of the recommended report. If an oral argument is ordered, it shall be limited, unless otherwise specified, to matters properly raised by the motion and in any accompanying briefs. (Authorized by K.S.A. 1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-7-15. Commission report and order. Upon receipt of a recommended report or when the commission as a whole hears a complaint, the commission shall as soon as practicable issue its report. All reports and orders of the commission shall, subject to application for rehearing, be final. A report of the commission shall set forth the findings and conclusions of the commission and may include an opinion containing the reasons for said decision. The report may be accompanied by a notice of the right to apply for a rehearing. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-7-16. Rehearing. (a) General. Any petitioner or party alleging any error in the original proceedings or report shall request a rehearing. An application for rehearing shall be filed with the commission at its office within ten (10) days after service of a commission report. Such application shall be made by motion, stating specifically the grounds relied on. A copy of such application shall be served on all petitioners or parties in conformity with the service provisions of these rules, by the petitioner or party making such application. An application for rehearing shall contain:

- (1) the docket number of the case for which such application is being made;
- (2) the name of the petitioner or party making such application; and
- (3) such application shall state concisely and specifically the alleged errors for which a rehearing is sought. If vacation, reversal or modification is sought by reason of matters which have arisen since the hearing and decision, the matters relied upon shall be identified in the application.

(b) Granting an application for rehearing. If the commission grants an application for rehearing, it shall so notify the petitioners or parties in writing. The date an application for rehearing is granted shall be the date on which the commission makes such decision. The rehearing shall follow the same procedural rules as a hearing, except to the extent otherwise directed by the commission or a presiding member.

(c) Effect of failure to allege specific error. Failure to request a rehearing on a specific allegation of error and provide reasons therefore shall constitute a waiver of all objection to any matters not specifically alleged as error. (Authorized by K.S.A.

1979 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 8.—ACTION SUBSEQUENT TO FINAL REPORT

19-8-1. Commission action. (a) Dismissal. The commission shall dismiss a complaint and all matters relative thereto if the final report concludes there has been no violation of relevant law.

(b) Report transmittal. If the final report concludes there has been a violation of relevant law, copies of the report shall be forthwith submitted to the attorney general and appropriate county or district attorney, and to the supreme court, legislature or governor as required by relevant law according to the particular violation found. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-8-2. Information release to government attorneys. Confidential portions of the formal record in any proceeding, or any other information relative thereto, may by resolution of the commission specifically authorizing such release upon a finding such information is material to a matter pending before the attorney general or a county or district attorney, be released to said government attorneys. Application by such government attorneys to the commission for information release shall provide such information to the commission as is necessary for the commission to make the required finding. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253; effective, E-76-52, Oct. 24, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

Article 9.—MAINTENANCE OF PUBLIC RECORDS

19-9-1. Maintenance of public records. Each statement, report, affidavit, or other document which is required to be filed or is filed pursuant to K.A.R. 19-1 to K.A.R. 19-63 shall be kept and maintained by the office with which it is filed for a period of five (5) years from the date of filing. At the termination of the five (5) year period, any office wishing to destroy such documents shall notify the commission in writing of its intent to destroy such documents sixty (60) days prior to destruction. Unless otherwise provided by law, the commission may at any time prior to the

termination of the notice period serve upon the office written notice that it shall maintain such records or portions thereof for such additional periods of time as the commission may determine is reasonable and necessary. (Authorized by K.S.A. 1976 Supp. 25-4119a, 46-253, 75-4303a; effective, E-77-7, March 19, 1976; effective Feb. 15, 1977.)

Article 20.—CAMPAIGN FINANCE ACT; GENERAL PROVISIONS

19-20-1. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-20-2. Definitions. (a) The term “act,” unless the context requires otherwise, means K.S.A. 25-4142 et seq., including related amendments, supplemental legislation, and rules and regulations.

(b) “In-kind contribution” means a contribution of goods, services, or anything of value to a candidate, candidate committee, party committee, or any representative of them without charge or provision of such items at a charge to the recipient of less than the fair market value. “In-kind contribution” also means the use of any goods, services, or anything of value, or the spending of any money, for the benefit of any candidate, candidate committee, party committee, or political committee when the use or expenditure is made in cooperation with or with the consent of the candidate, committee, or representative of them.

(c) “Session” means both the regular and special sessions of the legislature. Regular session includes the time period commencing January 2 through final adjournment. Special session includes the time of commencement through final adjournment. (Authorized by K.S.A. 1991 Supp. 25-4119a; implementing K.S.A. 1991 Supp. 25-4143 and K.S.A. 1991 Supp. 25-4153a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended June 22, 1992.)

19-20-3. Construction. K.A.R. 19-20 to 19-30, inclusive, shall be liberally construed to accomplish the purposes of the act including the administration of fair and open elections. (Authorized by K.S.A. 1976 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-20-4. Disclosures required on political advertising. (a) Each disclosure required pursuant to K.S.A. 25-4156(b)(1)(A)-(C) and amendments thereto shall appear at the bottom of the advertisement or item and shall contain both the name of the chairperson, treasurer, or other responsible party and the name of the organization that the responsible party represents. With regard to the required disclosure, the following requirements shall apply:

(1) The name of the organization alone shall not be sufficient.

(2) If a political committee is responsible for the advertisement or item, the chairperson's name and the name of the political committee shall be disclosed.

(3) If a candidate or candidate committee is responsible for the advertisement or item, the treasurer's name and the name of the candidate or candidate committee shall be disclosed.

(4) If an organization that has a chairperson, other than a political committee, candidate, or candidate committee, is responsible for the advertisement or item, the chairperson's name and the name of the responsible organization shall be disclosed.

(5) If an organization that does not have a chairperson, other than a political committee, candidate, or candidate committee, is responsible for the advertisement or item, then the responsible individual listed shall be one of the following:

(A) The individual who is the primary funding source;

(B) if no individual is the primary funding source, the individual who controlled the decision to place the advertisement or produce the item; or

(C) if no one individual controlled the decision, the individual who controlled the funds.

(6) If an individual is responsible for the item, that individual's name shall be disclosed, unless the advertisement or item is a brochure, flier, or other political fact sheet and the individual makes expenditures in an aggregate amount of less than \$2,500 within a calendar year.

(7) The following disclosures shall be considered adequate when placed at the bottom of the advertisement or item:

(A) Paid for by the (name of candidate) campaign, (name of treasurer), treasurer;

(B) paid for by (name of candidate) for (title of office sought), (name of treasurer), treasurer;

(C) sponsored by the committee to elect (name of candidate), (name of chairperson), chairperson;

(D) paid for by (name of political action committee) political action committee, (name of treasurer), treasurer; and

(E) advertisement: paid for by committee to elect (name of candidate), (name of chairperson), chairperson.

(b) The phrase "brochure, flier or other political fact sheet," as used in K.S.A. 25-4156 and amendments thereto, shall include the following if the items "expressly advocate the nomination, election or defeat of a clearly identified candidate," as defined by K.S.A. 25-4143 and amendments thereto:

(1) Business cards;

(2) door hangers;

(3) windshield fliers;

(4) postcards;

(5) fund-raiser invitations;

(6) traditional brochures, fliers, or mailers; and

(7) web sites, e-mails, or other types of internet communications.

(c) The phrase "brochure, flier or other political fact sheet" shall not include any of the following:

(1) Yard signs;

(2) billboards;

(3) bumper stickers;

(4) envelopes;

(5) t-shirts;

(6) pens, pencils, rulers, magnets, or other trinket items; or

(7) fund-raiser invitations, business cards, brochures, or fliers if these items do not expressly advocate the nomination, election or defeat of a clearly identified candidate.

(d) A postal or internet address that contains words that expressly advocate the nomination, election or defeat of a clearly identified candidate shall be considered political advertising if that address is published. Published matter containing an address that constitutes political advertising shall require a disclosure pursuant to K.S.A. 25-4156 and amendments thereto. (Authorized by K.S.A. 2007 Supp. 25-4119a; implementing K.S.A. 2007 Supp. 25-4156; effective Jan. 23, 2004; amended July 18, 2008.)

19-20-5. Use of public funds, machinery, equipment, and supplies. Postal or internet addresses that "expressly advocate the nomination, election or defeat of a clearly identified candidate," as defined by K.S.A. 25-4143 and amendments thereto, shall not be included in a communication generated or distributed using public

funds, machinery, equipment, or supplies. (Authorized by K.S.A. 2007 Supp. 25-4119a; implementing K.S.A. 25-4169a; effective July 18, 2008.)

Article 21.—CANDIDATES AND COMMITTEES

19-21-1. Candidate appointment of treasurer or committee. (a) Whenever any of the tests set forth in 1981 Kansas Session Laws, Chapter 171, Sec. 2(a) are met, an individual becomes a candidate on the date that test is met.

(1) For the purpose of this section, an appointment does not take place until an agency relationship is completed and the individual to be appointed takes significant action based on that relationship which is intended to influence the nomination or election to state office of the individual considering seeking that office.

(2) An announcement is not a public announcement unless it is intended to inform the general public that the individual is seeking nomination or election to state office.

(3) An individual makes a public announcement, or makes an expenditure or accepts a contribution if the individual does so directly, or directly or indirectly authorizes another to do so on the individual's behalf or directly or indirectly ratifies the action of another.

(b) A candidate may serve as his or her own treasurer. Only one treasurer or one candidate committee may exist at the same time. A prior treasurer or committee and a new treasurer or committee for a different candidacy may exist at the same time so long as the prior treasurer or committee does not serve in any capacity of an ongoing nature to advance the later candidacy and only to the extent necessary to close its affairs. (See K.A.R. 19-21-2 for the requirements if a candidate committee is appointed.) (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4143(a) and 25-4144; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-21-2. Candidate committees. (a) General. A candidate appoints a committee either directly or if he or she directly or indirectly authorizes a group of individuals to receive contributions or make expenditures on the candidate's behalf, or ratifies the actions of such group. A candidate

shall have no more than one candidate committee at any one time.

(b) Appointment of officers and structure. The candidate shall appoint one chairperson and one treasurer of the candidate committee for the purposes of the act. A candidate or candidate committee member may serve as both chairperson and treasurer for a candidate committee. The committee may consist of such other officers as the candidate may desire including co-chairpersons. A candidate committee may be divided into regional and local subdivisions as long as such subdivisions are under the direct control of the chairperson and treasurer and such subdivisions otherwise comply with the terms of the act. (Authorized by K.S.A. 1979 Supp. 25-4103 and 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended, E-79-24, Sept. 21, 1978; amended May 1, 1979; amended May 1, 1980.)

19-21-3. Political committees. (a) General. The following factors shall be considered in determining whether a combination of two or more persons, or a person other than an individual, constitutes a political committee:

- (1) The intent of the person or persons;
- (2) the amount of time devoted to the support or opposition of one or more candidates for state office;
- (3) the amount of time devoted to the support or opposition of any other political committee or party committee;
- (4) the amount of contributions, as defined by the act, made to any candidate, candidate committee, party committee or political committee;
- (5) the amount of expenditures, as defined by the act, made on behalf of any candidate, candidate committee, party committee or political committee; and
- (6) the importance to any candidate, candidate committee, party committee or political committee of the activities in which the person or persons engage.

(b) Structure and filing statement of organization. Each political committee which anticipates that it will receive contributions or make expenditures shall appoint one chairperson and one treasurer for the purposes of the act. A political committee member may serve as both chairperson and treasurer. A political committee may appoint such other officers as it desires, including co-chairpersons.

(c) Payroll deduction plan exception. Any person or persons who receive political contributions under a program similar to a payroll deduction plan shall be presumed not to be a political committee if the program administered by the person or persons meets all of the following tests:

(1) the decision to make any contribution by any individual employee is strictly voluntary;

(2) the employee alone determines to whom the employee's contribution will be distributed;

(3) any contribution made by the employee is made and transferred in the employee's name only; and

(4) the recipient candidate or committee is not made aware by the employer or the employer's agents that the contribution was made as a part of any such program.

(d) Affiliated or connected organizations.

(1) An organization shall be considered to be affiliated or connected with a reporting political committee if it is:

(A) an organization or group which founded or maintains the reporting committee with a major purpose of influencing the nomination or election of a candidate or candidates to state office;

(B) an organization or group which has as a major purpose providing support to a reporting committee or committees;

(C) an organization or group whose membership is generally composed of the same individuals as the reporting committee where the reporting committee advances the political goals of the organization either directly or indirectly on behalf of the organization; or

(D) an organization or group, whether or not a reporting committee, which is substantially controlled, directly or indirectly, by a reporting committee or committees or the controlling persons thereof. In addition, any organization or group controlling an affiliated or connected organization shall likewise be considered an affiliated or connected organization of the group or organization which it controls.

(2) Exceptions. If a state-wide union or professional or trade association is considered to be an affiliated or connected organization of a particular political committee under any of the above tests, local units of such unions or associations shall be presumed not to be affiliated or connected organizations of the political committee so long as the state-wide entity is reported as such. (Authorized by K.S.A. 25-4119a as amended by L. 1986, Ch. 143, Sec. 1; implementing K.S.A. 25-4143 and K.S.A. 1985 Supp. 25-4145; ef-

fective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended, E-79-24, Sept. 21, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1987.)

19-21-4. Party committees. (a) Party committees do not include committees authorized and regulated by K.S.A. 25-3803 or 25-3806. These committees may, however, in appropriate circumstances constitute political committees under K.A.R. 19-21-3.

(b) A party committee shall be subject to the same requirements as a political committee as set out in K.A.R. 19-21-3(b) and (d). However, county central committees shall not be deemed, for the purpose of this section, to be affiliated or connected organizations of their respective state committees. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4143 and 25-4145; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983.)

19-21-5. Other reporting persons. Every person, other than a candidate or a candidate committee, party committee, or political committee, who makes independent contributions or expenditures other than by contribution to a candidate or a candidate committee, party committee, or political committee, in an aggregate amount of one hundred dollars (\$100) or more within a calendar year shall make verified statements containing the information required by K.A.R. 19-29-2 on forms prescribed and provided by the commission, and file them in the office of the secretary of state so that each statement is in that office on the day specified in 1981 Kansas Session Laws, Chapter 171, Sec. 7. Reports made under this section need not be cumulative. For the purposes of this section, "independent contributions and expenditures" means contributions or expenditures made without cooperation or consent of the candidate or committee intended to be benefited and which expressly advocate the election or defeat of a clearly identified candidate. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4150; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-21-6. Out-of-state committees, and persons. Any combination of three or more individuals or a person other than an individual, not domiciled in this state, which is required to file a

verified statement pursuant to K.S.A. 25-4172 as amended by L. 1986, Ch. 144, § 1 shall include the names and addresses of contributors who are residents of Kansas, non-residents with jobs in Kansas, and those making contributions earmarked for use in Kansas. Other contributions may be disclosed in the aggregate. (Authorized by K.S.A. 25-4119a as amended by L. 1986, Ch. 143, Sec. 1; implementing K.S.A. 25-4172 as amended by L. 1986, Ch. 144, Sec. 1; effective, E-77-29, June 3, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1987.)

Article 22.—CONTRIBUTIONS AND OTHER RECEIPTS

19-22-1. Contributions. (a) General. None of the following shall constitute a contribution if the transaction is made in the ordinary course of business or complies with common trade practices and the transaction does not have as its purpose the nomination, election, or defeat of a clearly identified candidate for state office:

- (1) A transfer of goods and services;
- (2) the forgiving of a debt; or
- (3) the rendering of a discount.

The carryover of funds or inventory by a candidate, candidate committee, party committee, or political committee from one election period to another shall not constitute a contribution.

(b) Candidate contributions. The transfer of a candidate's personal funds to the candidate's treasurer for use by the treasurer in the candidate's campaign shall constitute a contribution made by the candidate. (c) In-kind contributions. An in-kind contribution shall constitute a contribution. Those transactions that are excluded from the definition of in-kind contribution shall also be excluded from the definition of contribution. (Authorized by K.S.A. 2009 Supp. 25-4119a; implementing K.S.A. 2009 Supp. 25-4143 (e)(1); effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; effective May 1, 1980; amended Feb. 18, 2011.)

19-22-2. Other receipts. Rebates and refunds given in the ordinary course of business constitute other receipts, as do the transfer of funds from an existing committee to its successor. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 23.—EXPENDITURES AND OTHER DISBURSEMENTS

19-23-1. Expenditures. Costs associated with attending informational meetings of the commission or otherwise obtaining information from the commission shall not constitute expenditures. Costs associated with defending actions brought pursuant to the act shall not constitute expenditures. Costs associated with employing accountants, attorneys, or other persons for advice concerning the requirements of the act or for keeping accounts and records shall constitute expenditures. (Authorized by K.S.A. 2009 Supp. 25-4119a; implementing K.S.A. 2009 Supp. 25-4143 (g)(1); effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended Feb. 18, 2011.)

19-23-2. Other disbursements. Other disbursements include but are not limited to:

- (a) the repayment of loans by a treasurer in his or her official capacity as such;
- (b) the disbursement of illegal contributions;
- (c) the payment of recoverable security deposits; and
- (d) transfers to other treasurers or to a successor committee which do not constitute expenditures. (Authorized by K.S.A. 1979 Supp. 25-4108 and 25-4119a; effective, E-76-56, Nov. 26, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

Article 24.—IN-KIND CONTRIBUTIONS

19-24-1. Value of in-kind contribution. The value of an in-kind contribution shall equal the fair market value of the item or service if it had been purchased, sold, or leased in the ordinary course of business. When a charge is made for an item or service which is less than the fair market value, then the difference between the fair market value and the charge shall be the value of the in-kind contribution. The donor of the item or service shall place the value on the in-kind contribution when given. The treasurer may question the value set by the donor if it appears unreasonable and shall revalue the in-kind contribution to a reasonable value. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4143; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983.)

19-24-2. Candidate in-kind contributions. The transfer of anything of value by the candidate to his or her campaign without charge or at a charge of less than the fair market value constitutes an in-kind contribution. That payment by a candidate or the candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or the candidate's spouse while campaigning does not constitute an in-kind contribution. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-24-3. Endorsements, voter registration drives and related matters. The costs associated with any news story, commentary, or editorial distributed in the ordinary course of business by a broadcasting station, newspaper or other periodical publication does not constitute an in-kind contribution. In addition, costs associated with nonpartisan activities designed to encourage individuals to register to vote or to vote do not constitute in-kind contributions. Finally, the costs associated with internal organizational communications of business, labor, professional or other associations which merely endorse a candidate do not constitute in-kind contributions. (Authorized by K.S.A. 1976 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-24-4. Volunteer service. The value of volunteer services provided without compensation does not constitute an in-kind contribution. Costs to a volunteer which are related to the rendering of volunteer services which do not exceed a fair market value of fifty dollars (\$50) during an allocable election period are also excluded from the definition of in-kind contribution. Once the fifty dollar (\$50) limit is reached in any allocable period, the excess during that period constitutes an in-kind contribution. For the purpose of K.A.R. 19-24 a candidate shall be considered a volunteer. (Authorized by K.S.A. 1979 Supp. 25-4102(d) and 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-24-5. Campaign worker expenditures. When a campaign worker is reimbursed for payments the worker has made during the same al-

locable election period in which the payment is made, the campaign worker has not made an in-kind contribution. Payments which are not reimbursed in the same allocable election period in which they are made constitute in-kind contributions. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 25, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-24-6. General overhead and other costs. (a) Party committees. Expenditures by a party committee for its own general overhead, salaries and supplies do not constitute reportable in-kind contributions to the candidates of the party. Other expenditures by a party committee which are intended to accrue to the equal benefit of its candidates do not constitute reportable in-kind contributions. In addition, costs associated with the provisions of campaign materials and general advice by a party committee to its candidates do not constitute reportable in-kind contributions to the recipient except to the extent the materials are prepared for a specific candidate or the advice is of a specialized nature and the value exceeds fifty dollars (\$50) in any allocable election period.

(b) Affiliated or connected organizations of political committees. Expenditures by an affiliated organization of a political committee, to the extent the expenditures exceed fifty dollars (\$50) during an allocable period for the use of office space to a political committee constitute reportable in-kind contributions to the committee. Costs associated with the provision of supervisory personnel, clerical or secretarial assistance constitute reportable in-kind contributions to the extent the costs exceed a value of fifty dollars (\$50) during an allocable election period. Where the supervisory personnel, clerks or secretaries volunteer their time and are not reimbursed no in-kind contribution exists. In addition, the provision of office supplies and telephone services by an affiliated organization to its political committee constitute reportable in-kind contributions but only to the extent the value exceeds fifty dollars (\$50) during an allocable election period. (Authorized by K.S.A. 1980 Supp. 25-4119a; implementing K.S.A. 1980 Supp. 25-4102(d),(f); effective, E-77-29, June 3, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1981.)

**Article 25.—TESTIMONIAL EVENTS
AND OTHER POLITICAL EVENTS**

19-25-1. Testimonial events. When a testimonial event is held for the benefit of more than one candidate, except when an individual contributor dedicates a contribution to a particular candidate, the value of each contribution or in-kind contribution shall be attributed to each candidate in the same ratio as that by which the candidates share the profits from the event, or, if there are no profits, in the same ratio by which the candidates share the expenses of the event. An event is held to raise funds if it is intended to do so, or if not intended to do so, if the effect is nonetheless attained. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4143; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983.)

19-25-2. Other political events. (a) Purchase of tickets, goods or services. The purchase of tickets, goods or services at political events or fund raisers which do not constitute testimonial events constitute contributions when the price substantially exceeds the value of the goods or services received, provided however, that a bulk purchase of tickets, goods or services constitutes a contribution. A bulk purchase is made whenever a person purchases tickets in excess of that reasonably necessary for the person's personal use and that of his or her immediate family. The value to be attributed to a contribution which occurs when the price paid substantially exceeds the value of the goods or services is the difference between the price and the fair market value of the goods or services. A treasurer may, if the treasurer so desires, consider the price the value of the contribution. The value attributed to a contribution when a bulk purchase is made is the full value of the bulk purchase.

(b) Donation of goods. The value of goods donated to political events and fund raisers which do not constitute testimonial events are treated in the same manner as donations to testimonial events. (See K.A.R.19-25-1(c).) (Authorized by K.S.A. 1979 Supp. 25-4102(d)(1), 25-4102(l), and 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

**Article 26.—RECEIVING
CONTRIBUTIONS AND
MAKING EXPENDITURES**

19-26-1. Treasurer's duty. All contributions or other receipts received and all expenditures or other disbursements made by or on behalf of a candidate or committee shall be received or made by or through the treasurer. For a contribution or other receipt to be received or an expenditure or other disbursement to be made by or through a treasurer, it must be received or made by a person who is the agent of the treasurer either by prior approval or by ratification. In either case the treasurer is required to keep records of the transaction as if received or made by the treasurer. (Authorized by K.S.A. 1979 Supp. 25-4105 and 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-26-2. Solicitation of contributions. Solicitors of contributions on behalf of a particular candidate or committee shall be deemed a part of the candidate or committee and therefore will not be required to report the contributions on their own behalf so long as the following tests are met:

(a) Prior approval both to permit solicitation and the procedure to be used has been received by the candidate's or committee's treasurer;

(b) The treasurer has final discretion over the activities of the solicitors;

(c) Contributions are made payable to the candidate or committee and are turned over to the treasurer pursuant to 1981 Kansas Session Laws, Chapter 171, Sec. 6;

(d) All expenditures incurred in soliciting the contributions are reported to the treasurer in the same manner as provided for contributions by 1981 Kansas Session Laws, Chapter 171, Sec. 6; and

(e) The treasurer keeps and preserves all records of these contributions and expenditures as a part of the treasurer's accounts and records and reports when required by the act. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4147 and 25-4150; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-26-3. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

Article 27.—ACCOUNTS AND RECORDS

19-27-1. Duty of treasurer. Each treasurer shall keep accounts and records of all contributions and other receipts received and all expenditures and other disbursements made by or on behalf of the treasurer's candidate or committee, as well as all other transactions relating thereto. A treasurer keeps such accounts and records if he or she does so directly or if another person does so under the treasurer's continuing supervision, authority and review. Whenever an individual vacates the position of treasurer, the individual shall substantiate the accuracy of his or her accounts and records to the succeeding treasurer on forms prescribed by the commission. The term "accuracy" shall mean true, complete and correct. The statement of substantiation shall become a part of the succeeding treasurer's records. (Authorized by K.S.A. 1980 Supp. 25-4106 and 25-4119a; implementing K.S.A. 1980 Supp. 25-4105 and 25-4106; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1981.)

19-27-2. Contributions and other receipts. (a) Each treasurer shall maintain a complete record of all contributions as follows:

(1) A detailed account of all contributions, including tickets or admissions to testimonials or other political events, that includes the following:

(A) The full name and address of the person making the contribution;

(B) the occupation of each individual contributor who contributes more than \$150 or, if the individual contributor is not employed, the occupation of the contributor's spouse;

(C) a description of the contribution as cash, check, in-kind, or loan, including the rate of interest, term, guarantor, and endorser;

(D) the date received;

(E) the amount; and

(F) the cumulative amount given by the contributor that is allocable to the primary or general election period;

(2) the date, the amount, and a description of each contribution of \$10 or less for which the name and address of the contributor is not known, subject to the limitations of K.S.A. 25-4154 and amendments thereto; and

(3) the aggregate total of all contributions received as the proceeds from the sale of political

materials and the date of each sale and a description of the materials sold.

(b) Each treasurer shall keep an account of all other receipts, including the following:

(1) The full name and mailing address of a person making the payment;

(2) a description of the other receipt indicating whether the receipt is a rebate, refund, or other miscellaneous receipt;

(3) the date received; and

(4) the amount of the receipt.

(c) Each treasurer shall perform one of the following:

(1) Photocopy each contribution or other receipt in the form of a check, money order, or similar instrument in the amount of \$50 or more and keep all deposit slips with the photocopies of the checks to which the deposit slips relate; or

(2) at the request of the commission, arrange with a depository or other person to provide the commission with these photocopies at the treasurer's expense. In addition, when necessary, each treasurer shall arrange with the treasurer's depository to permit the commission access to the depository's records of any contributions or other receipt in the form of a check, money order, or similar instrument at the treasurer's expense.

(d) Cash and in-kind contributions and other cash and in-kind receipts in an amount of \$10 or more shall be accounted for by written receipt, the original of which shall be kept by the treasurer. These receipts shall include the full name and address of the person making the contribution or payment, the date, and the amount. Each receipt shall be signed by the treasurer or the treasurer's agent. If the contribution is an in-kind contribution, a complete description shall be attached to the receipt.

(e) All treasurers or committees that use online merchant account providers or maintain a payroll deduction, dues, checkoff, or comparable system for political contributions shall keep sufficient supporting documentation to fully substantiate each contribution or transfer to the committee. (Authorized by K.S.A. 2007 Supp. 25-4119a; implementing K.S.A. 25-4147, K.S.A. 2007 Supp. 25-4148, and K.S.A. 25-4148a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended, E-77-29, June 3, 1976; amended, E-77-47, Sept. 30, 1976; amended, E-79-24, Sept. 21, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended June 22, 1992; amended July 18, 2008.)

19-27-3. Expenditures and other disbursements. (a) Each treasurer shall keep a detailed account of all expenditures, including:

- (1) The full name and address of a person to whom the expenditure is made;
- (2) The purpose of the expenditure;
- (3) The date of the expenditure; and
- (4) The amount of the expenditure.

(b) Each treasurer shall keep a detailed account of all other disbursements, including:

- (1) The full name and address of the person to whom the disbursement is made;
- (2) The purpose of the disbursement;
- (3) The date of the disbursement; and
- (4) The amount of the disbursement.

(c) Each treasurer shall obtain and keep a receipted bill from the person to whom an expenditure or other disbursement is made, which bill shall contain the information required in subsections (a) and (b) of this section. In lieu of a receipted bill the treasurer may keep the cancelled check(s) showing payment(s) and the bill, invoice, contract or other documentation of the transaction containing the information required in subsections (a) and (b) of this section.

(d) Each treasurer shall keep all cancelled checks, void checks, cancelled deposit slips, and bank statements in the order in which they are received.

(e) When expenditures are made by payments to advertising agencies, public relations firms, and political consultants for disbursement to vendors, each treasurer shall obtain and keep the documentation required by subsection (c) of this section. The documentation shall in turn contain the information required in subsection (a) of this section for each vendor to which disbursements are made by the advertising agency, public relations firm, or political consultant. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4147; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

19-27-4. Maintenance, preservation and inspection. (a) Maintenance. All accounts shall be kept reasonably current at all times and shall be completely current at the close of each reporting period.

(b) Preservation. All accounts required to be made and kept by this article (and all other accounts a treasurer makes in the course of his or

her official duties) shall be preserved for a period of six (6) years for an office with a four year term or four (4) years for an office with a two (2) year term and for party and political committees six (6) years from the closing date of the reporting period for which the account is kept by the treasurer. An individual who vacates the position of treasurer by reason of removal or resignation shall substantiate the accuracy of his or her accounts and transfer them to the succeeding treasurer. Upon the dissolution of a committee or the position of a candidate's treasurer, the last treasurer of record is responsible for the preservation of the required accounts.

(c) Inspection. The commission may inspect a treasurer's accounts at any reasonable time and place by giving written notice of the need to do so. (Authorized by K.S.A. 1980 Supp. 25-4119a; implementing K.S.A. 1980 Supp. 25-4105, 25-4106; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1981.)

Article 28.—REPORTING PERIODS AND ELECTION PERIODS

19-28-1. Nomination by convention or caucus. For the treasurer of any candidate seeking nomination by convention or caucus or the treasurer of such candidate's committee or for any treasurer of a party committee or political committee of which the primary purpose is supporting or opposing the nomination of any candidate, the date of such convention or caucus shall be considered the date of the primary election for the purposes of relevant law. (Authorized by K.S.A. 1979 Supp. 25-4109 and 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-28-2. Allocation of contributions and expenditures. (a) All contributions and other receipts received and expenditures and other disbursements made shall be allocated within each election period to the reporting period in which received or made. Contributions to or expenditures by a candidate seeking nomination by convention or caucus or by the candidate committee shall be allocated in the same manner as above except that the date of the convention or caucus shall be considered the primary election date.

(b) A contribution or other receipt made in cash, check, or similar instrument is received on the date it is physically in the hands of the candidate, treasurer, or the treasurer's agent, whichever occurs first.

(c) An expenditure or other disbursement is made on the date the actual payment is made or the expenditure contracted for, whichever occurs first.

(d) An in-kind contribution is received on the date the services or goods inure to the recipient's benefit. (Authorized by K.S.A. 25-4119a; implementing K.S.A. 25-4149; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982.)

Article 29.—RECEIPTS AND EXPENDITURES REPORT

19-29-1. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended, E-79-24, Sept. 21, 1978; amended May 1, 1979; revoked May 1, 1980.)

19-29-1a. Place and time of filing. (a) Place of filing.

(1) Each political committee and each party committee whose primary purpose is the nomination or election of candidates to state office shall file reports required by K.S.A. 25-4148 in the office of the secretary of state.

(2) Each political committee and each party committee whose primary purpose is the nomination or election of candidates to local office shall file reports required by K.S.A. 25-4148 in the office of the county election officer.

(b) Time of filing.

(1) Each political committee and each party committee whose primary purpose is the nomination or election of candidates to state office or a local office where the election dates are August and November shall file the reports required by K.S.A. 25-4148 only on the dates required for those elections.

(2) Each political committee whose primary purpose is the nomination or election of candidates to local office with election dates in February, March, or April shall file the reports required by K.S.A. 25-4148 only on the dates required for those elections. (Authorized by K.S.A. 1992 Supp. 25-4119a; implementing K.S.A. 1992 Supp. 25-4148; effective Oct. 18, 1993.)

19-29-2. Contents of receipts and expenditures report. (a) General. Each receipts and expenditures report shall contain:

(1) the full name and address of the candidate, party committee, or political committee;

(2) in the case of candidates, the office sought, and in the case of committees, a designation as to type;

(3) the period covered by the report;

(4) a designation, when applicable, that the report is an amended or a termination report; and

(5) a declaration as to completeness and accuracy, signed by the treasurer.

(b) Summary section. Each report shall contain a summary section for the reporting period which shall include:

(1) cash on hand at the beginning of the period;

(2) total contributions and receipts, except in-kind contributions;

(3) total cash available during the period;

(4) total expenditures and other disbursements;

(5) cash on hand at the close of the period;

(6) total in-kind contributions; and

(7) the total of other obligations.

(c) Supporting schedules.

(1) General. Each report shall contain the supporting schedules required by this subsection. For the purpose of subsection (c):

(A) The term "date" means the month, day and year.

(B) The term "name" means the full name of the person indicated.

(C) The term "address" means the street address or rural route, the city, state and zip code.

Each accompanying schedule shall include the name of the candidate or committee on whose behalf the report is filed. When the name is used more than once, the same name shall appear throughout the schedule. Whenever additional sheets are necessary to list the information required by any supporting schedule, each page of that schedule shall contain a space, completed by the treasurer, to indicate the subtotal for that page.

(2) "Monetary contributions and receipts" schedule. Monetary contributions and receipts shall be listed on an accompanying schedule. This schedule shall include:

(A) A date column, which shall state the date when the contribution was received by the treasurer or the treasurer's authorized agent, whichever occurs first;

(B) a name and address column, which shall state the name and address for each contributor. This column shall also be used to show the name

of the candidate or committee to whom funds are dedicated whenever a treasurer receives a contribution which is dedicated in whole or in part for use or transfer to another candidate or committee.

(C) An occupation of contributor column, which shall state the occupation of each individual contributor who contributes more than \$150, or if the individual contributor is not employed, the occupation of the contributor's spouse. If the contribution is from a political action committee, this column shall also be used to describe the political committee by including the name of the organization affiliated or connected with the committee or the trade, profession, or primary interest of the contributors.

(D) A description column, which shall state whether the contribution or receipt is in the form of a loan, cash, check or other. If the contribution is a loan, the interest rate and the name and address of any guarantors or endorsers shall be noted in this column.

(E) A column which states the amount of the cash, check, loan or other receipt;

(F) A total amount space in which the aggregate amount of monetary contributions and other receipts received during the reporting period shall be shown; this amount shall be carried forward to the summary page.

(G) Itemized monetary contributions and receipts. Each monetary contribution or receipt over \$50 received during the reporting period shall be itemized. In addition, each contribution or receipt of more than \$10 received during the reporting period for which the name and address of the donor is unknown shall be disclosed on this schedule; and

(H) unitemized monetary contributions and receipts. The aggregate total of all contributions and receipts of \$50 or less received during the reporting period for which the name and address of the donor is known shall be reported as unitemized contributions or receipts. Receipts during the reporting period from the sale of political materials shall also be reported. The proceeds from the sale of tickets or admissions to testimonial events, except those required to be itemized, shall be reported on this schedule. Contributions of \$10 or less received during the election period for which the name and address of the donor is unknown shall be disclosed on this schedule.

(3) "In-kind contributions" schedule. All in-kind contributions shall be listed on this accompanying schedule. This schedule shall include:

(A) A date column, which shall state the date the in-kind contribution was received by the treasurer or the treasurer's authorized agent, whichever occurs first;

(B) a name, address and occupation of contributor column, which shall state the name and address of each in-kind contributor, as well as the occupation of each individual contributor who contributes more than \$150, or, if the individual contributor is unemployed, the occupation of the contributor's spouse;

(C) a description column, which shall briefly describe the goods or services provided. When a treasurer receives a contribution which is dedicated in whole or in part for use or transfer to another candidate or committee, the name of the candidate or committee to whom the goods or services are dedicated shall be included in this column as well;

(D) a value of in-kind contributions column, which shall state the fair market value of the contribution;

(E) a total amount space in which the aggregate value of itemized and unitemized in-kind contributions shall be shown. This value shall be carried forward to the summary page.

(F) Itemized in-kind contributions. Each in-kind contribution having a value of more than \$50 received during the reporting period shall be itemized.

(G) Unitemized in-kind contributions. The aggregate total of in-kind contributions from any one contributor having a value of \$50 or less received during the reporting period; disclosed.

(4) An "Expenditures and disbursements" schedule. All expenditures and disbursements to any person shall be listed on this accompanying schedule. This schedule shall include:

(A) a date column that shall state the date or dates the payee was actually paid during the reporting period;

(B) a name column that shall state the name of the person to whom the payment was made;

(C) a purpose of expenditure column that shall reflect the nature of the expenditure; when an expenditure is made by payment to an advertising agency, public relations firm, or political consultants for disbursement to vendors, the report shall show in detail the name of each vendor and the information required on this schedule with regard to each expenditure. Whenever a treasurer makes a disbursement which constitutes a contribution to another candidate or committee

and when it is made up in whole or in part of dedicated funds, the treasurer shall disclose the names and addresses of those persons who dedicated the funds. The treasurer shall, in transferring any of these contributions, report the same information to the recipient;

(D) an amount column that shall reflect the aggregate amount of payment to the payee on the date of the entry;

(E) a total amount space in which the total amount of itemized and unitemized expenditures and disbursements during the reporting period shall be shown; this amount shall be carried forward to the summary page;

(F) itemized expenditures and disbursements; each expenditure or disbursement over \$50 made during the reporting period shall be itemized; and

(G) unitemized expenditures and disbursements; the aggregate total of all expenditures and disbursements of \$50 or less made during the reporting period shall be disclosed.

(5) "Other transactions" schedule. All other reportable financial transactions made during the reporting period shall be disclosed with reasonable specificity.

(A) Accounts and loans payable. All accounts and loans outstanding at the close of a reporting period shall be disclosed. This disclosure shall include:

- (i) the date the debts or loans were contracted;
- (ii) the person to whom the debt or loan is owned;
- (iii) a description of the goods or services subject to debt or a description of the principal amount and terms of the loan; and

(iv) the amount outstanding at the close of the reporting period.

(B) Loans receivable. All loans receivable outstanding at the close of the reporting period shall be disclosed. This disclosure shall include:

- (i) the date the loan agreement was completed;
- (ii) the person to whom the funds were loaned;
- (iii) the principal amount and terms of the loan; and

(iv) the amount outstanding at the close of the reporting period. (Authorized by K.S.A. 1991 Supp. 25-4119a; implementing K.S.A. 1991 Supp. 25-4148 and 25-4148a; effective, E-76-56, Nov. 26, 1975; effective, E-77-29, June 3, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1987; amended June 22, 1992.)

19-29-3. Material errors and omissions.

Giving due regard to the number of errors or omissions, the dollar value involved, the percentage of error, the magnitude of the contributions and expenditures of the particular candidate or committee, and the importance of presentation of a true public record, and professional accounting judgment, the following shall be considered material errors and omissions:

(a) General.

(1) Failure to use forms prescribed by the commission.

(2) Incomplete identification of the candidate or committee.

(3) Failure of treasurer to sign report.

(4) Illegibility.

(b) Summary page.

(1) Failure to complete or incorrect or omitted totals.

(c) Accompanying schedules.

(1) Dates inadequate, incorrect or omitted.

(2) Full name inadequate, incorrect or omitted.

(3) Address inadequate, incorrect or omitted.

(4) Description or purpose inadequate or omitted.

(5) Amount incorrect or omitted.

(6) Failure to report transaction on proper report.

(7) Transaction not reported or reported on wrong schedule.

(8) Transaction reported on correct schedule, but improperly.

(9) Total(s) for schedule incorrect or omitted.

(10) Contribution cumulative amount column incorrect or not completed.

(11) Detail provided for expenditures to advertising agencies, public relations firms, or political consultants inadequate or omitted.

(12) Disposition of loans or accounts payable from previous report(s) inadequate or omitted. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-29-4. Termination reports and reports of debts and obligations.

(a) Before any committee may be dissolved or the position of any treasurer terminated, a termination report shall be filed with the secretary of state, local election officer or both. A termination report may not be filed until the disbursement of all residual funds and the discharge of all remaining debts and obligations. These and all other transactions from the date of the last report shall be disclosed on

the termination report. Any report required by K.S.A. 25-4148 may serve as a termination report if the requirements described in this subsection are met.

(b) The position of treasurer may not be terminated until a termination report is filed. In addition, the position of treasurer shall not be deemed terminated to the extent of any report provided for by K.S.A. 25-4148(d) or (e) is required or to the extent necessary for the maintenance and preservation of records.

(c) A treasurer shall continue to file a report each January 10 as required by K.S.A. 25-4148 so long as any residual funds or outstanding debts or obligations remain. (Authorized by K.S.A. 1991 Supp. 25-4119a; implementing K.S.A. 25-4155 and K.S.A. 1991 Supp. 25-4157; effective, E-79-24, Sept. 21, 1978; effective May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended June 22, 1992.)

19-29-5. Computer generated campaign reports. Reports prepared on computer will be acceptable, provided that:

(1) Each computer generated page contains all information required in K.S.A. 25-4148;

(2) Print-outs are legible, clear black on white paper;

(3) Each page is on 8½" X 11" paper;

(4) Each page is numbered;

(5) Each report includes the commission's prescribed front page summary sheet; and

(6) The type is no smaller than pica (10 characters per inch). (Authorized by K.S.A. 1991 Supp. 24-4119a; implementing K.S.A. 25-4151; effective June 22, 1992.)

Article 30.—CONTRIBUTION LIMITATIONS

19-30-1 and 19-30-2. (Authorized by K.S.A. 1979 Supp. 25-4119a; effective, E-76-56, Nov. 26, 1975; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-30-3. (Authorized by K.S.A. 1980 Supp. 25-4119a; implementing K.S.A. 1980 Supp. 25-4112; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; revoked May 1, 1981.)

19-30-4. (Authorized by K.S.A. 1991 Supp. 25-4119a; implementing K.S.A. 25-4153; effective, E-77-20, May 1, 1976; amended, E-77-47,

Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended June 22, 1992; revoked Feb. 18, 2011.)

Article 40.—STATE CONFLICT OF INTEREST PROVISIONS

19-40-1. (Authorized by K.S.A. 1979 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-40-2. Construction. K.A.R. 19-40 to K.A.R. 19-42, inclusive, shall be liberally construed to accomplish the purposes of the act. (Authorized by K.S.A. 1979 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980.)

19-40-3. (Authorized by K.S.A. 1979 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-40-3a. Definitions. Incorporated by reference are the definitions of "express" and "apparent" contained in K.S.A. 46-215 et seq. (a) "Bona fide personal or business entertaining or gifts" means entertainment or gifts provided to state officers or employees or their spouses which are based solely on a business or personal relationship totally unrelated to the state officer or employee's duties as such. The following factors, among others, will be taken into consideration in determining whether a specific entertainment or gift falls within this definition:

(1) The intent of the parties;

(2) The length of time a business or personal relationship has existed;

(3) The topics of discussion;

(4) The setting;

(5) The persons attending;

(6) Whether the person providing the entertainment or gift is reimbursed by an organization by which they are employed; and

(7) Whether the person providing the entertainment or gift, or his or her principal, deducts or could deduct the expenditures as a business expense.

(b) "Gift" means the transfer of money or anything of value unless legal consideration of a reasonably equal or greater value is received in return.

(1) The value of a gift shall be the fair market value or a reasonable estimate thereof. Where a transfer is made for less than reasonable consideration, the amount by which the value of the transfer exceeds the value of the consideration shall be deemed a gift.

(2) Exceptions. For the purposes of K.S.A. 1991 Supp. 46-237, except when a particular course of official action is to be followed as a condition thereon, "Gift" does not include:

(A) goods or services which are provided to a state agency which does not license, inspect nor regulate the giver and are used to benefit the state as a whole;

(B) goods, services or discounts which are provided to a state agency to be used for advertising and promoting the products of the state;

(C) goods, services or discounts which are provided by federal or state agencies;

(D) a rebate, discount or promotional item available to any individual or governmental agency;

(E) the provision of hospitality in the form of recreation, food and beverage, except when provided to a state officer or employee which licenses, inspects or regulates the giver;

(F) any bona fide personal or business gift or entertainment; or,

(G) any contribution reported in compliance with the campaign finance act.

(c) Hospitality. "Hospitality in the form of recreation, food and beverage" means the provision of recreation and consumption of food and beverage in the company of the donor or the donor's authorized agent. The provision of recreation, food and beverage in any other manner constitutes a gift.

(d) Honoraria. For the purposes of K.S.A. 1991 Supp. 46-237(f) "honoraria" means any amount paid to a state officer or employee for giving a speech when the primary reason the state officer or employee was invited to give the speech was his or her position in state government. In determining the primary reason, factors to be considered include:

(1) The importance of position in state government of the state officer or employee. Thus, if a person is in a major policy making position, it is likely that the acceptance of honoraria is prohibited;

(2) Whether the grantor of the honoraria has a special interest concerning the duties of the state officer or employee; and

(3) Whether the speech deals with scientific or technical data within the area of expertise of the

state officer or employee's knowledge, as opposed to whether the speech deals with aspects of the duties of the state officer or employee. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-237; effective May 1, 1984; amended June 22, 1992.)

19-40-4. Nepotism. (a) No state officer or employee shall advocate, participate in or cause the employment, appointment, promotion, transfer or discipline of a member of the state officer's or employee's household or a family member.

(b)(1) As used in this regulation, "family member" means:

(A) a spouse, parent, child, or sibling;

(B) a sibling, as denoted by the prefix "half";

(C) a parent, child, or sibling, as denoted by the prefix "step";

(D) a foster child;

(E) a uncle, aunt, nephew, or niece;

(F) any parent or child of a preceding or subsequent generation, as denoted by the prefix of "grand" or "great"; or

(G) parent, child or sibling related by marriage as denoted by the suffix of "in-law."

(2) "Household member" means a person having legal residence in or living in the state officer's or employee's place of residence.

(c) The provisions of this regulation shall not be construed to apply to appointments of members of the governor's staff. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-246(a), as amended by 1992 SB 533, Sec. 1; effective Oct. 19, 1992.)

19-40-5. Contract. The term "contract" as defined by K.S.A. 46-231 shall exclude agreements to pay membership dues to a person or business when the primary occupation of the person or business is to provide publications and educational material to the agency or promote state interests. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-233; effective June 22, 1992.)

Article 41.—STATEMENT OF SUBSTANTIAL INTERESTS

19-41-1. Definitions. For the purposes of this article, the following words and phrases are defined below. (a) "Blind trust" means a trust established by a state officer or state employee or the individual's spouse for the purpose of divestiture of all control and knowledge of assets.

(b) "Combination of businesses" means any two or more businesses owned or controlled directly by the same interests.

(c) "Description of interests" means the type of ownership interest held, including common stock, preferred stock, stock option and limited partnership.

(d) "Equitable interest" means an actual beneficial ownership, though legal title may not be shown on public, partnership or corporate records.

(e) "General counsel" means any attorney for a state agency to whom the agency turns for legal advice concerning the general operation of the agency. This definition shall include any private attorney hired on a contract basis to give legal advice, as well as any in-house counsel for the state agency who is the chief legal counsel for the agency. The definition shall not include any attorney assigned to an agency by the attorney general from the attorney general's staff to serve as the the agency's primary legal advisor, unless the attorney is budgeted for by a separate agency or division, has permanent offices within the agency or division, or unless the individual falls under any other provision of K.S.A. 1991 Supp. 46-247. The definition shall not apply to any private attorney who is retained solely to handle specific litigation for an agency. Any in-house counsel other than the head of the legal division of a specific agency shall not be required to file unless the individual falls under any other provision of K.S.A. 1991 Supp. 46-247.

(f) "Members of state councils, commissions and boards" means members of state authorities, compacts and committees or similar state agencies who receive compensation from the state when such member is engaged in performing a function or duty for such council, commission, board, authority, compact or committee or similar state agency. Excluded from this definition are entities of the judicial branch or any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch.

(g) "Other business interest" means any endeavor which produces income, including appraisals, consulting, authorships, inventing or the sale of goods and services. It is unnecessary, for the purposes of this definition, that the interest have a formal business name or formal business structure.

(h) "Ownership interest" means a legal or equitable interest in any business or combination of businesses.

(i) "Trust" means a trust in which any state officer or employee or the individual's spouse has a present or future interest which exceeds five percent of the value of the trust or exceeds five thousand dollars, whichever is less, but does not include blind trusts.

(j) "Type of business" means the nature of the business activity in which the entity engages, including construction, retailing and manufacturing. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-229, 46-247; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1983; amended May 1, 1984; amended June 22, 1992.)

19-41-2. (Authorized by K.S.A. 46-253; implementing K.S.A. 46-221 and 46-247; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; revoked May 1, 1984.)

19-41-3. Interests disclosed. Each statement which is filed pursuant to K.S.A. 1983 Supp. 46-248 shall disclose the following: (a) The statement shall include the name, complete address, and telephone number of the individual filing the statement. In addition, each statement shall disclose the elective office held by that individual; the office for which a candidate seeks election; the position of employment; the position to which the individual was appointed subject to senate confirmation; the state council, commission or board of which the individual is a member; or the agency to which the individual is a general counsel.

(b) Pursuant to K.S.A. 1983 Supp. 46-229(a), the name of the business and its address, the type of business, a description of the interest, and a description of how the interest is held between the individual and the individual's spouse shall be included in the statement. Disclosure of the number of shares or their value, in the case of a corporation, or the net worth, in the case of a proprietorship or partnership, shall not be required. The value or percentage of a business interest shall be determined as of the time of the required filing. The value assigned to a holding shall be the fair market value.

For the purposes of this provision, certificates of deposit, bank savings or checking accounts,

passbook accounts in a savings and loan, shares in a credit union, life insurance policies, annuities, notes, bonds, debentures and mortgages shall not constitute "legal or equitable interests." Therefore, disclosure of these interests shall not be required under this provision. Ownership of other stocks and shares, including traded and closely held stocks, as well as shares in mutual funds, shall constitute legal or equitable interest for the purpose of this section.

(c) Under K.S.A. 1983 Supp. 46-229(b), the receipt of interests, dividends and mineral royalties shall not constitute "compensation" as the term is defined; disclosure of those matters shall not be required under this provision. The disclosure required under K.S.A. 1983 Supp. 46-229(b) shall include the name and address of the business or combination of the businesses, the type of business and a description of whether the compensation was received by the individual, the individual's spouse, or both.

(d) For the purposes of K.S.A. 1983 Supp. 46-229(e), the phrase "client or customer" shall relate only to businesses or combinations of businesses. Disclosure of the amount of any fee shall not be required. In the case of a partnership, it is the partner's proportionate share of the business and hence of the fee which is significant, without regard to expenses of the partnership. The disclosure under this subsection shall include the name of the client or customer and the address.

(e) Holding the position of administrator or executor of an estate shall not be considered reportable under K.S.A. 1983 Supp. 46-229(d). The disclosure under this subsection shall include the name and address of the business and the position held. (Authorized by K.S.A. 46-253; implementing K.S.A. 1983 Supp. 46-248; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984.)

19-41-4. Material errors and omissions. The following shall be considered material errors and omissions on any statement of substantial interests filed pursuant to this article:

- (a) General.
 - (1) Failure to use form prescribed by the commission.
 - (2) Incomplete identification of person filing.
 - (3) Inadequate identification of office or employment.

- (4) Failure to sign or date statement.
- (5) Illegibility.
- (b) Disclosure sections.
 - (1) Substantial interest omitted.
 - (2) Name inadequate or omitted.
 - (3) Address inadequate or omitted.
 - (4) Description or type of business inadequate or omitted.
 - (5) Description of interest inadequate or omitted.
 - (6) Holder or receiver unidentified.
 - (7) Position held omitted.
- (c) Other. Any other error or omission which leads to less than full disclosure as required by this article. (Authorized by K.S.A. 1976 Supp. 46-253; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-41-5. (Authorized by K.S.A. 1980 Supp. 46-253; implementing K.S.A. 1980 Supp. 46-280; effective, E-79-24, Sept. 21, 1978; effective May 1, 1979; revoked May 1, 1981.)

Article 42.—REPRESENTATION CASE DISCLOSURE STATEMENTS

19-42-1. Definitions. For the purposes of this article, the following words and phrases have the following meanings:

(a) For the purposes of K.S.A. 46-226, "representation case" shall not include participation in providing goods and services to the state, nor representation of any person before the judicial branch of state government.

(b) "Employed in a representation case" means the person will receive compensation from the case and actually communicates with the state agency or an employee of the agency concerning the representation case or personally appears before the state agency. (Authorized by K.S.A. 46-253; implementing K.S.A. 46-226; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1983.)

19-42-2. (Authorized by K.S.A. 46-233(b), 46-237, 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; revoked May 1, 1983.)

19-42-3. Contents of statement. (a) Each representation case disclosure statement shall contain the name, complete address, and telephone number of the individual filing the state-

ment. If the individual is a state officer or employee other than a legislator, the identification shall include the title or position of the person and the state agency by which the person is employed. If the individual is a present or former legislator, the statement shall disclose whether the individual is or was a member of the house of representatives or of the senate and whether the individual is currently a member thereof or is an individual whose term expired within the past year.

(b) Each statement which is filed pursuant to K.S.A. 46-239 shall include the name, complete address, and telephone number of the employee and the name, complete address, and telephone number of the state agency before which the appearance will be made. In addition, the statements shall include a brief description of the purpose of the employment including the objective or goal sought by the employer and the method of determining and computing the compensation for the employment.

(c) Each statement which is filed pursuant to K.S.A. 46-233(b) shall include the name, complete address, and telephone number of the agency contracted with. In addition, the statements shall include a brief description of the purpose of the contract and the method of determining and computing the individual's income from the contract.

(d) Signature. Each representation case disclosure statement shall be dated by the individual filing the statement. (Authorized by K.S.A. 46-253; implementing K.S.A. 46-239; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1983.)

Article 50.—LOCAL CONFLICT OF INTEREST PROVISIONS

19-50-1. (Authorized by K.S.A. 75-4303a; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-50-2. (Authorized by K.S.A. 1976 Supp. 75-4303a; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1984.)

19-50-3. (Authorized by K.S.A. 75-4303a; implementing K.S.A. 75-4301; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; revoked May 1, 1984.)

Article 51.—DISCLOSURE OF SUBSTANTIAL INTERESTS

19-51-1. (Authorized by K.S.A. 75-4303a; implementing K.S.A. 1980 Supp. 75-4302; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; amended, E-77-47, Sept. 30, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1982; revoked May 1, 1984.)

19-51-2. (Authorized by K.S.A. 75-4301, 75-4303a; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; revoked May 1, 1984.)

Article 60.—LOBBYING REGULATION PROVISIONS

19-60-1. (Authorized by K.S.A. 1979 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1980.)

19-60-2. Construction. K.A.R. 19-60 to K.A.R. 19-63, inclusive, shall be liberally construed to accomplish the purposes of the act including providing for the greatest disclosure of lobbying expenditures possible while not hindering citizen involvement in the political process. (Authorized by K.S.A. 1976 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977.)

19-60-3. Definitions. The following words and phrases shall have these meanings:

(a) "Employer" means any of the following:

(1) A person who employs another person to a considerable degree for the purpose of lobbying;

(2) a person who formally appoints a person as the primary representative of an organization or of other persons to lobby in person on state-owned or state-leased property; or

(3) a person on whose behalf a person otherwise registers or is required to register as a lobbyist. If a lobbyist has more than one employer, the provisions of articles 60, 61, 62, and 63 of these regulations that relate to employers shall apply independently to each of the lobbyist's employers.

(b) "Expenditure" means a payment or a contract to pay for any of the following:

(1) The provision of hospitality in the form of recreation, food, and beverage to any state officers or employees of the legislative branch, candidates

for the legislature, or legislators-elect, or their spouses, except bona fide personal or business entertainment as defined in subsection (c) below;

(2) the provision of any entertainment, gift, honoraria, or payment to any state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect, or their spouses, except bona fide personal or business gifts, entertainment, honoraria, or payments;

(3) the production and communication of lobbying information to any state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect by any person other than an individual; or

(4) the production and dissemination of mass media communications, letter-writing campaigns, and similar transactions that explicitly promote or oppose a clearly identified legislative matter or regulation and that urge or request the recipient to communicate directly with state officers or employees of the legislative branch, candidates for the legislature, or legislators-elect regarding that matter.

A person shall be considered to have made an expenditure if the person does so directly or if another person does so on the person's behalf. In addition, in the case of membership organizations, associations, or similar entities, the entity shall be deemed to make an expenditure associated with membership events if the entity plays an integral role initiating, planning, or operating these membership events.

(5) The term "expenditure" shall not mean a payment or contract that meets any of the following conditions:

(A) Is made for the preparation of proposals, position papers, and similar documents;

(B) is made to employ another to lobby on one's behalf;

(C) is made for personal travel and subsistence of an individual engaged in lobbying;

(D) is reported in compliance with the campaign finance act;

(E) is made in association with any news story, commentary, or editorial distributed in the ordinary course of business by a broadcasting station, newspaper, or other periodical publication; or

(F) is made for contributions to membership organizations, associations, or similar entities in which the funds are used to make expenditures attributable to the entity or its representatives.

(c) "Bona fide personal or business entertainment or gifts" means entertainment or gifts provided to state officers or employees of the leg-

islative branch, candidates for the legislature, or legislators-elect, or their spouses, that are based solely on a business or personal relationship totally unrelated to the duties of the state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect. The factors that shall be taken into consideration in determining whether a specific entertainment or gift falls within this definition include the following:

(1) The intent of the parties;

(2) the length of time a business or personal relationship has existed;

(3) the topics of discussion;

(4) the setting;

(5) the persons attending;

(6) the reimbursement of the person providing the entertainment or gift by an organization that engages in lobbying; and

(7) the deduction by the person providing the entertainment or gift, or that person's principal, of the expenditures as lobbying expenditures.

(d)(1) "Gift" means the transfer of money or anything of value without receiving legal consideration of a reasonably equal or greater value in return. The value of a gift shall be the fair market value or a reasonable estimate of it. If a transfer is made for less than reasonable consideration, the amount by which the value of the transfer exceeds the value of the consideration received shall be deemed a gift.

(2) The term "gift" shall not include any of the following:

(A) The provision of hospitality in the form of recreation with a value of less than \$100, food, or beverage;

(B) any bona fide personal or business gift or entertainment; or

(C) any contribution reported in compliance with the campaign finance act.

(e) "Hospitality in the form of recreation, food and beverage" means the provision of recreation to or consumption of food and beverage by a state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect while the state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect is in the company of the donor or the donor's authorized agent.

(f) "Entertainment" means the provision of recreation, food, or beverage to a state officer or employee of the legislative branch, candidate for the legislature, or legislator-elect, when the state officer or employee of the legislative branch, can-

didate for the legislature, or legislator-elect is not in the company of the donor or the donor's authorized agent.

(g) Invitations. In order for an invitation to comply with K.S.A. 46-269(c)(2)(E)(i) or (c)(2)(E)(ii) and amendments thereto, an invitation shall be meaningful and issued in good faith. In determining whether an invitation is meaningful and issued in good faith, the factors that shall be considered include the following:

(1) Actual notice. The person extending the invitation shall provide notification in a manner that ensures that the majority of the invitees receive actual notice. The manner in which the invitation is distributed or communicated to the invitees shall remain within the discretion of the invitor.

(2) Timeliness of notice. The invitees shall receive notice in a manner sufficiently timely to allow them a reasonable likelihood of attending the event. Considerations shall include the location of the event, the location of the invitees, the necessity of travel to the event, and the scheduling of other events generally attended by a significant portion of the invitees.

(3) Likelihood of attendance. There shall be a reasonable likelihood that the majority or a reasonable mix of the invitees will or reasonably could attend the event. An invitation to an event that is historically attended only by certain individuals and that carries no reasonable likelihood that the majority or a reasonable mix of the invitees will attend shall not be deemed to be an invitation pursuant to K.S.A. 46-269(c)(2)(E)(i) or (c)(2)(E)(ii) and amendments thereto. (Authorized by K.S.A. 46-253; implementing K.S.A. 46-237 and 46-271; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992; amended Jan. 23, 2004.)

Article 61.—LOBBYING

19-61-1. Legislative matters. (a) General. Promoting or opposing in any manner action or nonaction by the legislature on any legislative matter constitutes lobbying.

Legislative matters include any bills, resolutions, nominations, or other issues or proposals pending before the legislature or any committee, subcommittee, or council thereof. An issue or proposal is pending before any such body if it is being directly considered by such body, if it has been communicated to such body or a member thereof even if not

directly considered by it, or if it is an issue subject to continuing review by any such body.

(1) Any communication which is intended to advocate action or nonaction by the legislature on a legislative matter, including communications with other persons with the intent that such persons communicate with legislators in regard thereto, constitutes lobbying.

(2) The provision of entertainment, recreation or gifts to any state officer or employee involved in action or nonaction by the legislature on any legislative matter, except those provided as bona fide personal or business entertainment, recreation or gifts, constitutes lobbying.

The fact that a particular activity constitutes "lobbying" does not necessarily mean that an individual must register as a lobbyist. See K.A.R. 19-62 on the issue of registration.

(b) Exceptions. The communication of factual material which is not intended to promote or oppose action or nonaction on a legislative matter and which is not accompanied by active advocacy does not constitute lobbying. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-225; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992.)

19-61-2. Agency rules and regulations. (a) General. Promoting or opposing in any manner the adoption or nonadoption of any rule and regulation by any state agency constitutes lobbying.

"Rules and regulations" means such rules and regulations as are required by law to be filed with the secretary of state and does not include those adopted by the judicial branch or any court.

(1) Any communication which is intended to advocate action or nonaction by any state agency on the adoption or nonadoption of any rule and regulation, including communications with other persons with the intent that such other person communicate with agency personnel in regard thereto, constitutes lobbying.

(2) The provision of entertainment, recreation or gifts, except those provided as bona fide personal or business entertainment, recreation or gifts, to any state officer or employee when the state officer or employee is involved in the adoption or nonadoption of rules and regulations and when provided in a situation where it can reasonably be attributed to contemplated or completed rules and regulations constitutes lobbying.

The fact that a particular activity constitutes “lobbying” does not necessarily mean that an individual must register as a lobbyist. See K.A.R. 19-62 on the issue of registration.

(b) Exceptions. The communication of factual material which is not intended to promote or oppose the adoption or nonadoption of rules and regulations and which is unaccompanied by active advocacy does not constitute lobbying. In addition, the preparation of proposed or recommended rules and regulations or the monitoring of the adoption process does not constitute lobbying. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-225; effective, E-77-7, March 19, 1976; effective, E-77-29, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992.)

19-61-3. (Authorized by K.S.A. 1976 Supp. 46-253; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; revoked June 22, 1992.)

Article 62.—LOBBYIST REGISTRATION

19-62-1. Who must register. (a) Employed lobbyists. Each person whose employment is, to a considerable degree, for the purpose of lobbying shall register as a lobbyist. A person is employed if the person receives compensation for or in direct relation to lobbying regardless of the technical legal definition of the relationship between the principal and the lobbyist. An executive of an organization who as part of the executive’s duties only incidentally lobbies shall not be required to register under this subsection. However, where a person is employed to a considerable degree for the purpose of lobbying, it is irrelevant that the lobbying employment is not a substantial amount of the person’s overall business. In determining whether an individual is employed to a considerable degree to lobby, that portion of the employment which relates to preparation for lobbying shall be taken into consideration.

(b) Appointed lobbyists. Any person formally appointed as the primary representative of an organization or of another person to lobby on state-owned or leased property shall register as a lobbyist regardless of whether the person receives compensation for lobbying. Formal appointment as a primary representative may be indicated by election to a specific office or designation, including a specific post where the members of the organization or appointing per-

son recognize such election or designation to include the right or duty to lobby as its primary representative on state-owned or leased property. Generally, where an organization or other person has an employed lobbyist, members lobbying on behalf of the organization shall not be deemed the primary representative of the organization or other person for the purposes of this registration provision. Where an appointment is made in conjunction with an employment status as set out in subsection (a) of this section, the provisions of that subsection shall control as to whether the employed person must register as a lobbyist.

(c) Persons making lobbying expenditures. Any person who makes “expenditures” for lobbying, as defined in K.A.R. 19-60-3(c), in an aggregate amount of \$100 or more in any calendar year shall register as a lobbyist.

(d) Exceptions to the rules governing who must register.

(1) Those persons covered by K.S.A. 1991 Supp. 46-222(b) shall not be required to register as lobbyists.

(2) When an individual accepts a limited number of bona fide invitations from a state agency or subdivision thereof to appear before it for the purpose of providing information to such agency, the individual shall not be required to register as a lobbyist under subsections (a) and (b) of this section solely on account of such appearances. However, subsection (c) of this regulation applies to such situations. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-265; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended June 22, 1992.)

19-62-2. When and where to register. Every person required to register as a lobbyist shall register with the secretary of state on a form prescribed and provided by the commission. The registration shall be filed prior to lobbying in any calendar year. Whenever any new lobbying position is accepted by a registered lobbyist, the lobbyist shall file an additional registration in the same manner as the original. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-265; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended June 22, 1992.)

Article 63.—LOBBYIST REPORTING PROVISIONS

19-63-1. (Authorized by K.S.A. 1979 Supp. 46-253, 46-268, 46-269; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; revoked May 1, 1984.)

19-63-2. When to report. (a) Reporting periods. Each lobbyist shall report all expenditures allocable to that period by the 10th day of the month a report is due.

(b) Allocation of expenditures. Each expenditure shall be allocated to the reporting period in which the debt is incurred.

(c) Entertainment, gifts, honoraria and payments. Entertainment, gifts, honoraria and payments shall be allocated to the reporting period in which accepted by the state officer or employee. When entertainment, a gift, honoraria or payment is composed of separate transfers deferred over more than one reporting period, the total value thereof shall be allocated to the reporting period in which the state officer or employee accepts the initial transfer. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-268, 46-269; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1984; amended June 22, 1992.)

19-63-3. What to report. (a) Expenditures. When any lobbyist's total expenditures for the reporting period exceed \$100, the lobbyist shall report the aggregate amount of all individual expenditures of \$2 and over made by the lobbyist and by the lobbyist's employer, if the lobbyist is the lobbyist most directly connected. The individual expenditures shall be reported according to the following categories:

- (1) expenditures for hospitality provided in the form of food and beverage;
- (2) expenditures for entertainment, gifts, honoraria or payments to state officers and employees;
- (3) expenditures for mass media communications;
- (4) expenditures for recreation provided as hospitality;
- (5) expenditures for communication for the purpose of influencing legislative or executive action; and
- (6) other reportable expenditures.

A lobbyist shall be considered most directly connected with an expenditure if the lobbyist incurs the

debt, regardless of how the actual payment is made. The name and address of the lobbyist's employer shall be listed for all reportable expenditures.

(b) Entertainment, gifts, honoraria and payments. Entertainment, gifts, honoraria and payments made by the lobbyist's employer shall be reported by the lobbyist if, by themselves or in combination with entertainment, gifts, honoraria or payments made by the lobbyist, the reporting threshold is exceeded and if the lobbyist is the lobbyist of the employer most directly connected therewith. A lobbyist shall be considered most directly connected with entertainment, a gift, honoraria or payment if the lobbyist reaches the agreement for its acceptance, regardless of how the underlying debt is paid. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-269; effective, E-77-7, March 19, 1976; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended May 1, 1980; amended May 1, 1984; amended June 22, 1992.)

19-63-4. Material errors or omissions. The following shall be considered material errors or omissions on any report required by this article:

- (a) Failure to use the form prescribed by the commission;
- (b) incomplete identification of the person filing;
- (c) failure to show the correct period covered;
- (d) failure to sign or date the statement;
- (e) illegibility;
- (f) inadequate or omitted address;
- (g) inadequate or omitted description or purpose of statement;
- (h) incorrect or omitted expenditures or no check mark in the box indicating \$100 or less was spent;
- (i) failure to report any reportable expenditure;
- (j) incomplete identification of the person or employer on whose behalf the report is filed; and
- (k) any other error or omission which leads to less than full disclosure as required by this regulation. (Authorized by K.S.A. 1991 Supp. 46-253; implementing K.S.A. 1991 Supp. 46-280; effective, E-77-20, May 1, 1976; effective Feb. 15, 1977; amended June 22, 1992.)

19-63-5. (Authorized by K.S.A. 1979 Supp. 46-253; effective, E-79-24, Sept. 21, 1978; effective May 1, 1979; revoked May 1, 1980.)

19-63-6. Lobbyist's records. Records in support of every report or statement filed shall be maintained and preserved by the lobbyist for five years from the date of filing the report or state-

ment and may be inspected by and under conditions determined by the commission. At a minimum, each lobbyist shall maintain the following records: (a) A detailed account of all lobbying expenditures, including the following:

- (1) The full name and address of each person to whom the payment is made;
 - (2) the purpose of the expenditure;
 - (3) the date of the expenditure, including both the date of contracting and the date of payment; and
 - (4) the amount of the expenditure;
- (b) receipts and invoices to substantiate all expenditures and reimbursements;
- (c) all bills, statements, contracts, or other documentation for services relating to reportable lobbying activities;
- (d) the canceled check or copy supplied from a financial institution or other instrument by which payment for reportable lobbying activities was made;
- (e) a chart of accounts, if applicable;

(f) a general ledger;

(g) the following documentation for all bank and credit card accounts held or used in connection with lobbying activities, including any personal accounts used in connection with lobbying:

- (1) Account statements;
 - (2) deposit slips; and
 - (3) canceled checks or copies supplied from a financial institution;
- (h) lists of persons accepting gifts that shall be reported pursuant to K.S.A. 46-269 and amendments thereto;
- (i) lists of persons consuming meals or attending entertainment or recreational events that shall be reported pursuant to K.S.A. 46-269 and amendments thereto; and
- (j) contracts or agreements for lobbying services between the lobbyist and the lobbyist's employer or appointing authority. (Authorized by K.S.A. 46-253; implementing K.S.A. 46-269; effective June 22, 1992; amended Jan. 23, 2004.)

Agency 20

Crime Victims Compensation Board

Editor's Note:

Effective July 1, 1989, the Crime Victims Reparations Board shall be and is hereby officially designated as the Crime Victims Compensation Board. On and after July 1, 1989, whenever the Crime Victims Reparations Board, or words of like effect, is referred to or designated by the statute, contract or other document, such reference shall mean and apply to the Crime Victims Compensation Board.

Articles

- 20-1. DEFINITIONS.
- 20-2. CLAIMS.
- 20-3. HEARINGS. (*Not in active use.*)
- 20-4. ATTORNEY FEES.
- 20-5. ASSIGNMENT.
- 20-6. DEFINITIONS.
- 20-7. FUNDING PRIORITIES.
- 20-8. ELIGIBILITY REQUIREMENTS.
- 20-9. ALLOCATION OF FUNDING.
- 20-10. GRANT APPLICATION REQUIREMENTS.
- 20-11. GRANT REVIEW AND APPEALS.
- 20-12. FUNDING DISBURSEMENT.
- 20-13. GRANTEE ACCOUNTABILITY.
- 20-14. GRANTOR MONITORING RESPONSIBILITIES.
- 20-15. NOTORIETY FOR PROFIT CONTRACTS.

Article 1.—DEFINITIONS

20-1-1. Definitions. For the purpose of the act and the board's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Accomplice" means one who unites with another in a crime, by aiding or abetting in the crime, by advising or encouraging the crime, or by inciting the criminal conduct causing the claimant's injury.

(b) "Act" means K.S.A. 74-7301 et seq., and amendments thereto.

(c) "Allowable expense" means "allowance expense" as defined in K.S.A. 74-7301, and amendments thereto.

(d) "Extenuating circumstances" means facts that cause reasonable charges for reasonably needed mental health counseling to exceed the presumptive limits specified in K.A.R. 20-2-3.

(e) "Grief therapy" means the counseling or treatment of a victim by reason of family grief.

(f) "Mental health counseling" means a confidential service that provides problem solving and

support concerning emotional issues that result from criminal victimization. Mental health counseling has as its primary purpose the enhancement, protection, and restoration of the victim's sense of well-being and social functioning skills. This term shall not include any of the following:

(1) Efforts to verify or validate claims or reports of criminally injurious conduct;

(2) advocacy functions, including attendance at medical or law enforcement procedures or criminal justice proceedings; or

(3) crisis telephone counseling.

(g) "Victim by reason of family grief" means the spouse, children, siblings, parents, legal guardian, stepparents, and grandparents of a homicide victim. (Authorized by and implementing K.S.A. 74-7304; effective May 1, 1980; amended May 1, 1984; amended Nov. 15, 1993; amended Jan. 10, 2014.)

20-1-2. (Authorized by K.S.A. 1979 Supp. 74-7304; effective May 1, 1980; revoked Jan. 10, 2014.)

Article 2.—CLAIMS

20-2-1. (Authorized by and implementing K.S.A. 74-7304; effective May 1, 1980; amended May 1, 1984; revoked Jan. 10, 2014.)

20-2-2. Cooperation with the board. (a) All claimants and claimants' attorneys shall fully cooperate with the board and the board's investigators, agents, and representatives. If a claimant or a claimant's attorney fails to fully cooperate, the claim may be reduced or denied by the board.

(b) Failure to fully cooperate shall include the following:

(1) Failing to fully complete the application for compensation provided by the board;

(2) not responding to requests for information or evidence; and

(3) knowingly making false statements to the board or the board's investigators, agents, and representatives. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7304 and 74-7309; effective May 1, 1980; amended May 1, 1984; amended Jan. 10, 2014.)

20-2-3. Mental health counseling award. Each mental health counseling award shall be subject to the limitations specified in this regulation.

(a) Any victim of a crime may be considered for up to a \$5,000 mental health counseling award.

(1) A standard treatment plan based on this limit shall be approved by the board.

(2) Compensation beyond the \$5,000 maximum for mental health counseling may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recommendations of a mental health counseling provider or physician.

(3) The award for a mental health evaluation shall not exceed \$350, which may be in addition to the \$5,000 maximum. For purposes of this paragraph, mental health evaluation shall mean a diagnostic interview examination, including history, mental status, or disposition, that is administered in order to determine a plan of mental health treatment.

(b) Each victim by reason of family grief may be considered for up to a \$1,500 grief therapy award. Compensation beyond the \$1,500 maximum may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recom-

mendations of a mental health counseling provider or physician.

(c) If the mental health treatment plan for a victim requires that others, not including the offender, be involved in treatment, costs for third-party mental health counseling may be compensable up to the \$5,000 maximum, if the third-party mental health counseling is directly and beneficially related to the plan for treatment of the victim. Mental health counseling involving a third party shall not be compensable unless both of the following conditions are met:

(1) The primary victim is present in the mental health counseling sessions, or the focus of the treatment is to assist in the victim's recovery.

(2) The mental health treatment plan addresses the need for third-party mental health counseling.

(d) Compensable mental health counseling may be provided in either of the following:

(1) A medical or psychiatric setting under the supervision of a medical doctor or a psychiatrist licensed or registered by the Kansas board of healing arts or comparable governmental agencies in other jurisdictions having similar licensure or registration requirements. The costs of this mental health counseling incurred during inpatient treatment shall be applied toward the maximum claim for inpatient treatment; or

(2) a nonmedical setting by an individual licensed or registered by the Kansas behavioral sciences regulatory board, the Kansas board of healing arts, or comparable governmental agencies in other jurisdictions having similar licensure or registration requirements, if the mental health counseling falls within the professional parameters of the provider's license or registration.

(e) Compensation for inpatient hospitalization shall be considered only if the condition is life-threatening and the hospitalization has been recommended by the victim's physician or mental health counseling provider. Reimbursement for each instance of inpatient treatment and care shall not exceed the cost of treatment for a period of 10 days or \$10,000, whichever is less. Compensation beyond the \$10,000 maximum may be awarded if the board finds that extenuating circumstances justify this action and this action is supported by information, reports, or a mental health treatment plan and by recommendations of a mental health counseling provider or physician.

(f) The following limits on mental health counseling rates shall apply to outpatient mental health counseling:

- (1) Individual and family mental health counseling in a nonmedical setting \$90 per hour
- (2) Group therapy \$60 per hour

These rates shall apply to individuals performing treatment. Compensation shall not be awarded to pay the costs of persons supervising treatment.

(g) If it is apparent from the treatment plan that the treatment is addressing issues not directly related to the crime, only that portion of the treatment that is addressing the victimization shall be compensable.

(h) Compensation for mental health counseling shall be based on the version of this regulation that was in effect when the service was provided. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2012 Supp. 74-7301; effective Nov. 15, 1993; amended Jan. 10, 2014.)

20-2-4. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7314; effective May 1, 1980; amended May 1, 1984; revoked Jan. 10, 2014.)

20-2-5. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7315; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

20-2-6. Failure to properly report criminally injurious conduct. (a) To be eligible for an award of compensation, each victim shall report any criminally injurious conduct resulting in injury or death to a law enforcement officer within 72 hours after its occurrence. Subject to the restrictions of K.S.A. 74-7305, as amended, this rule may be waived by the board if the board finds that there was good cause for the failure to timely report.

(b) The following factors may be considered by the board in determining the existence of good cause:

- (1) The physical, emotional and mental condition of the victim;
- (2) the nature and circumstances of the crime;
- (3) the victim's family situation at the time of the criminally injurious conduct;
- (4) the earliest point at which the criminally injurious conduct could reasonably have been reported;
- (5) the victim's good faith belief that a timely report had been made to the appropriate law enforcement officials or agency; or
- (6) whether the victim was a minor at the time of an offense specified in K.S.A. 74-7305(b) and

the report was made within the statute of limitations for prosecution of the offense. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7304, 74-7305, as amended by L. 1993, ch. 166, § 1; effective Nov. 15, 1993.)

20-2-7. Cooperation with law enforcement. (a) For the purpose of K.S.A. 74-7305 and amendments thereto, full cooperation with appropriate law enforcement agencies shall include the following:

- (1) Reporting the crime in a timely manner to permit law enforcement agencies to investigate, identify, and charge those responsible for the crime;
- (2) providing information, upon request, to law enforcement officers and prosecutors investigating the crime;
- (3) cooperating with law enforcement procedures;
- (4) appearing in court to testify as required, unless just cause is shown for any failure to appear; and
- (5) requesting that the offender be prosecuted, which is commonly known as "pressing charges."

(b) The term "law enforcement agencies" shall include the offices and agencies responsible for investigating the crime or prosecuting the offender. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2013 Supp. 74-7305; effective Nov. 15, 1993; amended Jan. 10, 2014.)

20-2-8. Contributory misconduct. (a) For the purpose of K.S.A. 74-7305 and amendments thereto, "contributory misconduct" may include the following:

- (1) Consent, provocation, or incitement, which may consist of the use of fighting words or obscene gestures;
- (2) willing presence in a vehicle operated by a person who is known to be under the influence of alcohol or an illegal substance;
- (3) abuse of alcohol or an illegal substance;
- (4) failure to retreat or withdraw from a threatening situation if an option to do so is readily available;
- (5) failure to act as a prudent person; and
- (6) unlawful activity.

(b) The acts and behaviors listed in subsection (a) may be excused in cases involving domestic abuse or sexual assault. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2012 Supp. 74-7305; effective Nov. 15, 1993; amended Jan. 10, 2014.)

20-2-9. Allowable expenses. (a) Reasonable charges for medical care shall be deemed allowable expenses only if the medical care provider is registered or licensed by the appropriate governmental licensing entity.

(b) Moving costs may be deemed allowable expenses if one of the following individuals has recommended the move in writing for reasons related to the crime:

- (1) A law enforcement officer;
- (2) a prosecutor; or
- (3) a victims' advocate working for a law enforcement agency or prosecutor's office.

(c) Mileage costs may be deemed allowable expenses for medically necessary travel. These costs shall be computed at a rate that does not exceed the rate established by the secretary of administration pursuant to K.S.A. 75-3203a, and amendments thereto.

(d) Meal costs shall not be deemed allowable expenses. (Authorized by K.S.A. 74-7304; implementing K.S.A. 2012 Supp. 74-7301; effective Nov. 15, 1993; amended Jan. 10, 2014.)

Article 3.—HEARINGS

20-3-1. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7307; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

20-3-2. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7307, 74-7308; effective May 1, 1980; amended May 1, 1984; revoked Aug. 10, 2012.)

Article 4.—ATTORNEY FEES

20-4-1. Attorney; assistance in preparation of application; fees. (a) Each attorney representing a claimant shall submit to the board an itemized statement of the attorney's time expended on behalf of the claimant in preparation of the claim.

(b) The attorney fee shall be at a rate of \$45.00 per hour for time expended in preparation, investigation and presentation of the claim, together with reimbursement for mileage at the rate allowed by rules and regulations, adopted by the department of administration, for reimbursement of public officials. (Authorized by K.S.A. 74-7304; implementing K.S.A. 74-7311; effective May 1, 1980; amended May 1, 1984.)

Article 5.—ASSIGNMENT

20-5-1. Assignment to providers of allowable expenses. Upon request of the board, the claimant shall execute an assignment form approved by the board for payment of unpaid allowable expenses. The minimum amount to be assigned is fifteen dollars (\$15.00). (Authorized by K.S.A. 1979 Supp. 74-7304; effective May 1, 1980.)

Article 6.—DEFINITIONS

20-6-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 10, 2014.)

Article 7.—FUNDING PRIORITIES

20-7-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

20-7-2 to 20-7-4. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

Article 8.—ELIGIBILITY REQUIREMENTS

20-8-1 through 20-8-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

20-8-3. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

20-8-4. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

Article 9.—ALLOCATION OF FUNDING

20-9-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

20-9-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

20-9-3. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

20-9-4 to 20-9-6. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

Article 10.—GRANT APPLICATION REQUIREMENTS

20-10-1 through 20-10-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

Article 11.—GRANT REVIEW AND APPEALS

20-11-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

20-11-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

20-11-3 and 20-11-4. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

Article 12.—FUNDING DISBURSEMENT

20-12-1 and 20-12-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

Article 13.—GRANTEE ACCOUNTABILITY

20-13-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

20-13-2. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-45, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 11, 2002.)

20-13-3. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-86-45, Dec. 18, 1985; effective May 1, 1986; revoked Jan. 11, 2002.)

Article 14.—GRANTOR MONITORING RESPONSIBILITIES

20-14-1. (Authorized by and implementing K.S.A. 1984 Supp. 74-7325; effective, T-85-27, Nov. 14, 1984; effective May 1, 1985; amended, T-86-14, June 17, 1985; revoked, T-86-45, Dec. 18, 1985; revoked May 1, 1986.)

Article 15.—NOTORIETY FOR PROFIT CONTRACTS

20-15-1, 20-15-2. (Authorized by L. 1986, ch. 306, sec. 4; implementing L. 1986, ch. 306, sec. 2, 3, 4; effective May 1, 1987; revoked Jan. 10, 2014.)

Agency 21

Kansas Human Rights Commission

Editor's Note:

Effective July 1, 1991, the Commission on Civil Rights became the Kansas Human Rights Commission. All properties, moneys, appropriations, rights and authorities vested in the Commission on Civil Rights were vested in the Kansas Human Rights Commission. See K.S.A. 44-1003.

Articles

- 21-1. *DEFINITIONS. (Not in active use.)*
- 21-2. *COMPLAINTS. (Not in active use.)*
- 21-3. *CONCILIATION. (Not in active use.)*
- 21-4. *NOTICE OF HEARING. (Not in active use.)*
- 21-5. *ANSWER. (Not in active use.)*
- 21-6. *HEARINGS. (Not in active use.)*
- 21-7. *WRITTEN TRANSCRIPT OF THE RECORD. (Not in active use.)*
- 21-8. *DEPOSITIONS. (Not in active use.)*
- 21-9. *ORDERS. (Not in active use.)*
- 21-10. *CERTIFICATION. (Not in active use.)*
- 21-11. *AVAILABILITY OF REGULATIONS. (Not in active use.)*
- 21-12. *CONSTRUCTION. (Not in active use.)*
- 21-15. *DEFINITIONS. (Not in active use.)*
- 21-16. *COMPLAINTS. (Not in active use.)*
- 21-17. *INVESTIGATIONS. (Not in active use.)*
- 21-18. *CONCILIATION. (Not in active use.)*
- 21-19. *COMPLIANCE. (Not in active use.)*
- 21-20. *NOTICE OF HEARING. (Not in active use.)*
- 21-21. *ANSWER. (Not in active use.)*
- 21-22. *HEARINGS. (Not in active use.)*
- 21-23. *WRITTEN TRANSCRIPT OF THE RECORD. (Not in active use.)*
- 21-24. *DEPOSITIONS. (Not in active use.)*
- 21-25. *ORDERS. (Not in active use.)*
- 21-26. *CERTIFICATIONS. (Not in active use.)*
- 21-27. *AVAILABILITY OF REGULATIONS. (Not in active use.)*
- 21-28. *CONSTRUCTION. (Not in active use.)*
- 21-29. *GENERAL PROCEDURES. (Not in active use.)*
- 21-30. **EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT.**
- 21-31. **DISCRIMINATION BECAUSE OF NATIONAL ORIGIN OR ANCESTRY.**
- 21-32. **DISCRIMINATION BECAUSE OF SEX.**
- 21-33. **DISCRIMINATION BECAUSE OF RELIGION.**
- 21-34. **DISCRIMINATION BECAUSE OF DISABILITY.**
- 21-40. **GENERAL PROVISIONS.**
- 21-41. **COMPLAINTS AND RESPONSES.**
- 21-42. **INVESTIGATION.**

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- 21-43. CONFERENCE AND CONCILIATION.
 21-44. COMPLIANCE.
 21-45. *PROCEEDINGS.* (Not in active use.)
 21-46. MISCELLANEOUS SUBSTANTIVE PROVISIONS.
 21-50. CONTRACT COMPLIANCE.
 21-60. DISCRIMINATORY HOUSING PRACTICES.
 21-70. NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS.
 21-80. AGE DISCRIMINATION IN EMPLOYMENT.

Article 1.—DEFINITIONS

21-1-1 to 21-1-10. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 2.—COMPLAINTS

21-2-1 to 21-2-8. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 3.—CONCILIATION

21-3-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 4.—NOTICE OF HEARING

21-4-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 5.—ANSWER

21-5-1 to 21-5-10. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 6.—HEARINGS

21-6-1 to 21-6-11. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 7.—WRITTEN TRANSCRIPT OF THE RECORD

21-7-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 8.—DEPOSITIONS

21-8-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 9.—ORDERS

21-9-1 to 21-9-4. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 10.—CERTIFICATION

21-10-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 11.—AVAILABILITY OF REGULATIONS

21-11-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 12.—CONSTRUCTION

21-12-1. (Authorized by K.S.A. 1965 Supp. 44-1004; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

Article 15.—DEFINITIONS

21-15-1 to 21-15-3. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-4. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-5. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-6 to 21-15-11. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-15-12. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 16.—COMPLAINTS

21-16-1. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-2 to 21-16-4. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-5. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1968; amended, E-7-5, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-6. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-8. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-9. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-16-10. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 17.—INVESTIGATIONS

21-17-1. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended, E-71-5, Jan. 1, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-2 and 21-17-3. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-4. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-17-5. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 18.—CONCILIATION

21-18-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-18-2. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 19.—COMPLIANCE

21-19-1 and 21-19-2. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-19-3 to 21-19-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-19-8 to 21-19-10. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 20.—NOTICE OF HEARING

21-20-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 21.—ANSWER

21-21-1 and 21-21-2. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-21-3 and 21-21-4. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-21-5. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; revoked Jan. 1, 1970.)

21-21-6 to 21-21-10. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 22.—HEARINGS

21-22-1 to 21-22-3. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-4. (Authorized by K.S.A. 1971 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; amended, E-71-36, Sep. 8, 1971; amended Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-5 to 21-22-7. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-8. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-9 to 21-22-11. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-12. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-22-13 to 21-22-19. (Authorized by K.S.A. 1969 Supp. 44-1004; effective Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 23.—WRITTEN TRANSCRIPT OF THE RECORD

21-23-1. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 24.—DEPOSITIONS

21-24-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 25.—ORDERS

21-25-1 and 21-25-2. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-25-3 and 21-25-4. (Authorized by K.S.A. 1969 Supp. 44-1004, 44-1005; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 26.—CERTIFICATIONS

21-26-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 27.—AVAILABILITY OF REGULATIONS

21-27-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 28.—CONSTRUCTION

21-28-1. (Authorized by K.S.A. 1967 Supp. 44-1001; effective Jan. 1, 1968; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 29.—GENERAL PROCEDURES

21-29-1 to 21-29-4. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

Article 30.—EMPLOYEE SELECTION PROCEDURES AND RECRUITMENT

21-30-1. (Authorized by K.S.A. 44-1004 (3); effective Jan. 1, 1972; revoked, E-74-14, Dec. 28, 1973; revoked May 1, 1975.)

21-30-2. “Test” defined. For the purpose of the guidelines in this part, the term “test” is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measure of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical,

clerical and other aptitudes; dexterity and coordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-3. Discrimination defined. The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by the Kansas act against discrimination constitutes discrimination unless:

(a) The test has been validated and evidences a high degree of utility as hereinafter described, and

(b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-4. Evidence of validity. (a) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 21-30-3. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(b) The term "technically feasible" as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(c) Evidence of a test's validity should consist of empirical data demonstrating that the test is pre-

dictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(1) If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

(2) Where a test is to be used in different units of a multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: *Provided*, That no significant differences exist between units, jobs and applicant populations. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-5. Minimum standards for validation. (a) For the purpose of satisfying the requirements of this part, empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street N.W., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However,

evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

(b) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

(1) Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

(2) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of tests results, that are privately developed and/or are not available through normal commercial channels, must be included as a part of the validation evidence.

(3) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the

appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

(4) In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

(5) Differential validity. Data must be generated and results separately reported for minority and nonminority groups whenever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. (See 21-30-9.) A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

(c) In assessing the utility of a test the following considerations will be applicable:

(1) The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

(2) In addition to statistical significance, the relationship between the test and criterion should

have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including: (a) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available. (b) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory. (c) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-6. Presentation of validity evidence. The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See 21-30-5 (c) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-7. Use of other validity studies. In cases where the validity of a test cannot be determined pursuant to 21-30-4 and 21-30-5 (*e.g.*, the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when:

(a) The studies pertain to jobs which are comparable (*i.e.*, have basically the same task elements), and

(b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in paragraphs (a) and (b) of this section. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-8. Assumption of validity. (a) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-9. Continued use of tests. Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: *Provided:* (a) The person can cite substantial evidence of validity as described in 21-30-7 (a) and (b); and

(b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-10. Employment agencies and employment services. (a) An employment service, including private employment agencies, and state employment agencies, as defined in K.S.A. 44-1002 (e), shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these guidelines.

(b) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these guidelines.

(c) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity (see 21-30-8 (a)). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 21-30-7. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-11. Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance

in accordance with the guidelines in this part—cannot be imposed upon any individual or class protected by the Kansas act against discrimination where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by the Kansas act against discrimination who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-12. Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier “failure” candidates who have availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-13. Other selection techniques. Selection techniques other than tests, as defined in 21-30-2, may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 21-30-4 and 21-30-5. Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and non-minority groups for the same job or group of jobs or when there are disproportionate representa-

tions of minority and nonminority groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-14. Affirmative action. Nothing in these guidelines shall be interpreted as diminishing a person's obligation under the Kansas act against discrimination to undertake affirmative action to ensure that applicants or employees are treated without regards to race, religion, color, national origin or ancestry. Specifically, the use of tests which have been validated pursuant to these guidelines does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by the Kansas act against discrimination. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-15. Word-of-mouth recruiting. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not recruit exclusively or even primarily by means of word-of-mouth referrals from present employees or present members. (Authorized by K.S.A. 1971 Supp. 44-1004 and 44-1005; effective Jan. 1, 1972.)

21-30-16. Preference to relatives, friends or neighbors of present employees or members. Employers and/or labor organizations whose workforces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not give preference in hiring or in admission to membership to relatives, friends or neighbors of present employees or present members by reason of such relationships. (Authorized by K.S.A. 1974 Supp. 44-1004 and 44-1005; effective Jan. 1, 1972; amended, E-74-14, Dec. 28, 1973; amended May 1, 1975.)

21-30-17. Pre-employment inquiries and practices. K.S.A. 44-1009 (a) (3) prohibits, among others, the following pre-employment or premembership inquiries and practices:

(a) Inquiry into the birthplace of an applicant,

the applicant's spouse or parents or any other close relative.

(b) Any requirement that an applicant submit a birth certificate, naturalization or baptismal record with his application.

(c) Any requirement or suggestion that an applicant submit a photograph with his application or at any time before he is hired.

(d) Inquiry into the name and address of any relative of an adult applicant other than applicant's spouse or children.

(e) Any inquiry into organization memberships, the name or character of which could indicate the race, religion, color, national origin or ancestry of the applicant. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-30-18. (Authorized by K.S.A. 1974 Supp. 44-1003, 1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

21-30-19. Recruitment and referral agencies. (a) Public and private services. Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers "to establish continuing relationships with referral sources which may include, but is not limited to,

(1) Public referral services and agencies; and

(2) Private referral agencies and services, including those operated for profit."

(b) Recruitment. To the extent where necessary to eliminate the continuing effects or prior discrimination the commission may require employers to advertise vacancies and non-discriminatory hiring practices. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-30-20. Temporary employment. Where necessary to eliminate the continuing effects of prior discrimination, the commission may require employers to hire its summer, seasonal or any other temporary employees on the same basis as permanent employees. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 31.—DISCRIMINATION BECAUSE OF NATIONAL ORIGIN OR ANCESTRY

21-31-1. Construction of BFOQ Exemption. The bona fide occupational qualification exemption of K.S.A. 44-1009 (a) (3) shall be strictly

construed as it pertains to cases of national origin or ancestry. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-2. Covert and overt discrimination.

The Kansas act against discrimination is intended to eliminate covert as well as the overt practices of discrimination, and the commission will, therefore, examine with particular concern cases where persons within the jurisdiction of the commission have been denied equal opportunities for reasons which are grounded in national origin or ancestry considerations. Examples of cases of this character include: The use of tests in the English language where the individual tested came from circumstances where English was not that person's first language or mother tongue, and where English language skill is not a requirement of the task to be performed; denial of equal opportunity to persons married to or associated with persons of a specific national origin or ancestry; denial of equal opportunity because of membership in lawful organizations identified with or seeking to promote the interests of national groups; denial of equal opportunity because of attendance at schools or churches commonly utilized by persons of a given national origin or ancestry; denial of equal opportunity because their name or that of their spouse reflects a certain national origin or ancestry; and denial of equal opportunity to persons who as a class of persons tend to fall outside national norms for height and weight where such height and weight specifications are not necessary for the performance of the work involved. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-3. Protection of noncitizens. The Kansas act against discrimination protects all individuals, both citizens and noncitizens, domiciled, residing or transient in the state of Kansas, against discrimination in employment, public accommodations and housing because of race, religion, color, national origin or ancestry. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

21-31-4. Protection of national security. Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled, residing or transient in the state of Kansas may not be discriminated against on the basis of his citizenship, except that it is not an unlawful practice for an employer to refuse to employ any person who does not fulfill the require-

ments imposed in the interest of federal or state security pursuant to any statute of the United States or the state of Kansas or pursuant to any executive order of the president or the governor respecting the particular position or the particular premises in question. (Authorized by K.S.A. 1971 Supp. 44-1004; effective Jan. 1, 1972.)

**Article 32.—DISCRIMINATION
BECAUSE OF SEX**

21-32-1. Sex as a bona fide occupational qualification. (a) The bona fide occupational qualification exceptions as to sex should be interpreted narrowly. Labels—"men's jobs" and "women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

The commission will find that the following situations do not warrant the application of the bona fide occupational qualification exceptions:

(1) The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(2) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(3) The refusal to hire an individual because of the preference of co-workers, the employer, clients or customers.

(4) The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification unless the expense would be clearly unreasonable.

(b) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. (Authorized by K.S.A. 1974 Supp. 44-1004(3), 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; regulation modified by 1975 HB 2633, May 6, 1975.)

21-32-2. Fringe benefits. "Fringe benefits," as used herein includes medical, hospital, accident, life insurance and retirement benefits;

profit sharing and bonus plans; leave and other terms, conditions and privileges of employment.

(a) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(b) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principle wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of the household" or "principle wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the act.

(c) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is the situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(d) It shall not be a defense to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(e) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages on the basis of sex, or which differentiates in benefits on the basis of sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-3. Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male" or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex could reasonably be expected to perform. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-4. Discrimination against married women.

(a) The commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by the Kansas act against discrimination. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex. This rule also applies to unmarried women who happen to be mothers for example; in many instances women who have small children in the home are denied employment. Such discrimination usually takes place at the initial employer's screening process through the asking of such questions as "How old are your children? How many children do you have? What are your plans for providing care for your children?"

(b) An employed woman should not have her employment terminated when she marries a man who works for the same business or institution by whom she is employed. At the same time, a woman should not be denied employment by an employer due to rules against nepotism if she is otherwise qualified to perform the required work. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-5. Pre-employment inquiries as to sex.

Pre-employment inquiry may ask "Male . . . , Female . . . ;" provided that the inquiry is made in good faith for a non-discriminatory purpose. Any

pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-6. Pregnancy and childbirth. (a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is prima facie discrimination.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery therefrom, are for all job related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such termination is discriminatory if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d) Childbearing must be considered by the employer to be a justification for a leave of absence for female employees for a reasonable period of time. Following childbearing, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay without loss of service, credits, seniority or other benefits. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-7. Affirmative action. The employer shall take affirmative action to recruit women to apply for those jobs where they have been pre-

viously excluded. Such affirmative action may include but is not limited to notifying employment referral agencies that women are welcome to apply for all positions, recruiting at women's colleges and the use of advertising which is not classified by sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-32-8. Job opportunities advertising. It is a violation of the Kansas act against discrimination for a help wanted advertisement to indicate a preference, limitation, specification or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such columns headed "male" or "female," will be considered as an expression of preference, limitation, specification or discrimination based on sex. (Authorized by K.S.A. 1974 Supp. 44-1004(3) and 44-1009; effective, E-73-5, Nov. 16, 1972; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 33.—DISCRIMINATION BECAUSE OF RELIGION

21-33-1. Statement of purpose. (a) The guidelines in this part have been adopted to contribute to the implementation of non-discriminatory personnel policies with respect to employee religious beliefs as required by the Kansas act against discrimination. The guidelines in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their policies concerning employee religious beliefs conform with the basic purposes of the elimination of discrimination in employment as defined by the act.

(b) Observance of sabbath and other religious holidays. Regarding whether it is discrimination on account of religion to discharge or refuse to hire employees who regularly observe Friday evening and Saturday, or some other day of the week, as the Sabbath or who observe certain special religious holidays during the year and, as a consequence, do not work on such days, the commission finds that the duty not to discriminate on religious grounds, under the act, includes an obligation on the part of the employer to make reasonable accommodations to the religious needs of employees and prospective employees where

such accommodations can be made without undue hardship on the conduct of the employer's business. Such undue hardship, for example, may exist where the employee's needed work cannot be performed by another employee of substantially similar qualifications during the period of absence of the Sabbath observer. Because of the particularly sensitive nature of discharging or refusing to hire an employee or applicant on account of his religious beliefs, the employer has the burden of proving that an undue hardship renders the required accommodations to the religious needs of the employee unreasonable. The commission will review each case in an effort to seek an equitable application of these guidelines to the variety of situations which arise due to the varied religious practices of the people of Kansas. (Authorized by K.S.A. 1974 Supp. 44-1004 and 44-1005; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 34.—DISCRIMINATION BECAUSE OF DISABILITY

21-34-1. Definitions. (a) "Covered entity" means an employer, labor organization, employment agency, or joint labor-management committee.

(b) "Direct threat" means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

(c) "Essential function" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential function" does not include the marginal functions of the position.

(d) "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having such an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(3) Has none of the impairments defined in subsections (h)(1) or (2) of this section but is treated by a covered entity as having an impairment.

(f) "Illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by Controlled Substances Act or other provisions of Federal or Kansas law.

(g) "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(h) "Physical or mental impairment" means:

(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) "Qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position the person holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of the position.

(j) "Qualification standards" means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.

(k) "Substantially limits" means:

(1) unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform the same major life activity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-2. Medical examinations and inquiries; general prohibition. The prohibition against discrimination as referred to in K.S.A. 44-1009(a)(1) and 44-1009(a)(8) shall include medical examinations and inquiries. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-3. Preemployment medical examinations and inquiries. (a) Prohibited examination or inquiry. A covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the applicant's disability, except as provided in 21-34-4.

(b) Acceptable inquiry. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-4. Employment entrance examinations and inquiries; exception. A covered entity may require a medical examination, inquiry, or both after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant, and may condition an offer of employment on the results of the examination, inquiry, or both if:

(a) all entering employees in the same job category are subjected to an examination, inquiry, or both regardless of disability;

(b) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

(1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(2) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(3) government officials investigating compliance with this act shall be provided relevant information on request; and

(c) the results of such physical examination, inquiry, or both are used only in accordance with

these regulations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-5. Prohibited medical examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-6. Acceptable medical examinations and inquiries. (a) A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(b) Information obtained under subsection (a) regarding the medical condition or history of any employee is subject to the requirements of subsections (b) and (c) of 21-34-4. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-7. Regulation of alcohol and drugs. These regulations do not prohibit a covered entity from:

(a) prohibiting the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) requiring that employees not be under the influence of alcohol or drugs at the workplace;

(c) requiring that employees behave in conformance with the requirements established pursuant to the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(d) holding an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(e) requiring that its employees employed in an industry subject to federal regulations comply

with the standards established in those regulations, if any, regarding alcohol and the illegal use of drugs; and

(f) requiring that employees employed in sensitive positions in an industry subject to federal regulations comply with those regulations, if any, that apply to employment in sensitive positions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-8. Drug testing. (a) A test to determine the illegal use of drugs shall not be considered a medical examination.

(b) Nothing in this paragraph shall be construed to encourage, prohibit, or authorize the conducting of drug tests for the illegal use of drugs by job applicants or employees or making employment decisions based on the test results. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-9. Transportation employees. Nothing in these regulations should be construed to encourage, prohibit, restrict or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the United States Department of Transportation of authority to:

(a) test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and/or for on-duty impairment by alcohol; and

(b) remove persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to subsection (b)(1) of this regulation from safety-sensitive positions. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-10. Information from a drug test. Any information regarding the medical condition or history of any employee or applicant obtained from a drug test, except information regarding illegal use of drugs, is subject to the requirements of subsections (b) and (c) of 21-34-4. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-11. Illegal use of drugs and alcohol; exception to the definition of “qualified individuals with a disability”; policies and procedures. (a) The term “qualified individual with a disability” shall not include any employee or applicant who is engaging in the illegal use of drugs, when the covered entity acts on the basis of the illegal use of drugs.

(b) Nothing in subsection (a) of this regulation shall be construed to exclude as a “qualified individual with a disability” an individual who:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or

(3) is erroneously regarded as engaging in the illegal use of drugs, but is not engaging in the illegal use of drugs.

(c) It shall not be a violation of this act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b)(1) or (2) of this section is no longer engaging in the illegal use of drugs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-12. Regulation of smoking. A covered entity may prohibit or impose restrictions on smoking in places of employment. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-13. Direct threat; criteria for determination. (a) The determination that an individual with a disability poses a “direct threat” shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge, on the best available objective evidence, or both.

(b) In determining whether an individual would pose a direct threat, the factors to be considered include:

- (1) the duration of the risk
- (2) the nature and severity of the potential harm;
- (3) the likelihood that the potential harm will occur; and
- (4) the imminence of the potential harm. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-14. Essential function; criteria for determination. (a) A job function may be considered essential for any of several reasons, including but not limited to the following:

- (1) the function may be essential because the reason the position exists is to perform that function;
- (2) the function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and
- (3) the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(b) Evidence of whether a particular function is essential includes, but is not limited to:

- (1) the employer's judgment as to which functions are essential;
- (2) written job descriptions prepared before advertising or interviewing applicants for the job;
- (3) the amount of time spent on the job performing the function;
- (4) the consequences of not requiring the incumbent to perform the function;
- (5) the terms of a collective bargaining agreement;
- (6) the work experience of past incumbents in the job; and
- (7) the current work experience of incumbents in similar jobs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-15. Direct threat as qualification standard. The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of that individual or others in the workplace. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-16. Infectious and communicable diseases; food handling jobs. (a) If an individual with a disability is disabled by an infectious or communicable disease and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign the individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(b) This regulation does not preempt, modify, or amend any state, county, or local law, ordinance or regulation applicable to food handling which:

(1) provide greater or equal protection for the rights of individuals with disabilities disabled by an infectious or communicable disease that are afforded by the Americans with Disabilities Act of 1990; and

(2) is designed to protect the public from individuals who pose a significant health risk to the health and safety of others, where that risk cannot be eliminated by reasonable accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-17. Substantially limit; criteria for determination. (a) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

- (1) the nature and severity of the impairment;
- (2) the duration or expected duration of the impairment; and

(3) the permanent or long term impact of the impairment, or the expected permanent or long term impact of the impairment. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-18. Substantially limit; definition with respect to the major life activity of "working"; criteria for determination. (a) With respect to the major life activity of "working," the term "substantially limits" means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The in-

ability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(b) In addition to the factors listed in paragraph (a) of 21-34-17, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of “working”:

(1) the geographical area to which the individual has reasonable access;

(2) the job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and

(3) the job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skill or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-19. Undue hardship; definition; criteria for determination. (a) “Undue hardship” means an action requiring significant difficulty or expense.

(b) Criteria for determination. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(1) the nature and net cost of the accommodation needed under this act, taking into consideration the availability of tax credits and deductions, outside funding, or both;

(2)(A) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation;

(B) the number of persons employed at the facility;

(C) the effect on expenses and resources, or any other impact of the accommodation upon the operation, of the facility;

(3)(A) the overall financial resources of the covered entity;

(B) the overall size of the business of a covered entity with respect to the number of its employees;

(C) the number, type, and location of its facilities; and

(4)(A) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity;

(B) the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-20. Exceptions to the definitions of “disability.” (a) The term “disability” does not include:

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

(b) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

21-34-21. Health insurance, life insurance, and other benefit plans. (a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations, may underwrite risks, classify risks, or administer risks that are based on or not inconsistent with state law.

(b) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.

(c) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The activities described in paragraphs (a), (b), and (c) are permitted unless these activities are a subterfuge to evade the purposes of this act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

(d) The activities described in paragraphs (a), (b), and (c) are permitted unless these activities are a subterfuge to evade the purposes of this act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009, as amended by L. 1991, Chapter 147, Section 6; effective, T-21-3-27-92, March 27, 1992; effective April 27, 1992.)

Article 40.—GENERAL PROVISIONS

21-40-1. Definitions. Incorporated by reference are the definitions of K.S.A. 44-1002. In addition, the following words and terms shall have the following meaning: (a) “Acting executive director” means the person appointed by the commission to perform the functions, powers and duties of the executive director, or the person appointed to perform the functions, powers and duties of the executive director per rule K.A.R. 21-40-6.

(b) “Adjudication” means any order, decree, decision, determination or ruling affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

(c) “Attorney” means any licensed attorney currently admitted to practice before the supreme court of the state of Kansas or any attorney at law authorized to enter his appearance per rule K.A.R. 21-40-13.

(d) “Chairman” shall mean the chairman of the commission on civil rights duly designated by the governor pursuant to K.S.A. 44-1003, or, in the event of his absence, the acting chairman designated by the remaining members of the commission.

(e) “Commission” means the commission on civil rights created and amended by the Kansas act against discrimination, or as the context indicates, any member thereof.

(f) “Commissioner” shall mean one of the duly appointed members of the commission on civil rights.

(g) “Commission’s attorney” shall mean an attorney designated to assist the commission to carry out the provisions of this act subject to approval by the attorney general.

(h) “Complainant” shall mean any person filing a complaint with the commission.

(i) “Complaint” shall mean a written statement made under oath and filed with the commission alleging any violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(j) “Discrimination” means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or any other differentiation or preference in the treatment of a person or persons on account of race, religion, color, sex, physical handicap, national origin or ancestry, and/or

any denial of any right, privilege, or immunity, secured or protected by the constitution or laws of Kansas or the United States. Discrimination shall include but not be limited to any practice which produces a demonstrable racial or ethnic effect without a valid business motive.

(k) “Executive director” means the executive director employed by the commission.

(l) “Formal record” means all the filings and submittals in a matter or proceeding, any notice or agency order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, all exhibits received in evidence, all exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the commission, and determinations made by the commission thereon, certifications to the commission, and anything else upon which action of the presiding officer or the agency head may be based; but not including any proposed testimony or exhibits not offered or received in evidence.

(m) “Hearing commissioners” shall mean the commissioners designated by the chairman to conduct a pre-hearing, hearing, rehearing, reopen a hearing, or to proceed with any matter before the commission.

(n) “Interveners” means persons intervening or petitioning to intervene when admitted as a participant to a proceeding. Admission as an intervener shall not be construed as recognition by the commission that such intervener has a direct interest in the proceeding or might be aggrieved by any order of the commission in such proceeding.

(o) “Investigating commissioner” shall mean the commissioner duly designated by the commission to make investigation of a verified complaint filed with this commission, or to conduct any investigation initiated by the commission without the filing of a verified complaint.

(p) “Issue” means to prescribe or promulgate.

(q) “Matter or proceeding” means the elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon by the commission with respect to a particular subject by the commission, initiated by a filing or submittal or commission notice or order.

(r) “Party” means the complainant, the respondent, and any other person authorized by the commission to intervene in any proceeding.

(s) “Petitioners” means persons seeking relief, not otherwise designated in this section.

(t) "Pleading" means any application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

(u) "Presiding officer" means any member of the commission, or one or more hearing examiners appointed according to law and duly designated to preside at hearings or conferences, or other officers duly designated to conduct specified classes of proceedings.

(v) "Probable cause" means the presence of a reasonable ground for belief in the existence of the alleged facts of a violation of any statutory or other authority, orders, rules or regulations over which the commission may have jurisdiction or which the commission may enforce.

(w) "Proposed report" means the written statement of the issues, the facts, and the findings that a hearing examiner or other subordinate officer proposes the commission should make, with the reasons therefor, whether or not including a recommended order.

(x) "Respondent" shall mean any person against whom a complaint has been filed alleging an unlawful employment practice or unlawful discriminatory practice within the meaning of this act.

(y) "Segregation" shall include but not be limited to any practice which results in any discriminatory grouping.

(z) "Submittal" means any document filed in a nonadversary proceeding. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-2. Construction. These rules shall be liberally construed to accomplish the purposes of the act and the policies of the commission including the just, speedy, and inexpensive determination of the issues presented. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-3. Rules of order. Meetings of the commission shall be governed by Roberts rules of order, with the exception that the chairman may make motions, second motions already made and vote upon any matters. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-4. Cooperation with local agencies. The commission may cooperate with and utilize the services of local human relations commissions in fulfilling its responsibilities under the Kansas act against discrimination. The commission may

enter into written agreements with local human relations commissions for such purposes. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-5. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

21-40-6. Death, disability or absence of executive director. Whenever, in the event of the death, disability or absence from the state of the executive director, it shall be necessary to appoint an acting executive director without delay, the chairman may make such appointment, subject to the ratification or rejection of the commission at the next meeting; *Provided, however,* That rejection of such appointment shall have no effect on any of the actions of the acting executive director in the interim. In the event of any temporary absence of the executive director, the assistant director is authorized to exercise the functions, powers and duties of the executive director until the executive director returns. (Authorized by K.S.A. 1974 Supp. 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-7. Communications and filings generally. (a) All communications, submittals and pleadings should be addressed to the commission at the office of the commission unless otherwise specifically directed. All communication and filings should clearly designate the file number, docket number, or similar identifying symbols, if any, employed by the commission and should set forth a short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.

(b) In any proceeding when, upon inspection, the commission is of the opinion that a pleading or other matter tendered for filing does not comply with these rules or is otherwise insufficient, the commission may decline to accept the document for filing and may return it unfiled, or the commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(c) The commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any document filed with it.

(d) Except as may be otherwise ordered, the original copy of each pleading, submittal or other document shall be signed by the party in interest, or by his or its attorney, as required by subsec-

tion (e) of this section, and shall show the office and post office address of such party or attorney. All other copies filed shall be fully conformed thereto.

(e) Pleadings, submittals and other documents filed shall be subscribed:

(i) by the person filing such documents, and severally if there is more than one person so filing; or

(ii) by an officer thereof if it is a corporation, trust, association, or other organized group; or

(iii) by an officer or employee thereof if it is another public agency or a political subdivision; or

(iv) by an attorney having authority with respect thereto.

(f) Documents filed by any corporation, trust, association, or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing such documents.

(g) The signature of the person subscribing any document filed constitutes a certificate by such individual that he had read the document being subscribed and filed, and knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified upon the document with full power and authority so to do; that the contents are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-8. Copies of pleadings. Upon filing any application, complaint, pleading, brief or other submittal, the party filing the same must file an original and nine copies thereof for the commission and furnish additional copies to the commission for each party who may be expected to participate in the proceeding. The commission may require the filing of such additional copies as it may need or desire. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-9. Commencement of a proceeding. A proceeding is commenced either by the filing of a complaint or other document or an order of the commission initiating an investigation or complaint on its own motion. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-10. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked March 12, 2021.)

21-40-11. Service. (a) Service by the commission. Orders, notices and other documents originating with the commission shall be served by the office of the commission by mail, except when service by another method shall be specifically designated by the commission, by mailing a copy thereof to the person to be served, addressed to the person or persons designated in the initial pleading or submittal at the person's principal office or place of business. When service is not accomplished by mail, it may be effected in person or as otherwise ordered by any one duly authorized by the commission.

(b) Service by a participant. All pleadings, submittals, briefs and other documents, filed in proceedings when filed or tendered to the commission for filing, shall be served upon all participants in the proceeding. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant.

(c) Effect of service upon an attorney. When any participant has appeared by attorney, service upon such attorney shall be deemed service upon the participant and separate service on the party may be omitted.

(d) Date of service. The date of service shall be the day when the document served is deposited in the United States mail, or is delivered in person, as the case may be.

(e) Proof of service. There shall accompany and be attached to the original of each pleading, submittal or other document filed with an agency when service is required to be made by the parties, a certificate of service. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-12. Time. (a) Timely filing required. Pleadings, submittals or other documents required or permitted to be filed under these rules or any other provision of law must be received for filing at the commission's office within the time limits, if any, for such filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

(b) Computation of time. Except as otherwise provided by law, in computing any period of time

prescribed or allowed, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is Saturday, Sunday, or a "legal holiday" as defined in K.S.A. 60-206, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(c) Issuance of orders. In computing any period of time involving the date of the issuance of an order the day of issuance of an order shall be the day the commission mails or delivers copies of the order to the parties, or if such delivery is not otherwise required by law, the day the commission makes such copies public. Orders will not be made public prior to the mailing or delivery to the parties, except where, in the judgment of the commission, the public interest so requires. The day of issuance of an order may or may not be the day of its adoption by the commission. In any event, the office of the agency shall clearly indicate on each order the day of its issuance.

(d) Extensions of time. (1) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may by the commission or the presiding officer, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended; and upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act. Requests for the extension of time in which to file briefs shall be filed at least five days before the time fixed for filing such briefs.

(2) Except as otherwise provided by law, requests for continuance of hearings or for extension of time in which to perform any act required or allowed to be done at or within a specified time by these rules or any order, shall be by motion in writing, timely filed with the agency, stating the facts on which the application rests, except that during the course of a hearing in a proceeding, such requests may be made by oral motion in the hearing before the commission or the presiding officer. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-13. Representation. (a) Appearance in person. An individual may appear in his own behalf. A member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another public agency or of a political subdivision may represent the public agency or political subdivision in presenting any submittal to an agency subject to these rules.

(b) Appearance by attorney. A person may be represented in any proceeding by an attorney-at-law who is a resident of Kansas and regularly admitted to practice before the supreme court of Kansas; or a person may appear and be represented by any regularly admitted practicing attorney in the courts of record of another state of the United States, who has filed a verified application to the effect that he has associated and personally appearing with him, in the proceeding before the commission, an attorney who is a resident of Kansas and duly qualified to practice law therein, as his local counsel. Said local counsel shall first enter his own appearance and then move for the admission of the non-resident attorney with whom he is associated.

(c) Other representation prohibited at hearings. A person shall not be represented at any hearing except:

(1) as stated in K.A.R. 21-40-13 (a) (relating to appearance in person) or K.A.R. 21-40-13 (b) (relating to appearance by attorney); or

(2) as otherwise permitted by the commission in a specific case.

(d) Notice of appearance.

(1) When an individual appears in his own behalf in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission or otherwise state on the record an address at which any notice or other written communication required to be served upon the person or furnished to the person may be sent.

(2) When an attorney appears before the commission in a representative capacity in a proceeding which involves a hearing or an opportunity for hearing, he shall file with the commission a written notice of such appearance, which shall state the attorney's name, address and telephone number and the name and address of the person or persons on whose behalf the attorney appears. Any additional notice or other written communication required to be served on or furnished to a person may be sent to the attorney of record for such person at the stated address of the attorney.

(3) Any person appearing or practicing before the commission in a representative capacity may be required to file a power of attorney with the agency showing his authority to act in such capacity.

(e) Suspension. The commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found to have engaged in unethical or improper conduct before the commission. Practicing before the commission shall include, but shall not be limited to:

(1) Transacting any business with the agency.

(2) The preparation of any statement, opinion or other paper by an attorney, accountant, or other expert, filed with the commission in any pleading, submittal or other document with the consent of such attorney, accountant or other expert.

(f) Contemptuous conduct. Contemptuous conduct at any hearing shall be ground for exclusion from such hearing and for summary suspension without a hearing for the duration of the hearing. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-14. Order issuance. All orders issued by the commission shall be reviewed by the chairman and signed by him or as otherwise designated by the chairman. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-15. Effective date of orders. Commission orders shall become effective when all service provisions of these rules are effected, unless otherwise ordered by the commission. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-16. Commission decisions. The decisions of the commission or any panel of hearing commissioners shall be by majority vote. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-17. Intervention. (a) Initiation of intervention. At the discretion of the commission or presiding officer any person may by petition be allowed to intervene in person or by counsel, for such purposes and to such extent as the commission or presiding officer shall determine: *Provid-*

ed, Such person makes application to intervene at least ten (10) days before the hearing.

(b) Form and contents of petitions. Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding, so as fully and completely to advise the parties and the commission as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the proceeding, and citing by appropriate reference authority relied on.

(c) Notice and action on petitions. (1) Notice and service. Petitions to intervene, when tendered for filing, shall show service thereof upon all participants to the proceeding in conformity with § 21-40-11(b) of this title (relating to service by a participant.)

(2) Action on petitions. As soon as practicable after the expiration of the time for filing answers to such petitions or default thereof, the commission or presiding officer will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation.

(d) Limitation of participation in hearings. Where there are two or more interveners having substantially like interests and positions, the commission or presiding officer may, in order to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of such interveners. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-18. Certification of documents and records. Certified copies. Copies of and extracts from public records may be certified by the commission. The chairman or such other person as may be designated by the commission is authorized to certify all documents or records of the commission. Persons requesting the commission to prepare such copies should clearly state the material to be copied and whether it shall be certified. Charges may be imposed for certification and for the preparation of copies. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-19. Requests to inspect other records not considered public. Request to inspect records other than those now deemed to be of a public nature shall be addressed to the commission. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-40-20. Availability of rules. The rules of the commission shall be available to the public at the office of the commission and upon request. (Authorized by K.S.A. 1974 Supp. 44-1001; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 41.—COMPLAINTS AND RESPONSES

21-41-1. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked March 12, 2021.)

21-41-2. Submission of complaints and responses. Each complaint and each response to a complaint shall be submitted in hard copy, either typed or handwritten; by facsimile; or by electronic mail. Any complaint may be submitted on a form provided by the commission. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, K.S.A. 2019 Supp. 44-1005, K.S.A. 2019 Supp. 44-1019, K.S.A. 44-1033, K.S.A. 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended March 12, 2021.)

21-41-3. Contents of complaints. Each complaint shall contain the following:

- (a) The full name and address of the complainant;
- (b) the full name and address of the respondent;
- (c) the alleged unlawful employment practice or unlawful discriminatory practice and a statement of the nature thereof;
- (d) the date or dates of the alleged unlawful employment practice or unlawful discriminatory practice, and, if the alleged unlawful employment practice or unlawful discriminatory practice is of a continuing nature, the dates between which continuing acts of discrimination are alleged to have occurred; and
- (e) a statement as to any other action filed or pending in any court or other forum based on the same grievance as is alleged in the complaint, together with a statement as to the status or dispo-

sition of the other action. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, K.S.A. 2019 Supp. 44-1005, K.S.A. 2019 Supp. 44-1019, K.S.A. 44-1033, K.S.A. 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended March 12, 2021.)

21-41-4. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked March 12, 2021.)

21-41-5. Manner of filing. A complaint may be submitted for filing by delivery, mail, facsimile, or electronic mail to a commission office. If a complaint is received when the commission offices are closed, the complaint shall be considered received on the next business day that the commission offices are open. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended Nov. 17, 2017.)

21-41-6. Amendment; supplementation. Any complaint or response may be amended or supplemented before a finding of probable cause or no probable cause has been issued. Amendments or supplements to a complaint shall be permitted to add or clarify allegations related to or arising from the initial complaint. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, K.S.A. 2020 Supp. 44-1005, K.S.A. 2020 Supp. 44-1019, K.S.A. 44-1033, K.S.A. 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended March 12, 2021.)

21-41-7. Withdrawal. A complaint may be withdrawn by the complainant at any time before a finding has been made. After a finding has been made, the complainant may request and the commission shall decide whether or not a complaint may be withdrawn. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-8. Dismissal before hearing. (a) Dismissal. A complaint shall be dismissed against a respondent if the commission lacks jurisdiction over that respondent or if the investigating commissioner determines that there is no probable cause to credit the allegations of the complaint against that respondent.

(b) Administrative expedience. A complaint shall be subject to dismissal on grounds of admin-

istrative expedience if at least one of the following conditions is met:

(1) The complainant fails to cooperate with investigation of the complaint.

(2) The complainant's objections to a proposed conciliation agreement are without substance.

(3) Noticing the complaint for hearing would be otherwise impracticable. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, K.S.A. 2019 Supp. 44-1005, K.S.A. 2019 Supp. 44-1019, K.S.A. 44-1033, K.S.A. 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended March 12, 2021.)

21-41-9. Discontinuance. After the service of a notice of hearing on a party, a proceeding may be discontinued by the complainant only with the consent of the commission. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-41-10. Criminal and civil proceedings. If either criminal or civil proceedings are filed on a matter pending before the commission, any complaint based on the same matter may be suspended or dismissed, to avoid duplication of effort. (Authorized by K.S.A. 44-1004, 44-1034, 44-1121; implementing K.S.A. 44-1004, K.S.A. 2019 Supp. 44-1005, K.S.A. 2019 Supp. 44-1019, K.S.A. 44-1033, K.S.A. 44-1115; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; amended March 12, 2021.)

21-41-11. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked March 12, 2021.)

Article 42.—INVESTIGATION

21-42-1. Investigation. Any commissioner or presiding officer may request the commission to initiate an investigation whenever any possible violation of any statute, rules, orders or other authority administered by the commission appears. Upon such requests the commission may initiate such investigation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-2. Subpoenas. Any commissioner or the executive director may sign and issue a subpoena in the name of the commission. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-3. Investigating commissioner.

Whenever an investigation of a complaint is initiated, an investigating commissioner shall be assigned the case. Whenever an investigation is initiated without the filing of a formal complaint, an investigating commissioner may be assigned to the case. The investigating commissioner so assigned shall have the same powers of discovery in the name of the commission as are provided in these rules for any commissioner or presiding officer relative to any hearing or other proceeding, including the power of subpoena per K.A.R. 21-42-2 and 21-45-9; and discovery dispositions in the same nature as provided by K.A.R. 21-45-10. If a formal complaint shall issue from the investigation, the same investigating commissioner shall be assigned to that complaint unless, in the judgment of the chairman, a new appointment should be made. The investigating commissioner may not participate in any subsequent proceedings which may eventually be held as a result of such investigation other than as a witness. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-4. Notice of investigation. Where an investigation is directed without the filing of a complaint, the commission will notify the person to be investigated of the nature and scope of such investigation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-5. Preservation of records. (a) Employment records. When a complaint or notice of investigation has been served on an employer, labor organization or employment agency under the Kansas act against discrimination, the respondent shall preserve all personnel records relevant to the investigation until such complaint or investigation is finally adjudicated. The term "relevant to the investigation" shall include, but not be limited to, personnel, employment or membership records relating to the complainant and to all other employees, applicants or members holding or seeking positions similar to that held or sought by the complainant, and application forms or test papers completed by an unsuccessful applicant and by all other applicants or candidates for the same position or membership as that for which the complainant applied and was not accepted, and any records which are relevant to the scope of the investigation as defined in the notice or complaint.

(b) Membership club records. Where a complaint or notice of investigation has been served on a membership club under the Kansas act against discrimination, the respondent shall preserve all records relevant to the investigation until such complaint or investigation is finally adjudicated. The term "relevant to the investigation" shall include, but not be limited to, applications for membership on file at the time the complaint or notice of investigation is served and those received following service of the complaint or notice of investigation whether or not they have been accepted or rejected, membership lists, records of payment of initiation fees or regular dues, together with the minutes of meetings of the club conducted in conformity with the constitutions or by-laws adopted by the membership.

(c) Other records. Any other books, papers, documents, or records of any form which are relevant to the scope of any investigation as defined in the notice or complaint shall be preserved during the pendency of any proceedings by all parties to the proceedings unless the commission specifically orders otherwise. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-6. Amendment. The commission in its discretion may amend the notice of investigation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-42-7. Probable cause notice. The parties to the proceeding shall be notified by the commission of the investigating commissioner's final determination relative to probable cause. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 43.—CONFERENCE AND CONCILIATION

21-43-1. Conference. If the investigating commissioner finds that probable cause exists for crediting the allegations of the complaint, the investigating commissioner or such other commissioner as the commission may designate, shall, assisted by the executive director and the commission's staff, immediately endeavor to eliminate any unlawful practice or other matter in the complaint by conference, conciliation and persuasion. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-

1004, effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-2. Time limitation for conciliations. Failure to arrive at a satisfactory adjustment within forty-five (45) days after respondent is notified in writing of a finding of probable cause may constitute sufficient reason for the commission to judge efforts at conference and conciliation to be a failure. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-3. Successful conciliation. (a) Preparation. If the investigating commissioner, or such other commissioner as the commission may designate, assisted by the executive director and the commission's staff, shall succeed in endeavors under conference and conciliation, then a proposed conciliation agreement shall be prepared.

(b) Agreement. The commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within five (5) days after its service upon him, the commission may formally enter into the proposed conciliation agreement by issuing an order embodying such conciliation agreement. The commission shall serve a copy of such order upon all parties to the proceeding.

(c) Terms. The terms of such conciliation agreement may include any provisions and remedies, for retroactive, present or future effect, including all remedies which may be ordered by the commission per K.A.R. 21-45-21, and including a provision for the entry in court of a consent decree embodying terms of the conciliation agreement. When the commission accepts a conciliation agreement containing a provision for the entry in court of a consent decree, the commission's attorney, on behalf of and in the name of the commission, may commence a proceeding in the court to obtain an order for its enforcement. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-4. Consideration of complainant's objections. If the complainant objects to the proposed conciliation agreement, complainant shall, within five (5) days of the agreement's service upon complainant, serve a specification of the objections upon the commission. Unless such objections are met or withdrawn within five (5) days

after service thereof, the commission shall thereafter notice the complaint for hearing, except in cases where the complaint may be dismissed on the grounds of administrative convenience. However, the commission, where it finds the terms of a conciliation agreement to be in the public interest, may execute such agreement if the respondent is still willing to execute it, and may limit the hearing to the objections of the complainant, unless the respondent demands a hearing on the merits of all of the charges by serving an answer including such a demand. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-5. Settlements. At the hearing, the commission's attorney, with the consent of the complainant, may stipulate with the respondent for settlement of the case and the commission may issue an order on such stipulation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-43-6. Non-disclosure of facts. The commission shall not disclose what has transpired in the course of its endeavors at conciliation and persuasion, per K.S.A. 44-1005. However, when executed, the final terms of a conciliation agreement may be disclosed. No officer, agent or employee of the commission shall make public with respect to a particular person without his consent information from reports obtained by the commission except as necessary to the conduct of further commission proceedings. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 44.—COMPLIANCE

21-44-1. Compliance review. (a) Date. Not later than six (6) months from the date of a conciliation agreement or an order issued under article 45 of these rules, or at any other time in its discretion, including contract compliance review per K.S.A. 44-1032, the commission shall investigate whether the respondent is complying with the terms of such agreement, contract or order.

(b) Non-compliance. Upon a finding of non-compliance, the commission shall take appropriate action to assure compliance. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-2. Reports. (a) Filing. When any person subject to the jurisdiction of the commission is required to do or perform any act by the commission order, there shall be filed with the office of the commission within thirty (30) days following the date when such requirement became effective, a notice, stating that such requirement has been met or complied with, unless the commission directs otherwise.

(b) EEO forms. Every employer, labor organization and joint labor-management apprenticeship committee subject to the Kansas act against discrimination and also subject to the jurisdiction of the U.S. equal employment opportunity commission shall file with that agency the appropriate forms as required in accordance with that agency's instructions and regulations. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-3. Posting of law and information. "A conspicuous place or places" for the purposes of K.S.A. 44-1012 shall be any easily accessible and well lighted place or places where the notices may readily be seen regularly by employees, applicants for employment, members of labor organizations, applicants for membership in labor organizations, or persons using or attempting to use places of public accommodations or the services of an employment agency, or any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-4. Records. No notation identifying the race, religion, color, sex, physical handicap, national origin or ancestry of an individual shall be made or maintained on application forms or other records except as provided otherwise in these rules. Violations of this rule shall be deemed evidence of discrimination unless a person may show it is acting in conformity with an explicit mandate of a local, state or federal civil rights agency. The commission recommends the maintenance of a permanent record as to the racial, sexual, religious or ethnic identity of an individual for the purpose of complying with various reporting requirements only where the person maintains such records separately from the individual's basic personnel file or other similar records available to those responsible for decisions (*e.g.*, as a part of an automatic data processing system in the payroll

department). (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-44-5. Membership club references. Membership clubs which are covered by the Kansas act against discrimination may not require a recommendation by a present member or members as a prerequisite for admission to membership if the present membership does not bear a reasonable relationship to the ethnic and racial pattern of the general population of the area from which such clubs draw members; nor, in such circumstances, may they give preference to applicants recommended by present members by reason of such recommendation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

Article 45.—PROCEEDINGS

21-45-1, 21-45-2, 21-45-3, 21-45-4, 21-45-5, 21-45-6, 21-45-7, 21-45-8, 21-45-9, 21-45-10, 21-45-11, 21-45-12, 21-45-13, 21-45-14, 21-45-15, 21-45-16, 21-45-17, and 21-45-18. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

21-45-19 and 21-45-20. (Authorized by K.S.A. 1977 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked May 1, 1978.)

21-45-21, 21-45-22, 21-45-23, 21-45-24, and 21-45-25. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

Article 46.—MISCELLANEOUS SUBSTANTIVE PROVISIONS

21-46-1. Class B private clubs. All clubs holding licenses from the alcoholic beverage control commission as class B clubs are deemed places of public accommodations and subject to the provision of the Kansas act against discrimination. Nothing in the present paragraph shall be construed as grounds for an automatic exemption of any club holding a license from the alcoholic beverage control commission as a class A club from the provisions of the Kansas act against discrimi-

nation. (Authorized by K.S.A. 1974 Supp. 44-1003 and 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975.)

21-46-2 and 21-46-3. (Authorized by K.S.A. 1974 Supp. 44-1003, 44-1004; effective, E-74-14, Dec. 28, 1973; effective May 1, 1975; revoked Nov. 16, 2018.)

Article 50.—CONTRACT COMPLIANCE

21-50-1. Applicability. This article shall apply to every contractor covered by K.S.A. 1977 Supp. 44-1030 and K.S.A. 1977 Supp. 44-1031. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-2. Definitions. The following words and terms when used in this article shall have the following meanings:

(a) "Contract" means any agreement, purchase order or arrangement or modification thereof between the state or any political sub-division of the state and any person to be paid in whole or in part, directly or indirectly, by public funds or in kind contributions.

(b) "Contracting agency" or "agency" means any department, agency, commission, authority, establishment or other instrumentality of the state or any political sub-division of the state, which enters into contracts.

(c) "Contractor" means any contractor, supplier, vendor or other person who, through a contract or other arrangement, has received, is to receive or is receiving public funds or in kind contributions from the contracting agency, and shall include any sub-contractor who performs under a contract covered under K.S.A. 44-1030 and K.S.A. 44-1031. Contractors, whether corporate or natural persons, are designated in this article by use of the third person neuter pronouns.

(d) "Classification" means one or more groups of jobs having similar content, wage rates and opportunities. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-3. Compliance review. (a) In determining whether a contractor is in compliance with the Kansas act against discrimination, the contract compliance review may consider, but shall not be limited to, the following evidentiary factors, except that a finding adverse to the contractor as to any one of the following factors will not alone constitute conclusive proof of noncompliance:

(1) The ratio of minorities and females in the area in which the contractor operates as compared to the ratio of minority and female employees in the contractor's workforce.

(2) The availability of promotable and transferable minorities and women within the contractor's employment.

(3) The existence of local training institutions capable of training persons in the requisite skills.

(4) The degree of training which the contractor is reasonably able to undertake as a means of making all job classifications available to otherwise qualified minorities and women.

(5) The evidence that the contractor has furnished each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding and every other source of recruitment regularly utilized a notice advising of its commitment to non-discrimination pursuant to regulation 21-50-7, as amended.

(b) Notifying contractor. After review, the commission shall notify the contractor whether or not there is evidence of noncompliance with the Kansas act against discrimination. Where evidence of non-compliance is found to exist as a result of contract compliance review, reasonable efforts shall be made through negotiation and persuasion to secure written commitments to eliminate such problem areas. Written commitments may include the preparation and implementation of an affirmative action program as described below, and/or the precise action to be taken and dates for completion. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-4. Affirmative action program. Affirmative action programs may contain, but are not limited to:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification, development of goals to remedy such problems, including timetables for completion.

(e) Development and execution of action ori-

ented programs designed to attain specific goals and objectives.

(f) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(g) Compliance of personnel policies and practices with the regulations of the commission.

(h) Solicitation of the support and cooperation of the local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and females.

(i) Consideration of minorities and females not currently in the labor market having requisite skills who can be recruited through affirmative action measures.

(j) Consideration of the anticipated expansion and turnover of and in the contractor's workforce as one of the bases for development of goals and timetables. Supporting data and the analysis thereof on which goals and timetables are based may be part of the contractor's written affirmative action program. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

21-50-5. Duties of contracting agency. It shall be the duty of the contracting agency upon request of the commission to furnish the commission with a listing as to the identity of the contractors whenever the contracts with any contractor exceed \$5,000 cumulatively in a fiscal year. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-6. Exemptions. Contractor obligations shall be limited to the contractor's facilities within Kansas. (Authorized by K.S.A. 44-1034; effective May 1, 1978.)

21-50-7. Contractor's obligations. (a) Recruiting. The contractor at least once during the life of the agreement, contract or understanding shall send each labor union or workers' representative with which it has or is entering into a collective bargaining agreement or other contract or understanding, a written notice advising said labor union or workers' representative that the contractor is an equal opportunity employer. Similar notice shall be sent to every other source of recruitment regularly utilized by the contractor.

(b) Contractors. Contractors shall not discriminatorily exclude minority and female contractors from those from whom bids are solicited. (Authorized by K.S.A. 44-1034; modified, L. 1978, ch. 474, May 1, 1978.)

**Article 60.—DISCRIMINATORY
HOUSING PRACTICES**

21-60-1. Definitions. (a) “Broker” or “Agent” means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts as well as the administration of matters regarding such offers, solicitations or contracts, or any other real estate related transactions.

(b) “Dwelling” means any building, structure or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families as well as any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(c) “Person in the business of selling or renting” means any person who:

(1) within the preceding twelve months, has participated as principal in more than three transactions involving the sale or rental of any dwelling or any interest therein;

(2) within the preceding twelve months, has participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-2. Discriminatory housing practices on the basis of familial status. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-3. Unlawful refusal to sell or rent or to negotiate for the sale or rental. Unlawful practices under K.S.A. 44-1016(a) include, but are not limited to:

(a) Failing to accept or consider a bona fide offer because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Refusing to sell or rent real property to, or to negotiate for the sale or rental of real property with, any person because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Imposing different sales prices or rental charges for the sale or rental of real property upon any person because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(d) Using different qualification criteria or applications, or sale or rental standards or procedures such as income standards, application requirements, application fees, credit analysis, sale or rental approval procedures or other requirements because of race, religion, color, sex, disability, familial status, national origin or ancestry; or

(e) Evicting tenants because of their race, religion, color, sex, disability, familial status, national origin or ancestry, or because of the race, religion, color, sex, disability, familial status, national origin or ancestry of a tenant’s guest. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-4. Discrimination in terms, conditions and privileges and in services and facilities. Unlawful practices under K.S.A. 44-1016(b) include, but are not limited to:

(a) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, down payment and closing requirements, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Failing to perform or delaying maintenance or repairs of sale or rental real property because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Failing to process or accurately communicate an offer for the sale or rental of real property because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(d) Limiting the use of privileges, services or facilities associated with real property because of race, religion, color, sex, disability, familial status, national origin or ancestry of an owner, tenant or a person associated with him or her; and

(e) Denying or limiting services or facilities in connection with the sale or rental of real property because a person failed or refused to provide sexual favors. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-5. Other prohibited sale and rental conduct. (a) It shall be unlawful because of race, religion, color, sex, disability, familial status, national origin or ancestry for an agent, broker, person in the business of selling or renting or any other person for profit to restrict or attempt to restrict, by word or conduct, the choices of a person seeking, negotiating for, buying or renting real property so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

(b) It shall be unlawful because of race, religion, color, sex, disability, familial status, national origin or ancestry to engage in any conduct relating to the provision of housing or of related services and facilities that otherwise makes unavailable or denies real property to persons.

(c) Prohibited actions under subsection (a), generally referred to as unlawful steering practices, include, but are not limited to:

(1) discouraging any person from inspecting, purchasing or renting real property because of race, religion, color, sex, disability, familial status, national origin or ancestry, or because of the race, religion, color, sex, disability, familial status, national origin or ancestry of persons in a community, neighborhood or development;

(2) discouraging the purchase or rental of real property because of race, religion, color, sex, disability, familial status, national origin or ancestry, by exaggerating drawbacks or failing to inform any person of desirable features of real property or of a community, neighborhood, or development;

(3) communicating to any prospective purchaser or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(4) assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(d) Prohibited sales and rental activities under subsection (b) include, but are not limited to:

(1) discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice;

(2) employing codes or other devices to segregate or reject applicants, purchasers or renters;

(3) refusing to take or to show listings of real property in certain areas because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(4) denying or delaying the processing of an application made by a purchaser or renter, or refusing to approve such a person for occupancy in a cooperative or condominium because of race, color, sex, disability, familial status, national origin or ancestry; and

(5) refusing to provide municipal services or property hazard insurance for real property, or providing such services or insurance differently because of race, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-6. Discriminatory advertisements, statements and notices. (a) Unlawful practices under K.S.A. 44-1016(c) include, but are not limited to, all written or oral notices or statements by a person engaged in the sale or rental of real property. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any document used with respect to the sale or rental of real property.

(b) Discriminatory notices, statements and advertisements include, but are not limited to:

(1) using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(2) expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(3) selecting media or locations for advertising the sale or rental of real property in order to deny particular segments of the housing market infor-

mation about housing opportunities because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(4) refusing to publish advertising for the sale or rental of real property or requiring different charges or terms for such advertising because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-7. Discriminatory representations on the availability of real property. (a) It shall be unlawful, because of race, religion, color, sex, disability, familial status, national origin or ancestry, for a broker, agent, person in the business of selling or renting or other person for profit to provide inaccurate or untrue information about the availability of real property for sale or rental.

(b) Prohibited actions under this act include, but are not limited to:

(1) indicating through words or conduct that real property which is available for inspection, sale, or rental has been sold or rented, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(2) representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of real property to persons because of race, religion, color, sex, disability, familial status, national origin or ancestry preclude the sale or rental of real property to a person;

(3) enforcing covenants or other deed, trust or lease provisions in order to preclude the sale or rental of real property to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(4) limiting information, by word or conduct, regarding suitably priced real property available for inspection, sale or rental, because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(5) providing false or inaccurate information regarding the availability of real property for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992;

effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-8. Blockbusting. (a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, familial status, national origin or ancestry or with a disability.

(b) In establishing a discriminatory housing practice under this act it is not necessary that there was in fact profit, as long as profit was a motive for engaging in the blockbusting activity.

(c) Prohibited actions under this act include, but are not limited to:

(1) engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, religion, color, sex, disability, familial status, national origin or ancestry of persons residing in it, in order to encourage the person to offer real property for sale or rental; and

(2) encouraging, for profit, any person to sell or rent a real property through assertions that the entry or prospective entry of persons of a particular race, religion, color, sex, familial status, national origin or ancestry or with disabilities, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-9. Discrimination in the provision of brokerage services. Unlawful practices under K.S.A. 44-1016(f) include, but are not limited to:

(a) Setting different fees for access to or membership in a multiple listing service based on race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(c) Imposing different standards or criteria for membership in real estate sales or rental organi-

zation based on race, religion, color, sex, disability, familial status, national origin or ancestry; and

(d) Establishing geographic boundaries, office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-10. Discrimination in the making of loans and in the provision of other financial assistance. Unlawful practices under K.S.A. 44-1017(a) include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-11. Discrimination in the purchasing of loans. (a) It shall be unlawful for any person or entity engaged in purchasing loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) Unlawful practices under this act include, but are not limited to:

(1) purchasing loans or other debts or securities which relate to or are secured by real property in certain communities or neighborhoods, but not in others, because of the race, religion, color, sex, disability, familial status, national origin or ances-

try of one or more persons in such neighborhoods or communities;

(2) pooling or packaging loans or other debts or securities which relate to or which are secured by real property in a different manner because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to or which are secured by real property because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(c) Any person or entity engaged in the purchasing of loans may consider factors justified by business necessity, including requirements of federal law, and factors relating to a transaction's financial security or to protection against default or reduction of the value of the security. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-12. Discrimination in the terms and conditions for making available loans or other financial assistance. (a) It shall be unlawful for any person or entity engaged in making loans or providing other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or in making loans which are secured by residential real estate, to impose different terms or conditions for the availability of such loans or other financial assistance because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) Unlawful practices under this act include, but are not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining the creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling, or for any loan or other financial assistance which is secured by residential real estate, because of race, religion, color, sex, disability, familial status, national origin or ancestry; and

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling, or for any loan or other financial assistance which is secured by residential real estate, because of race, religion, color, sex,

disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-13. Unlawful practices in the selling, brokering, or appraising of residential real property.

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, religion, color, sex, disability, familial status, national origin or ancestry.

(b) For the purpose of this act, the term “appraisal” means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling, or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Practices which are unlawful under this act include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, religion, color, sex, disability, familial status, national origin or ancestry. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1017, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-14. Prohibitions against discrimination because of disability; definitions.

(a) “Accessible,” when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase “readily accessible to and usable by” is synonymous with accessible. A public or common use area that complies with the appropriate requirements of K.S.A. 1991

Supp. 44-1016(h)(4) or a comparable standard, is “accessible” within the meaning of this act.

(b) “Accessible route,” when used with respect to the public and common areas of a building containing covered multifamily dwellings, means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of K.S.A. 1991 Supp. 44-1016(h)(4) is an “accessible route.”

(c) “Building” means a structure, facility or the portion thereof that contains or serves one or more dwelling units.

(d) “Building entrance on an accessible route” means an accessible entrance to a building that is connected by an accessible route within the boundary of the site to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with the appropriate requirements of K.S.A. 1991 Supp. 44-1016(h)(4) or a comparable standard complies with the requirements of this act.

(e) “Common use areas” means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

(f) “Controlled substance” means any drug or other substance, or immediate precursor included in the definition in section 102 of the Controlled Substances Act (21 USC 802 1970).

(g) “Dwelling unit” means a single unit of residence for a family or one or more persons, including but not limited to, a single family home and an apartment unit within an apartment building. The term dwelling unit also includes other types of dwellings in which sleeping accommodations are provided but in which toilet or cooking facilities are shared by occupants of more than one room or portion of the dwelling, including, but not limited to, dormitory rooms, sleeping rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(h) "Entrance" means any access point to a building used by residents for the purpose of entering.

(i) "Exterior" means all areas of the premises outside of an individual dwelling unit.

(j) "First occupancy" means a building that has never before been used for any purpose.

(k) "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

(l) "Interior" means the spaces, parts, components or elements inside of an individual dwelling unit.

(m) "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

(n) "Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

(o) "Public use areas" means rooms or spaces of a building that are made available to the general public. Public use areas may be provided at a building that is privately or publicly owned.

(p) "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-15. Permissible inquiries under K.S.A. 44-1016(h). K.S.A. 44-1016(h) does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:

(a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;

(c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with a particular type of disability;

(d) Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; and

(e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B.

3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-16. Reasonable modifications of existing premises. (a) It shall be unlawful for any person to refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling.

(b) In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(c) The landlord may not increase for disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(d) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-17. Design and construction requirements. (a) On or after July 1, 1992, covered multifamily residential real property designed and constructed for first occupancy after January 1, 1992 shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this paragraph, covered multifamily residential real property shall be deemed to be designed and constructed for first occupancy on or before January 1, 1992, if the covered multifamily residential real proper-

ty is occupied by that date or if the last building permit or renewal thereof for the covered multifamily residential real property is issued by a state, county or local government on or before January 1, 1992. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) Compliance with a duly enacted law of the state of Kansas or unit of local government that includes the requirements of paragraph (h) of K.S.A. 44-1016 satisfies the requirements of this act.

(c) The state of Kansas or unit of general local government may review and approve newly constructed multifamily residential real property for the purpose of making determinations as to whether the requirements of paragraph (h) of K.S.A. 44-1016 are met.

(d) Determinations of compliance or noncompliance by the state of Kansas or a unit of general local government under paragraph (c) are not conclusive in proceedings under this act. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, as amended by 1992 H.B. 3164, § 1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-18. State and federal elderly housing programs. The provisions regarding familial status in this act shall not apply to housing provided under any federal or state program that the secretary of the United States department of housing and urban development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-19. 62 or over housing. The provisions regarding familial status in this act shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this act even though:

(a) There are persons residing in such housing on January 1, 1992, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;

(b) There are unoccupied units, provided that

such units are reserved for occupancy by persons 62 years of age or over;

(c) There are units occupied by employees of the housing units (and family members residing in the same unit) who are under 62 years of age, provided, they perform substantial duties directly related to the management or maintenance of the housing. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-20. 55 or over housing. (a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the requirements of subparagraphs (b)(1) or (b)(2) and the requirements of subsection (c).

(b)(1) The housing facility has significant facilities and services specifically designed to meet the physical and social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" means, but is not limited to:

- (A) social and recreational programs;
- (B) continuing education;
- (C) information and counseling;
- (D) recreational, homemaker, outside maintenance and referral services;
- (E) an accessible physical environment;
- (F) emergency and preventive health care or programs;
- (G) congregate dining facilities;
- (H) transportation to facilitate access to social services; and

(I) services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

(2) It is not practicable to provide significant facilities and services designed to meet the physical and social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this subparagraph (b)(2), the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in

the relevant geographic area of needed or desired housing. The following factors, among others, are relevant in meeting the requirements of subparagraph (b)(2):

(A) whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed by the owner or a contractual third party to meet the physical or social needs of older persons. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

(B) the amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

(C) the income range of the residents of the housing facility;

(D) the demand for housing for older persons in the relevant geographic area;

(E) the range of housing choices for older persons within the relevant geographic area;

(F) the availability of other similarly priced housing for older persons in the relevant geographic area; and

(G) the vacancy rate of the housing facility.

(3) If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this subsection (2).

(c)(1) On and after July 1, 1992, at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility designed and constructed for first occupancy after January 1, 1992, need not comply with this subsection (c)(1) until 25% of the units in the facility are occupied; and

(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of paragraph (c)(2):

(A) the manner in which the housing facility is described to prospective residents;

(B) the nature of any advertising designed to attract prospective residents;

(C) age verification procedures;

(D) lease provisions;

(E) written rules and regulations; and

(F) actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(3) Effective July 1, 1992, housing satisfies the requirements of this section even though:

(A) On January 1, 1992, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after January 1, 1992 are occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over; or

(C) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1016, 44-1018, as amended by 1992 H.B. 3164, §2 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-21. Prohibited interference, coercion or intimidation. Conduct made unlawful under K.S.A. 1991 Supp. 44-1027 includes, but is not limited to, the following:

(a) Coercing a person either orally, in writing or by other means to deny or limit the benefits provided a person in connection with the sale or rental of real property, or in connection with a residential real estate-related transaction, because of race, religion, color, sex, disability, familial status, national origin or ancestry;

(b) Threatening, intimidating or interfering with persons in their enjoyment of real property because of the race, religion, color, sex, disability, familial status, national origin or ancestry of such persons, or of visitors or associates of such persons;

(c) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of real property or seeking access to any residential real estate-related transaction, because of the race, religion, color, sex, disability, familial status, national origin or ancestry of that person or of any person associated with that person;

(d) Intimidating or threatening any person because that person is engaging in activities designed

to make other persons aware of, or to encourage such other persons to exercise, rights granted or protected by this act; and

(e) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the act. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1027, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-22. Complaints alleging unlawful housing practices. (a) The procedures under this act for investigation and conciliation of complaints will be conducted in accordance with K.A.R. Sections 21-41, 21-42 and 21-43 to the extent these procedures are in compliance with K.S.A. 1991 Supp. 44-1019 and 44-1020. Unless referred to an appropriate local agency pursuant to K.S.A. 1991 Supp. 44-1019(c), the commission shall commence investigation of the allegations of the complaint within 30 days after receipt of the complaint.

(b) Hearings shall be conducted in accordance with the provisions of the Kansas Administrative Procedure act and K.A.R. Section 21-45. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1019, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

21-60-23. Conciliation and conciliation agreements. (a) During the period beginning with the filing of the complaint and ending with either the serving of a notice of hearing under the provisions of K.S.A. 1991 Supp. 44-1019 or the dismissal of the complaint by the commission, the commission shall, to the extent feasible, attempt to conciliate the complaint.

(b) Where the aggrieved person has commenced a civil action under an act of congress or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the commission shall terminate conciliation unless the court specifically requests assistance from the commission.

(c) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the commission determines that disclosure of a conciliation agreement is not required. The commission may make public tabulated descriptions of the results of all concil-

iation efforts. (Authorized by K.S.A. 1991 Supp. 44-1004; implementing K.S.A. 1991 Supp. 44-1019, as amended by 1992 H.B. 3164, §1 and 6; effective July 1, 1992; effective, T-21-7-1-92, July 1, 1992; effective Aug. 17, 1992.)

Article 70.—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS

21-70-1. Definitions. (a) “Current illegal use of drugs” means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s use is current or that continuing use is a real and ongoing problem.

(b) “Professional office of health care provider” means a location where a person or entity regulated by the state of Kansas to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the “professional office of a health care provider” shall only include floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(c) “Public transportation facility” means transportation by bus, rail, aircraft, or any other conveyance that provides the general public with general or special services, including charter services, on a regular and continuing basis.

(d) “Qualified interpreter” means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

(e) “Service animal” means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

(f) “Shopping center or shopping mall” means:

(1) a building housing five or more places of public accommodation; or

(2) a series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more places of public accommodation. The facility housing a “shopping center or shopping mall” only includes floor levels housing at least one place of public accommodation, or any floor level designed or

intended for use by at least one place of public accommodation.

(g) As used in these regulations, “the act” means the Kansas act against discrimination, K.S.A. 44-1001 et seq., as amended. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-2. Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation shall be considered public accommodations subject to the act. As between the parties, allocation of responsibility for complying with the obligations of the act may be determined by lease or contract. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-3. Activities; denial of participation. (a) Denial of participation. A public accommodation shall not deny an individual or class of individuals the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of that place on the basis of a disability or disabilities of the individual or class, either directly or through contractual, licensing or other arrangements.

(b) Participation in unequal benefit. A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of the individual or class, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation in a manner that is not equal to that afforded to other individuals directly, or through contractual, licensing, or other arrangements.

(c) Separate benefit. Unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others, a public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of the individual or class, with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, directly, or through contractual, licensing, or other arrangements.

(d) Individual or class of individuals. For purposes of subsections (a) through (c) of this regu-

lation, the term “individual or class of individuals” means the clients or customers of the public accommodation that enter into the contractual, licensing, or other arrangement. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-4. Integrated settings. (a) Each public accommodation shall afford goods, services, facilities and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(b) Notwithstanding the existence of separate or different programs or activities provided in accordance with the act, a public accommodation shall not deny an individual with a disability the opportunity to participate in regular programs or activities.

(c) (1) Nothing in this regulation shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under the act that the individual chooses not to accept.

(2) Nothing in the act shall authorize a representative or guardian of an individual with a disability to decline food, water, or medical treatment and services for that individual. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-5. Administrative methods. A public accommodation shall not, either directly or through contractual or other arrangements, utilize standards, criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination by others who are subject to common administrative control. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-6. Association. A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-7. Retaliation or coercion. A public accommodation shall not discriminate against any individual because that individual has opposed

any act or practice made unlawful by the act, or because that individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-8. Places of public accommodation located in private residences. (a) When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence shall not be covered by the act. However, that portion used exclusively in the operation of the place of public accommodation, or that portion used both for the place of public accommodation and for residential purposes, shall be covered by the act and these regulations.

(b) The portion of the residence covered under subsection (a) of this regulation extends to those elements used to enter the place of public accommodation, including:

- (1) the homeowner's front sidewalk, if any;
- (2) the door or entryway;
- (3) the hallways; and

(4) those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms. (Authorized by K.S.A. 44-1004; implementing K.S.A. 1992 Supp. 44-1009; effective Dec. 19, 1994.)

21-70-9. Direct threat. (a) The act and these regulations shall not be interpreted to require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities and accommodations of that public accommodation when that individual poses a direct threat to the health and safety of others.

(b) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation shall make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

- (1) the nature, duration, and severity of the risk;
- (2) the probability that the potential injury will actually occur; and
- (3) whether reasonable modifications of policies, practices, or procedures will mitigate the

risk. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-10. Maintenance of accessible features. (a) A public accommodation shall maintain, in operable working condition, those features of facilities and equipment that are required by the act and these regulations to be readily accessible to and usable by persons with disabilities.

(b) These regulations do not prohibit isolated or temporary interruption in service or access due to maintenance or repairs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-11. Safety. A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements shall be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-12. Charges. A public accommodation shall not impose a surcharge on an individual with a disability to cover the costs of measures that are required to provide that individual with the nondiscriminatory treatment required by the act or these regulations, including the provision of auxiliary aids, barrier alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-13. Modifications in policies, practices, or procedures. (a) Each public accommodation shall make reasonable modifications in policies, practices or procedures, when the modifications are necessary to afford goods, services, facilities or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities or accommodations.

(b) Any public accommodation may refer an individual with a disability to another public accommodation if:

- (1) that individual is seeking or requires treatment which is not within the referring public accommodation's area of specialization; and
- (2) in the normal course of its operations, the referring public accommodation would make a

similar referral for an individual without a disability who seeks or requires the same treatment or services. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-14. Service animals. (a) Each public accommodation shall modify policies, practices or procedures as necessary to permit the use of a service animal by an individual with a disability.

(b) Nothing in the act or these regulations requires a public accommodation to supervise or care for a service animal. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-15. Undue burden: definition and determination. (a) "Undue burden" means significant difficulty or expense.

(b) In determining whether an action would result in an undue burden, factors to be considered shall include:

(1) the nature and cost of the action needed under the act;

(2) the overall financial resources of the site or sites involved in the action considering:

(A) the number of persons employed at the site;

(B) the effect on expenses and resources;

(C) legitimate safety requirements that are necessary for safe operation, including crime prevention measures; and

(D) how the action would otherwise impact the operation of the site; and

(3) whether the site or sites in question have a parent corporation or entity, and if so:

(A) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to the parent corporation or entity;

(B) the overall financial resources of any parent corporation or entity;

(C) the overall size of the parent corporation or entity with respect to the number of its employees;

(D) the number, type, and location of the parent corporation's or entity's facilities; and

(E) the type of operation or operations of any parent corporation, including the composition, structure, and functions of its workforce. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-16. Auxiliary aids and services. (a) Each public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied, segregated or

otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities or accommodations being offered or would result in an undue burden.

(b) The term "auxiliary aids and services" shall include:

(1) qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally-delivered materials available to individuals with hearing impairments;

(2) qualified readers, taped texts, audio recordings, brailled materials, large print materials or other effective methods of making visually-delivered materials available to individuals with visual impairments;

(3) acquisition or modification of equipment or devices; and

(4) other similar services and actions.

(c) Each public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-17. Auxiliary aids and services; telecommunication devices for the deaf (TDD's). (a) Each public accommodation that offers a customer, client, patient or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(b) The act and these regulations do not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-18. Auxiliary aids and services; closed caption decoders. Each lodging establishment that provides televisions in five or more guest rooms and hospitals that provide televisions

for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-19. Alternatives to auxiliary aids and services. (a) If provision of a particular aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities or accommodations being offered, or is an undue burden, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or undue burden.

(b) The alternative auxiliary aid or service, to the maximum extent possible, shall ensure that individuals with disabilities receive the goods, services, facilities or accommodations offered by the public accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-20. Definition of readily achievable; determination. (a) "Readily achievable" means easily accomplished and able to be carried out without much difficulty or expense.

(b) In determining whether an action is readily achievable, factors to be considered shall include:

(1) The nature and cost of the action needed under the act;

(2) the overall financial resources of the site or sites involved in the action, considering:

(A) the number of persons employed at the site;

(B) the effect on expenses and resources;

(C) legitimate safety requirements that are necessary for safe operation, including crime prevention measures; and

(D) how the action would otherwise impact the operation of the site; and

(3) whether the site or sites in question have a parent corporation or entity, and if so:

(A) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to the parent corporation or entity;

(B) the overall financial resources of any parent corporation or entity;

(C) the overall size of the parent corporation or entity with respect to the number of its employees;

(D) the number, type, and location of the parent corporation's or entity's facilities; and

(E) the type of operation or operations of any parent corporation, including the composition,

structure, and functions of its workforce. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-21. Removal of barriers. (a) Each public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, if removal is readily achievable.

(b) Removal of barriers may include the following actions:

(1) installing ramps;

(2) making curb cuts in sidewalks and entrances;

(3) repositioning shelves;

(4) rearranging tables, chairs, vending machines, display racks, and other furniture;

(5) repositioning telephones;

(6) adding raised markings on elevator control buttons;

(7) installing flashing alarm lights;

(8) widening doors;

(9) installing offset hinges to widen doorways;

(10) eliminating a turnstile or providing an alternative accessible path;

(11) installing accessible door hardware;

(12) installing grab bars in toilet stalls;

(13) rearranging toilet partitions to increase maneuvering space;

(14) insulating lavatory pipes under sinks to prevent burns;

(15) installing a full-length bathroom mirror;

(16) repositioning the paper towel dispenser in a bathroom;

(17) creating designated accessible parking spaces;

(18) installing an accessible paper cup dispenser at an existing inaccessible water fountain;

(19) removing high pile, low density carpeting;

(20) installing vehicle hand controls;

(21) installing a raised toilet seat; and

(22) installing assistive listening systems. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-22. Removal of barriers; priorities. Each public accommodation shall consider taking measures to comply with the barrier removal requirements of K.A.R. 21-70-21 in accordance with the following order of priorities. (a) The first priority shall be to make measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures may include installing an

entrance ramp, widening entrances, and providing accessible parking spaces.

(b) The second priority shall be to take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures may include adjusting the layout of display racks, rearranging tables, providing brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.

(c) The third priority shall be to take measures to provide access to restroom facilities. These measures may include removing obstructing furniture or vending machines, widening doors, installing ramps, providing accessible signage, widening toilet stalls, and installing grab bars.

(d) The final priority shall be to take any other measures necessary to provide access to its goods, services, facilities or accommodations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-23. Removal of barriers; relationship to alteration requirements. (a) Except as provided in subsection (b) of this regulation, measures taken to comply with the barrier removal requirements of K.A.R. 21-70-21 shall comply with the applicable requirements in these regulations for the alteration of that element. However, the “path of travel” requirement in K.A.R. 21-70-36 shall not apply to measures taken solely to comply with the barrier removal requirement.

(b) If, as a result of compliance with the alterations requirements specified in subsection (a) of this regulation, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements.

(c) Those readily achievable measures may include providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. However, no measure shall be taken that would pose a significant risk to the health or safety of individuals with disabilities or others. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-24. Removal of barriers; portable ramps. If installation of a permanent ramp is not readily achievable, a portable ramp may be used to comply with K.A.R. 21-70-21. To avoid any sig-

nificant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features, including nonslip surfaces, railings, anchoring, and strength of materials. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-25. Removal of barriers; selling or serving space. The rearrangement of temporary or movable structures, including furniture, equipment, and display racks shall not be considered readily achievable if it results in a significant loss of selling or serving space. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-26. Limitation on barrier removal obligations. (a) The requirements for barrier removal under these regulations shall not exceed the standards for alteration in K.A.R. 21-70-21.

(b) If relevant standards for alterations are not provided in K.A.R. 21-70-34, the requirements for barrier removal under these regulations shall not be interpreted to exceed the standards for new construction in these regulations.

(c) These regulations shall not apply to transportation services subject to K.A.R. 21-70-32. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-27. Alternatives to barrier removal. (a) If a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall make its goods, services, facilities or accommodations available through alternative methods, if those methods are readily achievable.

(b) Alternatives to barrier removal may include the following actions:

- (1) providing curb service or home delivery;
- (2) retrieving merchandise from inaccessible shelves or racks; or
- (3) relocating activities to accessible locations.

(c) If removal of barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema is not readily achievable, the cinema shall establish a film rotation schedule that provides reasonable access to all films for individuals who use wheelchairs. Reasonable notice shall be provided to the public as to the location and time of accessible showings. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-28. Accessible or special goods. (a) The act and these regulations shall not be interpreted to require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.

(b) Each public accommodation shall order accessible or special goods at the request of an individual with disabilities, if in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.

(c) Accessible or special goods may include brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-29. Seating in assembly areas; existing facilities. (a) To the extent that it is readily achievable, assembly areas of a public accommodation shall:

(1) provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(2) locate the wheelchair seating spaces so that they:

(A) are dispersed throughout the seating area;

(B) provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) permit individuals who use wheelchairs to sit with family members or other companions.

(b) If removal of seats is not readily achievable, each public accommodation with assembly areas shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(c) The requirement of subsection (a) shall not be interpreted to exceed the standards for alterations in K.A.R. 21-70-34. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-30. Seating in assembly areas; new construction and alterations. The provision and location of wheelchair seating spaces in new-

ly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in K.A.R. 21-70-34. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-31. Examinations and courses. (a) Each public accommodation that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer the examinations or courses in a place and manner accessible to persons with disabilities or offer alternative arrangements for access.

(b) Examinations.

(1) Each private entity offering an examination covered by this section shall assure that:

(A) the examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills, except where those skills are the factors that the examination purports to measure;

(B) any examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and

(C) the examination is administered in facilities that are accessible to individuals with disabilities or alternative arrangements for access are made.

(2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.

(3) Each private entity offering an examination covered by this regulation shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that private entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this regulation may include:

(A) taped examinations, interpreters or other effective methods of making orally delivered ma-

terials available to individuals with hearing impairments;

(B) Braille or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities;

(C) transcribers for individuals with manual impairments; and

(D) other similar services and actions.

(4) Alternative arrangements for access may include provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements shall provide conditions which are comparable to those provided for nondisabled individuals.

(c) Courses.

(1) Each private entity that offers a course covered by these regulations shall make any modifications to that course necessary to ensure that the place and manner in which the course is given are accessible to individuals with disabilities.

(2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of manner in which the course is conducted or course materials are distributed.

(3) Each private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the private entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include:

(A) taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(B) Braille or large print texts or qualified readers for individuals with visual impairments and learning disabilities;

(C) classroom equipment adapted for use by individuals with manual impairments; and

(D) other similar services and actions.

(4) Courses shall be administered in facilities that are accessible to individuals with disabilities, or alternative arrangements for access shall be made.

(5) Alternative arrangements for access may include offering the course through videotape, cassettes, or prepared notes. Alternative arrangements shall provide conditions which are

comparable to those provided for nondisabled individuals. (Authorized by K.S.A. 44-1004; implementing K.S.A. 1992 Supp. 1009; effective Dec. 19, 1994.)

21-70-32. Transportation. (a) Each public accommodation which provides any transportation service, shall ensure that each service provided by the public accommodation is available and accessible to people with disabilities. Necessary modifications may include:

(1) retrofitting with lifts or ramps

(2) retrofitting with P.A. systems

(3) retrofitting with visible signage

(4) using color coding on vehicles and routes

(b) Only those modifications which are readily achievable shall be required. However, good faith efforts shall be made to accomplish readily achievable modifications which make transportation services as accessible as possible. This regulation shall not be considered to require premature replacement of any existing vehicle.

(c) All services shall be provided equally in the most integrated manner possible to all individuals with disabilities including:

(1) equal fares for all people regardless of accommodation provided;

(2) equal access to all discounts, specials, programs, passes, and any other event or service in the most integrated setting possible;

(3) accessibility to all fixed routes and shuttle services operated by units and subdivisions of government, unless an undue hardship would occur; and

(4) use of accessible vehicles in the existing fleet of vehicles, operating to the maximum extent feasible.

When determining whether an activity referred to herein is readily achievable, providing an equivalent accommodation by contractual or other indirect means shall be considered.

(d) Each new vehicle used to transport the general public shall be accessible unless the vehicle is not generally available in an accessible design from factory dealerships or custom chassis or body manufacturers. At a minimum, a nationwide search shall be undertaken for vehicles available in an accessible design before it can be claimed as a defense that it is not possible to obtain them. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-33. Transportation provided by public accommodations. (a) Each public accommodation that provides transportation ser-

vices, but that is not primarily engaged in the business of transporting people, shall be subject to the act and these regulations.

(b) Transportation services shall include various types of shuttle services operated between a transportation facility and other places of public accommodation, including:

(1) customer shuttle bus services operated by private companies and shopping centers; and

(2) transportation provided within recreational facilities, including stadiums, zoos, amusement parks, and ski resorts.

(c) Each public accommodation subject to the act and these regulations shall remove transportation barriers in existing vehicles and rail cars used for transporting individuals when removal is readily achievable. However, this provision shall not be applicable to barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-34. New construction; exception for structural impracticability; elevator exemption. (a) Except as provided in subsection (b) of this regulation, an unlawful discriminatory practice shall include a failure to design and construct facilities for first occupancy after July 1, 1994, that are readily accessible to and useable by individuals with disabilities.

(b) For purposes of the act and this regulation, a facility shall be considered to have been designed and constructed for first occupancy after July 1, 1994, only if:

(1) (A) the last application for a building permit or permit extension for the facility is certified to be complete, by a state, county, or local government after July 1, 1993; or

(B) in those jurisdictions where the government does not certify completion of applications, the last application for a building permit or permit extension for the facility is received by the state, county, or local government after July 1, 1992; and

(2) if the first certificate of occupancy for the facility is issued after July 1, 1994.

(c) (1) If an entity can demonstrate that it is structurally impracticable to fully comply with the requirements of this regulation, compliance shall be required to the extent that it is not structurally impracticable. Full compliance shall be considered structurally impracticable only in those rare circumstances when the unique char-

acteristics of terrain prevent the incorporation of accessibility features.

(2) If providing accessibility to individuals with certain disabilities, such as those who use wheelchairs, would be structurally impracticable, accessibility shall nonetheless be ensured in accordance with this subsection (c) to persons with other types of disabilities, such as those who use crutches or who have sight, hearing, or mental impairments.

(d) Installation of an elevator shall not be required in a facility that is less than three stories high or has less than 3000 square feet per story, unless the facility houses one or more of the following:

(1) a shopping center or shopping mall, or a professional office of a health care provider; or

(2) a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In these facilities, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities and other common areas open to the public, shall be on an accessible route from an accessible entrance.

(e) The elevator exemption set forth in subsection (d) shall not obviate or limit in any way the obligation to comply with the other accessibility requirements established in subsection (a) of this regulation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-35. Alterations. (a) (1) Any alteration to a place of public accommodation after July 1, 1991, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration shall be deemed to be undertaken after July 1, 1991, if the physical alteration begins after that date.

(b) For the purposes of this regulation, "alteration" means a change to a place of public accommodation that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations may include remodeling, renovation, rehabilitation, reconstruction, historic restorations, changes or rearrangements in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions.

(2) Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems shall not be con-

sidered alterations unless they affect the usability of the building or facility.

(3) If existing elements, spaces or common areas are altered, then each altered element, space or area shall comply with the applicable standards for accessible design in the Americans with disabilities act accessibility guidelines (ADAAG) dated July 26, 1991, which are incorporated herein by reference.

(c) The phrase "to the maximum extent feasible," as used in this regulation, shall apply to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in compliance with this regulation to individuals with certain disabilities, such as those who use wheelchairs, would not be feasible, the facility shall be made accessible to persons with other types of disabilities, such as those who use crutches, or those who have sight, hearing, or other impairments. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-36. New construction and alterations; path of travel. (a) If an alteration affects or could affect the usability of or access to an area of a facility that contains a primary function, the alteration shall be made so as to ensure that to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones and drinking fountains serving the altered area is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) "Primary function" means a major activity for which the facility is intended. Areas that contain a primary function may include the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center and offices or other work areas in the public accommodation. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms shall not be considered areas containing a primary function. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-37. Alterations to an area containing a primary function. (a) Alterations that affect the usability of or access to an area containing a primary function may include:

(1) remodeling merchandise display areas or employee work areas in a department store; and

(2) replacing an inaccessible floor surface in the customer service or employee work areas of a bank.

(b) For the purposes of this regulation, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of an area containing a primary function. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-38. New construction and alterations; path of travel; landlord or tenant. If a tenant is making alterations as defined in K.A.R. 21-60-16 that would trigger the requirements of K.A.R. 21-70-36, those alterations by the tenant in areas that only the tenant occupies shall not trigger an obligation on the landlord to alter the areas of the facility under the landlord's authority in order to comply with the "path of travel" requirements in K.A.R. 21-70-36, if those areas are not otherwise being altered. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-39. New construction and alterations; definition of path of travel. (a) The term "path of travel" means a continuous, unobstructed way of pedestrian passage by which the altered area may be approached, entered and exited, and which connects the altered area with:

(1) an exterior approach, including sidewalks, streets, and parking areas;

(2) an entrance to the facility; and

(3) other parts of the facility.

(b) An accessible path of travel may consist of:

(1) walks and sidewalks;

(2) curb ramps and other interior or exterior pedestrian ramps;

(3) clear floor paths through lobbies, corridors, rooms, and other improved areas; or

(4) part or a combination of these elements.

(c) For the purposes of this regulation, the term "path of travel" also shall include the restrooms, telephones, and drinking fountains serving the altered area. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-40. New construction and alterations; path of travel; disproportionality. (a) The cost of alterations made to provide an accessible path of travel to the altered areas shall be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

(b) Costs that may be counted as expenditures required to provide an accessible path of travel may include:

(1) costs associated with providing an accessible entrance and an accessible route to the altered area, including the cost of widening doorways or installing ramps;

(2) costs associated with making restrooms accessible, including installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;

(3) costs associated with providing accessible telephones, including relocating the telephone to an accessible height, installing amplification devices, or installing a telecommunications device for deaf persons (TDD); and

(4) costs associated with relocating an inaccessible drinking fountain. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-41. New construction and alterations; path of travel; duty to provide accessible features in the event of disproportionality. (a) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(b) In choosing which accessible elements to provide, consideration shall be given to altering those elements that will provide the greatest access, in the following order:

- (1) an accessible entrance;
- (2) an accessible route to the altered area;
- (3) at least one accessible restroom for each sex or a single unisex restroom;
- (4) accessible telephones;
- (5) accessible drinking fountains; and
- (6) when possible, additional accessible elements, including parking, storage, and alarms. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-42. New construction and alterations; path of travel; series of smaller alterations. (a) The obligation to provide an accessible path of travel shall not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(b) Cost of alterations. (1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(2) Only alterations undertaken after July 1, 1991, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-43. Alterations; elevator exemption. (a) Installation of an elevator shall not be required in an altered facility that is less than three stories high or has less than 3,000 square feet per story, except with respect to:

- (1) any public accommodation located in a shopping center or a shopping mall;
- (2) the professional office of a health care provider; and
- (3) any public transportation facility.

(b) The exemption provided in subsection (a) of this regulation shall not obviate or limit in any way the obligation to comply with the other accessibility requirements established by the act or these regulations. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-44. Alterations; historic preservation. (a) Alterations to buildings or facilities that are eligible for listing in the national register of historic places under the national historic preservation act (16 U.S.C. 470 et seq.), or are designated as historic under state or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to 28 CFR Part 36 of the Americans with disabilities act accessibility guidelines dated July 26, 1991.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A to the Americans with disabilities act accessibility guidelines dated July 26, 1991 that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of K.A.R. 21-70-41. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-45. Standards for new construction and alterations. New construction and alterations subject to the act and this regulation shall comply with the standards for accessible design published in appendix A to 28 CFR Part 36, the Americans with disabilities act accessibility guidelines (ADAAG), dated July 26, 1991. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-46. (a) The term “disability” shall not be interpreted to include:

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorder resulting from current illegal use of drugs.

(b) The phrase “physical or mental impairment” shall not be interpreted to include homosexuality or bisexuality. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-47. Smoking. This act shall not preclude the prohibition of, or the imposition of restrictions on smoking in places of public accommodation. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-48. Health insurance, life insurance and other benefit plans. (a) Any insurer, hospital, medical service company, health maintenance organization, or any similar entity or agent of an entity that administers benefit plans may underwrite risks, classify risks, or administer risks in a manner based on or not inconsistent with state law.

(b) Any person or organization covered by the act may establish or administer the terms of a bona fide benefit plan that are based on under-

writing risks, classifying risks, or administering such risks in a manner based on or not inconsistent with state law.

(c) Any person or organization covered by the act may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.

(d) The activities described in subsections paragraphs (a), (b), and (c) shall be permitted unless these activities are a subterfuge to evade the purposes of the act.

(e) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-49. Personal devices and services.

A public accommodation shall not be required to provide its customers, clients, or participants with:

(a) personal devices, such as wheelchairs;

(b) individually prescribed devices, such as prescription eyeglasses or hearing aids; or

(c) services of a personal nature including assistance in eating, toileting, or dressing. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-50. Illegal use of drugs. The term “illegal use of drugs” shall not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the controlled substances act, 21 U.S.C. 812, or other provisions of federal or Kansas law. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-51. Illegal use of drugs. (a) Except as provided in paragraph (c)(2), the act and these regulations shall not be construed as prohibiting discrimination against an individual based on that individual’s current illegal use of drugs.

(b) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(2) is currently participating in a supervised rehabilitation program; or

(3) is erroneously regarded as engaging in such use.

(c) (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) Any drug rehabilitation or treatment program may deny participation to individuals who engage in the illegal use of drugs while they are in the program. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-52. Illegal use of drugs; drug testing. (a) The act and these regulations shall not prohibit a public accommodation from adopting or administering reasonable policies or procedures that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in the illegal use of drugs. These policies and procedures may include drug testing.

(b) Nothing in this regulation shall be construed to encourage, prohibit, restrict, or authorize testing for the illegal use of drugs. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-53. Relationship to other law. (a) These regulations shall not be construed to invalidate or limit the remedies, rights and procedures of any other state or local laws that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.

(b) Except as otherwise provided in these regulations, these regulations shall not be construed to apply a lesser standard than the standards applied under the Kansas handicapped accessibility standards, K.S.A. 1993 Supp. chapter 58, article 13, or regulations issued by the attorney general or secretary of administration of the state of Kansas pursuant to that act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

21-70-54. Certification of state laws or local building codes. (a) For purposes of this regulation:

(1) "assistant attorney general" means the assistant attorney general for civil rights, the United States department of justice (DOJ), or his or her designee

(2) "certification of equivalency" means a final certification by the assistant attorney general that

a code meets or exceeds the minimum requirements of title III of the Americans with disabilities act (ADA), 42 U.S.C. 12181, for accessibility and usability of facilities covered by that title; and

(3) "code" means a state law or local building code or similar ordinance, or part thereof, that establishes accessibility requirements.

(b) If the assistant attorney general certifies that a code meets or exceeds the minimum requirements of title III of the ADA at any proceeding under the act, the DOJ certification of equivalency shall be rebuttable evidence that the state law or local ordinance does meet or exceed the minimum requirements of the act for accessibility and usability of facilities covered by the act. (Authorized by K.S.A. 44-1004; implementing K.S.A. 44-1009; effective Dec. 19, 1994.)

Article 80.—AGE DISCRIMINATION IN EMPLOYMENT

21-80-1. Unlawful employment practices based on age. No employer, employment agency, or labor organization shall set an arbitrary age limit in relation to employment or membership except as otherwise provided by commission rules or by the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-2. Job opportunities advertising. Help wanted notices or advertisements shall not contain age-specific terms and phrases, including "young," "boy," "girl," "college student," "recent college graduate," "retired person," or others of a similar nature, unless a bona fide occupational requirement for the position has been established. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-3. Age information on job applications and other preemployment inquiries.

(a) Any preemployment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect preemployment inquiry is based upon a bona fide occupational qualification.

(b) The following inquiries shall be permissible:

(1) Preemployment inquiries regarding the age of an applicant if the inquiry is made in good faith for a non-discriminatory purpose; and

(2) preemployment inquiries to determine that an applicant is over 18 years of age. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-4. Bona fide occupational qualifications. (a) The bona fide occupational qualification exception as to age shall be narrowly construed.

(b) An employer asserting a bona fide occupational qualification defense has the burden of proving that:

(1) the age limit is reasonably necessary to the essence of the business; and

(2)(A) that all or substantially all individuals excluded from the job involved are in fact not qualified; or

(B) that some of the individuals were excluded on the basis of a trait that cannot be ascertained except by reference to age.

(c) If the employer's bona fide occupational qualification defense is based on public safety, the employer shall prove that the challenged practice does effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-5. Differentiations based on necessary factors other than age. (a) If an employment practice uses age as a limiting criterion, the defense that the practice is justified by a necessary factor other than age is unavailable.

(b) Any employment practice, including a test, which is claimed as a basis for different treatment of employees or applicants for employment on the grounds that it is a necessary factor other than age, may only be justified on the basis of business necessity or valid business motive if such a practice has an adverse impact on individuals within the protected age group. Tests which are asserted as reasonable factors other than age will be scrutinized in accordance with the standards set forth at Article 30 of these regulations.

(c) If the exception of a necessity factor other than age is raised against an individual claim of discriminatory treatment, the employer shall bear

the burden of proving the necessary factor other than age.

(d) An employment practice based on the average cost of employing older employees as a group shall be unlawful except with respect to employee benefit plans which qualify for the section 1113(b)(2) exception to the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-6. Bona fide seniority systems. (a) Each bona fide seniority system shall be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. Other secondary factors, including merit, capacity, or ability, also may be used.

(b) A seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to older workers, may be found to be a subterfuge to evade the purposes of the Kansas age discrimination in employment act.

(c) Essential terms and conditions of a seniority system shall be communicated to the affected employees and applied uniformly to all those affected, regardless of age. Any seniority system shall not be considered a bona fide seniority system within the meaning of the Kansas age discrimination in employment act if its terms and conditions are not communicated and applied as required by this subsection. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-7. Prohibition of involuntary retirement. (a) Each seniority system or employee benefit plan shall not require or permit the involuntary retirement of any individual. Accordingly, any system or plan provision requiring or permitting involuntary retirement shall be unlawful, unless the provision is otherwise permitted by state or federal law or by an ordinance or resolution which preempts, supersedes or otherwise takes precedence over the Kansas age discrimination in employment act.

(b) Any plan may permit individuals to elect early retirement at a specified age at their own option. Any plan may require early retirement for reasons other than age. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

21-80-8. Exemption for employees serving under a contract of unlimited tenure.

(a) The exemption for employees serving under a contract of unlimited tenure at an institution of higher education may be applied to any individual who attains age 70 prior to January 1, 1994, and whose job duties and responsibilities cease prior to January 1, 1994, regardless of the contract expiration date.

(b) The party seeking to invoke the exemption for employees serving under a contract of unlimited tenure shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. This exemption shall be narrowly construed.

(c) Definitions.

(1) "Institution of higher education" means all public and private universities and colleges which grant tenure to employees.

(2) "Any employee" means faculty, teachers and other groups of employees who have tenured status at an institution of higher education, including academic deans, scientific researchers, professional librarians and counseling staff.

(3) "Tenure" means an arrangement under which certain appointments in an institution of higher education are continued until retirement for age or physical disability, subject to dismissal for adequate cause or under extraordinary circumstances on account of financial exigency or change of institutional program.

(4) "Unlimited" means tenure which is not limited to a specific term. A contract or other similar arrangement which is limited to a specific term shall not meet the requirements of the exemption.

(d) A contract or other similar arrangement which meets the standards in the "1940 Statement of Principles on Academic Freedom and Tenure," jointly developed by the Association of American Colleges and the American Association of University Professors, shall be deemed to satisfy the tenure requirements of the exemption.

(e) Any employee who is not assured of a continuing appointment either by contract, unlimited tenure or another similar arrangement shall not be exempted from the prohibitions against compulsory retirement, even if the employee performs functions identical to those performed by employees with appropriate tenure.

(f) Any employee within the exemption may lawfully be required to retire on account of age at age 70 or above. In the alternative, the employer may retain such an employee either in the same

position or status or in a different position or status if the employee voluntarily accepts this new position or status. Any employee who accepts a non-tenured position or part-time employment shall not be treated any less favorably, on account of age, than any similarly situated younger employee, unless the less favorable treatment is excused by an exception of the Kansas age discrimination in employment act. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113, 44-1118; effective Dec. 28, 1992.)

21-80-9. Exemption for bona fide executive or high policy making employees.

(a) The party seeking to invoke the exemption for bona fide executive or high policy-making employees shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. This exemption shall be narrowly construed.

(b) Any employee within the exemption may lawfully be required to retire on account of age at age 65 or above. In the alternative, the employer may retain such an employee either in the same position or status or in a different position or status. Any employee who accepts such a new status or position shall not get treated any less favorably, on account of age, than any similarly situated younger employee.

(c) The bona fide executive exemption shall apply to top-level employees who exercise substantial executive authority over a significant number of employees and a large volume of business.

Any individual in the corporate organizational structure who possesses a comparable or greater level of responsibility and authority, as measured by established and recognized criteria, shall also qualify for this exemption.

(d) The phrase "high policymaking position" shall be limited to certain top-level employees:

(1) who are not bona fide executives;

(2) who are individuals who have little or no line authority; and

(3) whose position and responsibility are such that they play a significant role in the development of corporate policy and effectively recommend its implementation.

(e) Each employee qualifying for this exemption shall have been a bona fide executive or held a high policy-making position, as those terms are defined in this regulation, for the two-year period immediately before retirement.

(f) "Annual retirement benefit" means the aggregate sum payable during each one-year period

of retirement. The initial one-year period shall commence from the date the benefits first became receivable by the retiree. Once established, the annual period upon which calculations are based may not be changed from year to year.

(g) The annual retirement benefit shall be immediately available to the employee retiring under this exemption. For purposes of determining compliance, "immediate" means that the payment of plan benefits, in a lump sum or the first of a series of periodic payments, shall occur not later than 60 days after the effective date of the retirement in question. The fact that an employee will receive benefits only after expiration of the 60-day period shall not preclude retirement under the exemption, if the employee could have elected to receive benefits within that period.

(h) To determine whether the aggregate annual retirement benefit equals at least \$44,000, only benefits authorized by and provided under the terms of a pension, profit-sharing, savings, or deferred compensation plan shall be included.

(i)(1) The annual retirement benefit shall be nonforfeitable. Accordingly, the exemption shall not be applied to any employee subject to plan provisions which could cause the cessation of payments to a retiree or result in the reduction

of benefits to less than \$44,000 in any one year. However, retirement benefits shall not be considered forfeitable solely because the benefits are discontinued or suspended for reasons permitted under section 411(a)(3) of the Internal Revenue Code.

(2) An annual retirement benefit shall not be considered forfeitable merely because the minimum statutory benefit level is not guaranteed against the possibility of plan bankruptcy or is subject to benefit restrictions in the event of early termination of the plan in accordance with Treasury Regulation 1.401-4(c). However, there shall be at least a reasonable expectation that the plan will meet its obligations when the retirement in question becomes effective. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113, 44-1118; effective Dec. 28, 1992.)

21-80-10. Firefighters and law enforcement officers. The party seeking to invoke the exemption for firefighters and law enforcement officers shall have the burden of showing that every element of the exemption has been met clearly and unmistakably. (Authorized by K.S.A. 1991 Supp. 44-1121; implementing K.S.A. 1991 Supp. 44-1113; effective Dec. 28, 1992.)

Agency 22

State Fire Marshal

Articles

- 22-1. KANSAS FIRE PREVENTION CODE.
- 22-2. REGULATORY STANDARD FOR TANK VEHICLES FOR FLAMMABLE AND COMBUSTIBLE LIQUIDS. (*Not in active use.*)
- 22-3. LIFE SAFETY CODE. (*Not in active use.*)
- 22-4. EXPLOSIVE MATERIALS.
- 22-5. FIRE REPORTING REQUIREMENTS.
- 22-6. FIREWORKS.
- 22-7. FLAMMABLE AND COMBUSTIBLE LIQUIDS.
- 22-8. LIQUEFIED PETROLEUM GASES.
- 22-9. EQUIPMENT AND TRANSPORTATION; CASINGHEAD GASOLINE. (*Not in active use.*)
- 22-10. INSTALLATION AND CERTIFICATION STANDARDS FOR EXTINGUISHING DEVICES.
- 22-11. ADULT CARE HOMES, HOSPITALS, RESIDENTIAL CARE FACILITIES AND MATERNITY CENTERS.
- 22-12. RESIDENTIAL OCCUPANCIES. (*Not in active use.*)
- 22-13. PLACES OF ASSEMBLY.
- 22-14. MERCANTILE OFFICE, INDUSTRIAL STORAGE AND MISCELLANEOUS STRUCTURES. (*Not in active use.*)
- 22-15. CHILD CARE FACILITIES. (*Not in active use.*)
- 22-16. INSTALLATION, MAINTENANCE AND USE OF PORTABLE FIRE EXTINGUISHERS. (*Not in active use.*)
- 22-17. SALE AND DISTRIBUTION OF EARLY WARNING, FIRE SUPPRESSION OR FIRE ALARM DEVICES.
- 22-18. EDUCATIONAL OCCUPANCIES.
- 22-19. CERTIFICATION OF FIRE INVESTIGATORS.
- 22-20. NATURAL GAS AS MOTOR FUEL. (*Not in active use.*)
- 22-21. CHRISTMAS DECORATIONS.
- 22-22. FIRE DEPARTMENT VEHICLES.
- 22-24. REGIONAL HAZARDOUS MATERIALS RESPONSE.
- 22-25. REDUCED CIGARETTE IGNITION PROPENSITY.
- 22-26. COMMERCIAL INDUSTRIAL HEMP PROCESSING.

Article 1.—KANSAS FIRE PREVENTION CODE

GENERAL

22-1-1. Municipal compliance with Kansas fire prevention code. (a) When a municipality adopts one of the nationally recognized fire codes or the fire protection segment of a nationally recognized building code and modifies a section of that code, a summary of the modifications shall be submitted to the state fire marshal's office. The modifications shall be reviewed and either approved or rejected by the state fire marshal. The

municipality shall be notified of the action within 30 days from receipt of the summary.

(b) Each alternate method of fire protection that has been approved by a local board of appeals as a substitute for strict compliance with code requirements shall be deemed to be in compliance with the Kansas fire prevention code.

(c) Each question arising as to whether another state statute or an enactment of a municipality is inconsistent with the provisions of the fire prevention code shall be resolved by the state fire marshal after a hearing with all interested parties. Each decision of the state fire marshal made un-

der authority of this subsection shall be appealable in accordance with the provisions of K.S.A. 31-142 and amendments thereto. (Authorized by and implementing K.S.A. 2008 Supp. 31-133 and 31-134; effective May 1, 1981; amended May 1, 1985; amended Aug. 28, 1989; amended Sept. 17, 1990; amended Feb. 4, 2011.)

22-1-2. Compliance with certain building codes. A building shall be deemed to comply with the Kansas fire prevention code if the building conforms to one of the following building codes and to any additional special requirements of the Kansas fire prevention code and if the building has been issued a certificate of occupancy:

- (a) The 1997 edition of the uniform building code (UBC); or
- (b) the 2006 edition of the international building code (IBC). (Authorized by and implementing K.S.A. 31-134a; effective May 1, 1985; amended Aug. 28, 1989; amended May 10, 1993; amended July 9, 2004; amended Feb. 4, 2011.)

22-1-3. Adopted codes and standards. The following codes and national fire protection association (NFPA) standards are adopted by reference:

- (a) International building code (IBC), international code council, 2006 edition, including the appendices but excluding the references in chapter 35 to NFPA 13, 13D, 13R, 14, 30, 72, 101, and 110;
- (b) international fire code (IFC), international code council, 2006 edition, including the appendices but excluding the following:
 - (1) Chapters 22, 30, 33, 34, 35, 36, and 38; and
 - (2) the references in chapter 45 to NFPA 10, 13, 13D, 13R, 14, 25, 30, 30A, 52, 72, 101, 110, and 385;
- (c) portable fire extinguishers. NFPA standard no. 10, including annexes A, B, C, D, E, F, G, H, I, J, and K, 2007 edition. The provisions of section 4.4.1 shall be effective only on and after January 1, 2014;
- (d) installation of sprinkler systems. NFPA standard no. 13, including annexes A, B, C, and E, 2007 edition;
- (e) installation of sprinkler systems in one- and two-family dwellings and manufactured homes. NFPA standard no. 13D, including annexes A and B, 2007 edition;
- (f) installation of sprinkler systems in residential occupancies up to and including four stories in

height. NFPA standard no. 13R, including annexes A and B, 2007 edition;

- (g) installation of standpipe and hose systems. NFPA standard no. 14, including annexes A and B, 2007 edition;
- (h) dry chemical extinguishing systems. NFPA standard no. 17, including annexes A and B, 2002 edition;
- (i) wet chemical extinguishing systems. NFPA standard no. 17A, including annexes A and B, 2002 edition;
- (j) water-based fire protection systems. NFPA standard no. 25, including annexes A, B, C, D, and E, 2008 edition;
- (k) flammable and combustible liquids. NFPA standard no. 30, including annexes A, B, C, D, E, F, and H, 2008 edition;
- (l) motor fuel-dispensing facilities. NFPA standard no. 30A, including annexes A, B, and D, 2008 edition;
- (m) vehicular fuel systems. NFPA standard no. 52, including annexes A, C, D, and E, 2006 edition;
- (n) national electric code. NFPA standard no. 70, including annexes A, B, C, D, E, F, G, and H, 2008 edition;
- (o) fire alarms. NFPA standard no. 72, including annexes A, B, C, E, F, G, and H, 2007 edition;
- (p) vapor removal from cooking equipment. NFPA standard no. 96, including annexes A and B, 2008 edition;
- (q) life safety code. NFPA standard no. 101, including annexes A and B, 2006 edition;
- (r) alternative approaches to life safety. NFPA standard no. 101A, including annexes A and B, 2007 edition;
- (s) assembly seating, tents, and membrane structures. NFPA standard no. 102, including annexes A and B, 2006 edition;
- (t) emergency and standby power systems. NFPA standard no. 110, including annexes A, B, and C, 2005 edition;
- (u) fire safety symbols. NFPA standard no. 170, including annexes A, B, C, and D, 2006 edition; and
- (v) tank vehicles for flammable and combustible liquids. NFPA standard no. 385, including annexes A, B, and C 2007 edition. (Authorized by and implementing K.S.A. 2008 Supp. 31-133; effective May 10, 1993; amended Feb. 4, 2011.)

22-1-4. Variances and exemptions. Upon a written application the state fire marshal may grant an exemption or variance from compliance

with any provision of the regulations adopted pursuant to the Kansas fire prevention code when it is clearly demonstrated that: (a)(1) the enforcement of a specific requirement will cause unnecessary hardship; or

(2) the exemption is necessary for the petitioner to take advantage of new methods or equipment; and,

(b) the condition, structure, or activity in non-compliance poses no immediate life safety hazard. (Authorized by K.S.A. 1991 Supp. 31-133; implementing K.S.A. 31-136; effective May 10, 1993.)

22-1-5. Denial, refusal, suspension, or revocation. (a) A registration certificate authorized under the Kansas fire prevention code that has been duly issued by the office of the state fire marshal or has been applied for may be denied, suspended, revoked, or renewal refused, if:

(1) the office of the state fire marshal finds from available evidence that the individual or business has violated any provisions of the Kansas fire prevention code or these regulations; or

(2) certified as an arson investigator, the holder has been convicted of a felony.

(b) A person or business aggrieved by an order of the office of the state fire marshal may seek an appeal and hearing under the provisions of K.S.A. 31-140, 31-141, and 31-142 by filing a notice of appeal in the office of the state fire marshal within fifteen (15) days from the date of the service of this order. (Authorized by and implementing K.S.A. 1991 Supp. 31-133, K.S.A. 31-133a, as amended by L. 1992, ch. 220, § 1, and K.S.A. 31-157; effective May 10, 1993.)

22-1-6. Commercial fire suppression and detection firms, filing. Any business which currently installs, maintains, modifies, or repairs any fire sprinkler systems, fire detection systems, or fire alarm systems, except those performing these functions solely in one and two family dwellings, shall file a notification of doing business by April 1, 1994 with the state fire marshal on forms provided by the state fire marshal. Any new business performing these functions after April 1, 1994 shall file a notification of doing business within 30 days of commencing business with the state fire marshal. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-1-7. Code footprint. (a)(1) "Code footprint" shall mean a building and life safety code compliance document that contains both graphic

and narrative information and that meets the requirements of this regulation.

(2) Each code footprint shall be submitted in the following format:

(A) A full-sized drawing consisting of a complete floor plan, including existing facilities and new construction, for each floor of the facility, including basements and mezzanines; and

(B) an 11-inch by 17-inch reduction of the full-sized drawing, sealed by a Kansas-licensed design professional.

(3) A code footprint shall be prepared for all new buildings, new building additions, changes in occupancy, or building renovation, with the exception of buildings used solely as dwelling houses containing no more than two families. Each code footprint shall be prepared by a Kansas-licensed design professional. Upon request, a code footprint shall be provided to the fire or building official in the municipality where the work is occurring.

(4) A code footprint shall be submitted to the state fire marshal for review and approval for any new construction, renovation, or change of occupancy for the following types of buildings:

(A) Any group A assembly occupancy having a combined occupant load in excess of 2,000 persons;

(B) any group B business occupancy used at any community college, area vocational school, vocational-technical school, technical college, or any institution under the governance of the state board of regents;

(C) any group A assembly occupancy mixed with a group E educational occupancy or a group I institutional occupancy;

(D) any group E educational occupancy, including any day care facility for more than 24 persons;

(E) any group I institutional occupancy, including any state or other governmental entity's detention facilities, and any occupancy physically attached to a group I occupancy regardless of fire barrier separation; and

(F) any group R-1 or R-2 residential occupancy that is three or more stories in height, including basements, or more than 12,000 square feet in area, and any R-4 residential occupancy.

(b) The following shall be required on all code footprints:

(1) A graphic bar scale;

(2) a north directional indicator;

(3) a complete building floor plan, with a clear identification of new, remodeled, and existing portions;

(4) identification of all permanent partitions taller than six feet;

(5) a label with plain text, keynotes, or legends for each room and space;

(6) the occupant load of assembly rooms and total occupant load for each floor level;

(7) identification of openings and ratings of stair and shaft enclosures;

(8) identification of openings and ratings of corridors and openings;

(9) identification of occupancy and area separations;

(10) identification of all horizontal exit arrangements, exit passageways, and smoke compartments;

(11) identification of all required exterior exits and exit capacity;

(12) the location of the central fire alarm control panel and any remote annunciator panels;

(13) the location of each fire department supply connection;

(14) the location of fire department access roads and fire hydrants;

(15) the distances to property line and exposures;

(16) identification of any special hazards or conditions; and

(17) the location of any anticipated future additions.

(c) The following narrative information shall be required on each code footprint submitted:

(1) The project construction purpose: new, addition, change in use, renovation, or other;

(2) the reason for submittal: new construction, new licensure, certificate of occupancy, or plan of correction for existing code deficiencies;

(3) the code or codes used;

(4) the street address, city, state, zip code, and county of the building;

(5) the name, address, city, state, zip code, phone number, and fax number of the owner;

(6) the date developed and any revision dates;

(7) the name, address, city, state, zip code, phone number, and fax number of the designer;

(8) the designer's seal (RA or PE);

(9) the name of the responding fire service;

(10) the name of the local building inspection department, if available;

(11) each occupancy group and type;

(12) the type of construction;

(13) the structural code requirements, including the following:

(A) The total floor area of each occupancy, both actual and allowable;

(B) height and area limitations, both actual and allowable; and

(C) structural fire ratings, both actual and allowable;

(14) identification of active fire safety features, including the following:

(A) The type of automatic suppression systems and locations;

(B) the fire alarm signaling system;

(C) emergency lighting and power features; and

(D) the smoke control system;

(15) water supply requirements of the facility for fire suppression; and

(16) alternative methods of design or construction, or both. (Authorized by and implementing K.S.A. 31-133; effective July 9, 2004.)

Article 2.—REGULATORY STANDARD FOR TANK VEHICLES FOR FLAMMABLE AND COMBUSTIBLE LIQUIDS

22-2-1. (Authorized by and implementing K.S.A. 1989 Supp. 31-133 as amended by L. 1990, Ch. 135, Sec. 1; effective May 1, 1981; amended May 1, 1986; amended Jan. 21, 1991; revoked May 10, 1993.)

Article 3.—LIFE SAFETY CODE

22-3-1. (Authorized by and implementing K.S.A. 1984 Supp. 31-133; effective May 1, 1980; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended Aug. 28, 1989; revoked May 10, 1993.)

22-3-2. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective Aug. 28, 1989; amended Sept. 17, 1990; revoked May 10, 1993.)

Article 4.—EXPLOSIVE MATERIALS

22-4-1. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1980; amended May 1, 1985; amended May 1, 1986; amended Sept. 17, 1990; revoked May 10, 1993.)

22-4-2. (Authorized by and implementing K.S.A. 1988 Supp. 31-133; effective Nov. 27, 1989; revoked Oct. 18, 2013.)

22-4-3. (Authorized by and implementing K.S.A. 1988 Supp. 31-133; effective Nov. 27, 1989; revoked Oct. 18, 2013.)

22-4-4. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective Sept. 17, 1990; revoked Oct. 18, 2013.)

22-4-5. Adoption by reference. (a) The 2013 edition of NFPA 495, “explosive materials code,” published by the national fire protection association (NFPA), is hereby adopted by reference, with the alterations specified in subsections (b) through (d).

(b) The following provisions shall be excluded from adoption:

- (1) All material before chapter 1 and all annexes;
- (2) chapters 2, 8, and 12;
- (3)(A) The last sentence of section 1.3.1;
- (B) sections 1.4 through 1.4.3; and
- (C) section 1.6;
- (4)(A) The last sentence of section 3.1;
- (B) section 3.2.1; and
- (C) sections 3.2.3 through 3.2.7;
- (5)(A) Section 4.1.7;
- (B) sections 4.2.3.1 through 4.2.3.3;
- (C) sections 4.7.2 through 4.7.4;
- (D) section 4.8.2; and
- (E) section 4.10.2;
- (6) section 5.2.13.2;
- (7)(A) Sections 6.3 through 6.3.5; and
- (B) sections 6.6 through 6.6.8;
- (8) sections 7.3 through 7.3.2;
- (9) section 10.3.8.1;
- (10) section 11.4.3;
- (11) section 13.1.2; and
- (12)(A) Sections 14.1 through 14.3.8;
- (B) sections 14.4.1 through 14.4.4; and
- (C) sections 14.4.8 through 14.5.9.

(c) The following modifications shall be made to NFPA 495:

(1) Section 1.3.2 shall be replaced with the following: “This code shall not apply to the transportation and use of military explosives by federal or state military agencies, nor shall this code apply to the use of explosive materials by federal, state, or municipal agencies while engaged in public safety functions, except that state and municipal agencies shall be subject to the storage, recordkeeping, and permitting requirements of this code.”

(2) In section 1.3.5, the phrase “as defined in NFPA 1122, Code for Model Rocketry; NFPA 1125, Code for the Manufacture of Model Rocket and High Power Rocket Motors; and NFPA 1127, Code for High Power Rocketry” shall be deleted.

(3) The following text shall be added after section 1.3.6:

“This code shall not apply to small arms ammunition and components of small arms ammunition, but this code shall apply to the manufacture of smokeless propellants and black powder substitutes and to smokeless propellants and black powder substitutes not designed for use in small arms ammunition.

“This code shall not apply to commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnical fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. §921(a)(16) or in antique devices exempted from the term ‘destructive device’ in 18 U.S.C. §921(a)(4).

“This code shall not apply to the use, storage, or transportation of precursor chemicals used for agricultural purposes other than blasting, or to fertilizers and fertilizer materials regulated by the Kansas department of agriculture pursuant to K.S.A. 2-1201 et seq., and amendments thereto, except that thefts of ammonium nitrate shall be reported to the office of the state fire marshal and to a local law enforcement authority within 24 hours of discovering the theft.”

(4) In section 3.2.2, the definition of “Authority Having Jurisdiction (AHJ)” shall be replaced with the following: “The state fire marshal or designee, except when the context indicates that the term is referring to a local fire department or law enforcement agency.”

(5) In section 3.3.8, the definition of blasting agent shall be replaced with the following: “Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive, provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.”

(6) Section 3.3.20 shall be replaced with the following: “Explosive. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term shall also include two or more precursor chemicals sold or possessed together that if mixed or combined would constitute a binary explosive.”

(7) Section 3.3.49 shall be replaced with the following: “Small arms ammunition and components of small arms ammunition. Small arms ammunition or cartridge cases, primers, or smokeless propellants designed for use in small arms, including percussion caps, and $\frac{3}{32}$ inch and other external burning pyrotechnic hobby fuses. The term shall

not include black powder, but shall include black powder substitutes provided the propellant is a component of small arms ammunition.”

(8) Section 4.2.1 shall be replaced with the following: “No person shall be in possession of explosive materials, or conduct an operation or activity requiring the use of explosive materials, or perform or supervise the loading and firing of explosive materials without first obtaining the correct permit or permits from the state fire marshal.”

(9) Section 4.2.4 shall be replaced with the following: “Each permitted manufacturer, distributor, and user in the state shall maintain continuous general liability coverage that includes coverage for intentional blasting of not less than \$1,000,000 from an insurance company authorized by the Kansas insurance department to do business in Kansas and shall annually provide proof of this insurance to the state fire marshal.”

(10) Section 4.3.1 shall be replaced with the following sentence: “Before a person conducts an operation or activity that uses explosive materials in the state, the person shall obtain a user permit from the state fire marshal.”

(11) Section 4.3.2 shall be replaced with the following sentence: “Before an individual performs or supervises the loading and firing of explosive materials in the state, that individual shall obtain the appropriate permit to blast, as specified in Table 4.3.2, from the state fire marshal, except that this requirement shall not apply to a trainee who is acting under the direct supervision of and is being trained by the holder of a blaster permit.”

(12) The following classes of blasting permits shall be added to table 4.3.2:

(A) Class P1 permit. The category name for this permit shall be “Public Safety, Bomb Technician.” The permit shall allow “blasting by a bomb technician acting on behalf of the state or a political or taxing subdivision in a public safety capacity.”

(B) Class P2 permit. The category name for this permit shall be “Public Safety, Explosive Breacher.” The permit shall allow “explosive breaching by a person acting on behalf of the state or a political or taxing subdivision in a public safety capacity.”

(13) The following text shall be added after section 4.3.2:

“Permit to Manufacture. Before a person manufactures explosive materials in the state, that person shall obtain a manufacturer permit from the state fire marshal. A holder of a manufacturer permit shall not be required to obtain a distributor or user permit.

“Permit to Distribute. Before a person engages in the business of distributing explosive materials within the state, that person shall obtain a distributor permit from the state fire marshal, except that this requirement shall not apply to common carriers or to an out-of-state person who distributes explosive materials to the holder of a manufacturer or distributor permit. ‘Distributing’ shall mean the selling, issuing, giving, transferring, or other disposing of. A holder of a distributor permit shall not be required to obtain a user permit.

“Handler Permit. Before an individual, other than the holder of a blaster permit, actually or constructively possesses explosive materials in the state, that individual shall obtain a handler permit from the state fire marshal, except that a handler permit shall not be required to handle explosive materials under the direct supervision of the holder of a blaster permit. ‘Direct supervision’ shall mean that the holder of the blaster permit is physically present and overseeing the actions of the employee. Actual possession shall include the physical handling of explosive materials. Permitted handlers may include individuals who load or unload vehicles, trainees, magazine keepers, drillers, stemmers and sales staff.

“Storage Permit. Before a person stores explosive materials in the state, that person shall obtain a site-specific storage permit. The storage permit may be temporary or permanent. A permanent storage permit shall be valid for no longer than three years. A temporary storage permit shall be valid for no longer than 90 days, but the permit holder may apply to the office of the state fire marshal to renew the permit one time for no longer than an additional 90 days. Before either storage permit will be issued, the person shall obtain a manufacturer, distributor, or user permit from the state fire marshal, any explosive permit required by the bureau of alcohol, tobacco, firearms and explosives, and a certification from the fire department with jurisdiction over the area where the storage site will be located that the proposed storage of explosive materials will not violate any local laws.”

(14) Section 4.4.2.1 shall be replaced with the following: “Each applicant shall complete a blaster training program and pass a qualifying examination in the category of blasting for which application is made. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal. To be approved by

the office of the state fire marshal, a blaster training program or blaster refresher course shall provide training on the following topics, as applicable to the category of blasting for which application is made: the requirements of this code; federal explosives law and regulations; and industry standards related to the safe use, storage, and transportation of explosive materials.”

(15) Section 4.4.2.2 shall be replaced with the following: “To be approved by the office of the state fire marshal, a qualifying examination shall test the applicant’s knowledge of the following topics, as applicable to the category of blasting for which application is made: the requirements of this code; federal explosives law and regulations; and industry standards related to the safe use, storage, and transportation of explosive materials.”

(16) Section 4.4.5 shall be replaced with the following: “Each person whose permit to blast has been revoked shall be required to complete a blaster training program and pass a qualifying examination of a condition of reinstatement of the permit. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal.”

(17) Section 4.4.6 shall be replaced with the following: “Each person whose permit to blast has lapsed for a period of one year or longer shall be required to complete a blaster training program and pass a qualifying examination as a condition of renewal of the permit. The blaster training program and qualifying examination shall be approved in advance by the office of the state fire marshal.”

(18) The following text shall be added after section 4.4.6:

“If the holder of a blaster or handler permit ceases to be employed by a permitted manufacturer, distributor, or user, the blaster or handler shall notify the office of the state fire marshal within five business days, and the individual’s permit shall be placed on inactive status. The individual shall not blast or handle explosive materials while the permit is on inactive status. Before resuming work with a permitted manufacturer, distributor, or user, the blaster or handler shall notify the office of the state fire marshal, and the permit shall be returned to active status. However, if the permit has been on inactive status for at least one year, the holder shall complete an approved blaster refresher class for a blaster permit or an approved explosive safety course for a handler permit before the permit is returned to active status.

“Requirement for a Handler Permit. Before applying for or renewing a handler permit, an individual shall complete an explosive safety course approved by the state fire marshal. The explosive safety course shall provide training on the safe handling, storage, and transportation of explosive materials.”

(19) Sections 4.5.1 and 4.5.2 shall be replaced with the following sentence: “The holder of any permit or permits issued pursuant to this code shall maintain a copy of the permit or permits at all sites where explosive materials are stored or used and in any vehicle used to transport explosive materials.”

(20) Section 4.6.2 shall be replaced with the following sentence: “An individual shall be at least 18 years old before applying for a handler permit and at least 21 years old before applying for a blaster permit.”

(21) In section 4.7.1(3), “is a fugitive from justice” shall be replaced with “has fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.”

(22) Section 4.8.1.1 shall be replaced with the following sentence: “Permit holders shall keep records in accordance with 27 C.F.R. Part 555, Subpart G, as adopted by reference in K.A.R. 22-4-5.”

(23) Section 4.10.1 shall be replaced with the following: “When an application for renewal is filed with the office of the state fire marshal before expiration of the current permit, the existing permit shall not expire until the state fire marshal has taken final action upon the application for renewal or, if the state fire marshal’s action is unfavorable, until the last day for seeking judicial review of the state fire marshal’s action or a later date fixed by the reviewing court.”

(24) The following sentence shall be added after section 4.10.3: “Before applying for renewal, the holder of a blaster permit shall complete a blaster refresher course approved by the state fire marshal and the holder of a handler permit shall complete an explosive safety course approved by the state fire marshal.”

(25) Section 5.4.4.1.2 shall be replaced with the following: “The integrity of the fences and gates shall be checked at least annually.”

(26) In section 5.4.7, the phrase “and the IAPMO Uniform Mechanical Code” shall be deleted.

(27) Section 9.7.2 shall be replaced with the following: “All magazines containing explosive materials shall be opened and inspected at maximum intervals of seven days to determine whether there

has been unauthorized or attempted entry into the magazines or whether there has been unauthorized removal of the magazines or their contents.”

(28) The following sentence shall be added before section 10.1: “A holder of a user permit shall notify the office of the state fire marshal at least 48 hours before beginning blasting operations at a site and before resuming blasting operations at a site if those operations have been suspended or discontinued for more than six months.”

(29) Section 10.1.19.1(2) shall be replaced with the following: “Compliance with the safe distances in safety library publication 20, ‘safety guide for the prevention of radio frequency radiation hazards in the use of commercial electric detonators (blasting caps),’ published by the institute of makers of explosives (IME) and dated December 2011, parts II and III of which are hereby adopted by reference, with the exception of all text before table 1 and pages 36 through 38.”

(30) Section 11.1.1 shall be replaced with the following: “This chapter shall apply to buildings and other structures. As used in this chapter, ‘buildings and other structures’ shall mean dwellings, public buildings, schools, places of worship, and commercial or institutional buildings.”

(31) In section 11.1.3, all text after “with” shall be replaced with “the international society of explosives engineers’ ‘ISEE performance specifications for blasting seismographs,’ 2011 edition.”

(32) In section 11.1.4, the phrase “2009 edition” shall be added at the end of the sentence.

(33) The following text shall be added after section 11.1.4:

“The blaster-in-charge or designee shall conduct a preblast survey of all buildings and structures within a scaled distance of 35 ft/lbs^{1/2} from the blast site, except that a preblast survey shall not be required for a building or structure if the owner refuses permission or if the owner does not respond after three documented attempts to obtain permission.

“Where blasting seismographs are used, the permitted user shall maintain the seismograph recording and accompanying records for at least three years. These records shall include the maximum ground vibration and acoustics levels recorded, the specific location of the seismograph equipment, its distance from the detonation of the explosives, the date and time of the recording, the name of the individual responsible for operation of the seismograph equipment, the type of seismograph instrument, its sensitivity, and the

calibration signal or certification date of the last calibration.”

(34) Section 11.2.3 shall be replaced with the following sentence: “The ground vibration limit for underground utilities, pipelines, fiber optic lines, and similar buried engineered structures shall be five inches per second.”

(35) Section 11.4.2 shall be replaced with the following: “Reasonable precautions shall be taken to prevent flyrock from being propelled from the blast site onto property not contracted by the blasting operation or onto property for which the owner has not provided a written waiver to the blasting operation.”

(36) The following text shall be added at the end of chapter 11: “The blaster-in-charge shall ensure that a record of each use of explosives is made, and this record shall be retained for at least three years by the permitted user. The record shall include:

“(A) The name and permit number of the permitted user;

“(B) the location, date, and time of the detonation;

“(C) the name and permit number of the blaster-in-charge;

“(D) the type of materials blasted;

“(E) the type of explosives used;

“(F) the weight of each explosive product used and the total weight of explosives used;

“(G) the maximum weight of explosives detonated within any eight-millisecond period;

“(H) the initiation system, including the number of circuits and the timer interval, if a sequential timer is used;

“(I) the type of detonator and delay periods used, in milliseconds;

“(J) the sketch of delay pattern, including decking;

“(K) the distance and scaled distance, if applicable, to the nearest building or structure;

“(L) the location of the nearest building or structure, using the best available information; and

“(M) if bore holes are used, the number of bore holes, burden, and spacing; the diameter and depth of bore holes; and the type and length of stemming.”

(37) Section 13.1.1 shall be replaced with the following sentence: “Two or more precursor chemicals that would constitute a binary explosive if mixed or combined shall be stored and used in the same manner as other explosive materials.”

(38) Section 13.4.2 shall be replaced with the following: “Thefts of precursor chemicals during transportation, storage, and use shall be reported to the office of the state fire marshal, the bureau of alcohol, tobacco, firearms and explosives, and a local law enforcement agency.”

(d)(1) Each citation in NFPA 495 to the following codes shall mean the edition adopted by reference in K.A.R. 22-1-3:

(A) NFPA 13, “standard for the installation of sprinkler systems”; and

(B) NFPA 70, “national electric code.”

(2) Each citation in NFPA 495 to the following codes shall mean the edition adopted by reference in K.A.R. 22-6-20:

(A) NFPA 1123, “code for fireworks display”; and

(B) NFPA 1124, “code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles”; and

(C) NFPA 1126, “standard for the use of pyrotechnics before a proximate audience.”

(3) Each citation of NFPA 1, “fire code,” shall be replaced by “the international fire code (IFC) as adopted by reference in K.A.R. 22-1-3.”

(4) Each citation of NFPA 5000, “building construction and safety code,” shall be replaced by “the international building code (IBC) as adopted by reference in K.A.R. 22-1-3.”

(e) 27 C.F.R. part 555, subpart G, as in effect on April 27, 2012, is hereby adopted by reference, with the following modifications:

(1) 27 C.F.R. 555.121(b), 555.122, 555.123(f), 555.124(f), 555.125(a), (b)(2), and (b)(6), 555.126, and 555.129 are not adopted.

(2) In 27 C.F.R. 555.121(c), the last sentence shall be deleted.

(3) In 27 C.F.R. 555.127, all text after “end of the day” shall be deleted.

(4) In 27 C.F.R. 555.128, the last sentence shall be replaced with the following sentence: “Copies of the records shall be delivered to the office of the state fire marshal within 30 days following the discontinuance of the business or operations.”

(5) Wherever the term “Director, Industry Operations” appears in subpart G, this term shall be replaced with “state fire marshal.”

(6) Each reference to a “licensed manufacturer” shall mean a “person with a state manufacturer permit.” Each reference to a “licensed dealer” shall mean a “person with a state distributor permit.”

(7) Each reference to a “limited permit” shall be deleted.

(f) Each existing user permit and each existing blaster permit issued by the state fire marshal shall be deemed valid and shall remain effective until the permit’s expiration date, unless the permit is revoked or suspended before then. (Authorized by and implementing K.S.A. 2012 Supp. 31-133; effective, T-22-6-28-13, June 28, 2013; effective Oct. 18, 2013.)

Article 5.—FIRE REPORTING REQUIREMENTS

22-5-1. Reporting of incidents and casualties. (a) The chief of any organized fire department, regular or volunteer, or the chief law enforcement officer where no fire department exists shall submit the following reports to the state fire marshal for each incident occurring in the chief’s municipality or fire district territory:

(1) An incident report for each incident where a response is made, regardless of whether an actual fire occurred;

(2) casualty reports for each civilian casualty (injury or death) that occurs as the result of any fire or explosion; and

(3) casualty reports for each firefighter casualty (injury or death) that occurs while acting in an official role as a firefighter.

(b) Each report shall be submitted by the 20th of the month following the incident.

(c) After January 1, 1984, Kansas uniform fire incident reporting system (K-FIRS) incident and casualty report forms shall be the only approved report forms, except that: (1) a municipality or fire district territory that can provide a machine readable medium which has been approved in writing by the state fire marshal may report by the machine readable medium; and (2) only the incident and casualty report forms will be accepted from a fire department after the fire department has complete training on the forms. (Authorized by and implementing K.S.A. 1984 Supp. 31-133(a)(6); effective May 1, 1980; amended May 1, 1982; amended May 1, 1986.)

22-5-2. Reporting of fire deaths. It shall be the duty of the chief of any organized fire department, regular or volunteer, or the chief law enforcement officer where no fire department exists, to report the name and address of any firefighter or other person who dies as a result of any fire or explosion in his or her municipality or fire district territory to the state fire marshal by telephone within seventy-two (72) hours. Telephone

notification does not relieve the fire department of other reporting requirements. (Authorized by and implementing K.S.A. 31-133(a)(6); effective May 1, 1980; amended May 1, 1982.)

22-5-3. Reporting of fire losses by insurance companies. (a) Definitions.

(1) Annual report means a report submitted to the state fire marshal by a company setting forth the total number of fire losses and the total amount of losses paid for one calendar year.

(2) Company means a property or casualty insurance company transacting business in Kansas.

(3) FDID means a fire department identification number. Each fire department in Kansas shall be assigned an FDID.

(4) KILR form means the current edition of the Kansas insurance loss report form used by companies that do not use the PILR to report fire losses to the state fire marshal.

(5) Machine readable medium means a form that is readable by electronic data processing machines.

(6) PILR means the property insurance loss register reporting service of the American insurance association.

(7) PILR form means the reporting form used by PILR subscribers to report fire losses as approved by the state fire marshal.

(8) Reportable fire means a fire in Kansas that damages any property, dwelling, building, automobile, cropland, contents, and other such items, and that results in five hundred dollars (\$500) or more in loss.

(9) Reporting service means a service provided by a third party to a company, such as adjusting services or bureaus that report to the state fire marshal on behalf of a company, including PILR. (Authorized by and implementing K.S.A. 40-2,110; effective, E-82-4, Jan. 21, 1981; effective May 1, 1981; amended May 10, 1993.)

22-5-4. General requirements. (a) Only the PILR or KILR forms shall be used to report fire loss to the state fire marshal, except that a company or reporting service that can provide a machine readable medium which has been approved in writing by the state fire marshal may report by this machine readable medium.

(1) A PILR or KILR form shall be submitted for every fire loss over five hundred dollars (\$500) that occurs in Kansas.

(2) PILR and KILR forms that are submitted by a company or reporting service shall be submitted

to the state fire marshal no later than the 20th of the month following the report of the loss to the company.

(3) When a company has no losses to report to the state fire marshal, a PILR or KILR form shall be submitted that indicates "no losses" and the month and year for which it applies.

(b) FDID. Each KILR form reporting a loss to the state fire marshal shall contain the FDID and the name of the fire department in whose jurisdiction the loss occurred.

(c) Each PILR form shall contain the FDID and fire department name in the "Property Insurance Loss Register" box on the upper left corner of the PILR form.

(d) The information specified in (a) (2) and (3) is necessary even if the fire department did not respond. If no fire department protects the property, enter "None" in place of the FDID. (Authorized by and implementing K.S.A. 1980 Supp. 40-2,110; effective, E-82-4, Jan. 21, 1981; effective May 1, 1981.)

22-5-5. Reports. (a) Reporting of losses by companies not subscribing to a reporting service.

(1) A company shall report its losses directly to the state fire marshal except as noted in K.A.R. 22-5-4. Reports shall be submitted to the state fire marshal with postage paid.

(2) A company shall not be in compliance with these regulations until the applicable forms have been received in the office of the state fire marshal.

(b) Reporting of losses by companies subscribing to a reporting service. (1) A company may use a reporting service to report its losses to the state fire marshal instead of reporting directly to the state fire marshal.

(2) A company using a reporting service shall not be in compliance with these regulations until the applicable forms have been received by the state fire marshal from the reporting service.

(c) Annual report. Each company shall complete and submit an annual report to the state fire marshal no later than May 15 of the year immediately following the year being reported. This annual report shall contain the actual number of fire losses paid, and the total amount of fire dollar losses paid by the company. (Authorized by and implementing K.S.A. 1980 Supp. 40-2,110; effective, E-82-4, Jan. 21, 1981; effective May 1, 1981.)

22-5-6. Reporting of burn wounds. Hospitals which treat burn patients and doctors or other

health care providers who treat burn patients at any location other than a hospital shall report all second- and third-degree burn wounds involving 20% or more of the victim's body and requiring hospitalization of the victim to the state fire marshal on forms provided by the state fire marshal. Each report shall be mailed no later than the Monday following the date of the first treatment of any wound. (Authorized by and implementing L. 1988, Ch. 127, Sec. 1(7); effective May 1, 1986; amended Aug. 28, 1989.)

Article 6.—FIREWORKS

22-6-1. Definitions; exclusions. (a)(1) “Fireworks” shall have the meaning specified in national fire protection association standard no. 1123, which is adopted by reference in K.A.R. 22-6-20.

(A) “Consumer fireworks” shall have the meaning specified in national fire protection association standard no. 1123, which is adopted by reference in K.A.R. 22-6-20.

(B) “Display fireworks” shall have the meaning specified in national fire protection association standard no. 1123, which is adopted by reference in K.A.R. 22-6-20.

(C) “Pyrotechnic article” shall have the meaning specified in national fire protection association standard no. 1124, which is adopted by reference in K.A.R. 22-6-20.

(2) “Novelties” shall have the meaning specified in the American pyrotechnic association standard no. 87-1, which is adopted by reference in K.A.R. 22-6-20.

(3) “Responsible person” means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.

(b) Nothing in these regulations shall apply to the following:

(1) Toy smoke devices as defined in the American pyrotechnic association standard no. 87-1, section 3.2.3;

(2) toy paper caps as defined in the American pyrotechnic association standard no. 87-1, section 3.3;

(3) the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation;

(4) the military or naval forces of the United States or of this state, or peace officers; and

(5) the sale or use of blank cartridges for ceremonial or theatrical or athletic events. (Authorized

by and implementing K.S.A. 2007 Supp. 31-133; effective Jan. 1, 1973; amended Dec. 29, 2008.)

22-6-2. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked Dec. 29, 2008.)

22-6-3. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked Dec. 29, 2008.)

22-6-4. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked Dec. 29, 2008.)

22-6-5. Sale; days permitted. A seasonal retailer shall not sell fireworks, except during the fireworks season. The fireworks season shall be the period beginning on June 27 and ending on July 5 of each calendar year. (Authorized by K.S.A. 2007 Supp. 31-506; implementing K.S.A. 2007 Supp. 31-502; effective Jan. 1, 1973; amended May 1, 1985; amended May 1, 1986; amended Dec. 29, 2008.)

22-6-6. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked Dec. 29, 2008.)

22-6-7. (Authorized by and implementing K.S.A. 31-133; effective Jan. 1, 1973; amended May 1, 1983; revoked Dec. 29, 2008.)

22-6-8. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked Dec. 29, 2008.)

22-6-9. Discharge of fireworks. (a) A person shall not ignite or discharge fireworks into, under, or from a car or vehicle, whether moving or standing still, or on a public roadway or the right-of-way adjoining a public roadway.

(b) Fireworks shall not be discharged within 100 feet of any “place of institution,” as defined by national fire protection association standard no. 101, which is adopted by reference in K.A.R. 22-1-3, or any retail fireworks stand or facility where fireworks are stored. (Authorized by and implementing K.S.A. 2007 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; amended Dec. 29, 2008.)

22-6-10. (Authorized by K.S.A. 1984 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; revoked May 10, 1993.)

22-6-11. (Authorized by K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked May 1, 1983.)

22-6-12. (Authorized by and implementing K.S.A. 2007 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; amended Dec. 29, 2008; revoked April 6, 2018.)

22-6-13. (Authorized by and implementing K.S.A. 1984 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; revoked Dec. 29, 2008.)

22-6-14. (Authorized by and implementing K.S.A. 1984 Supp. 31-133; effective Jan. 1, 1973; amended May 1, 1986; revoked Dec. 29, 2008.)

22-6-15. (Authorized by K.S.A. 31-133; effective Jan. 1, 1973; amended, E-80-9, June 21, 1979; revoked May 1, 1980.)

22-6-16. (Authorized by and implementing K.S.A. 31-133, 31-155, 31-156; effective May 1, 1982; amended May 1, 1983; revoked April 6, 2018.)

22-6-17. (Authorized by and implementing K.S.A. 31-133; effective Aug. 28, 1989; revoked May 10, 1993.)

22-6-18. Records. (a) Each licensee with a permit to store display fireworks shall keep an accurate inventory of all firework materials on hand.

(b) Each operator of a temporary retail stand shall maintain a list of what consumer firework items are on the premises, indicating the Kansas licensed distributor from whom those items were purchased. This list shall be provided to law enforcement, the fire department, or the local authority, upon request. (Authorized by K.S.A. 2007 Supp. 31-133 and 31-506; implementing K.S.A. 2007 Supp. 31-133 and 31-505; effective Dec. 29, 2008.)

22-6-19. Purchase of display fireworks in another state. (a) Any person who holds a valid Kansas display operator license pursuant to K.A.R. 22-6-24 may purchase display fireworks from a federally licensed dealer located in a state other than Kansas and may have display fireworks purchased in that state transported to a permitted firework storage site in Kansas.

(b) A person who holds a Kansas display operator license shall not transport display fireworks across a state line in that person's own transport vehicle unless that person also holds a valid permit issued by the bureau of alcohol, tobacco, firearms, and explosives authorizing this activity. (Authorized by and implementing K.S.A. 2007 Supp. 31-133; effective Dec. 29, 2008.)

22-6-20. Adoptions by reference. (a) The following national fire protection association codes and standards are hereby adopted by reference, with the following modifications and the modifications specified in subsection (b):

(1) No. 160, "standard for the use of flame effects before an audience," 2011 edition, with the following modifications:

(A) Section 1.3.5 shall be deleted; and

(B) section 8.1.2 shall be deleted and replaced with the following: "Each operator shall be licensed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-25.";

(2) no. 1123, "code for fireworks display," 2014 edition, except that sections 10.1.1 through 10.1.3 shall be deleted and replaced with the following: "Each operator shall be licensed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-24.";

(3) no. 1124, "code for the manufacture, transportation, storage, and retail sales of fireworks and pyrotechnic articles," 2006 edition, with the following modifications:

(A) In section 4.3.3.1, the words "to the Office of the State Fire Marshal" shall be added before the words "and to local law enforcement authorities";

(B) in section 5.1.1.2(1), the words "that are not bullet sensitive" shall be deleted;

(C) in section 6.2.7.1, the words "using an approved test sampling plan" shall be deleted and replaced by the following: "or a CPSC-approved test sampling plan shall be used";

(D) sections 6.5.2.3, 6.5.2.4, 6.14.4, 7.3.19.4, and 7.4.6.3 shall be deleted;

(E) in section 7.3.14.1.1, the text "three or as determined in accordance with NFPA 101, Life Safety Code, whichever number is greater" shall be deleted and replaced by the following: "two, or as determined in accordance with the international fire code, which is adopted by reference in K.A.R. 22-1-3, whichever number is greater"; and

(F) in section 7.3.15.6, the word "horizontally" shall be inserted before "ejected pyrotechnic components"; and

(4) no. 1126, "standard for the use of pyrotechnics before a proximate audience," 2011 edition, with the following modifications:

(A) Section 1.3.5.2 shall be deleted; and

(B) sections 6.5.1 through 6.5.1.2 shall be deleted and replaced with the following: "Each operator shall be licensed in accordance with K.S.A. 2015 Supp. 31-503, and amendments thereto, and K.A.R. 22-6-25."

(b) The following modifications shall be made to the codes and standards adopted in subsection (a):

(1) All material before the first chapter shall be excluded from adoption.

(2) All annexes shall be excluded from adoption.

(3) Chapter 2, “referenced publications,” shall be excluded from adoption.

(4) All indexes and all material after the indexes shall be excluded from adoption.

(5) The last sentence of section 3.1 in each code or standard shall be excluded from adoption.

(6) Each reference to a code or standard adopted in article 1 shall mean the edition of that code or standard adopted in that article.

(7) Each reference to a code or standard adopted in this regulation shall mean the edition of that code or standard adopted in this regulation.

(8) The definition of “authority having jurisdiction (AHJ)” in section 3.2.2 shall be replaced with the following: “the state fire marshal or designee,” except when the context indicates that the term is referring to a local fire department or a local law enforcement agency.

(c) Chapter three in American pyrotechnics association standard 87-1, “standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics,” 2001 edition, is hereby adopted by reference, except for the following:

(1) Section 3.8;

(2) section 3.9; and

(3) section 3.10. (Authorized by and implementing K.S.A. 2016 Supp. 31-133 and K.S.A. 2016 Supp. 31-506; effective Dec. 29, 2008; amended April 6, 2018.)

22-6-21. Manufacturing license. (a) Except for any hobbyist manufacturer, each person engaged in the manufacture of fireworks in the state of Kansas shall obtain a license from the office of the state fire marshal.

(b) Each applicant shall indicate which of the following classes the applicant is requesting a license for on the application:

(1) Manufacture of consumer fireworks;

(2) manufacture of display fireworks;

(3) manufacture of pyrotechnic articles; or

(4) unlimited manufacture.

(c) Each applicant shall meet the following requirements:

(1) Provide a list of the name of each individual, owner, partner, and other responsible person in the applicant’s business; and

(2) pay a nonrefundable fee of \$400.

(d) Each manufacturing license shall be valid for one year from the date of issuance.

(e) Each licensee shall keep the original license posted on the manufacturing site at all times while

engaging in manufacturing operations. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(f) Each licensee shall comply with national fire protection standard no. 1124, which is adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2007 Supp. 31-506; implementing K.S.A. 2007 Supp. 31-503; effective Dec. 29, 2008.)

22-6-22. Hobbyist manufacturer license.

(a) Each person engaged in the manufacture of consumer fireworks, display fireworks, or pyrotechnic articles for that individual’s personal use shall obtain a license from the office of the state fire marshal.

(b) Each applicant shall meet the following requirements:

(1) Obtain a valid display operator license pursuant to K.A.R. 22-6-24; and

(2) pay a nonrefundable fee of \$50.

(c) Each licensee shall keep the original license posted on the manufacturing site at all times while engaging in manufacturing operations. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(d) The hobbyist manufacturer license shall be valid for four years from the date of issuance.

(e) The licensee shall comply with national fire protection association standard no. 1124, which is adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2007 Supp. 31-506; implementing K.S.A. 2007 Supp. 31-503; effective Dec. 29, 2008.)

22-6-23. Distributor license. (a) Each person engaged in the distribution of fireworks shall obtain a license from the Kansas state fire marshal’s office.

(b) Each applicant shall indicate which of the following classes the applicant is requesting a license for on the application:

(1) Distributor of consumer fireworks;

(2) distributor of display fireworks;

(3) distributor of pyrotechnic articles; or

(4) unlimited distributor.

(c) Each applicant shall meet the following requirements:

(1) Provide a list of the name of each individual, owner, partner, and other responsible person in the applicant's business; and

(2) pay a nonrefundable fee of \$300.

(d) Each distributor license shall be valid for one year from the date of issuance.

(e) Each licensee shall keep the original license posted on the distribution site at all times while engaging in distribution operations. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(f) A license shall not be required for any of the following:

(1) Anyone who possesses a valid Kansas manufacturing license as specified in K.A.R. 22-6-21;

(2) anyone who transports fireworks from one state to another state through the state of Kansas if the ultimate destination of the fireworks is not within the state of Kansas;

(3) anyone who sells consumer fireworks during a fireworks season as a seasonal retailer;

(4) any freight delivery company or common carrier, as defined in 49 C.F.R. 171.8 on April 15, 1976, as amended; or

(5) any out-of-state person who sells, transports, delivers, or gives fireworks to a Kansas licensed manufacturer or distributor.

(g) Each licensee shall comply with national fire protection association standard nos. 1124 and 1126, which are adopted by reference in K.A.R. 22-6-20, and with all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2007 Supp. 31-506; implementing K.S.A. 2007 Supp. 31-503; effective Dec. 29, 2008.)

22-6-24. Display operator license. (a) Each person who operates an outdoor display of display fireworks, as defined in K.A.R. 22-6-1, shall obtain a license from the office of the state fire marshal.

(b) Each applicant shall meet all of the following requirements:

(1) The applicant shall provide proof of experience in the performance of at least three outdoor displays of display fireworks in the last four years.

(A) For each of the three required displays, each applicant for a new display operator license shall include documentation of participation as an assistant under a display operator who has a valid Kansas license at the time of the displays. The licensed display operator shall provide written verification of the applicant's participation in the display.

(B) For each of the three required displays, each applicant for renewal of the display operator license shall provide a signature from the local jurisdiction, organization sponsoring the display, Kansas licensed distributor who produced the display, or another Kansas licensed operator assisting with the display.

(2) The applicant shall complete a written examination, administered by the state fire marshal, and shall be required to achieve a passing score of at least 80 percent.

(c) The display fireworks operator license shall be valid for four years from the date of issuance.

(d) Each licensee shall keep the original license on the licensee's person at all times while performing duties as a display operator. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(e) No fee shall be charged for a display operator license for any person who is an officer or employee of the state or any political or taxing subdivision of the state if that person is acting on behalf of the state or political or taxing subdivision.

(f) Each licensee shall comply with national fire protection association standard no. 1123, which is adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2016 Supp. 31-506; implementing K.S.A. 2016 Supp. 31-503; effective Dec. 29, 2008; amended April 6, 2018.)

22-6-25. Proximate pyrotechnic operator license. (a) Each person who operates any indoor or outdoor pyrotechnic article, as defined in K.A.R. 22-6-1, shall obtain a license from the state fire marshal.

(b) Each applicant shall indicate which of the following classes the applicant is requesting a license for on the application:

(1) Indoor proximate pyrotechnic operator license;

(2) outdoor proximate pyrotechnic operator license;

(3) flame effect pyrotechnic operator license; or

(4) unlimited proximate pyrotechnic operator license.

(c) Each applicant shall meet all of the following requirements:

(1) The applicant shall provide proof of experience in the performance of at least three pyrotechnic displays in the last four years as follows:

(A) Each display shall be in the class for which licensure is sought. Each applicant for an unlimited proximate pyrotechnic operator license shall demonstrate proficiency in each of the three classes listed in paragraphs (b)(1) through (b)(3) and shall provide proof of experience in the performance of at least two displays in each class.

(B) The use of at least four individual devices of pyrotechnic articles shall be used to qualify as a display.

(C) For each of the displays required for a new proximate pyrotechnic license, the applicant shall acquire a signature from a proximate pyrotechnic operator who had a valid Kansas license for that type of display at the time of the display, verifying that the applicant assisted in the operation of the display.

(D) For each of the displays required for renewal of the proximate pyrotechnic license, the applicant shall acquire a signature from the local jurisdiction, organization sponsoring the display, Kansas licensed distributor who produced the display, or another Kansas licensed proximate pyrotechnic operator licensee assisting with the display.

(2) The applicant shall complete a written examination, administered by the state fire marshal, and shall be required to achieve a passing score of at least 80 percent.

(d) The proximate pyrotechnic operator license shall be valid for four years from the date of issuance.

(e) Each licensee shall keep the original license on the licensee's person at all times while performing duties as a proximate pyrotechnic operator. A copy of the license shall not be accepted as valid proof of licensure if the licensee is questioned by law enforcement, the fire department, or the local authority.

(f) No fee shall be charged for a proximate pyrotechnic operator license for any person who is an officer or employee of the state or any political or taxing subdivision of the state if that person is acting on behalf of the state or political or taxing subdivision.

(g) Each licensee shall comply with national fire protection association standard nos. 160 and 1126, which are adopted by reference in K.A.R. 22-6-20, and all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2016 Supp. 31-506; implementing K.S.A. 2016 Supp. 31-503; effective Dec. 29, 2008; amended April 6, 2018.)

22-6-26. Fireworks storage permit. (a) Each person who stores display fireworks shall

obtain a permit from the state fire marshal. A permit shall not be required for the use of day boxes, as defined in national fire protection association standard no. 1124, which is adopted by reference in K.A.R. 22-6-20, at a display site.

(b) Each applicant shall meet the following requirements:

(1) Hold a valid Kansas license to possess fireworks. The license shall be at least one of the following:

(A) Display operator license;

(B) hobbyist manufacturer license;

(C) manufacturing license;

(D) distributor license; or

(E) proximate pyrotechnic operator license; and

(2) pay a nonrefundable fee of \$25.

(c) Each licensee shall keep the original permit at the location of the storage site. A copy shall not be accepted as a valid permit if the permit holder is questioned by law enforcement, the fire department, or the local authority.

(d) Each storage permit shall be valid for one of the following, whichever occurs first:

(1) Four years from the date of issuance;

(2) the expiration date of the license specified in paragraph (b)(1); or

(3) the date on which the storage site is vacated if the site is vacated before the expiration date of the permit. The permit holder shall notify the Kansas state fire marshal's office and the local authority having jurisdiction when the site is vacated and is no longer in use.

(e) No fee shall be charged for a fireworks storage permit for any person who is an officer or employee of the state or any political taxing subdivision of the state if that person is acting on behalf of the state or political taxing subdivision.

(f) Each licensee shall comply with all local, state, and federal regulations, statutes, and laws. (Authorized by K.S.A. 2007 Supp. 31-506; implementing K.S.A. 2007 Supp. 31-504; effective Dec. 29, 2008.)

22-6-27. Denial, suspension or revocation of permit or license. (a) A license or permit shall be denied issuance, suspended, or revoked by the state fire marshal if the state fire marshal finds that the applicant, licensee, or permit holder meets either of the following conditions:

(1) Has been convicted of a felony; or

(2) knowingly provided false information in conjunction with an application for a license or permit.

(b) A license or permit may be denied issuance, suspended, or revoked by the state fire marshal if the state fire marshal finds that the applicant, licensee, or permit holder meets either of the following conditions:

(1) Violated any provision of any regulation of the state fire marshal; or

(2) failed, neglected, or refused to provide direct supervision over any unlicensed person who assisted in the performance of a fireworks display. (Authorized by and implementing K.S.A. 2007 Supp. 31-133 and 31-506; effective Dec. 29, 2008.)

Article 7.—FLAMMABLE AND COMBUSTIBLE LIQUIDS

22-7-1. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective, E-80-16, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Sept. 17, 1990; revoked May 10, 1993.)

22-7-2. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective, E-80-16, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1987; amended Sept. 17, 1990; revoked May 10, 1993.)

22-7-3. (Authorized by and implementing K.S.A. 1980 Supp. 31-133; effective May 1, 1981; revoked May 10, 1993.)

22-7-4. (Authorized by and implementing K.S.A. 1980 Supp. 31-133; effective May 1, 1981; revoked May 1, 1983.)

22-7-5. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1986; amended Sept. 17, 1990; revoked May 10, 1993.)

22-7-6. Flammable and combustible liquids; applications and checklists. The state fire marshal shall make available on request applications, guidelines, checklists, procedures, applicable regulations and the like regarding the safe storage, use and sale of flammable and combustible liquids as well as the installation and maintenance of related tanks, piping, valves and dispensers. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-7-7. Approval of plans. (a) Except as otherwise provided in this section, before the construction or modification of any installation

for the storage, handling or use of flammable liquids is undertaken, drawings or blueprints made to scale shall be submitted to the state fire marshal with an application, all in duplicate, for approval. Within a reasonable time after receipt of the application with drawings or blueprints, the state fire marshal shall examine the plans and, if found to conform to applicable requirements of the Kansas Fire Prevention Code, shall signify approval of the application either by endorsement thereon or by attachment thereto, retain one copy for the files and forward the second copy to the Kansas Department of Health and Environment for their required approvals and eventual return to the requestor. If the drawings or blueprints do not indicate conformity with the applicable requirements of the Kansas Fire Prevention Code, the state fire marshal shall notify the applicant accordingly. Plans and applications shall be submitted postage paid to the address specified by the state fire marshal.

(b) The plans approval requirement applies to the following:

(1) Each new installation of tanks containing flammable or combustible liquids in the following amounts:

(A) Any state, county or local governmental unit installing tanks of 660 gallons or more capacity;

(B) any Industrial or Business company installing tanks of 660 gallons or more capacity;

(C) any agricultural farm installation of tanks of 1,100 gallons or more capacity; and

(D) any tank installed for the retail sale of flammable or combustible product through dispenser devices;

(2) any modifications to or replacements of tanks or piping at any establishment or facility meeting the requirements of (1); and

(3) any installation of new dispenser locations at any establishments or facility meeting the requirements of (1). This does not include the routine replacement of dispensers at existing sites.

(c) This plans approval requirement is in addition to any local jurisdiction requirements necessary to meet local zoning or permit approval and additional local requirements. In the event of a dispute as to whether or not the drawings or blueprints show conformity with the applicable requirements of these regulations, the local decision can be appealed to the state fire marshal in accordance with statutory provisions.

(d) All submitted drawings shall include the following minimum information:

(1) The name of the person, firm, or corporation proposing the installation, the location thereof and the adjacent streets or highways;

(2) for bulk plants, in addition to any applicable features required under (4) and (5) of this section, the plot of ground to be utilized and its immediate surroundings, including any structures of value located on adjacent properties within 100 feet of the property line, on all sides, the complete layout of buildings, tanks, loading and unloading docks, and the types of construction of each building;

(3) for service stations, in addition to any applicable features required under (4) and (5) of this section, the plot of ground to be utilized and the complete layout of buildings, drives, and dispensing equipment;

(4) for above ground storage, the location and capacity of each tank, the dimensions of each tank, the class and name of liquid to be stored in each tank, the type of any tank supports, the types and sizes of normal and emergency valves, and the location of pumps and other facilities by which the tanks are filled or drained;

(5) in the case of underground storage, the location and capacity of each tank, the class and name of liquid to be stored in each tank, and the location of fill, gauge and vent pipes and openings; and

(6) in the case of installation for storage, handling or use of flammable liquids within the buildings or enclosures at any establishment or occupancy covered in this section, such detail as to show whether applicable requirements are met. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-7-8. Retroactivity. (a) Kansas Fire Prevention Code regulations governing flammable and combustible liquids shall apply uniformly at all new or existing establishments and facilities in Kansas except as modified below. Requirements pertaining to operational practices and use of containers shall apply and be enforced at all new or existing establishments and facilities at or in which flammable or combustible liquids are stored, handled or used as of the effective date of these regulations.

(1) Physical installations shall apply and be enforced at all establishments and facilities erected, constructed, installed or first devoted to flammable or combustible liquid storage, handling or use on or after the effective date of these regulations.

(2) Establishments and facilities in existence prior to the effective date of these regulations shall comply with the following minimum requirements.

(A) The location or arrangement of buildings, tanks, platforms, docks, or spacing or clearances between these installations or between these installations and adjoining property lines, shall not be deemed to be distinctly hazardous and may be continued. When reconstruction or modernization of any noncomplying establishment or facility existing prior to the effective date of these regulations is undertaken, the elimination or correction of such nonconformity shall then be made in the course of such work.

(B) Lack of adequate emergency venting on any above ground tank, or lack of an operable fire valve at any tank opening below the liquid level on above ground tanks of more than 1,100 gallons or on any size above ground tank used for refueling at a service station, is deemed to be distinctly hazardous and shall be corrected or eliminated by no later than January 1, 1994 in all tanks except for crude oil tanks in oil fields, or tanks at refineries or marine or pipeline terminals.

(C) Lack of a liquid level gauge or a suitable means to prevent tank overfilling with the availability of appropriate conversion charts to determine the available capacity of a tank is deemed to be distinctly hazardous, and such system or means shall be installed and operable by no later than October 1, 1993.

(D) Lack of diking of existing above ground tanks to contain a fuel spill of at least 110 percent to the capacity of the largest tank is deemed to be distinctly hazardous, and such diking or containment shall be installed which contains the product at a location away from inhabited buildings or places of high value by no later than January 1, 1994.

(E) Lack of breakaway devices on all dispenser hoses and the secure anchoring of dispensers is deemed to be distinctly hazardous, and such shall be installed, anchored and operable by no later than October 1, 1993.

(F) Lack of a properly installed fire valve underneath a dispenser in a pressurized piping system is deemed to be distinctly hazardous, and such device shall be installed immediately.

(G) Lack of a properly operating solenoid valve installed adjacent to any tank installed at an elevation which produces a gravity head on a dispensing device used to refuel vehicles and in the piping serving any such dispenser is deemed to be distinctly hazardous, and such valve shall be installed by no later than July 1, 1994, or at any prior date when such piping or dispenser is modified or replace.

(H) Lack of a fire valve or vacuum-activated anti-siphon valve installed underneath any suction type dispenser served by above ground tanks at an elevation that produces a gravity head on a dispensing device used to refuel vehicles is deemed to be distinctly hazardous, and either a fire valve or anti-siphon vacuum activated valve shall be installed by no later than July 1, 1994, or at any prior date when such piping or dispenser is modified or replaced.

(I) Lack of substantial collision protection at the end of dispenser islands is determined to be distinctly hazardous, and such protection shall be provided no later than January 1, 1994, or any prior date when dispenser island is modified or upgraded. (Authorized by and implementing K.S.A. 1992 Supp. 31-133; effective May 10, 1993.)

22-7-9. Flammable and combustible liquid transfer responsibility. Each individual conducting the transfer of flammable or combustible liquids from a transport vehicle to a storage tank governed by the Kansas Fire Protection Code shall verify the available capacity of the tank prior to starting any transfer operations, be in attendance during such operations and take the necessary steps to insure that overfilling does not occur. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-7-10. Emergency response training. (a) Each employee involved in fuel transfer into motor vehicles at a retail service station, including attendants and cashiers of self-service stations, upon employment and at least annually thereafter shall receive training from a responsible facility representative or industry organization on the proper procedures to be used in case of fire, overfill, or fuel spill situation. Such training shall include information regarding improper transfer of fuels, types of improper and illegal containers, and instruction of the proper use of fire extinguishers. Documentation of such training shall be maintained and shall be available for inspection upon request by a deputy state fire marshal.

(b) Each establishment or facility involved in fuel transfer into motor vehicles at retail service stations shall have emergency instructions covering fire, overfill or fuel spill procedures posted and readily available in the vicinity of all control consoles or attendant locations. Emergency telephone numbers shall be included on the instructions. The owner or designee of each estab-

lishment or facility is responsible for developing and posting the instructions. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-7-11. Connection of above ground tanks to dispensers used for refueling vehicles. (a) Above ground tanks of no more than 12,000 gallons total capacity may be connected to a dispenser used for refueling vehicles if, by the determination of the state fire marshal, adequate safeguards, including distances to property of value, proper valving and dispenser protection are provided and a reasonable degree of safety is maintained.

(b) Local jurisdictions may supersede this approval through zoning, ordinance or permitting prohibitions against such installations. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

22-7-12. Aboveground abandonment of underground tanks. (a) Any underground tanks previously containing flammable or combustible liquids which are abandoned above ground shall be marked on two sides, in legible numbers not less than eight inches tall, the month, day and year the tank was first abandoned. The local fire department shall be notified of the location of any site where any group of tanks having a combined capacity of more than 12,000 gallons is abandoned.

(b) The tank owner shall be responsible for:

- (1) Purging the tank of vapors;
- (2) insuring that explosive concentrations of vapors cannot gather inside the tank; and
- (3) insuring that no opening of the tank is accessible to children.

(c) Tanks abandoned for more than twelve months shall then be rendered unusable by the tank owner by disassembly or other appropriate means which shall permit the free circulation of air throughout the tank.

(d) No underground tank shall be reinstalled for aboveground use without being certified for such use by meeting the requirements of UL standard 142 or equivalent. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

Article 8.—LIQUEFIED PETROLEUM GASES

22-8-1. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1979;

amended, E-82-28, Dec. 22, 1981; amended May 1, 1984; amended Aug. 28, 1989; amended Sept. 17, 1990; revoked May 10, 1993.)

22-8-2. Required signs at liquefied petroleum gas facilities. Each owner or operator of a liquefied petroleum gas facility shall ensure that the requirements of this regulation are met. (a) Each bulk storage container for liquefied petroleum gas shall be marked with “Flammable LP gas” in letters at least six inches in height. A “No smoking” sign shall be posted within 20 feet of the container area.

(b) A weatherproof sign shall be posted at the main entrance to the facility stating the owner’s name, the address of the facility, the license number of the facility, and an emergency phone number, which shall be answered 24 hours a day and seven days a week. The owner or operator, or designee, shall be available for emergency callback. This sign shall be readable at all times and shall be marked with letters and numbers at least three inches in height. (Authorized by and implementing K.S.A. 2004 Supp. 55-1812; effective May 1, 1979; amended May 1, 1984; amended March 31, 2006.)

22-8-3. Definitions. (a) “End retail user” has the meaning specified in K.S.A. 55-1807, and amendments thereto.

(b) “Interruption of service” has the meaning specified in K.S.A. 55-1807, and amendments thereto.

(c) “Liquefied petroleum gas” has the meaning specified in K.S.A. 55-1807, and amendments thereto. This term is also known as “LP gas” or “LPG.”

(d) “Liquefied petroleum gas facilities” has the meaning specified in K.S.A. 55-1807, and amendments thereto.

(e) “Liquefied petroleum gas marketer” and “marketer” have the meaning specified in K.S.A. 55-1807, and amendments thereto.

(f) “Liquefied petroleum gas system” and “system” have the meaning specified in K.S.A. 55-1807, and amendments thereto.

(g) “LP gas motor fuel” means a material having a vapor pressure not exceeding that allowed for commercial propane composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane, including normal butane and isobutane, and butylenes.

(h) “Major modification” means a 2,000-gallon increase or decrease in the amount of LP gas stor-

age or the relocation of any LP gas bulk storage tank, dispenser, or bulkhead.

(i) “Public transportation vehicle” means a motor vehicle used to transport persons for hire.

(j) “Recognized testing laboratory” means a nationally recognized testing agency approved by the state fire marshal that is staffed by qualified personnel, is properly equipped to conduct safety tests, and is regularly engaged in conducting tests and furnishing inspection and reexamination services.

(k) “Retail distribution of liquefied petroleum gas” has the meaning specified in K.S.A. 55-1807, and amendments thereto.

(l) “Returned to service” has the meaning specified in K.S.A. 55-1807, and amendments thereto.

(m) “Site plans” means a scale drawing of an LP gas marketer’s property showing the location of the site, including the location of the buildings, aboveground or underground tanks, and dispensing units, indicating the distances between all buildings, tanks, and units.

(n) “State fire marshal” means the fire marshal of the state of Kansas. (Authorized by and implementing K.S.A. 55-1812; effective, E-82-28, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1983; amended March 31, 2006.)

22-8-4. (Authorized by and implementing K.S.A. 31-133; effective, E-82-28, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1983; revoked May 2, 2014.)

22-8-5. Application and drawings. Each LP gas marketer who wants to construct a LP gas facility or make a major modification to an existing liquefied petroleum gas facility shall submit an application, on a form provided by the state fire marshal’s office, with drawings to the state fire marshal’s office as specified in this regulation. If required, the marketer shall send a copy of the drawings to the local authority having jurisdiction before the marketer begins the construction or a major modification. (a) Each application shall be accompanied by drawings, which shall be made to scale on paper no larger than 11 inches by 17 inches. The tank drawings and site plan shall be clear and readable and shall show all dimensions. The applicant shall submit the application, drawings, and a review fee of \$35 and shall obtain approval from the state fire marshal before the construction of, or any major modification to, any of the following:

(1) Any bulk storage or transfer facility with an aggregate water capacity of more than 2,000 gallons;

(2) any tank installed for the retail sale of LP gas through dispenser devices;

(3) any portable cylinder storage and filling facility;

(4) any vehicle fuel dispensing station;

(5) any facility where the handling or use of liquefied petroleum gas is undertaken; or

(6) any liquefied petroleum gas service station.

(b) The construction or major modification of any liquefied petroleum gas facility with an aggregate water capacity exceeding 2,000 gallons shall not commence until the application and drawings are reviewed and approved by the state fire marshal.

(c) The requirement to submit drawings for approval shall be in addition to any local jurisdiction's zoning or permit approval requirements and any additional local requirements.

(d) All submitted drawings shall include the following information:

(1) The name of the person, firm, or corporation planning the new or modified LP gas facility, the location of the proposed facility, and the location of the adjacent streets or highways;

(2) for bulk plants, the location of the plot of ground to be utilized and its immediate surroundings, including any structures of value located on adjacent properties within 100 feet of the property line on all sides, and the complete layout of the buildings, tanks, point-of-transfer operations, driveways, and dispensing equipment;

(3) the location, capacity, and dimensions of each tank; the types, sizes, and locations of all valves, including hydrostatic relief and emergency shutoff valves; the location of all lines and pumps; the location of the plot of ground to be utilized; and the complete layout of the buildings, driveways, and dispensing equipment;

(4) the type, size, and location of all appliances piping located below ground and connected to aboveground equipment;

(5) for underground storage, the location and capacity of each tank, the class and name of the liquid to be stored in each tank, and the location of the fill openings, gauges, vent pipes, valves, and regulators;

(6) all details specifically requested in the application; and

(7) any other relevant information deemed necessary by the fire marshal. (Authorized by and implementing K.S.A. 55-1810; effective, E-82-28, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1983; amended March 31, 2006.)

22-8-6. Self service LP stations. Self service LP gas service stations open to the public

except political or state subdivisions shall be prohibited in the state of Kansas. (Authorized by and implementing K.S.A. 31-133; effective, E-82-28, Dec. 22, 1981; effective May 1, 1982.)

22-8-7. (Authorized by and implementing K.S.A. 1985 Supp. 31-133; effective May 1, 1986; amended May 1, 1987; revoked May 2, 2014.)

22-8-8. Inspections. Each liquefied petroleum gas facility licensed under the Kansas propane and safety act shall be inspected by the state fire marshal or the state fire marshal's designee during the application process or during the first year of licensure. After each license renewal, the facility shall be inspected by the state fire marshal or the state fire marshal's designee. (Authorized by and implementing K.S.A. 55-1808 and 55-1812; effective March 31, 2006.)

22-8-9. Approval process for application and drawings. (a) Each submitted application and the accompanying drawings specified in K.A.R. 22-8-5 shall be approved or denied pursuant to K.S.A. 55-1810 and amendments thereto.

(b) If the application or drawings do not indicate substantial conformity to the applicable requirements of the Kansas fire prevention code and the state fire marshal's regulations, the applicant shall be notified in writing that the application is deemed deficient by the state fire marshal. (Authorized by K.S.A. 55-1812; implementing K.S.A. 55-1810; effective March 31, 2006.)

22-8-10. Licensing requirements; classes; renewals. (a) To obtain a license under the Kansas propane safety and licensing act, each applicant shall submit the following to the state fire marshal's office:

(1) An application for each desired license;

(2) proof that the training requirements in K.A.R. 22-8-11 for each desired license have been met; and

(3) proof of continuous general liability insurance coverage of at least \$1,000,000.

(b) The classes of licenses shall be as follows:

(1) A class one dealer license shall be required for the retail distribution of liquefied petroleum gas.

(2) A class two bulk storage site license shall be required for the bulk storage of liquefied petroleum gas.

(3) A class three cylinder transport license shall be required to operate a cylinder delivery service.

(4) A class four cylinder filling license shall be required to operate a cylinder filling facility. For the purpose of this paragraph, "cylinder filling facility" shall include any facility that fills cylinders or sells cylinder valves.

(5) A class five recreational vehicle fueling license shall be required to fuel recreational vehicles or mobile fuel containers.

(6) A class six cylinder exchange cabinet license shall be required to establish a cylinder exchange cabinet or participate in a cylinder program. Each cabinet shall be required to have a new sticker applied to the cabinet annually. Each sticker shall be provided by the state fire marshal's office.

(7) A class seven self-serve liquefied petroleum gas dispensing license shall be required to operate a liquefied petroleum gas fueling facility.

(8) A class eight installation and service of liquefied petroleum gas systems license shall be required to install, maintain, or modify a residential or commercial liquefied petroleum gas distribution and utilization system.

(c) Each license shall expire on September 30 each year.

(d) Any LP gas license may be renewed annually. Each applicant for renewal shall submit the following to the state fire marshal's office on or before July 15:

(1) The renewal form;

(2) proof that the continuing education requirements have been met; and

(3) proof of continuous general liability insurance coverage of at least \$1,000,000. (Authorized by K.S.A. 2016 Supp. 55-1812; implementing K.S.A. 55-1809 and K.S.A. 2016 Supp. 55-1812; effective March 31, 2006; amended April 6, 2018.)

22-8-11. Initial training; instructor and class approval. (a) For each type of initial license sought, each applicant or, if the applicant is not an individual, an agent or employee of the applicant shall complete the required training specified in this regulation.

(b) If the individual who completed the required training specified in this regulation ceases to be an agent or employee of the licensee, another agent or employee of the licensee shall complete the training specified in this regulation within six months of the date the individual who previously completed the training ceased to be an agent or employee of the licensee.

(c) Each instructor and each class shall be approved in advance by the state fire marshal.

(d) Each applicant shall submit proof of successful completion of the following certified employee training program (CETP) or propane education and research council (PERC) courses or equivalent courses approved by the state fire marshal, as applicable, to the state fire marshal's office:

(1) For a class one dealer license, the basic principles and practices class, except that this requirement shall not apply to any applicant seeking a class four or class five license who will not otherwise engage in the retail distribution of liquefied petroleum gas;

(2) for a class two bulk storage site license, the basic plant operations class;

(3) for a class three cylinder transport license, the propane delivery operations and cylinder delivery class or the bobtail delivery operations class;

(4) for a class four cylinder filling license, the dispensing propane safely class;

(5) for a class five recreational vehicle fueling license, the dispensing propane safely class;

(6) for a class six cylinder exchange cabinet license, one of the following:

(A) If the applicant is a cylinder exchange company, the basic principles and practices class; or

(B) if the applicant owns or operates an individual cylinder exchange location, no required training;

(7) for a class seven self-serve liquefied petroleum gas dispensing license, the dispensing propane safely class; and

(8) for a class eight installation and service of liquefied petroleum gas systems license, the basic principles and practices class and one of the following:

(A) The installing appliances and interior vapor distribution systems class;

(B) the designing and installing exterior vapor distribution systems class; or

(C) systems testing training. (Authorized by and implementing K.S.A. 2013 Supp. 55-1812; effective March 31, 2006; amended May 2, 2014.)

22-8-12. Refresher training. (a) Each licensee shall ensure that one of the following occurs at least every three years:

(1) The individual who completed the initial training required by K.A.R. 22-8-11 completes the corresponding refresher training.

(2) An agent or employee of the licensee other than the individual specified in paragraph (a)(1) completes the initial training specified in K.A.R. 22-8-11.

(b) Each instructor and each refresher course shall be approved in advance by the state fire marshal.

(c) Each licensee shall submit proof of compliance with this regulation to renew the license. (Authorized by and implementing K.S.A. 2013 Supp. 55-1812; effective March 31, 2006; amended May 2, 2014.)

22-8-13. Adoption of national codes. The following national fire protection association standards, including the annexes, are hereby adopted by reference: (a) Standard no. 54, “national fuel gas code,” 2006 edition; and

(b) standard no. 58, “liquefied petroleum gas code,” 2008 edition, except that the provisions of chapter 6.25 shall be effective only on and after January 1, 2012. (Authorized by and implementing K.S.A. 2008 Supp. 55-1812; effective March 31, 2006; amended Feb. 4, 2011.)

22-8-14. Interruption of LP gas service.

(a) Each licensee that modifies, repairs, services, or alters an end retail user’s liquefied petroleum gas system shall fill out an “interruption of LP gas service form” for each modification, repair, service, or alteration. The licensee shall require the signature of the customer on the form and shall keep the original form on file for five years. The licensee shall make each form available to the state fire marshal upon request.

(b) The form specified in subsection (a) shall be obtained from or approved by the state fire marshal’s office. This form is also known as an “out of LP gas” form. (Authorized by and implementing K.S.A. 2004 Supp. 55-1812; effective March 31, 2006.)

22-8-17. Public LP gas cylinder exchange cabinets. Each liquefied petroleum gas marketer and each owner or operator of a location with any public LP gas cylinder exchange cabinets shall ensure that the requirements of this regulation are met. (a) Each public LP gas cylinder exchange cabinet shall be located at least 10 feet from any doorway or opening in a building frequented by the public. Each cabinet shall be located at least 20 feet from any automotive fuel dispenser and at least 20 feet from any source of ignition.

(b) Each public LP gas cylinder exchange cabinet shall be protected from vehicle damage. The protection of each cabinet shall consist of guard posts or either tire bumpers or curbs made of concrete.

(1) Each guard post shall be designed and constructed as follows:

(A) Each post shall be constructed of steel that is at least four inches in diameter and is filled with concrete.

(B) The posts shall be spaced not more than four feet apart and at least four feet high from the top edge of the footing hole. A minimum of two posts shall be used.

(C) Each cabinet corner that does not abut a building shall be protected by a post.

(D) Each post shall be set at least three feet deep in a concrete footing that is at least 15 inches in diameter.

(E) Each post shall be painted yellow.

(F) The clearance between the posts and the cabinet shall be at least three feet.

(2) Each tire bumper or curb shall be designed and constructed as follows:

(A) Each bumper or curb shall be made of concrete and shall be at least four feet long.

(B) The premanufactured height of the bumper or curb shall be at least five inches.

(C) Each bumper or curb shall be permanently affixed to the sidewalk or driveway.

(D) The clearance between the cabinet and either the bumper or curb shall be at least three feet.

(E) Each bumper or curb shall be painted yellow.

(c) (1) All emergency information and product information on each public LP gas cylinder exchange cabinet shall be visible and readable from the front of each cabinet and on each cylinder. All company information, including an emergency phone number that is answered 24 hours a day and seven days a week, shall appear on each cabinet and cylinder and shall be readable. Each cabinet shall bear the words “No smoking” and “propane” in letters at least three inches high.

(2) Each exchange cabinet shall bear one or more warning labels that identify the hazards of propane in terms of the categories of health, flammability, and instability to provide basic information to fire-fighting, emergency response, and other personnel. Each warning label shall meet the requirements specified in national fire protection standard no. 704, 2001 edition, including the annexes, which is hereby adopted by reference.

(d) Each cylinder shall remain upright when stored in the exchange cabinet, whether the cylinder is empty, full, or partly full. (Authorized by and implementing K.S.A. 2004 Supp. 55-1812; effective March 31, 2006.)

**Article 9.—EQUIPMENT AND
TRANSPORTATION;
CASINGHEAD GASOLINE**

22-9-1 to 22-9-16. (Authorized by K.S.A. 31-207, 75-1511; effective Jan. 1, 1966; revoked May 1, 1981.)

**Article 10.—INSTALLATION AND
CERTIFICATION STANDARDS FOR
EXTINGUISHING DEVICES**

22-10-1. Certification standards, definitions. (a) “Business” means any person or firm who inspects, services or installs portable fire extinguishers or automatic fire extinguishers for commercial cooking equipment. “Business” does not include any person or authorized agent of the person who installs a portable fire extinguisher for protection of the person’s own property or business or any individual acting as a representative or employee of a certified firm.

(b) “Certificate” means a written document issued by the state fire marshal that authorizes a business to perform the act or acts permitted by these regulations.

(c) “Certified firm” means a business having a valid registration certificate issued by the state fire marshal.

(d) “Charge” means to fill and make a portable fire extinguisher or fixed extinguishing system cylinder or container ready for use.

(e) “Class” or “classes” mean the specific function or functions that a business is authorized to perform under these regulations.

(f) “Department of transportation (DOT) cylinder” means a cylinder manufactured and tested in compliance with specifications of the United States department of transportation.

(g) “Engineered system” means a fixed extinguishing system that requires individual calculation and design to determine the flow rates, nozzle pressure, quantities of extinguishing agent, and the number and types of nozzles and their placement in a specific system.

(h) “Firm” means any person, partnership, corporation, association or business which installs, services, charges, recharges or inspects any portable fire extinguisher or fixed extinguishing system, unless otherwise exempted.

(i) “Fixed extinguishing system” means an automatic fire extinguisher for commercial cooking equipment.

(j) “Hydrostatic testing” means the pressure-testing of cylinders and containers by approved hydrostatic methods.

(k) “Portable fire extinguisher” means a device that contains chemical fluids, powders, or gases for extinguishing fires and has a label of approval attached by a nationally recognized testing laboratory.

(l) “Pre-engineered system” means a fixed extinguishing system with predetermined flow rates, nozzle pressures, and quantities of extinguisher agents.

(m) “Recognized testing laboratory” means a nationally recognized testing agency, approved by the state fire marshal, which is staffed by qualified personnel, properly equipped to conduct the particular tests in question, and is regularly engaged in conducting tests and furnishing reports on the inspections, examinations and tests of the most recent production of the listed product.

(n) “Self-contained cooking equipment” means a unit of cooking equipment manufactured with a grease collection and vapor removal apparatus as an integral part of the unit and provided with or designed for the installation of a fixed extinguishing system.

(o) “Service” means to conduct a thorough check of a portable fire extinguisher or fixed extinguishing system including charging, maintaining, recharging, repairing, testing or tagging necessary to give maximum assurance that the portable fire extinguisher or fixed extinguishing system will operate effectively and safely.

(p) “Test” means to subject any portable fire extinguisher or fixed extinguishing system to the procedure necessary to assure its proper operation or installation. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a as amended by L. 1990, Ch. 135, Sec. 1; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended May 1, 1986; amended Jan. 21, 1991.)

22-10-2. Applicability. (a) These regulations shall apply to:

(1) any business that services, charges, recharges, installs or inspects portable fire extinguishers;

(2) any business that is manufacturer-authorized to service, charge, recharge, install or inspect fixed extinguishing systems;

(3) any business that is not manufacturer-authorized but is state-certified to service, recharge and inspect fixed extinguishing systems;

(4) any business that conducts hydrostatic testing of portable fire extinguisher or fixed extinguishing system cylinders or containers;

(5) any combination of (1), (2), (3) or (4); or

(6) any business that has employees who service, recharge or inspect only the portable fire extinguishers owned and used exclusively by the business.

(b) These regulations shall not apply to:

(1) any manufacturer who charges a portable fire extinguisher or fixed extinguishing system cylinder or container prior to its initial sale;

(2) any business engaged in the sale of approved portable fire extinguishers but not engaged in the servicing, charging, recharging, installing or inspecting of portable fire extinguishers; or

(3) any person or authorized agent of a person who installs a portable fire extinguisher for protection of that person's own property or business. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a as amended by L. 1990, Ch. 135, Sec. 1; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-81, Oct. 25, 1982; amended May 1, 1983; amended Jan. 21, 1991.)

22-10-3. Registration certificate. (a) Each business that services, recharges, installs, or inspects portable fire extinguishers or fixed extinguishing systems or hydrostatically tests these cylinders or any combination of them shall obtain a registration certificate issued by the state fire marshal unless otherwise exempted by these regulations. The registration certificate shall indicate the class or classes that are authorized. A certified business shall provide only the classes listed under its own registration number. A certified business may take orders for a class or classes that are not authorized by its registration certificate if these orders are consigned to a business that is certified to perform the class or classes indicated.

(b) The registration certificate shall indicate one or more of the following classes:

(1) Class RA, which permits servicing, recharging, installing, or inspecting fixed extinguishing systems by a currently certified manufacturer's distributor;

(2) class RB, which permits servicing, recharging, installing, or inspecting portable fire extinguishers;

(3) class RC, which permits hydrostatic testing of non-DOT cylinders, including wet chemical or dry chemical containers; or

(4) class RD, which permits servicing, recharging, and inspecting fixed extinguishing systems.

(c) Each business that desires a registration certificate shall submit a written application on forms prescribed by the state fire marshal and signed by the sole proprietor, each partner, or an officer of the corporation, as appropriate.

(d) Each applicant shall provide proof that an employee meets one of the following requirements:

(1) Received training from the manufacturer of each fixed extinguishing system whose products are used by the business indicating the type or types of systems the employee has been trained to service; or

(2) meets the following requirements:

(A) Has a notarized affidavit filed with the state fire marshal's office attesting that the employee has at least two years of experience in servicing, recharging, and inspecting fixed extinguishing systems and has access to the tools and service manuals for each fixed extinguishing system that the business services; and

(B) has current certification through the international code council and the national association of fire equipment distributors (ICC/NAFED).

(e) A nonrefundable application fee of \$200 shall accompany each application. No fee shall be charged for any person who is an officer or employee of the state or any political or taxing subdivision if that person is acting on behalf of the state or political or taxing subdivision.

(f)(1) Each applicant for a class RA registration certificate shall provide proof of at least \$500,000 of insurance covering comprehensive general liability, bodily injury, property damage, and completed operations.

Written authorization shall be included from each fixed extinguishing system manufacturer whose products are used by the business including the types of systems the business is authorized and has been trained to install or service. The manufacturer's authorization shall remain valid until the employee's training certificate expires or is cancelled for misconduct.

(2) Each applicant for a class RB or RC registration certificate shall provide proof of at least \$100,000 of insurance covering comprehensive general liability, bodily injury, property damage, and completed operations.

(3) Each applicant for a class RD registration certificate shall provide proof of at least \$1,000,000 of insurance covering comprehensive general liability, bodily injury, property damage, and completed operations.

(g) If, after reviewing the application, insurance information, record of services, servicing and shop facilities, and methods and procedures of operations, the state fire marshal finds that granting or renewing a registration certificate would be in the interest of public safety and welfare, a certificate for the appropriate classes of registration requested by the business shall be issued or renewed by the state fire marshal. An identifying number shall be assigned by the state fire marshal to each registration certificate.

(h) Each registration certificate shall be valid for one calendar year. Renewal applications shall be submitted to the state fire marshal on or before November 30 of the year of expiration and shall meet the requirements of subsections (d), (e), and (f), as applicable.

(i) Evidence that a registration certificate has been altered shall render the certificate invalid. The altered certificate shall be surrendered to the state fire marshal.

(j) Each change in the location or ownership of a certified business shall be reported in writing to the state fire marshal at least 14 days before the change. Failure to notify the state fire marshal may render the registration certificate invalid. Each change in location or ownership shall be verified by the state fire marshal or an authorized deputy.

(k) Each registration certificate issued by the state fire marshal shall be posted at the certified location and be available for inspection during normal business hours.

(l) A duplicate registration certificate may be issued by the state fire marshal to replace one that has been lost or destroyed if a written statement attesting to the loss or destruction of the original certificate is submitted.

(m) A registration certificate shall not constitute authorization for a registration certificate holder or the holder's employees to perform either of the following:

(1) To enter any property or building; or

(2) to enforce any provision of these regulations. (Authorized by and implementing K.S.A. 2008 Supp. 31-133, 31-133a; effective, E-82-3, Jan. 21, 1981, effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended Aug. 28, 1989; amended Sept. 17, 1990; amended Jan. 21, 1991; amended Feb. 4, 2011.)

22-10-3a. (Authorized by and implementing K.S.A. 1989 Supp. 31-133 and K.S.A. 1989 Supp.

31-133a as amended by L. 1990, Ch. 135, Sec. 1; effective Jan. 21, 1991; revoked May 10, 1993.)

22-10-4. (Authorized by and implementing K.S.A. 1982 Supp. 31-133, 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; revoked, T-83-31, Oct. 25, 1982; revoked May 1, 1983.)

22-10-5. (Authorized by and implementing K.S.A. 31-133 and 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; revoked May 1, 1982.)

22-10-6. Requirements. The requirements for the servicing, charging, recharging, installing or inspecting or hydrostatic testing of portable fire extinguishers or fixed extinguishing systems shall be performed in accordance with these regulations and the manufacturer's recommended procedures at the time of installation. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a as amended by L. 1990, Ch. 135, Sec. 1; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended Jan. 21, 1991.)

22-10-7. Sale or lease of portable fire extinguishers. A portable fire extinguisher or fixed extinguishing system shall not be sold, leased, or installed in the state of Kansas unless it carries a label of approval from a recognized testing laboratory. (Authorized by and implementing K.S.A. 31-133 and 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982.)

22-10-8. Prohibited extinguishers. The sale, lease, servicing, or recharging of carbon tetrachloride fire extinguishers in the state of Kansas shall be prohibited. (Authorized by and implementing K.S.A. 31-133 and 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982.)

22-10-9. Service tags. (a) A new service tag shall be attached to a portable fire extinguisher or fixed extinguishing system in a position that shall be convenient to inspect, but that shall not hamper its operation or removal.

(b) Each service tag shall contain:

- (1) the servicing firm's business name;
- (2) the address of the servicing business;
- (3) the registration certificate class and number;
- (4) the type of service performed;
- (5) the date the service is performed;

(6) the label “do not remove by order of the state fire marshal”;

(7) the signature of the service person; and

(8) the type of extinguisher.

(c) Service tags shall be printed for a minimum of two years use. Service tags shall be approximately two and one-half inches in width and not more than five and one-half inches in length.

(d) All required information shall appear on one side of the service tag. Any other desired printing or information shall be placed on the reverse side of the tag.

(e) Every tag attached to an extinguisher serviced by a certified business after January 1, 1991 shall conform to these regulations.

(f) No person shall remove a service tag except when further service is performed. No person shall deface, modify, or alter a service tag attached to a portable extinguisher or fixed extinguishing system. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a as amended by L. 1990, Ch. 135, Sec. 1; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended Jan. 21, 1991.)

22-10-10. (Authorized by and implementing K.S.A. 1982 Supp. 31-133; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; revoked May 10, 1993.)

22-10-11. Approval of fixed extinguishing systems. (a) The authority to approve or disapprove any fixed extinguishing system installed in this state shall lie in the state fire marshal or deputy state fire marshal. This determination shall be made pursuant to K.A.R. 22-10-13, 22-10-14 and 22-10-17, or to the manufacturer’s installation instructions.

(b) When a fixed extinguishing system is disapproved written notification of this disapproval shall be forwarded to the business making the installation and to the owner or occupant of the premises where the fixed extinguishing system is installed. This written notification shall include the reason or reasons why the fixed extinguishing system was disapproved. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended Oct. 29, 1990.)

22-10-12. (Authorized by and implementing K.S.A. 1984 Supp. 31-133, 31-133a; effective, E-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended May 1, 1986; amended Aug. 28, 1989; revoked May 10, 1993.)

22-10-13. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a, as amended by L. 1990, Ch. 135, Sec. 1; effective, T-82-3, Jan. 1981; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1986; amended Oct. 29, 1990; revoked May 10, 1993.)

22-10-14. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a, as amended by L. 1990, Ch. 135, Sec. 1; effective, T-82-3, Jan. 21, 1981; effective May 1, 1981; amended May 1, 1982; amended, T-83-31, Oct. 25, 1982; amended May 1, 1983; amended May 1, 1986; amended Jan. 21, 1991; revoked May 10, 1993.)

22-10-15. Fire extinguishers. Approved portable fire extinguishers shall be maintained in a fully charged and operable condition, and kept in their designated places at all times when not in use. (Authorized by and implementing K.S.A. 31-133; effective May 1, 1985.)

22-10-16. Automatic extinguishing systems. In addition to the provisions of K.A.R. 22-10-15, each facility maintaining commercial cooking equipment shall have approved automatic extinguishers mounted in the ventilation canopies or directly above such equipment. All equipment shall bear the label of a nationally-recognized testing laboratory and shall contain an approved extinguishing agent. The state fire marshal may exempt a facility from the requirements of this regulation, if in the marshal’s opinion, the exemption from this requirement would not present an immediate life safety hazard. (Authorized by and implementing K.S.A. 1985 Supp. 31-133; effective May 1, 1985; amended May 1, 1987.)

22-10-17. (Authorized by and implementing K.S.A. 1989 Supp. 31-133, 31-133a, as amended by L. 1990, Ch. 135, Sec. 1; effective May 1, 1987; amended Aug. 28, 1989; amended Sept. 17, 1990; amended Jan. 21, 1991; revoked May 10, 1993.)

22-10-18. Minimum performance standards for holders of class RA registration

certificates. (a) Each Class RA registration certificate holder shall insure that the performance of servicing, recharging, installing or inspecting of fixed extinguishing systems in commercial cooking equipment is done in accordance with the Kansas Fire Prevention Code, the appropriate national standards adopted therein and the applicable current design specifications of the manufacturer.

(b) Each Class RA registration certificate holder installing fixed extinguishing systems in commercial cooking equipment shall provide the state fire marshal with written notification within 30 days after installation of each new installation in Kansas. This notification shall contain:

(1) the business name and location of the installation;

(2) reference to the section of the manufacturer's installation manual by which it was installed;

(3) the date of the installation;

(4) the name, address and certificate number of the business making the installation;

(5) the make and model of the system; and

(6) a drawing of the piping layout and nozzle placement as installed.

(c) The performance of servicing, recharging, installing or inspecting of fixed extinguishing systems in commercial cooking equipment conducted after June 30, 1993 shall include the completion of a checklist, in addition to any other required tag. The original checklist will be left with a business representative at the time the servicing, recharging, installation or inspection is completed. A copy of the checklist will be maintained by the Class RA registration certificate holder for at least 24-months during which time it is subject to inspection on demand by a deputy state fire marshal during normal business hours. The checklist shall include:

(1) the type of system;

(2) the type of service;

(3) the business name and location of the system;

(4) the items checked, repaired or replaced;

(5) the date of service;

(6) the starting time and ending time of the work;

(7) the name of the person completing the work;

(8) the name, address and certificate number of the Class RA Registration Certificate holder conducting the work;

(9) a notation of corrective action, modification or any continuing non-complaint items;

(10) the signature of a representative of the business; and

(11) a statement notifying the business that the

checklist will be kept available for inspection by a deputy state fire marshal or local fire inspector.

(d) A new installation of a fixed extinguishing system may be permitted in an existing range hood for vapor removal not strictly in compliance with NFPA pamphlet no. 96 if the state fire marshal determines that no distinct life safety hazard would result.

(e) The installation of a fixed extinguishing system in self-contained cooking equipment need not comply with NFPA pamphlet no. 17, 17A and 96 if designed and installed according to the manufacturer's specification. (Authorized by and implementing K.S.A. 1991 Supp. 31-133 and 31-133a, as amended by L. 1992, ch. 220, subsection 1; effective May 10, 1993.)

22-10-19. Minimum performance standards for holders of class RB and RC registration certificates.

(a) Each Class RB registration certificate holder shall insure that the performance of servicing, recharging, installing, or inspecting portable fire extinguishers is done in accordance with the Kansas Fire Prevention Code, the appropriate national standards adopted therein and any applicable design specifications of the manufacturer.

(b) Each Class RC registration certificate holder shall insure that the performance of hydrostatic testing of non-DOT fire extinguisher cylinders is done in accordance with the Kansas Fire Prevention Code, the appropriate national standards adopted therein and any applicable design specifications of the manufacturer.

(c) The performance of servicing, recharging, installing or inspecting of portable fire extinguishers or hydrostatic testing of non-DOT fire extinguisher cylinders conducted after June 30, 1993 shall include, in addition to any other required tags or labels, the completion of a checklist or invoice. The original checklist or invoice will be left with a business representative at the time the servicing, recharging, installation or inspection is completed. A copy of the checklist will be maintained by the Class RB or RC registration certificate holder for at least 24 months during which time it is subject to inspection on demand by a deputy state fire marshal during normal business hours. The checklist or invoice shall include:

(1) the business name and location;

(2) the date of service;

(3) the starting time and ending time of the work;

(4) the name of the person completing the work;
 (5) the name, address and certificate number of the RB or RC registration certificate holder conducting the work;

(6) the signature of a representative of the business;

(7) a statement notifying the business that the checklist or invoice will be kept available for inspection by a deputy state fire marshal or local fire inspector; and

(8) a summary of the number and types of extinguishers serviced and the type of service performed.

(d) Six-year maintenance labels. After June 30, 1993, each six-year maintenance shall be recorded on a record label consisting of a mylar decal or sticker, with dimensions not exceeding 1.5 inches by 2.5 inches, which shall be affixed on the exterior of the extinguisher shell. Any six-year maintenance tags previously attached to an extinguisher shall be removed prior to affixing a new tag. The label shall contain:

(1) the year and month that the six-year maintenance was performed;

(2) the name of the firm completing the service;

(3) the initials of the person performing the maintenance.

(e) After June 30, 1993, whenever a low-pressure hydrostatic test is performed, it shall be recorded on a test label consisting of a mylar decal or sticker, with dimensions not exceeding 1.5 inches by 2.5 inches, which shall be affixed on the exterior of the extinguisher shell. Any test tag previously attached to an extinguisher shall be removed prior to affixing a new tag. The record label shall contain:

(1) the year and month that the test was performed;

(2) the test pressure;

(3) the name of the firm completing the service; and

(4) the initials of the person performing the maintenance.

(f) Internal service tags. After June 30, 1992, the following requirements shall be met.

(1) In addition to any other label required by these regulations, an internal service tag shall be provided each time an extinguisher is opened for any type of maintenance or for any other purpose. The following types of extinguishers are exempt from this requirement:

(A) carbon dioxide;

(B) halogenated agents;

(C) dry chemical external cartridge-operated types; and

(D) extinguishers containing water or water-type solutions.

(2) An approved standard internal service label shall be at least ½ inch by 3½ inch, on a durable material, either white or yellow in color, with a pressure sensitive adhesive backing conforming to the standards of UL 969, marking and labeling systems.

(3) Internal service labels shall contain:

(A) The Registration certificate number of the firm conducting the work;

(B) the month and year the service was performed; and

(C) the initials of the person conducting the work.

(4) A new internal label shall be provided for an extinguisher each time internal service is performed for any purpose.

(5) Internal service labels shall be affixed in the following manner.

(A) Any label previously attached shall be removed prior to affixing a new tag.

(B) The area to which the tag is to be affixed shall be cleaned to remove all residue of any kind, including old adhesive from a previously attached tag.

(C) The tag shall be placed within 1 inch of the top of the siphon tube below the valve assembly.

(D) The tag shall be pressed and adhered solidly around the tube. The writing must remain visible. Under no circumstances shall the required information be written directly on the siphon tube. (Authorized by and implementing K.S.A. 1992 Supp. 31-133 and 31-133a, as amended by L. 1992, ch. 220, subsection 1; effective May 10, 1993.)

Article 11.—ADULT CARE HOMES, HOSPITALS, RESIDENTIAL CARE FACILITIES AND MATERNITY CENTERS

22-11-1 and 22-11-2. (Authorized by and implementing K.S.A. 31-133, 31-147; effective Jan. 1, 1973; amended May 1, 1983; revoked May 1, 1985.)

22-11-3 and 22-11-4. (Authorized by K.S.A. 31-133, 31-147; effective Jan. 1, 1973; revoked May 1, 1981.)

22-11-5. Health care facilities; fire protection. (a) Each health care facility shall have fire protection available from an organized fire department.

(b) Each health care facility which is not located in an area served by a fire department may establish a contract with a nearby fire department to furnish fire protection.

(c) Telephone service to the department furnishing fire protection shall be provided. (Authorized by and implementing K.S.A. 1984 Supp. 31-133, 31-147; effective Jan. 1, 1973; amended May 1, 1985; amended May 1, 1986.)

22-11-6. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Sept. 17, 1990; revoked Feb. 4, 2011.)

22-11-7. (Authorized by and implementing K.S.A. 1983 Supp. 31-133, 31-147; effective May 1, 1983; revoked May 1, 1985.)

22-11-8. Adult and boarding care homes.

(a) The requirements of NFPA standard no. 101, which is adopted in K.A.R. 22-1-3, shall apply to one- and two-bed adult care homes, one- and two-bed adult family homes, three- and four-bed boarding care adult care homes, and boarding care homes for the mentally retarded.

(b) A life safety code inspection of a home shall be performed by the state fire marshal or an authorized representative under K.S.A. 31-137, and amendments thereto, upon request from the Kansas department of health and environment.

(c) As used in this subsection, “ambulatory” shall mean having the physical and mental capability of getting in and out of bed and walking in a normal path to safety in a reasonable period of time without the aid of another person. “Nonambulatory” shall mean not having the physical or mental capability of getting in and out of bed and walking a normal path to safety without the aid of another person.

(1) Ambulatory residents who are able to walk without the aid of another person but are unable to move from place to place without the use of a device including a walker, crutches, wheelchair, or wheeled platform shall be housed on the ground level of a home if handicap accommodations for exiting are present.

(2) Fully ambulatory residents who do not require the use of a device including a walker, crutches, wheelchair, or wheeled platform may be housed on any level of a home.

(3) Nonambulatory persons shall not be allowed as residents.

(d) The following requirements shall apply to all one- and two-bed adult care homes, one- and

two-bed adult family homes, three- and four-bed boarding care adult care homes, and boarding care homes for the mentally retarded, in addition to NFPA standard no. 101, which is adopted in K.A.R. 22-1-3:

(1) Emergency lighting shall be provided to ensure illumination for evacuation in case of a power failure.

(2) Fire alarms, smoke detectors, and fire extinguishers shall be maintained in an operable condition at all times.

(3) Fire drills shall be conducted as frequently as necessary, and at least once every three months, to ensure orderly egress in case of an emergency.

(4) Each exit and each route to each exit shall be clearly marked so that all residents will readily know the direction of egress from any point within the building.

(5) Each exit shall be arranged and maintained to provide free, unobstructed egress. Locks or fastening devices shall not be installed to prevent free escape from inside the building.

(6) Each building shall be constructed, arranged, equipped, maintained, and operated to avoid danger to the lives and safety of its residents from fire, smoke, fumes, and panic during emergency situations. (Authorized by and implementing K.S.A. 2008 Supp. 31-133 and K.S.A. 31-147; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended Sept. 17, 1990; amended Feb. 4, 2011.)

Article 12.—RESIDENTIAL OCCUPANCIES

22-12-1 and 22-12-2. (Authorized by K.S.A. 31-133, 31-147; effective Jan. 1, 1973; revoked May 1, 1980.)

Article 13.—PLACES OF ASSEMBLY

22-13-1. (Authorized by K.S.A. 1979 Supp. 31-133; effective Jan. 1, 1973; revoked May 1, 1980.)

22-13-2 to 22-13-33. (Authorized by and implementing K.S.A. 1972 Supp. 31-133; effective Jan. 1, 1973; revoked May 1, 1985.)

22-13-34. Heavy duty flexible metal gas connectors for commercial appliances. Flexible metal gas connectors may be used in connection with gas fired movable cooking equipment in any public building, resort, or hotel, as such term as defined by K.S.A. 1978 Supp. 36-501. Such as-

semblies shall be of a two (2) wall construction. The exterior wall shall either be metal braiding or metal interlocking casing. All flexible metal gas connectors shall be equipped with a cadmium-plated steel or brass quick-disconnect coupling equipped with a thermal shut-off. The flexible connectors and the quick disconnect device shall comply with the American national standards institute inc. (ANSI) regulations Z21-45-1971 and Z21-41-1971 respectively. A manual shut-off valve shall be installed in the piping immediately ahead of the quick disconnect device. The shut-off valve shall be an approved gas cock valve. (Authorized by K.S.A. 1978 Supp. 31-133, 36-133; effective May 1, 1979.)

22-13-35. (Authorized by and implementing K.S.A. 31-133; effective May 1, 1985; amended Aug. 28, 1989; revoked May 10, 1993.)

**Article 14.—MERCANTILE OFFICE,
INDUSTRIAL STORAGE AND
MISCELLANEOUS STRUCTURES**

22-14-1. (Authorized by K.S.A. 1979 Supp. 31-133; effective Jan. 1, 1973; revoked May 1, 1980.)

Article 15.—CHILD CARE FACILITIES

22-15-1 to 22-15-6. (Authorized by K.S.A. 1979 Supp. 31-133; effective Jan. 1, 1973; revoked May 1, 1980.)

22-15-7. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1979; amended May 1, 1986; amended Sept. 17, 1990; revoked Feb. 4, 2011.)

**Article 16.—INSTALLATION,
MAINTENANCE AND USE OF
PORTABLE FIRE EXTINGUISHERS**

22-16-1 to 22-16-11. (Authorized by K.S.A. 1980 Supp. 31-133; effective, E-73-14, March 13, 1973; effective, E-74-9, Jan. 1, 1974; effective, E-74-55, Sept. 30, 1974; effective May 1, 1975; revoked May 1, 1981.)

**Article 17.—SALE AND
DISTRIBUTION OF EARLY WARNING,
FIRE SUPPRESSION OR FIRE
ALARM DEVICES**

22-17-1. Official NFPA definitions. Shall is intended to indicate requirements.

Approved means acceptable to the authority having jurisdiction. The national fire protection association does not approve, inspect or certify any installations, procedures, equipment or materials nor does it approve or evaluate testing laboratories. In determining the acceptability of installations or procedures, equipment or materials, the authority having jurisdiction may base acceptance on compliance with NFPA or other appropriate standards. In the absence of such standards, said authority may require evidence of proper installation, procedure or use. The authority having jurisdiction may also refer to the listings or labeling practices of nationally recognized testing laboratories,* *i.e.*, laboratories qualified and equipped to conduct the necessary tests, in a position to determine compliance with appropriate standards for the current production of listed items, and the satisfactory performance of such equipment or materials in actual usage.

Listed: Equipment or materials included in a list published by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

Labeled: Equipment or materials to which has been attached a label, symbol or other identifying mark of a nationally recognized testing laboratory that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling is indicated compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

Authority having jurisdiction shall mean the state fire marshal or any of his authorized deputies. (Authorized by K.S.A. 31-133; effective May 1, 1975.)

* An example of a laboratory that is nationally recognized would be Underwriters' Laboratories, Inc., 207 East Ohio Street, Chicago, Illinois 60611.

22-17-2. Approval of devices. (a) An early warning, fire suppression or fire alarm device shall not be sold, offered for sale, or distributed within the state of Kansas without prior approval of the state fire marshal.

(b) Each early warning, fire suppression and fire alarm device shall be listed by and bear the label of a nationally-recognized testing laboratory unless the requirement is waived by the state fire

marshal. (Authorized by and implementing K.S.A. 1984 Supp. 31-133; effective May 1, 1975; amended May 1, 1986.)

Article 18.—EDUCATIONAL OCCUPANCIES

22-18-1. (Authorized by K.S.A. 1979 Supp. 31-133; effective May 30, 1975; revoked May 1, 1980.)

22-18-2. Fire and tornado drills in schools. (a) The administrators of all schools, both public and private in the state of Kansas except community junior colleges, colleges and universities shall conduct at least one (1) fire drill each month. Fire drills shall be conducted during school hours aside from regular dismissal time at noon or at close of days session. Fire drills shall be unannounced and shall be conducted by the use of the regular fire alarm system. Fire drills shall include all floors, wings and sections of the building. Every person shall vacate the building during the fire drill and teachers and administrators shall accompany their pupils from the building and account for each pupil within their authority. All doors and exits shall be kept unlocked and unobstructed when building is occupied. It shall be the duty of the school board or board of trustees of all schools both public and private to assure that such fire drills are conducted and true and accurate records of such drills are kept on forms provided by the state fire marshal and posted in a conspicuous location and filed with the state fire marshal at the end of each school year. It shall also be the responsibility of said school boards that the fire alarm system in each school within their district is maintained in working order and shall be activated at all times during occupancy.

(b) The administrators of all schools both public and private except community junior colleges, colleges and universities shall conduct at least three (3) tornado drills during each school year. Tornado drills shall be conducted during school hours aside from regular dismissal time at noon or at close of the day's session. Tornado drills shall be conducted by using a method of alerting distinctly different from the fire alarm, this may be by using public address system, or by method recommended by local civil defense director. Tornado drills shall include all floors, wings and sections of the building and every person in the building shall take refuge in designated tornado safety area. The

school administrator shall determine area to be used for tornado refuge and shall work with local civil defense director, in areas where one is available, to establish tornado safety procedure.

It shall be the duty of the school board or board of trustees of all schools, both public and private, to assure that such tornado drills are conducted and a true and accurate record of such drills are kept on forms provided by the state fire marshal and posted in a conspicuous location and filed with the state fire marshal at the end of each school year.

(c) The administrator of each community junior college, college and university within the state shall establish tornado procedures for each facility within their institution designating tornado safety refuge areas and posting them as such, and posting within each building in a conspicuous location, a notice of location of tornado safety refuge area. Administrators shall provide copies of tornado plan to local civil defense director for approval or in areas where there is no local civil defense director, plan shall be furnished to state civil defense council for approval. (Authorized by K.S.A. 1978 Supp. 31-133; effective May 1, 1979.)

22-18-3. Construction requirements for school buildings. (a) The construction of school buildings shall meet the requirements of the international building code, 2006 edition, as specified in K.S.A. 31-134a and amendments thereto. All electric wiring shall conform to the requirements of the national electric code of the national fire protection association adopted by K.A.R. 22-1-3.

(b) The construction of mobile, modular, portable, or relocatable school buildings shall meet the requirements of the life safety code adopted by K.A.R. 22-1-3. (Authorized by and implementing K.S.A. 2008 Supp. 31-133, 31-150; effective Sept. 17, 1990; amended May 10, 1993; amended Feb. 4, 2011.)

Article 19.—CERTIFICATION OF FIRE INVESTIGATORS

22-19-1. Fire investigation and reporting. (a) All necessary and appropriate investigations of every fire or explosion or any attempt to cause a fire or explosion in this state by incendiary means or to defraud any insurance company shall be made by the state fire marshal, deputy state fire marshals, the chief of any paid or volunteer fire department, or any member of a fire department

who has been duly designated by the chief, and the investigation shall be reported to the state fire marshal's office.

(b) Each person certified as a fire investigator I or II may conduct investigations that occur within the jurisdictional boundaries of the employing fire department or within the boundaries of any department with which the employing district has a statutorily authorized mutual aid, interlocal, or other contractual agreement concerning fire matters. Any investigation by a certified fire investigator I or II anywhere within the state may be authorized by the state fire marshal. (Authorized by and implementing K.S.A. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; amended May 10, 1993; amended Aug. 27, 1999.)

22-19-2. Certification of fire investigators. Certification may be granted at one of two levels: certified fire investigator I or certified fire investigator II. (a) Each individual seeking certification at either level shall apply on a form approved by the state fire marshal. Any individual that meets and demonstrates the following criteria may be certified by the state fire marshal:

- (1) Is a United States citizen;
- (2) has been fingerprinted, with a search of local, state, and national fingerprint files to determine whether the applicant has a criminal record;
- (3) has not been convicted, does not have an expunged conviction, and on and after July 1, 1995, has not been placed on diversion by any state or the federal government for a crime that is a felony or its equivalent under the uniform code of military justice;
- (4) has not been convicted, does not have an expunged conviction, and has not been placed on diversion by any state or the federal government for a misdemeanor crime of domestic violence or its equivalent under the uniform code of military justice, if the misdemeanor crime of domestic violence was committed on or after the effective date of this regulation;
- (5) is the holder of a high school diploma or furnishes evidence of successful completion of an examination indicating an equivalent achievement;
- (6) is of good moral character;
- (7) is free of any physical or mental condition that could adversely affect the applicant's performance of a fire investigator's duties;
- (8) is at least 21 years of age;
- (9) is recommended by the agency head of the applicant's jurisdiction;

(10)(A) Provides proof of successful completion of a fire investigation course, within the past five calendar years, that meets or exceeds the "standard for professional qualifications for fire investigator" established by the national fire protection association in publication number 1033, 2009 edition, which is hereby adopted by reference, and all law enforcement training required under K.S.A. 74-5607a et seq., and amendments thereto, and applicable regulations. Each applicant who completed an approved fire investigation course more than five years before the date of application shall submit proof of the applicant's successful completion of the course and proof of the applicant's fire investigation responsibilities within the past five calendar years; or

(B) achieves a score of at least 80 percent on the fire investigation graded examination. Any applicant may take this examination only once. If an applicant scores less than 80 percent, the applicant shall meet the requirement in paragraph (a) (10)(A); and

(11) submits a completed criminal history form. Each applicant shall also provide proof that the applicant has submitted fingerprints to the Kansas bureau of investigation.

(b) Each applicant for certified fire investigator II shall, in addition to meeting all of the requirements in subsection (a), successfully complete a firearms training course approved for law enforcement officers and be employed full-time by a fire department or law enforcement agency. Each applicant for a certified fire investigator II shall maintain firearms qualifications annually and shall provide documentation of this to the state fire marshal.

(c) Any applicant who is a part-time or volunteer certified fire investigator I may apply for certification as a fire investigator II with a written recommendation from the local law enforcement agency.

(d) Comparable qualifications from another state or jurisdiction may be recognized by the state fire marshal.

(e) Certification as a fire investigator I or II shall be valid for three years.

(f) Any certification issued under this regulation may be suspended or revoked by the state fire marshal if the state fire marshal finds that the certification holder has not accumulated and documented at least 60 points in each three-year period following initial certification and has not provided this documentation to the state fire marshal as follows:

(1) Training points shall be earned at the rate of one point for every clock-hour of department-approved training attended or taught, and 10 points shall be earned for every college-level course of three or more credit hours for which the applicant achieves a grade of C or higher if the course content directly relates to fire investigation skills. No more than 10 points shall be applied from instructing. At least 30 points shall be earned in this category, and a maximum of 40 points may be applied towards recertification.

(2) Experience points shall be earned for performing fire scene investigation and reporting or for the supervision of fire scene investigation and reporting. Points shall be earned at the rate of one point per fire investigation performed or supervised. At least 10 points shall be earned in this category, and a maximum of 20 points may be earned.

(3) Each individual shall be required to accumulate and document at least 10 points of training in law enforcement-related courses.

(g) Points shall not be carried over from one three-year period into another. A fire investigator who is certified before the effective date of this regulation shall not be required to meet the requirements in paragraph (f)(3) until the individual's next three-year certification period following the effective date of this regulation.

(h) For each subsequent three-year certification, each individual shall provide the following to the state fire marshal no later than 60 days before the expiration of the individual's current certification:

(1) A completed certification form approved by the state fire marshal;

(2) originals or legible copies of all documents establishing the points earned; and

(3) a notarized statement of eligibility for the subsequent three-year certification.

(i) If an individual's certification lapses for more than six months, the individual shall complete all applicable requirements in subsections (a) through (e). (Authorized by and implementing K.S.A. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; amended May 10, 1993; amended Aug. 27, 1999; amended Aug. 5, 2011.)

22-19-3. (Authorized by and implementing K.S.A. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; amended May 10, 1993; amended Aug. 27, 1999; revoked Aug. 5, 2011.)

22-19-4. (Authorized by and implementing K.S.A. 1983 Supp. 31-157; effective, T-84-43, Dec. 21, 1983; effective May 1, 1984; revoked May 10, 1993.)

22-19-4a. Revocation or suspension. (a) Every certification or recertification granted by the state fire marshal may be revoked or suspended for good cause shown. For the purpose of this regulation, "good cause" shall include any of the following:

(1) Misrepresentation of any information provided on an application, in a supporting document, or in any filed report;

(2) conviction or diversion for any felony criminal offense;

(3) failure to make timely, complete reports of all investigations to the state fire marshal's office; or

(4) failure to conduct an investigation in accord with nationally recognized methods and procedures.

(b) An individual may appeal any suspension or revocation of a certification or recertification as provided for by the Kansas administrative procedure act. (Authorized by and implementing K.S.A. 31-133 and 31-157; effective Aug. 27, 1999.)

22-19-5. Reports to be filed; required notification in certain circumstances. (a) Each person certified as a fire investigator I or II shall file a report of every fire investigation conducted by that individual with the state fire marshal within 30 days. The report shall be submitted through the investigative database used by the state fire marshal's investigations division and shall include the following:

(1) The name and birthdate of the owner;

(2) the name and birthdate of each suspect, if any, and either the driver's license or other identification number of each suspect;

(3) the name, the birthdate, and either the driver's license or other identification number of each witness; and

(4) the name of the insurance company, policy number, and amount of insurance coverage.

(b) A supplemental report indicating disposition of each case shall be filed within 30 days of disposition.

(c) Each certified fire investigator shall notify the state fire marshal immediately of each fire death or fire injury likely to result in death that the fire investigator has been assigned to investigate.

(d) Failure to file the reports or notify the state fire marshal as specified in this regulation shall

be grounds for suspension or revocation of the certificate pursuant to K.A.R. 22-1-5. (Authorized by K.S.A. 2016 Supp. 31-133; implementing K.S.A. 2016 Supp. 31-137; effective May 10, 1993; amended Aug. 5, 2011; amended April 6, 2018.)

**Article 20.—NATURAL GAS
AS MOTOR FUEL**

22-20-1. (Authorized by and implementing K.S.A. 1989 Supp. 31-133; effective May 1, 1985; amended Sept. 17, 1990; revoked May 10, 1993.)

Article 21.—CHRISTMAS DECORATIONS

22-21-1. A person shall not sell an electrical Christmas decoration which is not listed by, nor bears the label of, a nationally-recognized testing laboratory, unless the specific type of decoration is exempted by the state fire marshal. (Authorized by and implementing K.S.A. 1984 Supp. 31-133; effective May 1, 1986.)

**Article 22.—FIRE
DEPARTMENT VEHICLES**

22-22-1. Inspection of fire department vehicles. (a) Each organized fire department, regular or volunteer, shall inspect every fire department vehicle at least annually and after that vehicle is involved in an accident to identify and correct unsafe or non-working conditions. Each fire department shall establish a preventive maintenance program. Inspections shall be performed by a mechanic chosen by the fire chief. All maintenance, inspections and repairs shall be performed in accordance with the manufacturer's guidelines. The inspection shall include but is not limited to the following areas:

- (1) brake system;
- (2) coupling devices;
- (3) exhaust system;
- (4) fuel system;
- (5) lighting devices;
- (6) steering mechanism;
- (7) suspension;
- (8) frame;
- (9) tires;
- (10) wheels and rims; and
- (11) electrical system.

(b) Each fire department shall file, on January 1 of each year, a report of the vehicle inspections performed during the preceding calendar year on the form designated by the state fire marshal.

(c) The state fire marshal may, upon written re-

quest and for good cause shown, approve alternatives to the inspections or reporting requirements of this regulation. The alternative approved must provide comparable assurances of safety and reliability of fire department vehicles. (Authorized by and implementing K.S.A. 1991 Supp. 31-133; effective May 10, 1993.)

**Article 24.—REGIONAL HAZARDOUS
MATERIALS RESPONSE**

22-24-1. Definitions. (a) "Local authority" means the local unit of government's public safety agency that is in overall command at the scene of a hazardous materials incident.

(b) "Regional hazardous materials response team" means an emergency response team that has contracted with the state fire marshal to provide a response to hazardous materials incidents. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

22-24-2. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

22-24-3. (Authorized by and implementing K.S.A. 2008 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended Oct. 2, 2009; revoked April 6, 2018.)

22-24-4, 22-24-5, and 22-24-6. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

22-24-7. Notification of incidents. Each local jurisdiction requesting assistance from a regional hazardous materials response team shall notify the Kansas division of emergency management and the Kansas department of health and environment that an incident has occurred. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

22-24-8, 22-24-9, 22-24-10, 22-24-11, 22-24-12, and 22-24-13. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

22-24-14. Cost recovery. (a) When an emergency response team is activated to respond to a hazardous materials incident, the party responsible for the hazardous materials shall be responsible for paying the costs incurred as a result of the team's emergency response. The responsible party shall be billed by the state fire marshal for these costs in a summary order. If the responsible party fails to pay the bill in full within 30 days of its issuance, a second billing shall be issued by the state fire marshal. The second billing and any subsequent billings shall include interest on the unpaid balance. If payment is not made in full within 60 days of the initial billing, the responsible party shall be contacted by the state fire marshal in an effort to obtain payment. If the matter remains unresolved, legal action shall be brought to recover the costs of the response, any legal fees, and other related expenses, including reasonable attorney's fees.

(b) Within 30 days of the original billing issued as a summary order, any responsible party who disagrees with a billing for costs incurred as a result of an emergency response may request a hearing, which shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto. The request for a hearing shall specifically identify the portion of the billing that is disputed and the factual basis of that dispute. Any remaining portion of the bill that is undisputed shall be paid in accordance with subsection (a). (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

22-24-15. Assisting with emergency response activities. The local authority that has jurisdiction and that requested the emergency response shall provide all necessary assistance to the regional hazardous materials response team. (Authorized by and implementing K.S.A. 2016 Supp. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; amended April 6, 2018.)

22-24-16 and 22-24-17. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

22-24-18. (Authorized by and implementing K.S.A. 31-133 and 31-135; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002; revoked April 6, 2018.)

Article 25.—REDUCED CIGARETTE IGNITION PROPENSITY

22-25-1. Definitions. (a) "ASTM" shall mean the American society for testing and materials or its successor organization.

(b) "Attorney general" shall mean the attorney general of the state of Kansas.

(c) "Consumer testing" shall mean an assessment of cigarettes that is conducted by, or under the control and direction of, a manufacturer for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the testing. Consumer testing shall not be construed as the "sale" of cigarettes for the purposes of this article.

(d) "Person" shall mean an individual, partnership, corporation, or other association.

(e) "Sale" shall mean any transfer of title or possession, or both, or exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts and the exchanging of cigarettes for any consideration other than money shall be considered sales of cigarettes.

(f) "State fire marshal" shall mean the fire marshal of the state of Kansas.

(g) "UPC symbol" shall mean the symbol signifying the universal product code. (Authorized by K.S.A. 2011 Supp. 31-611; implementing K.S.A. 2011 Supp. 31-602; effective July 27, 2012.)

22-25-2. Certification forms and requirements; recertification. (a) Certification forms may be requested from the state fire marshal's office.

(b) If any certification form, including all required documentation, is incomplete, the state fire marshal or designee shall notify the manufacturer in writing that the submission is incomplete. All missing information and documentation shall be submitted to the state fire marshal's office within 30 days of notification. If the submission is still incomplete after 30 days, the fees shall not be refunded or considered part of that submission or any other request.

(c) Each cigarette shall be retested in accordance with K.S.A. 31-603, and amendments thereto, within one year before the submission of an application for recertification as required by K.S.A. 31-604, and amendments thereto. (Authorized by K.S.A. 2011 Supp. 31-611; implementing K.S.A. 2011 Supp. 31-604; effective July 27, 2012.)

**Article 26.—COMMERCIAL
INDUSTRIAL HEMP PROCESSING**

22-26-1. Definitions. As used in this article of the state fire marshal's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Act" means the commercial industrial hemp act, K.S.A. 2020 Supp. 2-3901 et seq. and amendments thereto.

(b) "Allowable THC content" means the legal level of THC concentration allowed under state and federal law.

(c) "Batch" means a quantity of hemp, by-products, distillate, or seeds acquired on the same date from the same source.

(d) "Batch identification number" means a unique, sequential number that is assigned to each batch and corresponds to a record identifying the source of the material acquired and the date of acquisition.

(e) "By-product" means the spent biomass, after the extraction of cannabinoids, that contains no greater than the allowable THC content.

(f) "CBD" means cannabidiol.

(g) "Certificate of analysis" means a document from the Kansas department of agriculture or an independent testing laboratory stating the results of laboratory testing of a sample of hemp, by-products, distillate, seeds, hemp waste, or hemp products.

(h) "Distillate" means any substance resulting from the extraction of cannabinoids that contains greater than the allowable THC content and is intended for further processing to yield final hemp products and hemp waste.

(i) "Final hemp product" means a hemp product that has no greater than the allowable THC content and is in a form suitable for lawful sale in Kansas.

(j) "Hemp" means industrial hemp.

(k) "Hemp waste" means the materials resulting from hemp processing that contain greater than the allowable THC content and cannot be further processed into a final hemp product.

(l) "KBI" means Kansas bureau of investigation.

(m) "Lot" means the quantity of hemp processed in one operation or in one continuous or semicontinuous process or cycle. A lot could consist of a single batch or batches from multiple producers.

(n) "Premises" means a hemp processing facility, the immediately surrounding areas controlled by a processor, waste receptacles, associated buildings, and parking areas.

(o) "Processor" means a person registered as a hemp processor in Kansas.

(p) "Producer" means a person lawfully engaged in the cultivation or production of industrial hemp for commercial purposes, whether inside or outside Kansas.

(q) "THC concentration" means the combined percentage of tetrahydrocannabinol and its isomers, their salts and acids, and salts of their acids, reported as free THC and measured on a dry-weight basis for any part of the plant *Cannabis sativa L.* and on a percentage-by-weight basis in distillate, by-products, hemp waste, or other materials resulting from the processing of industrial hemp.

(r) "Treated hemp waste" means hemp waste that has been treated as required by K.S.A. 2020 Supp. 2-3909, and amendments thereto, and this article of the state fire marshal's regulations to render the hemp waste unusable and unrecognizable. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-2. Hemp processor registration; renewal. (a) No person shall process industrial hemp in Kansas without a valid registration issued by the state fire marshal. Each hemp processor registration shall be nontransferable.

(b) Each individual wanting to register as a hemp processor shall submit an application on a form provided by the state fire marshal.

(c) If the applicant is not an individual, the applicant shall designate one or more individuals to be legally responsible for all activities relating to hemp processing and submit an application on a form provided by the state fire marshal, identifying each designated individual and each owner.

(d) The application shall also include the following:

(1) The street address or a legal description of any premises that will serve as a part of the applicant's processing operations;

(2) a brief description of the industrial hemp processing methods that will be used, activities that will be undertaken, and final hemp products planned for production;

(3) a policies and procedures manual, as specified in K.A.R. 22-26-5, for approval by the state fire marshal; and

(4) a code footprint meeting the requirements of K.A.R. 22-1-7.

(e) Each applicant shall be fingerprinted and submit to a criminal history record check, and each applicant or processor shall ensure that each employee or owner wanting to engage in the extraction of cannabinoids, the handling or transportation of distillate, or the disposal of hemp waste is fingerprinted and submits to a criminal history record check.

(f) Each registration shall expire annually on June 30. Each renewal application shall be submitted on or before June 1.

(g) The annual registration fees shall be as follows:

(1) \$1,000 for each processor that performs the extraction of cannabinoids or processes extracted cannabinoids, or both; and

(2) \$500 for each processor that does not perform the extraction of cannabinoids and does not process extracted cannabinoids.

Each fee shall be nonrefundable.

(h) No registration shall be approved for hemp processing activities in or within an area zoned for residential use or within one-quarter mile of any public or private K-12 school or public recreational area, except with the state fire marshal's written permission.

(i) Acceptance of a hemp processor registration shall constitute a grant of authority by the processor allowing the state fire marshal to provide the registration number, full legal name of the processor, and descriptions of all locations and facilities identified for processing industrial hemp, including any later modifications, to the United States drug enforcement agency, the KBI, the sheriff of the county where the premises are located, and any other law enforcement agency.

(j) A registration issued pursuant to this article of the state fire marshal's regulations shall not relieve the processor from the responsibility to obtain any other registrations, licenses, or permits required by law.

(k) An application may be denied or refused renewal by the state fire marshal for any lawful reason, including any of the reasons stated in K.A.R. 22-26-3. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-3. Compliance with laws; denial, revocation, or conditioning of a registration; appeals. (a) Each processor shall comply with

the act and the implementing regulations and with all local, state, and federal laws, regulations, and ordinances related to industrial hemp, hemp products, and materials containing THC. Each processor shall be responsible for the actions of its employees, contractors, and agents in their performance of any activities relating to the acquisition, possession, sale, distribution, processing, or transportation of hemp, distillate, seeds, and hemp waste.

(b) Each of the following shall constitute a basis for the state fire marshal to deny an initial or renewal application or to impose conditions on a registration or revoke a registration:

(1) Knowingly providing any false, misleading, or incorrect information on the registration application or to the state fire marshal;

(2) failure to provide any information that the state fire marshal requests;

(3) failure to cooperate with the state fire marshal or law enforcement agencies in administration and enforcement of the act and the implementing regulations;

(4) failure to maintain or submit any forms or reports as required;

(5) violation of any provision of the act or the implementing regulations;

(6) revocation of a registration, license, permit, or certificate to practice in the hemp industry by the state fire marshal, the Kansas department of agriculture, the United States department of agriculture, another state, or any Indian nation or U.S. territory within the three years preceding the application date;

(7) any conviction, other than a felony conviction, related to growing, cultivating, processing, or distributing hemp or marijuana within the five years preceding the application date;

(8) failure to ensure that fingerprint-based criminal history record checks are conducted as required by the act and the implementing regulations;

(9) conviction of an individual applicant, or an officer, proprietor, or partner of the applicant entity or an owner of more than a 10 percent interest in the processing operations, within the preceding five years of a felony or Class A misdemeanor violation involving homicide, assault, domestic violence, battery, fraud, theft, or misappropriation of another person's money or property, or offenses that are substantially similar to these offenses under the laws of another jurisdiction or federal law;

(10) conviction of an individual applicant, or an officer, proprietor, or partner of the applicant en-

tity or an owner of more than a 10 percent interest in the processing operations within the preceding 10 years of a felony involving the unlawful use, possession, or distribution of drugs;

(11) knowingly employing any individual to engage in any activities related to the processing of hemp, distillate, seeds, or hemp waste if the individual has been convicted within the preceding five years of any of the crimes listed in paragraph (9) of this subsection or within the preceding 10 years of any of the crimes listed in paragraph (10) of this subsection; and

(12) failure to submit to the state fire marshal the name and the job title or job responsibilities of each new employee within 14 days of hiring.

(c) If a processor's Kansas registration is revoked, the person shall not be eligible to apply for a hemp processor registration for three years from the date of revocation. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5, and K.S.A. 74-120; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-5. Policies and procedures manual. Each processor shall establish, maintain, and adhere to written policies and procedures for the processing, security, storage, inventory, distribution, and transportation of hemp, distillate, seeds, hemp products, and hemp waste, as defined in K.A.R. 22-26-1. These policies and procedures shall be specified in a manual that includes the following topics:

(a) Ensuring that all of the hemp and distillate in every stage of processing and distribution are used and stored in such a manner as to prevent diversion, theft, or loss and are accessible only to the minimum number of authorized personnel essential for efficient operation;

(b) ensuring that hemp waste is kept in a secure location in such a manner as to prevent diversion, theft, or loss and is accessible only to the minimum number of authorized personnel essential for hemp waste storage and disposal; and

(c) indicating the methods of disposal of hemp waste that will be used. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-6. Processing records. (a) For each lot, each processor shall make a processing record

that shall include the following, except as specified in subsection (b):

(1) The date of processing;

(2) the batch identification number of each batch processed in the lot;

(3) the method used for processing and the type and name of any solvent or other compounds used in the processing of the lot;

(4) the weight of the lot processed;

(5) the weight of by-products and of distillate from the lot that are not further processed;

(6) the weight and types of final hemp products; and

(7) the weight of hemp waste from the lot and the method of disposal.

(b) Any processor may request approval from the state fire marshal to make a processing record composed of data different from the data specified in subsection (a), if necessary to more accurately reflect the processing method used by the processor. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-7. Access to records and property.

(a) Acceptance of a hemp processor registration shall constitute a grant of consent to allow the state fire marshal, or designee, complete, unrestricted, and immediate access to the records, premises, motor vehicles on the premises, and motor vehicles used in the transportation of hemp or distillate to determine compliance with the act and the implementing regulations. Access shall be granted at reasonable times, whether the processor is present or not, without interference or obstruction, with or without cause, and with or without advance notice.

(b) Each processor shall sign, and shall require each employee to sign, a form provided by the state fire marshal granting consent for the state fire marshal or designee to search the processor's or employee's person, personal effects, or vehicle while on the premises whenever an inventory discrepancy is detected or there is reason to believe that the processor or employee is in possession of hemp, distillate, seeds, or hemp waste for a purpose other than the activities authorized by the act.

(c) If a processor denies the state fire marshal, or designee, the access required by subsection (a), any court of competent jurisdiction may issue a search warrant authorizing access to the records,

premises, or motor vehicles, upon application and showing of cause by the state fire marshal. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-8. Facilities; exemptions. (a) Each hemp processing facility shall be inspected by the state fire marshal before the issuance of a hemp processor registration. A hemp processor registration shall be valid only for the facility that was inspected at the time of registration.

Each hemp processing facility and premises shall continue to be subject to inspection by the state fire marshal, pursuant to K.S.A. 31-139 and amendments thereto.

(b) Each processor shall ensure that the hemp processing facility complies with the national codes and standards adopted by the state fire marshal, unless an exemption from a specific requirement is granted by the state fire marshal. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5, K.S.A. 2020 Supp. 31-133, and K.S.A. 2020 Supp. 31-136; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-9. Security measures; reportable events; recordkeeping. (a) Each processor shall keep all equipment and areas used for the processing and storage of hemp, distillate, seeds, or hemp waste securely locked and protected from entry by unauthorized individuals.

(b) Each hemp processing facility shall have adequate alarm and video surveillance security systems to prevent and detect diversion, theft, or loss of hemp, distillate, seeds, or hemp waste, including the following:

(1) A perimeter alarm with motion detector providing coverage of all facility entrances and exits, rooms with exterior windows, roof hatches, skylights, and storage rooms; and

(2) a video surveillance system.

(c) The video surveillance system shall have video cameras directed at and recording all areas that are used to contain hemp, distillate, seeds, or hemp waste and all points of entry and exit. These cameras shall be angled to capture a clear and certain identification of any person within view. The date and time shall be embedded on all surveil-

lance recordings without obscuring the picture. The video cameras shall be in operation 24 hours each day and may be set to record upon detection of motion.

(d) Each processor shall make available the video camera recordings for immediate viewing by the state fire marshal or law enforcement upon request.

(e) All alarm and video surveillance systems shall be designed to operate during power outages.

(f) All alarm and video surveillance systems shall be inspected at least annually by the vendors.

(g) Each processor shall immediately notify the state fire marshal of any failure of the security alarm system or surveillance system due to a loss of electrical power or mechanical malfunction and shall describe any corrective measures taken.

(h) Each processor shall maintain the following records:

(1) Surveillance video camera recordings, for at least the preceding 14 days;

(2) annual inspections of the alarm and video surveillance systems, for three years; and

(3) records of any occurrence that is reportable under this regulation, for three years after the occurrence.

(i) Each processor shall immediately notify the state fire marshal of any interaction of the processor, or its employees, contractors, or agents, with law enforcement that is related to participation in the hemp processing industry. This requirement shall also apply to any contact with law enforcement related to a criminal charge or criminal investigation involving any of the offenses listed in K.A.R. 22-26-3(b)(9) or (10) or offenses in another jurisdiction that are substantially similar to the listed offenses. The processor shall provide a written follow-up statement summarizing the interaction and its outcome to the state fire marshal within three calendar days of the interaction. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-10. Acquisition of hemp, by-products, distillate, or seeds for processing.

(a) Each processor shall obtain hemp, by-products, distillate, or seeds only from legal sources.

(b) Each processor shall accept hemp, by-products, distillate, or seeds only if the material is accompanied by a harvest certificate, a certificate

of analysis, or a similar document and by a signed bill of lading that includes the weight of the material transferred, the date of the transfer, and the following information:

(1) The name, address, and registration, permit, or license number of the producer of the hemp;

(2) the name, address, and registration, permit, or license number of the person from whom the processor acquired the hemp, by-products, distillate, or seeds; and

(3) the name, address, and registration, permit, or license number of any prior processor.

(c) Each processor shall assign a batch identification number to each batch at the time of acquisition.

(d) Each processor shall retain the records required by this regulation for at least three years and shall make the records available to the state fire marshal upon request. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-11. Inventory control; reports. (a) Each processor shall conduct an inventory each processing week and create an inventory report that shall include the locations and weights of each of the following materials:

(1) The hemp, by-products, distillate, seeds, final hemp products, hemp waste, and treated hemp waste on hand at the start of the processing week;

(2) the hemp, by-products, distillate, and seeds received;

(3) the hemp, by-products, distillate, and seeds processed, identified by batch identification numbers;

(4) the final hemp products produced;

(5) the hemp, by-products, seeds, final hemp products, and distillate shipped from the facility;

(6) the hemp waste produced from processing activities;

(7) the hemp waste treated;

(8) the hemp waste disposed of; and

(9) the hemp, by-products, distillate, seeds, final hemp products, hemp waste, and treated hemp waste on hand at the end of the processing week.

(b) Any processor may request approval from the state fire marshal to make an inventory report different from that specified in subsection (a) if necessary to more accurately reflect the processing activities of the processor.

(c) Each processor shall notify the state fire marshal immediately upon discovering any actual or apparent diversion, theft, or loss of any hemp, by-products, distillate, or hemp waste or of any loss or unauthorized alteration of records related to hemp processing or business activities, including inventory, security, employment, and transportation. The processor shall submit to the state fire marshal a signed report detailing the location and circumstances of the event, the type and amount of material involved, and an accurate inventory.

(d) Each processor shall maintain the records required by this regulation for at least three years and make the records available to the state fire marshal upon request. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-12. Disposal of hemp waste. (a) For any hemp waste, as defined in K.A.R. 22-26-1, that is required by K.S.A. 2020 Supp. 2-3909 and amendments thereto to be rendered unusable and unrecognizable, the processor shall incorporate the hemp waste into one or more of the nonconsumable solid waste materials listed below, such that the resulting mixture is less than 50 percent hemp waste:

(1) Paper waste materials;

(2) cardboard waste materials;

(3) food waste materials;

(4) yard waste materials;

(5) soil or other growth media; or

(6) other materials approved by the state fire marshal.

(b) Each processor shall maintain and make available to the state fire marshal upon request a separate record of every disposal. The record shall contain the following:

(1) The date and time of disposal;

(2) the disposal method and procedures followed;

(3) the volume and weight of the approved material used to render the hemp waste unusable;

(4) the reason for disposal;

(5) the volume and weight of hemp waste disposed of and the batch identification number of each batch from which the hemp waste was produced; and

(6) the name, title, and signature of each person involved in the disposal.

(c) Any processor may use any other method approved in writing by the state fire marshal for rendering hemp waste unusable and unrecognizable.

(d) No processor shall allow hemp waste that is required by K.S.A. 2020 Supp. 2-3909, and amendments thereto, to be rendered unusable and unrecognizable to leave the premises before the hemp waste is treated as required in subsections (a) and (c).

(e) Each processor shall dispose of all hazardous waste pursuant to K.S.A. 2020 Supp. 2-3909, and amendments thereto.

(f) Each processor shall retain the records required by this regulation for at least three years. (Authorized by K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5, and K.S.A. 2020 Supp. 2-3909; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-13. Transportation. (a) Each processor that sells, trades, barter, gives away, or otherwise transfers any hemp, distillate, by-products, seeds, or final hemp products to any other person shall ensure that the materials are accompanied by the following:

(1) A harvest certificate, a certificate of analysis, or a similar document from the producer; and

(2) a signed bill of lading that includes the following:

(A) The processor's registration number;

(B) the total weight of hemp, distillate, by-products, seeds, or final hemp products transferred;

(C) the date of the transfer; and

(D) the name and other requested identifiers of the person acquiring the materials.

If the processor received these materials from a prior processor, the processor shall include a signed bill of lading from the prior processor.

(b) No processor, or contractor, employee, or agent of a processor, shall take from the premises or possess any hemp, distillate, unprocessed seeds, or hemp waste unless the individual's possession is for activities authorized by the act and is in accordance with state and federal law and this article of the state fire marshal's regulations.

(c) Any individual in possession of hemp, distillate, unprocessed seeds, or hemp waste without a valid hemp producer's license, a valid processor's registration, or an appropriate signed bill of lading

or a similar document from the producer and any prior processor may be presumed to have gained possession of the material in violation of the act and the implementing regulations.

(d) Each processor shall comply with the act and the implementing regulations and with all local, state, and federal laws, regulations, and ordinances related to the possession and transportation of hemp, distillate, by-products, seeds, hemp products, and hemp waste. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5, K.S.A. 2020 Supp. 2-3908, as amended by L. 2021, ch. 76, sec. 6; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-14. Chain of custody for transportation of distillate. (a) No processor shall supply or release distillate to any person or individual in Kansas who does not possess one of the credentials specified in K.S.A. 2020 Supp. 2-3908 and amendments thereto or who is not an employee of a person having one of those credentials, except that, if not otherwise prohibited by state or federal law, any processor may release distillate to an employee of a commercial shipping or delivery company for transport to a licensed hemp producer in Kansas, a registered hemp processor in Kansas, or another lawful recipient.

(b) Each processor shall package all distillate leaving a hemp processing facility in a container that is sealed with tamper-evident tape. The processor shall take a digital photo of the seals on the containers after sealing the containers.

(c) Each sealed container shall be placed in a locked compartment within the transport vehicle or secured in accordance with the policies of a commercial shipping or delivery company. Acceptable compartments shall include a trunk in a car, a locking cargo box in a truck, a safe, and a lockbox.

(d) When distillate leaves a hemp processing facility, the processor shall record the following information on a form provided by the state fire marshal:

(1) Number of containers in the shipment;

(2) batch identification numbers for the distillate in each container;

(3) weight of each container;

(4) date and time of transfer;

(5) delivery address, recipient name, and any other identifying information about the recipient required by the state fire marshal; and

(6) If the transportation is not being performed by a commercial shipping or delivery company, the signature, name, and driver's license or state-issued identification card number of each individual in the transport vehicle.

(e)(1) If the transportation is not being performed by a commercial shipping or delivery company, a copy of the form specified in subsection (d) shall be retained by the driver and shall be shown to any law enforcement officer upon demand, to demonstrate that the driver is authorized to transport distillate.

(2) If the transportation is being performed by a commercial shipping or delivery company, each processor shall include in the package a copy of the form specified in subsection (d).

(f)(1) If transportation is not being performed by a commercial shipping or delivery company, upon delivery of the distillate, each individual in the transport vehicle shall sign the form; record the date, time, and place of delivery; and record the name and title of the person taking delivery and any other identifying information requested by the state fire marshal.

(2) If transportation is being performed by a commercial shipping or delivery company, each processor shall use a delivery service that provides for delivery restricted to identified recipients, requires a recipient signature at the time of delivery, and provides for delivery confirmation.

(g) The recipient shall record the date and time of delivery, take a digital photo of each seal, and inspect each container and seal for any indication of tampering.

(1) If a container or a seal shows any sign of tampering, the recipient shall take possession of the delivery and shall immediately notify the processor and the state fire marshal.

(2) If the recipient detects no tampering, the recipient shall sign the delivery form acknowledging that each seal and container was intact upon delivery and shall return a copy of the delivery form to the processor by physical or electronic means.

(h) The recipient shall retain the information and photos required by this regulation for three years and shall make the information and photos available to the state fire marshal upon request. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5, K.S.A. 2020 Supp. 2-3908, as amended by L. 2021, ch. 76, sec. 6; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

22-26-16. Testing. (a) Each processor shall allow the state fire marshal or designee to inspect and take samples of any hemp, distillate, by-products, seeds, or hemp products on the premises to determine compliance with the act and implementing regulations.

(b) When requested by the state fire marshal, a processor shall provide a representative sample of any material specified in subsection (a) to a testing laboratory acceptable to the state fire marshal.

(c)(1) If testing is done pursuant to subsection (a) or (b), a certificate of analysis from the testing laboratory shall be provided directly to the state fire marshal.

(2) If testing is done at the processor's request, the processor shall retain a copy of the certificate of analysis for at least three years and shall make this copy available to the state fire marshal upon request. (Authorized by and implementing K.S.A. 2020 Supp. 2-3907, as amended by L. 2021, ch. 76, sec. 5; effective, T-22-1-28-21, Jan. 28, 2021; effective, T-22-5-26-21, May 28, 2021; effective Oct. 22, 2021.)

Agency 23

Kansas Department of Wildlife and Parks

Editor's Note:

The Fish and Game Commission, which was formerly Agency 23, was abolished on July 1, 1987. Powers, duties, functions and property were transferred to the department and the Secretary of Wildlife and Parks. See K.S.A. 1988 Supp. 75-3903.

Articles

- 23-1. *GAME BIRDS. (Not in active use.)*
- 23-2. *GAME ANIMALS. (Not in active use.)*
- 23-3. *FISH; SPORT AND COMMERCIAL. (Not in active use.)*
- 23-4. *WARNING CITATIONS. (Not in active use.)*
- 23-5. *SPECIAL SURETY BOND PROGRAM. (Not in active use.)*
- 23-6. *FUR BEARERS. (Not in active use.)*
- 23-7. *FUR DEALERS. (Not in active use.)*
- 23-8. *WILDLIFE AREAS. (Not in active use.)*
- 23-9. *GAME BIRDS; SHOOTING AREAS. (Not in active use.)*
- 23-10. *FEDERAL WATER IMPOUNDMENT AREAS. (Not in active use.)*
- 23-11. *BOATING REGULATIONS. (Not in active use.)*
- 23-12. *TRAINING DOGS AND FIELD TRIAL EVENTS. (Not in active use.)*
- 23-13. *SKIN AND SCUBA DIVING. (Not in active use.)*
- 23-14. *DISABLED PERSONS. (Not in active use.)*
- 23-15. *NUISANCE BIRD CONTROL. (Not in active use.)*
- 23-16. *IMPORTATION AND POSSESSION OF CERTAIN WILDLIFE. (Not in active use.)*
- 23-17. *NONGAME, THREATENED OR ENDANGERED SPECIES. (Not in active use.)*
- 23-18. *FEES. (Not in active use.)*
- 23-19. *SALE OF GAME BIRDS AND GAME ANIMALS. (Not in active use.)*
- 23-20. *AMPHIBIANS AND REPTILES. (Not in active use.)*
- 23-21. *FALCONRY. (Not in active use.)*

Article 1.—GAME BIRDS

23-1-1. (Authorized by K.S.A. 32-104e; effective Jan. 1, 1966; revoked May 1, 1976.)

23-1-2. Migratory water fowl—open season and bag limits. (Effective, Jan. 1, 1966.)

23-1-3. Doves—open season and bag limits. (Effective, Jan. 1, 1966.)

23-1-4. Upland birds; open seasons, bag limits, and possession limits. (Effective April 30, 1982.)

23-1-8. (Authorized by K.S.A. 32-164, K.S.A. 77-415 and K.S.A. 77-421a; implementing K.S.A. 32-178; effective May 1, 1989; revoked June 25, 1990.)

23-1-10. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-177 and 32-178; effective, T-81-32, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked Jan. 22, 1990.)

23-1-11. (Authorized by and implementing K.S.A. 32-152 and 32-215; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; revoked July 13, 2001.)

23-1-12. (Authorized by K.S.A. 32-164 and 32-178; implementing K.S.A. 32-178; effective Nov. 18, 1987; revoked April 30, 1990.)

Article 2.—GAME ANIMALS

23-2-1. (Authorized by K.S.A. 32-157, K.S.A.

1970 Supp. 32-152, 32-164; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1971; revoked May 1, 1987.)

23-2-2. Squirrel; season, daily bag limit, possession limit. (Effective, May 1, 1987.)

23-2-3. (Effective May 1, 1987; revoked Dec. 4, 1989.)

23-2-5. (Authorized by K.S.A. 32-164, K.S.A. 77-415 and K.S.A. 77-421a; implementing K.S.A. 32-178; effective May 1, 1989; revoked June 25, 1990.)

23-2-7. (Authorized by K.S.A. 32-164; implementing K.S.A. 32-110a and 32-178; effective May 1, 1981; amended May 1, 1982; amended May 1, 1988; revoked April 30, 1990.)

23-2-12. (Authorized by K.S.A. 32-164, K.S.A. 77-415 and K.S.A. 77-421a; implementing K.S.A. 32-178; effective May 1, 1989; revoked June 25, 1990.)

23-2-14. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-178 and 32-179; effective May 1, 1981; amended May 1, 1983; amended May 1, 1985; amended May 1, 1986; effective, T-89-20, May 27, 1988; effective, T-23-9-12-88, Sept. 12, 1988; amended Oct. 17, 1988; revoked April 30, 1990.)

23-2-15. (Authorized by and implementing K.S.A. 32-164, 32-178, and 32-179; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; revoked April 30, 1990.)

23-2-16. (Authorized by and implementing K.S.A. 32-158a; effective Jan. 1, 1988; revoked April 30, 1990.)

23-2-17. (Authorized by and implementing K.S.A. 1986 Supp. 32-110a; effective May 1, 1987; revoked Sept. 10, 1990.)

23-2-18. (Authorized by K.S.A. 32-164, K.S.A. 32-178, K.S.A. 32-179, K.S.A. 77-415 and K.S.A. 77-421a; implementing K.S.A. 32-164, K.S.A. 32-178 and K.S.A. 32-179; effective May 1, 1987; revoked June 25, 1990.)

23-2-19. (Authorized by K.S.A. 32-179, K.S.A. 77-415 and K.S.A. 77-421a; implementing K.S.A. 32-179; effective May 1, 1987; revoked June 25, 1990.)

Article 3.—FISH; SPORT AND COMMERCIAL

23-3-1. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-161; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-76-16, March 27, 1975; amended May 1, 1976; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-3-2. (Effective May 1, 1982; revoked Jan. 22, 1990.)

23-3-3. (Authorized by K.S.A. 32-224, 32-225; effective Jan. 1, 1966; amended May 1, 1976; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-3-5. (Authorized by K.S.A. 32-161, 32-164, 32-215; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1978; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-3-6. (Authorized by K.S.A. 32-161, 32-170; effective Jan. 1, 1966; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-3-7. (Authorized by K.S.A. 32-161, 32-161a, 32-161b; effective Jan. 1, 1968; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-3-8. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; revoked Dec. 26, 1989.)

23-3-9. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective May 1, 1983; revoked Sept. 10, 1990.)

23-3-10 and 23-3-11. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; amended May 1, 1985; revoked Dec. 26, 1989.)

23-3-12. (Authorized by K.S.A. 32-164; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; revoked Dec. 26, 1989.)

23-3-13. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; amended May 1, 1987; amended Oct. 17, 1988; revoked Sept. 10, 1990.)

23-3-14 and 23-3-15. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; revoked Dec. 26, 1989.)

23-3-16. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983; revoked Aug. 5, 1991.)

23-3-17. (Authorized by K.S.A. 32-215; implementing K.S.A. 32-189; effective, T-82-3, Jan. 7, 1982; effective May 1, 1983, revoked Dec. 10, 1990.)

23-3-18. (Authorized by and implementing K.S.A. 32-185, K.S.A. 32-503; effective May 1, 1984; revoked Dec. 10, 1990.)

Article 4.—WARNING CITATIONS

23-4-1. (Authorized by K.S.A. 1983 Supp. 74-3302 and implementing K.S.A. 32-164 and 82a-815; effective, T-85-17, June 20, 1984; effective May 1, 1985; revoked Dec. 27, 1993.)

23-4-5 to 23-4-7. (Authorized by K.S.A. 32-185; effective Jan. 1, 1966; revoked, T-83-3, Jan. 7, 1982; revoked May 1, 1983.)

Article 5.—SPECIAL SURETY BOND PROGRAM

23-5-1 to 23-5-8. (Authorized by and implementing K.S.A. 1987 Supp. 19-328; effective, T-88-19, July 1, 1987; effective, T-89-20, May 27, 1988; effective, T-23-9-12-88, Sept. 12, 1988; effective Oct. 17, 1988; revoked April 30, 1990.)

Article 6.—FUR BEARERS

23-6-1. (Authorized by K.S.A. 32-164, implementing K.S.A. 32-158; effective May 1, 1987; revoked Sept. 10, 1990.)

23-6-2. (Authorized by K.S.A. 1965 Supp. 32-158 and 32-164; effective Jan. 1, 1966; revoked May 1, 1986.)

23-6-3. (Authorized by and implementing K.S.A. 32-158, 32-164; effective Jan. 1, 1971; revoked May 1, 1983.)

23-6-4. (Authorized by K.S.A. 1979 Supp. 32-158, 32-164, 32-215; effective May 1, 1980; revoked May 1, 1987.)

23-6-6. (Authorized by K.S.A. 1982 Supp. 32-158, 32-164, 32-215, implementing K.S.A. 32-158; effective May 1, 1981, amended May 1, 1984; amended May 1, 1987; revoked March 19, 1990.)

23-6-7. (Authorized by and implementing K.S.A. 32-158, 74-3302; effective May 1, 1983; revoked Sept. 10, 1990.)

23-6-8. (Authorized by and implementing K.S.A. 1983 Supp. 32-104; effective May 1, 1984; revoked Dec. 27, 1993.)

Article 7.—FUR DEALERS

23-7-1. (Authorized by K.S.A. 32-163, 32-164; effective Jan. 1, 1966; amended May 1, 1978; revoked May 1, 1984.)

23-7-2. (Authorized by K.S.A. 32-163, K.S.A. 1965 Supp. 32-164; effective Jan. 1, 1966; revoked May 1, 1984.)

23-7-3. (Authorized by K.S.A. 32-163, 32-164; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1978; amended May 1, 1979; revoked May 1, 1984.)

23-7-4. (Authorized by K.S.A. 32-163, K.S.A. 1967 Supp. 32-164; effective Jan. 1, 1966; amended Jan. 1, 1968; revoked May 1, 1984.)

23-7-5. (Authorized by K.S.A. 32-163, 32-164; effective, E-79-19, July 20, 1978; effective, E-80-11, Aug. 8, 1979; effective May 1, 1980; revoked March 19, 1990.)

23-7-7. (Authorized by K.S.A. 32-164; implementing K.S.A. 32-163; effective May 1, 1984; effective, T-88-23, July 15, 1987; effective, T-89-20, May 27, 1988; effective, T-23-9-12-88, Sept. 12, 1988; amended Oct. 17, 1988; revoked March 19, 1990.)

Article 8.—WILDLIFE AREAS

23-8-1. (Authorized by and implementing K.S.A. 32-214, 32-224, and L. 1985, Ch. 252, Sec. 1; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1982; amended May 1, 1986; revoked Dec. 4, 1989.)

23-8-2. (Authorized by and implementing K.S.A. 32-224; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1980; amended, T-83-3, Jan. 7, 1982; amended May 1, 1983; amended May 1, 1985; amended May 1, 1988; amended Oct. 17, 1988; revoked Dec. 4, 1989.)

23-8-3 and 23-8-4. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

23-8-5. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; amended Feb. 15, 1977; amended, E-78-14, May 19, 1977; amended May 1, 1978; revoked May 1, 1980.)

23-8-6 to 23-8-10. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

23-8-11. (Authorized by and implementing K.S.A. 32-224; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1983; amended May 1, 1987; revoked Sept. 10, 1990.)

23-8-12. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; amended May 1, 1976; amended May 1, 1980; revoked, T-82-3, Jan. 7, 1982; revoked May 1, 1983.)

23-8-13. (Authorized by K.S.A. 32-224, 74-3302; effective, E-78-27, Sept. 7, 1977; effective May 1, 1978; revoked May 1, 1980.)

23-8-14 to 23-8-17. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

23-8-18. (Authorized by K.S.A. 32-215, 32-224; implementing L. 1985, Ch. 252, Sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended, E-76-51, Oct. 10, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1981; amended May 1, 1986; revoked Dec. 4, 1989.)

23-8-19. (Authorized by K.S.A. 32-215, 32-224; implementing L. 1985, Ch. 252, Sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended May, 1976; amended May 1, 1978; amended May 1, 1981; amended May 1, 1986; revoked Dec. 4, 1989.)

23-8-20. (Authorized by K.S.A. 32-225, 74-3302, K.S.A. 1967 Supp. 32-224; effective Jan 1, 1966; revoked Jan. 1, 1968.)

23-8-21. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; amended May 1, 1980; revoked Dec. 4, 1989.)

23-8-22. (Authorized by K.S.A. 32-225, K.S.A. 1978 Supp. 74-3302; effective Jan. 1, 1966; revoked, E-79-19, July 28, 1978; revoked May 1, 1979.)

23-8-23. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

23-8-24. (Authorized by K.S.A. 32-173, 32-174, 32-224; implementing L. 1985, Ch. 252, Sec. 1; effective Feb. 15, 1977; amended May 1, 1986; revoked Aug. 5, 1991.)

23-8-25. (Authorized by K.S.A. 32-224; implementing K.S.A. 32-225; effective Feb. 15, 1977; amended May 1, 1982; revoked Dec. 4, 1989.)

23-8-26. (Authorized by K.S.A. 32-224; implementing K.S.A. 32-225; effective Feb. 15, 1977; amended May 1, 1982; revoked May 1, 1986.)

23-8-27. (Authorized by K.S.A. 32-161a, 82a-821; effective May 1, 1980; revoked July 13, 2001.)

23-8-30. (Authorized by K.S.A. 32-225, 74-3302, K.S.A. 1967 Supp. 32-224; effective Jan. 1, 1966; revoked, E-67-4, May 19, 1967; revoked Jan. 1, 1968.)

23-8-33. (Authorized by and implementing K.S.A. 32-224 and 74-3302; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended May 1, 1976; amended May 1, 1981; amended May 1, 1982; revoked Dec. 4, 1989.)

23-8-34. (Authorized by and implementing K.S.A. 32-215, 32-224, and 1985 Supp. 74-3302; effective May 1, 1987; revoked Oct. 30, 1989.)

23-8-36. (Authorized by K.S.A. 32-224, 32-225, 74-3302; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1970; amended May 1, 1976; amended May 1, 1981; revoked Dec. 4, 1989.)

23-8-40. (Authorized by K.S.A. 32-225, 74-3302, K.S.A. 1967 Supp. 32-224; effective Jan. 1, 1966; revoked, E-67-4, May 19, 1967; revoked Jan. 1, 1968.)

23-8-44. (Authorized by K.S.A. 32-225, 74-3302, K.S.A. 1967 Supp. 32-224; effective Jan. 1, 1966; revoked, E-67-4, May 19, 1967; revoked Jan. 1, 1968.)

23-8-47. (Authorized by K.S.A. 32-225, 74-3302, K.S.A. 1967 Supp. 32-224; effective Jan. 1, 1966; revoked, E-67-4, May 19, 1967; revoked Jan. 1, 1968.)

Article 9.—GAME BIRDS; SHOOTING AREAS

23-9-1. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; revoked May 1, 1982.)

23-9-2. (Authorized by K.S.A. 32-321; implementing 32-312; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1974; amended May 1, 1982; revoked Dec. 4, 1989.)

23-9-3. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked Jan. 1, 1974.)

23-9-4. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1982.)

23-9-5. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1982.)

23-9-6. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Jan. 1, 1974; revoked May 1, 1982.)

23-9-7 and 23-9-8. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; amended Jan. 1, 1970; revoked May 1, 1982.)

23-9-9. (Authorized by K.S.A. 32-321; effective Jan. 1, 1966; revoked May 1, 1982.)

23-9-10. (Authorized by K.S.A. 32-321; implementing K.S.A. 32-320; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1982; revoked Dec. 4, 1989.)

23-9-11. (Authorized by and implementing K.S.A. 32-321; effective May 1, 1982; revoked Dec. 4, 1989.)

Article 10.—FEDERAL WATER IMPOUNDMENT AREAS

23-10-1 to 23-10-12. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

23-10-13. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; amended, E-78-14, May 19, 1977; amended May 1, 1978; revoked May 1, 1980.)

23-10-14 to 23-10-16. (Authorized by K.S.A. 32-224, 74-3302; effective Jan. 1, 1966; revoked May 1, 1980.)

Article 11.—BOATING REGULATIONS

23-11-1. (Authorized by and implementing K.S.A. 82a-804; effective Jan. 1, 1966; amended,

E-71-20, April 28, 1971; amended Jan. 1, 1972; amended May 1, 1980; amended May 1, 1985; revoked Oct. 30, 1989.)

23-11-2. (Authorized by K.S.A. 82a-804; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; amended May 1, 1979; revoked May 1, 1980.)

23-11-3. (Authorized by and implementing K.S.A. 82a-804; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; amended May 1, 1985; revoked Oct. 22, 1990.)

23-11-4. (Authorized by K.S.A. 82a-804; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-5. (Authorized by K.S.A. 82a-804; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; amended May 1, 1979; revoked May 1, 1983.)

23-11-6. (Authorized by K.S.A. 82a-814, K.S.A. 1973 Supp. 82a-804a; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; revoked Oct. 22, 1990.)

23-11-7. (Authorized by K.S.A. 82a-811, 82a-815, K.S.A. 1971 Supp. 82a-804a; effective Jan. 1, 1966; amended, E-71-20, April 28, 1971; amended Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-8. (Authorized by K.S.A. 1971 Supp. 82a-804a; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-9. (Authorized by K.S.A. 1975 Supp. 82a-807(5); effective, E-76-16, March 27, 1975; effective May 1, 1976; revoked Oct. 22, 1990.)

23-11-12. (Authorized by K.S.A. 1971 Supp. 82a-804a; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-13. (Authorized by K.S.A. 82a-815, K.S.A. 1971 Supp. 82a-804a; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-15. (Authorized by K.S.A. 82a-814; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; revoked Jan. 28, 1991.)

23-11-16. (Authorized by K.S.A. 82a-811, 82a-815; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; revoked Oct. 22, 1990.)

23-11-17. (Authorized by K.S.A. 82a-810a; effective, E-71-20, April 28, 1971; effective Jan. 1, 1972; amended May 1, 1978; amended May 1, 1979; revoked Oct. 22, 1990.)

Article 12.—TRAINING DOGS AND FIELD TRIAL EVENTS

23-12-1. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; amended May 1, 1981; revoked Aug. 5, 1991.)

23-12-2. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; revoked May 1, 1981.)

23-12-3. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1981.)

23-12-4. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; revoked May 1, 1981.)

23-12-5 to 23-12-7. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; amended Jan. 1, 1974; revoked May 1, 1981.)

23-12-8. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; amended May 1, 1981; revoked Aug. 5, 1991.)

23-12-9. (Authorized by K.S.A. 1980 Supp. 32-174; effective Jan. 1, 1966; revoked May 1, 1981.)

23-12-11. (Authorized by and implementing K.S.A. 32-173, 32-174 and 32-145; effective Jan. 1, 1970; amended, E-76-16, March 27, 1975; amended May 1, 1976; amended, E-79-32, Nov. 21, 1978; amended May 1, 1979; amended, E-80-20, Nov. 7, 1979; amended May 1, 1980; amended May 1, 1981; amended May 1, 1987; revoked Aug. 5, 1991.)

23-12-12. (Authorized by K.S.A. 32-174; effective, E-76-16, March 27, 1975; effective May 1, 1976; revoked, E-79-32, Nov. 21, 1978; revoked May 1, 1979.)

Article 13.—SKIN AND SCUBA DIVING

23-13-1. (Authorized by K.S.A. 82a-821; effective Jan. 1, 1968; amended Jan. 1, 1970; revoked May 1, 1980.)

Article 14.—DISABLED PERSONS

23-14-1. (Authorized by K.S.A. 1975 Supp. 32-154a, 32-156; effective, E-76-16, March 27, 1975; effective May 1, 1976; revoked Oct. 30, 1989.)

Article 15.—NUISANCE BIRD CONTROL

23-15-1. (Authorized by K.S.A. 32-156b, K.S.A. 1977 Supp. 32-156, 32-156a; effective, E-78-34, Dec. 7, 1977; effective May 1, 1978; revoked Sept. 10, 1990.)

Article 16.—IMPORTATION AND POSSESSION OF CERTAIN WILDLIFE

23-16-1. (Authorized by and implementing K.S.A. 32-164a; effective May 1, 1978; amended May 1, 1986; revoked Dec. 27, 1993.)

Article 17.—NONGAME, THREATENED OR ENDANGERED SPECIES

23-17-1. (Authorized by K.S.A. 32-504 and 32-507; effective May 1, 1978; amended May 1, 1980; amended May 1, 1987; revoked Oct. 30, 1989.)

23-17-2. (Authorized by K.S.A. 32-504, 32-507; effective May 1, 1981; amended May 1, 1987; revoked Oct. 30, 1989.)

23-17-3. (Authorized by and implementing K.S.A. 32-503 and 32-507; effective May 1, 1987; revoked Oct. 30, 1989.)

Article 18.—FEES

23-18-1. (Authorized by and implementing K.S.A. 32-164b; effective, E-79-32, Nov. 21, 1978; effective May 1, 1979; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked Dec. 4, 1989.)

23-18-2. (Authorized by and implementing K.S.A. 1984 Supp. 32-602; effective, T-83-34, Nov. 10, 1982; effective May 1, 1983; amended, T-85-21, July 2, 1984; effective May 1, 1985; amended, T-86-21, July 1, 1985; amended May 1, 1986; revoked Dec. 10, 1990.)

23-18-3. (Authorized by and implementing K.S.A. 32-1-4b; effective May 1, 1988; revoked Dec. 26, 1989.)

23-18-4. (Authorized by K.S.A. 32-401; implementing K.S.A. 32-104m; effective May 1, 1988; revoked Dec. 26, 1989.)

**Article 19.—SALE OF GAME BIRDS
AND GAME ANIMALS**

23-19-1. (Authorized by K.S.A. 1979 Supp. 32-152, 32-156; effective May 1, 1980; revoked Dec. 27, 1993.)

**Article 20.—AMPHIBIANS
AND REPTILES**

23-20-1. (Authorized by K.S.A. 32-189; implementing K.S.A. 32-188; effective May 1, 1983; revoked Dec. 10, 1990.)

Article 21.—FALCONRY

23-21-1 to 23-21-14. (Authorized by K.S.A. 32-164 and 32-215; implementing K.S.A. 32-156; effective May 1, 1988; revoked Nov. 12, 1991.)

Agency 24
Kansas Wheat Commission

Articles

24-1. MILL LEVY ASSESSMENT.

Article 1.—MILL LEVY ASSESSMENT

24-1-1. Mill levy assessment. Wheat marketed through commercial channels in the state of Kansas shall be assessed at 10 mills per bushel. The assessment shall be levied and assessed to

the grower at the time of sale. (Authorized by and implementing K.S.A. 2-2608; effective, T-89-21, May 27, 1988; effective Sept. 19, 1988; amended May 31, 1996.)

Agency 25

Kansas State Grain Inspection Department

Editor's Note:

The Kansas State Grain Inspection Department, which was formerly Agency 25, was abolished on September 1, 1997. Powers, duties and functions of the department concerning public warehouses were transferred to the Department and the Secretary of Agriculture. Powers, duties and functions of the department concerning grain inspection are hereby governed by the Grain Inspection, Packers, and Stockyards Administration of the United States Department of Agriculture. See K.S.A. 1999 Supp. 34-128.

Articles

- 25-1. *WAREHOUSING. (Not in active use.)*
- 25-2. *INSPECTION DIVISION. (Not in active use.)*
- 25-3. *WEIGHING. (Not in active use.)*
- 25-4. *FEES AND CHARGES. (Not in active use.)*
- 25-5. *TRANSFER OF GRAIN BETWEEN PUBLIC WAREHOUSES. (Not in active use.)*

Article 1.—WAREHOUSING

25-1-1. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-229; effective Jan. 1, 1966; amended May 1, 1981; amended May 1, 1982; revoked Feb. 23, 1996.)

25-1-2. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

25-1-3. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-1-4. (Authorized by K.S.A. 34-102, 34-2,100; implementing K.S.A. 34-299 and 34-2,100; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1982; revoked March 8, 2002.)

25-1-5. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-1-6. (Authorized by K.S.A. 34-102, 34-2,100; implementing 34-295a, 34-2,100; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1982; revoked March 8, 2002.)

25-1-7. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; implementing K.S.A. 34-235; effective Jan. 1, 1966; amended Jan. 1, 1968; revoked May 1, 1982.)

25-1-8. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked,

T-25-9-30-93, Sept. 30, 1993; revoked Nov. 8, 1993.)

25-1-9. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; amended, E-67-8, June 16, 1967; amended Jan. 1, 1968; revoked May 1, 1985.)

25-1-10 and 25-1-11. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

25-1-12. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; amended May 1, 1967; amended Jan. 1, 1968; revoked March 8, 2002.)

25-1-13 and 25-1-14. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

25-1-15. (Authorized by and implementing K.S.A. 34-2,100, as amended by L. 1993, ch. 159, sec. 4; effective Jan. 1, 1966; amended, T-25-9-30-93, Sept. 30, 1993; amended Nov. 8, 1993; revoked March 8, 2002.)

25-1-16. (Authorized by K.S.A. 34-102, 34-2,100; implementing K.S.A. 34-248a; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1982; revoked, T-25-9-30-93, Sept. 30, 1993; revoked Nov. 8, 1993.)

25-1-17. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; amended

Jan. 1, 1968; revoked, T-25-9-30-93; Sept. 30, 1993; revoked Nov. 8, 1993.)

25-1-18. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Jan. 1, 1968.)

25-1-19. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-1-20. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; implementing K.S.A. 34-102; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended May 1, 1982; revoked March 8, 2002.)

25-1-21. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; implementing K.S.A. 34-102; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1969; amended May 1, 1982; revoked March 8, 2002.)

25-1-22. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-1-23. (Authorized by K.S.A. 34-102, 34-235, and 34-2,100, K.S.A. 1967 Supp. 34-227a, 34-227b; effective, E-67-18, Sep. 13, 1967; effective Jan. 1, 1968; revoked March 8, 2002.)

25-1-24. (Authorized by K.S.A. 34-102a, 34-228, 34-2,100, 34-2,103; effective, E-68-8, March 11, 1968; effective Jan. 1, 1969; revoked March 8, 2002.)

25-1-25. (Authorized by K.S.A. 34-223; effective, E-69-7, May 28, 1969; effective Jan. 1, 1970; revoked March 8, 2002.)

25-1-26. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-228; effective May 1, 1982; revoked March 8, 2002.)

25-1-27. (Authorized by K.S.A. 34-2,100; implementing K.S.A. 34-251, K.S.A. 1983 Supp. 34-2,109, 34-2,110; effective May 1, 1984; revoked March 8, 2002.)

25-1-28. (Session Laws of 1985, Chapter 137 & Chapter 138; effective, T-86-29, Aug. 19, 1985; effective May 1, 1986; revoked March 8, 2002.)

Article 2.—INSPECTION DIVISION

25-2-1. (Authorized by K.S.A. 34-102, 34-

235, 34-2,100; effective Jan. 1, 1966; revoked May 1, 1980.)

25-2-2. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Dec. 28, 1992.)

25-2-3. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; implementing K.S.A. 34-102; effective Jan. 1, 1966; revoked May 1, 1982.)

25-2-4. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-2-5. (Authorized by K.S.A. 34-102, 34-2,100, K.S.A. 1979 Supp. 34-235; effective May 1, 1980; revoked Dec. 28, 1992.)

Article 3.—WEIGHING

25-3-1. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked May 1, 1982.)

25-3-2. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-3. (Authorized by K.S.A. 34-102, 34-2,100; implementing K.S.A. 83-304; effective Jan. 1, 1966; amended May 1, 1982; amended Feb. 23, 1996; revoked March 8, 2002.)

25-3-4. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-5. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-6. (Authorized by K.S.A. 34-102, 34-2,100; implementing K.S.A. 34-102; effective Jan. 1, 1966; amended May 1, 1982; revoked March 8, 2002.)

25-3-7. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked May 1, 1980.)

25-3-8. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-9. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked May 1, 1980.)

25-3-10. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-11. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-12. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-13. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked March 8, 2002.)

25-3-14. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked Jan. 1, 1972.)

25-3-15. (Authorized by K.S.A. 34-102, 34-2,100; implementing K.S.A. 34-102; effective Jan. 1, 1972; amended May 1, 1979; amended May 1, 1982; revoked March 8, 2002.)

25-3-16. (Authorized by K.S.A. 34-102, 34-235; implementing K.S.A. 34-112a; effective May 1, 1982; revoked March 8, 2002.)

25-3-17. (Authorized by K.S.A. 34-102; implementing K.S.A. 34-112a; effective May 1, 1982; revoked March 8, 2002.)

Article 4.—FEES AND CHARGES

25-4-1. (Authorized by and implementing K.S.A. 1994 Supp. 34-103a; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-68-7, Feb. 20, 1968; amended Jan. 1, 1969; amended, E-69-7, May 28, 1969; amended Jan. 1, 1970; amended, E-71-26, June 18, 1971; amended Jan. 1, 1972; amended, E-72-8, Feb. 26, 1972; amended Jan. 1, 1973; amended, E-74-27, June 26, 1974; amended, E-74-51, Sept. 30, 1974; amended May 1,

1975; amended, E-78-10, March 26, 1977; modified, L. 1978, ch. 448, May 1, 1978; modified, L. 1980, ch. 345, May 1, 1980; amended May 1, 1981; amended May 1, 1982; amended, T-83-20, July 21, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-16, July 26, 1987; amended May 1, 1988; amended, T-25-6-13-88, June 13, 1988; amended Sept. 26, 1988; amended Oct. 16, 1989; amended Oct. 22, 1990; amended May 13, 1991; amended, T-25-10-23-92, Oct. 23, 1992; amended Dec. 7, 1992; amended, T-25-8-25-94, Aug. 25, 1994; amended Oct. 3, 1994; amended, T-25-5-8-95, May 8, 1995; amended June 26, 1995; revoked Sept. 20, 1996.)

25-4-2 and 25-4-3. (Authorized by K.S.A. 34-102, 34-235, 34-2,100; effective Jan. 1, 1966; revoked May 1, 1979.)

25-4-4. (Authorized by and implementing K.S.A. 34-228, as amended by 1996 House Bill 2641; effective, E-67-18, Sept. 13, 1967; effective Jan. 1, 1968; amended, E-69-7, May 28, 1969; amended Jan. 1, 1970; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-16, July 1, 1987; amended May 1, 1988; amended Oct. 22, 1990; amended March 23, 1992; amended June 7, 1996; amended Oct. 25, 1996; revoked March 8, 2002.)

25-4-5. (Authorized by K.S.A. 34-228; effective Jan. 1, 1968; revoked May 1, 1980.)

Article 5.—TRANSFER OF GRAIN BETWEEN PUBLIC WAREHOUSES

25-5-1. (Authorized by K.S.A. 1997 Supp. 34-102; implementing K.S.A. 34-241; effective, T-25-8-13-98, Aug. 13, 1998; effective Jan. 29, 1999; revoked March 8, 2002.)

Agency 26
**Kansas Department for Aging
and Disability Services**

Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 41, The Kansas Department on Aging was renamed the Kansas Department for Aging and Disability Services. See L. 2012, Ch. 185.

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Article 1.—GENERAL PROVISIONS

26-1-1. Definitions. (a) “Area agency” and “area agency on aging” mean the agency or organization within a planning and service area that has been designated by the secretary to develop, implement, and administer a plan for the delivery of a comprehensive and coordinated system of services to individuals in the planning and service area.

(b) “Area plan” means the document developed by an area agency that describes the comprehensive and coordinated system of services to be provided to individuals in a planning and service area.

(c) “Comprehensive and coordinated system of services” means a program of interrelated sup-

portive and nutrition services designed to meet the needs of individuals in a planning and service area.

(d) “Contract” means a procurement agreement.

(e) “Contractor” means the party or parties who are under contract with the department or an area agency to provide services to individuals in a planning and service area.

(f) “Contribution” means a donation of money or vision card units that is given by a customer to pay to the provider a portion or the total cost of services received.

(g) “Department” has the meaning specified in K.S.A. 75-5902(a), and amendments thereto.

(h) “Federal act” means the older Americans act of 1965, codified at 42 U.S.C. 3001 et seq. on October 17, 2006, as amended.

(i) “Final financial report” means a contractor-prepared or grantee-prepared document that contains an accurate and complete disclosure of the financial results of the contract, grant, subcontract, or subgrant.

(j) “Grant” means an award of financial assistance in the form of money, or property in lieu of money, by the department.

(k) “Grantee” means any legal entity to which a grant is awarded and that is accountable to the department for the use of the grant. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant.

(l) “Granting agency” means Kansas department on aging.

(m) “Greatest economic need” means the need for services resulting from an annual income level at or below the poverty threshold established annually by the U.S. department of health and human services.

(n) “Greatest social need” means the need for services caused by noneconomic factors that restricts an individual’s ability to perform normal daily tasks or that threatens the capacity to live independently. Noneconomic factors shall include physical and mental disabilities, language barriers, and cultural, social, or geographic isolation including isolation caused by racial or ethnic status.

(o) “Indian tribal organization” means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe.

(p) “In-home service” means the provision of health, medical, or social services to a private individual in the individual’s noninstitutional place of residence.

(q) “Kansan” means any individual who currently resides within the state of Kansas.

(r) “Metropolitan area” means a standard metropolitan statistical area as defined by the census bureau.

(s) “Modification of a grant or contract” means a change in an area plan or other grant or a contract that would result in any of the following:

(1) Alteration of the program scope, planned objectives, or manner in which services are delivered;

(2) provision of financial assistance or payments to any entity not authorized by the original grant or contract; or

(3) alteration of the approved budget of the original grant or contract.

(t) “Notification of grant award” and “NGA” mean the document, issued by the department, awarding financial assistance for the provision of services and specifying the terms of the grant.

(u) “Obligation” means the dollar amount of the orders placed, contracts and subgrants awarded, services received, and similar transactions during the grant period that will require payment within 75 days following the last day in which the grant is active.

(v) “Older individual” and “older person” has the meaning specified in K.S.A. 75-5902(d), and amendments thereto, for “aged” and “senior citizen.”

(w) “Planning and service area” and “PSA” mean a geographic area of the state designated by the department for the purpose of planning, development, delivery, and overall administration of services under an area plan.

(x) “Program income” and “project income” mean gross income received by the grantee or subgrantee and directly generated by a grant-supported activity or earned only as a result of the grant agreement during the period.

(y) “Qualified assessor” means any individual who meets the department’s education, licensure, certification, and training requirements that are required to perform a customer assessment for a program funded by the department.

(z) “Redesignation” means a change in the geographic boundaries of a planning and service area or selection of an area agency that is different from the area agency previously designated for a particular planning and service area.

(aa) “Request for proposal” and “RFP” mean the document containing criteria that is used to solicit applications for a contract or grant from potential service providers.

(bb) “Secretary” has the meaning specified in K.S.A. 75-5902(b), and amendments thereto.

(cc) “Self-employment” means work for income performed by an individual engaged on that individual’s own account in a business, farm, or other enterprise.

(dd) “Service provider” means any legal entity that is obligated to provide services in any planning and service area.

(ee) “State act” means Kansas act on aging, K.S.A. 75-5901 et seq. and amendments thereto.

(ff) “State advisory council” means the advisory council on aging created by K.S.A. 75-5911, and amendments thereto.

(gg) “State plan” means the document submitted to the U.S. department of health and human

services by the department in order to receive its allotment of funds under the older Americans act.

(hh) "Subcontractor" means any legal entity to which a subcontract has been awarded and that is accountable to the contractor to provide services to individuals in a planning and service area.

(ii) "Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to a subgrantee.

(jj) "Subgrantee" means any legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the grant funds.

(kk) "Unit of local government" means either of the following:

(1) Any county, city, township, school district, or other similar political subdivision of the state, or any agency, bureau, office, or department thereof; or

(2) any Indian tribal organization. (Authorized by K.S.A. 2010 Supp. 75-5908; implementing K.S.A. 75-5902 and K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended July 15, 2011.)

26-1-2. Procedure for redesignation of planning and service area boundaries. (a) Requests for redesignation of existing planning and service area boundaries shall be in writing and may be made by any of the following applicants:

- (1) Any unit of local government;
- (2) any Indian tribal organization;
- (3) any region within the state recognized for area-wide planning; or
- (4) any metropolitan area.

(b) At a minimum, the following factors shall be considered in decisions regarding redesignation of planning and service areas:

- (1) The proposed boundaries' conformity with requirements of the state and federal acts;
- (2) the geographical distribution of persons age 60 and over;
- (3) the relationship of the proposed boundaries to those of other planning and service areas;
- (4) the incidence of need for services and the degree to which resources are available to meet the needs;
- (5) comments by older citizens, units of local government, and other interested parties in the planning and service area; and

(6) comments of the state advisory council.

(c) A public hearing on the proposed planning and service area redesignation shall be held before taking action on the request. At least one hearing shall be held in the locality of the state where redesignation will alter or modify the existing geographic boundaries.

(d) Applications shall be processed in the following manner:

(1) Within 60 calendar days following the receipt by the department of a request for redesignation, a public hearing shall be held in the geographic area that will be affected by the proposed redesignation.

(2) Advance notice of the hearing shall be given at least 15 calendar days before the date of the hearing by publishing the notice in a newspaper with general circulation in the geographic area that will be affected by the proposed redesignation. The notice shall state the date, time, location, and purpose of the public hearing.

(3) Written comments shall be received on or before the 10th calendar day following the hearing.

(4) The secretary shall render a decision on each request within 60 calendar days after the close of the comment period.

(5) The applicant shall have 30 calendar days following the receipt of the decision to appeal the secretary's decision.

(e) The applicant may withdraw or ask for a continuance of its redesignation request at any time before receiving the secretary's decision. The request shall be made in writing to the secretary. Only one request for continuance shall be allowed for each redesignation request, and, if granted, the continuance shall not exceed 90 calendar days from the date it is requested. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended March 5, 1999.)

26-1-3. Procedure for redesignation of area agency on aging. (a) Only one area agency on aging shall be designated in each planning and service area.

(b) A request for redesignation of an area agency on aging may be submitted by any of the following:

- (1) Any unit of local government;
- (2) any established office on aging operating in a planning and service area;

- (3) any private or public nonprofit agency; or
 - (4) any Indian tribal organization.
- (c) An area agency on aging shall not be redesignated until:
- (1) An on-site review has been completed to determine the capacity of the applicant to conform with the federal and state acts and rules and regulations promulgated pursuant to those acts;
 - (2) At least one public hearing has been conducted in the planning and service area;
 - (3) Evidence of support has been provided from:
 - (A) Units of local government;
 - (B) older persons;
 - (C) the state advisory council;
 - (D) local advisory councils; and
 - (E) other interested parties; and
 - (4) Evidence has been supplied that the applicant possesses the legal and organizational capacity to carry out the functions specified in the federal and state acts.
- (d) Applications shall be processed as follows:
- (1) Within 60 calendar days following the receipt by the department of a request for redesignation, a public hearing shall be held in the geographic area which will be affected by the proposed redesignation.
 - (2) Advance notice of the hearing shall be given at least 10 calendar days prior to the date of the hearing by publishing the notice in a newspaper which has general circulation in the geographic area which will be affected by the proposed redesignation. The notice shall state the date, time, location, and purpose of the public hearing.
 - (3) Written comments shall be received before, at, and up to 10 calendar days following the hearing.
 - (4) The secretary shall render a decision to the applicant within 60 calendar days after the close of the comment period.
 - (5) The applicant shall have 30 calendar days following the receipt of the secretary's decision to appeal the decision.
- (e) The party requesting a redesignation of an area agency may withdraw or ask for a continuance of its redesignation request at any time prior to receiving the secretary's decision. The request shall be in writing. Only one request for continuance shall be allowed each redesignation request and, if granted, the continuance shall not exceed 90 calendar days from the date it is requested. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986.)

26-1-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended May 1, 1986; amended May 21, 1999; revoked May 31, 2002.)

26-1-5. Area plan development. (a) Each area agency's executive director shall ensure that an area plan is developed and submitted to the department for approval. An area agency shall not receive any funds from the department until the area agency's area plan has been approved.

(b) Each area plan shall be submitted on forms prescribed by the secretary and shall contain all of the assurances required in section 306 of the federal act, and all other relevant information requested on the forms.

(c) Each area agency's executive director shall ensure that units of local government, local advisory councils, potential service providers, and older individuals, family caregivers, and other representatives of these older individuals have an opportunity for involvement in the development of the area plan.

(d) Each area agency's area plan shall describe the rationale for the proposed allocation of funds for services in the planning and service area. The rationale shall identify the manner in which the proposed distribution of funds will meet identified nutrition and supportive service needs.

(e) The area plan shall provide assurances that the area agency will expend for services to older individuals residing in rural areas in the area agency's planning and service area an amount not less than the amount expended for these services in federal fiscal year 2000. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended July 15, 2011.)

26-1-6. Operating policies and procedures of area agencies. (a) Each area agency receiving funding under an area plan shall have written policies and procedures to govern the conduct of its operations and functions. These policies and procedures shall meet the following requirements:

(1) Describe the administrative and policy structure of the area agency; and

(2) describe the policies and procedures that are applicable to recipients of services provided with

funds from the department and include any policies and procedures mandated by the department.

(b) Each area agency's written policies and procedures that are applicable to recipients of services provided with funds from the department shall be officially adopted by action of the entity's governing body. Before adoption, the area agency shall provide an opportunity for comment on the proposed operating policies and procedures by units of local government, local advisory councils, potential service providers, and older individuals. Notice of the opportunity for comment shall be published in a newspaper or newspapers of general circulation within the planning and service area at least 14 days before the policies and procedures are adopted by the area agency.

(c) Each area agency's executive director shall ensure that the area agency's policies and procedures are submitted to the department within 10 days of receipt of the department's written request.

(d) Each area agency's executive director shall ensure that each of the area agency's subgrantees and contractors that receive department funds is provided with a copy of the area agency's written policies and procedures, at no cost to the subgrantee or contractor. Other parties may obtain a copy of the written policies and procedures by submitting a written request to the area agency. The area agency shall provide the requested policies or procedures, or both, within three business days after the date the request is received, subject to prepayment of reasonable costs. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 21, 1999; amended July 15, 2011.)

26-1-7. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Nov. 14, 1997; revoked July 15, 2011.)

26-1-8. Confidentiality; policies and procedures to protect information; sanctions. (a) Personal information collected in the application for or delivery of services funded, in whole or in part, by the department shall remain confidential unless the disclosure meets any of the following conditions:

(1) Prior written consent to disclose an individual's personal information is obtained from the individual or the individual's legal representative.

(2) Disclosure is required to enable the delivery of services for which the individual or the individual's representative has requested or applied.

(3) Disclosure is required for program monitoring purposes by authorized federal, state, or local agencies.

(4) Disclosure is required by court order, administrative tribunal, or law.

(b) Personal information shall include any of the following:

(1) Street address, city, county, zip code, or equivalent geocodes;

(2) telephone number, fax number, or electronic mail address;

(3) social security, medical record, health plan beneficiary, and account numbers, and any other unique identifying number, characteristic, or code;

(4) certificate or license number;

(5) web universal resource locators (URLs) and internet protocol (IP) address numbers;

(6) biometric identifiers, including fingerprints and voiceprints;

(7) full-face photographic images and any comparable images;

(8) validation of past and present receipt of any local, state, or federal program services;

(9) validation of family, social, and economic circumstances;

(10) medical data, including diagnoses and history of disease or disability;

(11) income and other financial information;

(12) department evaluation of personal or medical information;

(13) validation of program eligibility; and

(14) validation of third-party liability for payment for program services to any individual or entity.

(c) Each department grantee, subgrantee, contractor, and subcontractor shall adopt and adhere to written policies and procedures to safeguard against the unauthorized disclosure of personal information about individuals collected in the delivery of services and shall identify sanctions to be imposed against an individual or organization that discloses confidential information in violation of the policies and procedures.

(1) Access to confidential information shall be restricted to those individuals who specifically require access in order to perform their assigned duties.

(2) All staff engaged in the collection, handling, and dissemination of personal information shall be informed of the responsibility to safeguard the information in their possession and shall be held

accountable for the appropriate use and disclosure of confidential information.

(d) If, after an investigation, notice, and the opportunity for a hearing, the secretary finds that any individual or organization identified in subsection (c) has disclosed or permitted the disclosure of any confidential information the disclosure of which is prohibited by this regulation or by any other state or federal law restricting or prohibiting the disclosure of information about individuals requesting or receiving services through any of the department's programs, the individual or organization shall have imposed against that individual or organization those sanctions that the secretary decides are commensurate with the disclosure under all the circumstances. Sanctions may include any of the following:

(1) Denial, termination, or suspension of performance of any grant, subgrant, contract, sub-contract, or other agreement;

(2) denial, termination, or suspension of participation in any or all department programs;

(3) referral for criminal prosecution or civil penalty assessments when provided for by law;

(4) petitioning for temporary or permanent injunctive relief without prior notice;

(5) exclusion from department data bases; or

(6) any other sanctions permitted by any state or federal law.

(e) No attorney paid through any program administered by the department to provide legal assistance to an individual shall be required by the department or the area agency to disclose the identity of any individual to whom the attorney provides or has provided legal assistance or any information protected by the attorney-client privilege. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908 and 75-5945; effective July 15, 2011.)

26-1-9. Withdrawal of area agency on aging designation. (a) An area agency's designation shall be withdrawn by the secretary after reasonable notice and opportunity for a hearing, for any of the following reasons:

(1) An area agency does not meet federal, state, or local requirements.

(2) An area plan or plan amendment is not approved.

(3) There is substantial failure in the provisions, implementation, or administration of an approved area plan to comply with any provision of the older Americans act or the policies and procedures established or published by the department.

(4) The area agency voluntarily withdraws as the designated area agency on aging, which shall be effective only with the express written consent of the secretary.

(5) The area agency expends the resources allocated by the department in violation of the federal older Americans act or the policies and procedures established or published by the department.

(6) The area agency does not obtain approval by the department for a revision of its area plan before implementing a change, as required by K.A.R. 26-2-4.

(7) The area agency fails to meet all conditions of a notification of grant award issued by the department by the deadline established by the department.

(8) There is a change in administration that erodes the authority or capacity of the area agency to perform the functions required by law and regulations.

(9) The area agency is insolvent or fails to meet any of its financial obligations, including payroll, rent, utilities, or payment of subgrantees or sub-contractors, for a period of at least 90 consecutive days.

(10) The area agency commits fraudulent, unethical, or unprofessional conduct.

(b) The governing board or administrative unit of the area agency shall have 30 days to respond to the department's written notification of withdrawal by submitting for department approval a plan of corrective action that shall describe the following:

(1) The action steps to be taken to regain area agency designation;

(2) the expected outcome for each action step; and

(3) the maximum time frame needed to correct the deficiencies.

(c) If the department withdraws an area agency's designation under subsection (a) of this regulation, the following shall be undertaken by the department:

(1) Provision of a plan for the continuity of area agency functions and services in the affected planning and service area; and

(2) designation of a new area agency in the planning and service area in a timely manner.

(d) If necessary to ensure continuity of services in a planning and service area, either of the following actions may be undertaken by the department, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Performance of the responsibilities of the area agency; or

(2) assignment of the responsibilities of the area agency to another agency in the planning and service area. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective March 5, 1999.)

Article 2.—GRANTS AND CONTRACTS

26-2-1. Notification of grant award (NGA) or contract. (a) Each grantee or contractee of the department shall sign and return to the department a notification of grant award or contract before funds will be advanced. The notification of grant award or contract shall include:

(1) the total financial amount of the grant award or contract, including:

(A) the amount of funds to be provided by the department;

(B) the amount of funds to be provided by the grantee or contractee; and

(2) the effective and expiration dates of the grant or contract;

(3) assurance that all materials published in connection with the grantees, contractees, and subcontractees activities shall conspicuously acknowledge the support of the administration on aging and the department;

(4) special conditions which may be specified as part of the grant or contract;

(5) the signature of the authorized representative of the grantee or contractee and the secretary; and

(6) the statement that the grant award or contract is made subject to the Kansas administrative regulations and the department's policy issuances which become effective after the date of the initial grant award for the grant period.

(b) Unless revised, computation of grant amounts which appear on the document shall constitute a ceiling for state and federal participation in the approved cost.

(c) Unless specifically exempted by the secretary, providers of services funded in whole or in part by state funds shall comply with the financial requirements applicable to providers of services funded by federal act funds. When an exemption is given, appropriate financial requirements shall be imposed concerning the use of these funds. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; revoked, T-86-34, Oct. 23, 1985; revoked May 1, 1986.)

26-2-3. Reporting and unearned funds requirements. (a) General reporting requirements.

(1) Each grantee and contractor shall submit program and financial reports to comply with federal and state program requirements. Each grantee and each contractor shall be responsible for the following:

(A) Gathering accurate information necessary to complete its reports;

(B) completing reports on forms or in a format prescribed by the secretary, including entering data in the management information system; and

(C) submitting reports or data to the secretary or designee on or before the due dates.

(2) Each grantee and each contractor shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors, and subcontractors with whom the grantee or contractor has subgrants, contracts, or subcontracts.

(3) A waiver of deadline for submitting a report may be authorized by the secretary if the grantee or contractor meets the following requirements:

(A) Submits a written waiver request that is received by the secretary at least eight business days before the due date for the report for which the waiver is being requested;

(B) identifies in the written waiver request the reason for the reporting delay, which shall be legitimately beyond the grantee's or contractor's control;

(C) provides an acceptable remedy to rectify the delay; and

(D) submits a report acceptable to the secretary on or before the revised due date indicated in the request.

(4) Within five business days after receipt of the written waiver request, a written notice of denial or approval of the request shall be issued by the secretary. The deadline for submitting a program or financial report shall not be deemed changed merely because the grantee or contractor submitted a written waiver request for an extension of the report's due date.

(5) Failure to submit complete and accurate program or financial reports by the due dates, even if a waiver is granted, may be remedied by departmental action, including one or more of the following:

(A) Termination or suspension of the grant or contract;

(B) termination or suspension of grant or contract payments;

(C) withholding of all administrative funds;

(D) reducing a percentage of administrative funds;

(E) exclusion from consideration for future grants or contracts; and

(F) exclusion from participation in the redistribution of the older Americans act carryover or unearned funds, as specified in the state plan on aging.

(b) Final financial report requirements for older Americans act (OAA) title III.

(1) Before submitting its final financial report, each area agency shall liquidate all obligations for goods and services purchased for the report period.

(2) Each area agency shall submit an accurate consolidated final financial report to the department for each program component no later than December 15 following the end of the grant period.

(3) An area agency may submit a revised final financial report if the report is accompanied by the supporting final financial report for each of the area agency's OAA title III subgrantees, contractors, and subcontractors and if either of the following conditions is met:

(A) The revised report is received either on or before December 31 after the end of the grant period.

(B) The revised report is received after December 31 following the end of the grant period, but on or before April 15, and the report is delivered simultaneously with the audit report performed in accordance with K.A.R. 26-2-10 confirming that the revised report is an accurate report.

(c) Older Americans act title III unearned funds requirements.

(1) Unearned funds shall be those funds that have been awarded to a grantee or contractor that have not been expended by the grantee or contractor or that have been expended for an unallowable cost due to the grantee's or contractor's failure to comply with specific policies, regulations, or grant or contract conditions governing the award or contract.

(2) Each area agency's unearned funds calculation shall be based on the area agency's final or revised final financial report submitted on or before December 31. The area agency shall be notified by the department of the amount of unearned funds by issuance of revised notifications of grant award.

(3) Unearned older Americans act funds that have been calculated and issued shall be adjusted only if the revised final financial report accompanied by an audit report is received by the department on or before April 15 and if the revised calculated unearned funds increased by one-half percent or more. If an area agency has an increase in older Americans act unearned funds of one-half percent or more, the area agency shall perform one of the following adjustments:

(A) Submit a check payable to the Kansas department on aging for the amount of the increased unearned funds;

(B) submit a written request to the department for a reduction in its allocation for the next grant year in an amount equal to the amount of the increased unearned funds; or

(C) make arrangements approved by the secretary, in writing, to pay the increased unearned funds to the department in two or more installments.

(d) Final report requirements for all programs except older Americans act title III programs.

(1) Each recipient of state or federal funds for aging program grants or contracts not identified in subsection (b) shall submit an accurate and complete final financial report in the format prescribed by the secretary for each program for which the recipient has received funds.

(2) The complete final financial report shall be received by the department no later than the deadline stated in the notification of grant award or contract.

(3) (A) If funds advanced by the department to a recipient of a grant award are unearned or disallowed, the recipient shall perform one of the following adjustments upon submission of the grant's final financial report or upon the entity becoming aware of the overpayment following submission of the final financial report:

(i) Submit a check payable to the department for the amount of the unearned or disallowed funds; or

(ii) make arrangements approved by the secretary in writing to pay the unearned or disallowed funds to the department in two or more installments.

(B) If funds advanced by the department to a contractor are unearned or disallowed, the contractor shall return the funds to the department as prescribed by the terms of the contract or as requested by the secretary. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amend-

ed May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Aug. 1, 2003; amended July 15, 2011.)

26-2-4. Revision of approved area plans, grants, or contracts. (a) The area agency may submit a written request for revision of an area plan, grant, or contract to the secretary for approval.

(b) A revision of an approved area plan, grant, or contract may be approved by the secretary, if the secretary determines that the revision is consistent with the state plan, program priorities, or mandates and will not adversely affect the provision of services to older persons.

(c) The area agency shall submit a request for revision of an area plan, grant, or contract to the secretary before the final 60 days during which the plan, grant, or contract is in effect. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Jan. 7, 2000; amended May 31, 2002.)

26-2-5. Assessments of performance and compliance with department grants and contracts. (a) Each grantee or contractee shall submit to an annual on-site assessment to:

(1) Determine the extent of compliance with state and federal requirements; and

(2) assess the degree to which objectives which are part of the grant or contract have been achieved.

(b) A written report of the on-site assessment shall be provided to the grantee or contractee describing the findings of the on-site assessment, and listing any corrective actions deemed necessary and the deadline for taking such action.

(c) Each grantee or contractee shall respond to the department to any exceptions noted by the department within 30 days from receipt of the written assessment report.

(d) If corrective actions listed within the assessment report are not taken:

(1) The corrective action deadline may be extended by the department;

(2) the current grant may be suspended or terminated by the department; or

(3) subsequent grant applications may be denied by the department.

(e) Each grantee shall assess its subgrantees annually. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; ef-

fective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-6. Basis for withholding of payments. (a) Payments to a grantee or contractee shall be withheld by the department if:

(1) Expenditures by the grantee or contractee fail to comply with applicable federal or state requirements; or

(2) The secretary suspends or terminates the grant or contract.

(b) Payments may be withheld by the department if a grantee or contractee fails to submit any document required by the department on or before the established due date.

(c) Payments that are withheld shall be released within 30 days after the requirements are met by the grantee or contractee. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-2-7. Closeout, suspension, or termination of a grant, subgrant, contract, or subcontract. (a) The department and each recipient of department funds may close out, suspend, or terminate a grant, subgrant, contract, or subcontract in accordance with the provisions of 45 C.F.R. 74.61, 74.62 and 74.71, as in effect on October 1, 1998, which are adopted by reference, with the following exceptions:

(1) Each reference in the federal regulations to "HHS" shall be deemed to refer to the department when the department is a party in an action with the grantee or contractor and refers to the grantee when the grantee or contractor is a party in an action with the subgrantee.

(2) Each reference in the federal regulations to "the Federal Government" shall be deemed to refer to the department or grantee of the department.

(3) Each reference in the federal regulations to "Federal" shall be deemed to refer to "state."

(b) 45 C.F.R. Part 76, as in effect on October 1, 1998, is adopted by reference, and any amounts due the federal government shall constitute a debt or debts owed by the grantee to the federal government and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law. (Authorized by and implementing K.S.A.

1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Jan. 7, 2000.)

26-2-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 15, 1985; effective May 1, 1986; revoked May 1, 1987.)

26-2-9. (Authorized by and implementing K.S.A. 2002 Supp. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Jan. 7, 2000; amended Aug. 1, 2003; revoked July 15, 2011.)

26-2-10. Audits. (a) Definitions.

(1) "Federal funds" means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from the department, other state agencies, or pass-through entities.

(2) "Limited-scope audit" means agreed-upon procedures conducted in accordance with the American institute of certified public accountants' generally accepted auditing standards or attestation standards that address one or more of the following types of compliance requirements:

- (A) Activities allowed or unallowed;
- (B) allowable costs and cost principles;
- (C) eligibility;
- (D) matching, level of effort, and earmarking; and
- (E) reporting.

(3) "Pass-through entity" and "entity" mean a non-state organization that provides a state award to a subrecipient to carry out a federal or state program.

(4) "Recipient" means an entity that expends a state award received directly from the department to carry out a federal or state program.

(5) "Single audit" means an audit that includes both the entity's financial statements and the funds awarded by the department and expended during the entity's fiscal year.

(6) "State award" means state financial assistance and state cost-reimbursement contracts that entities receive directly from the department or indirectly from pass-through entities. This term shall not include procurement contracts used to buy goods or services from vendors.

(7) "Subrecipient" means an entity that expends department funds received from a pass-through entity to carry out a federal or state program and

shall not include an individual that is a beneficiary of the program.

(8) "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal or state program. These goods or services may be for the entity's own use or for the use of beneficiaries of the federal or state program.

(b) Audit requirements.

(1) Office of management and budget circular no. A-133 (OMB circular A-133), "audits of states, local governments, and non-profit organizations," revised to show changes published in the federal registers of June 27, 2003 and June 26, 2007, excluding the introduction, subparts D and E, and the appendices, is hereby adopted by reference, except that in subpart B, section .200(a), "Federal awards" shall be replaced with "state awards in combination with federal funds received from other sources."

(2) Each recipient, subrecipient, or pass-through entity that expends a state award shall ensure the entity's related financial and program records are available to the secretary or the secretary's designee for audit or review.

(3) Each recipient, subrecipient, or pass-through entity that expends \$500,000 or more in state awards in combination with federal funds received from other sources during the entity's fiscal year shall have a single audit conducted in accordance with generally accepted government auditing standards and OMB circular A-133.

(4) Each area agency on aging that is required to have a single audit in accordance with paragraph (b)(3) shall include all funds received from department grants and contracts in the single audit, including payments from medicaid programs.

(5) Each recipient, subrecipient, or pass-through entity that expends less than \$500,000 in state awards in combination with federal funds received from other sources during the entity's fiscal year may be subject to the following:

- (A) A limited-scope audit; or
- (B) an independent audit, which shall be completed at the department's expense.

(6) Each audit shall be conducted by an independent auditor.

(7) Each audit report shall be submitted to the department within six months after the end of the entity's fiscal year and shall include a reconciliation of the audited financial statements to the financial reports submitted by the entity to the department for programs funded by the department.

(8) Each audit report submitted to the secretary after the audit report's deadline shall be considered late unless the audited entity has received an extension of the deadline, in writing, from the secretary. A written request for an extension may be granted by the secretary if the request meets all of the following conditions:

(A) The entity's written request is signed by the entity's chair of the board of directors.

(B) The request is received by the secretary at least seven working days before the date the report is due to the department.

(C) The written request provides the reason for the delay which shall be legitimately beyond the entity's control.

(D) The entity submits an audit report acceptable to the department by the revised due date indicated in the request.

(9) Penalties for failing to submit an audit report on or before the due date or submitting an audit report that does not meet the requirements specified in this regulation shall be determined by the secretary and may include one or more of the following:

(A) Disallowance of audit costs when audits required by paragraph (b)(3) have not been made or have been made but not in accordance with OMB circular A-133;

(B) withholding a percentage of state awards until the audit is completed satisfactorily;

(C) withholding or disallowing overhead costs;

(D) suspending state awards until the audit is conducted; or

(E) terminating the state award.

(c) Monitoring requirements. Each recipient, subrecipient, pass-through entity, and vendor shall be subject to monitoring performed by the secretary's designee, which shall include one or more of the following:

(1) A review of reports submitted by the recipient, subrecipient, pass-through entity, or vendor to the department;

(2) one or more site visits to the recipient, subrecipient, pass-through entity, or vendor to review financial and program records and observe operations; and

(3) procedures agreed upon by the recipient, subrecipient, pass-through entity, or vendor's executive director or other individual authorized by the entity's board of directors and the secretary or secretary's designee to review activities or documentation related to programs funded by the department, including eligibility determinations.

(Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective July 15, 2011.)

Article 3.—PROCUREMENT

26-3-1. Contracting and granting practices and requirements. (a) Department approval of funding. No grantee or contractor shall make a subgrant or contract involving funds made available by the department until an area plan or other document detailing the proposed use or uses of the funds has been approved by the secretary for a specific time period and the secretary has issued a notification of grant award or contract to the grantee or contractor.

(b) Allowable use of funds. In making a subgrant or contract, each grantee or contractor shall use the funds awarded under a secretary-approved area plan for those services that are consistent with service definitions issued and provided by the department and the identified priority service needs within the PSA.

(c) Competitive bids. Each entity that receives funding through a program administered by the secretary, except a medicaid program, shall be selected on a competitive basis, unless a noncompetitive selection basis is permitted by some other provision of law. For purposes of this subsection, "entity" shall include any grantee or contractor, a subgrantee or subcontractor of a grantee or contractor, and any entity providing services under any arrangement with a subgrantee or subcontractor.

(d) Provider selection standards. The service provider selection process for grants, contracts, subgrants, and subcontracts required by subsection (c) shall meet the following requirements:

(1) For services provided under a state-funded program, the provider selection process used shall encourage free and open competition among qualified, responsible providers by meeting, at a minimum, the following requirements:

(A) Providing potential providers with a notice of service needs describing the required services, the service standards, the minimum vendor qualifications, and the process for submitting a bid or an offer to provide the services; and

(B) identifying and avoiding both potential and actual conflicts of interest. A "conflict of interest" shall mean a situation in which an employee, officer, or agent or any member of the employee's, officer's, or agent's immediate family or partner, or an organization that employs or is about to

employ any of these parties, has a financial or other interest in the firm selected for a grant award or contract.

(2) For services provided under a program funded with federal funds or a combination of federal and state funds, the provider selection process shall satisfy the competition and procurement standards and procedures by meeting, at a minimum, either of the following requirements:

(A) For each grantee or contractor that is a part of a local government, the requirements of 45 C.F.R. 92.36(b) through (i), as in effect on October 1, 2009 and hereby adopted by reference; or

(B) for each grantee or contractor that is not a part of a local government, the requirements of 45 C.F.R. 74.40 through 74.48, as in effect on October 1, 2009 and hereby adopted by reference.

(e) Older Americans act services. When the department enters into a contract with or awards a grant to an area agency under the older Americans act to provide services to older persons within a PSA, the following provisions shall apply:

(1) The area agency shall enter into a subgrant or contract for services within 90 days after the effective date of the notification of grant award issued by the department, unless the area agency requests and receives prior written approval for an extension of time from the secretary.

(2) The area agency may enter into a contract with a unit of local government or with a non-profit organization to provide services without the prior written approval of the secretary. For purposes of this regulation, a "nonprofit" organization is an organization that has received a determination letter from the internal revenue service that qualifies it for tax-exempt status under the internal revenue code.

(3) The area agency shall not enter into a contract with an individual or a for-profit organization to provide services until the area agency has requested and received written approval from the secretary to enter into the contract. Requests for contract approvals shall be approved if accompanied by a notarized statement from the area agency's executive director that the contract was procured according to competition and procurement standards and procedures required by the older Americans act and does not involve a conflict of interest as defined in paragraph (d)(1)(B). Within 30 days after the date on which the request was received, the area agency shall be notified by the department if the request is approved or disapproved.

(4) An area agency whose older Americans act for-profit service provider terminates the service contract before the end of the contract's term for any reason may enter into a replacement contract with a different for-profit provider for the same services without using the area agency's normal competitive process and without requesting the prior approval of the secretary required by this regulation if the area agency, within 30 days after the effective date of the replacement contract, sends the secretary a written notice describing the following:

(A) The circumstances of the contract termination;

(B) the efforts made to obtain replacement services; and

(C) an assurance that the replacement contract does not involve a conflict of interest, as defined in paragraph (d)(1)(B).

(5) An area agency shall not alter a subgrant or contract during the final 60 days of any grant or contract period, unless the area agency requests and receives written approval for the alteration from the secretary.

(f) Record retention. Each area agency shall retain its grants, subgrants, contracts, and subcontracts with service providers in retrievable form for at least six years after the date on which the grant, subgrant, contract, or subcontract ended or at least three calendar years from the date of the area agency's final financial report, whichever date is later, unless otherwise stated in the department's grant or contract.

(1) If any litigation, claim, financial management review, or audit begins before the expiration of the retention period, the area agency shall retain its records pertaining to the litigation, claim, financial management review, or audit until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Upon request made during the retention period, an area agency shall make its grants, contracts, and subcontracts available for review by representatives of the department or its auditors, the division of legislative post audit, or the United States department of health and human services. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000; amended July 15, 2011.)

26-3-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked May 31, 2002.)

26-3-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Jan. 7, 2000.)

26-3-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Nov. 14, 1997; revoked July 15, 2011.)

26-3-5. Revision of approved subgrants or contracts. (a) A subgrantee, contractor or sub-contractor shall submit to an area agency a written request for revision of a subgrant or contract.

(b) Any area agency may agree to a revision of a subgrant or a contract with a non-profit public or private organization, if the area agency determines that the revision is consistent with state and area plans and will not adversely affect the provision of services to older persons in the PSA.

(c) Each area agency, before agreeing to a revision of a contract with a for-profit organization, shall submit the revision to the department for its approval. The request shall include a statement that the area agency has determined that the proposed revision is consistent with the state and area plans and will not adversely affect the provision of services to older persons in the PSA. (Authorized by and implementing K.S.A. 1998 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000.)

26-3-6. Reporting requirements. Each sub-grantee or contractee of an area agency shall: (a) Submit program and financial reports to the area agency deemed necessary by the department to comply with federal and state requirements; and (b) submit such reports by the due dates, using the forms prescribed by the secretary. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988.)

26-3-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Nov. 14, 1997.)

Article 4.—NON-MEDICAID HEARING AND APPEALS

26-4-1. Notice of actions; appeals by written requests; time to file written requests. (a) When an action is taken or proposed by any of the following parties in any program administered by the secretary, other than a medicaid program administered pursuant to K.S.A. 39-968, 75-5321a, and 75-5945 and amendments thereto, the procedures in this article 4 shall apply:

(1) By the secretary or the secretary's designee when the action affects any area agency on aging, a service provider, a customer, or an applicant to become a service provider or customer;

(2) by the secretary or the secretary's designee, an area agency on aging, or any of their agents when the action affects a service provider, a customer, or an applicant to become a service provider or customer; or

(3) by a service provider or its agent when the action affects a customer or an applicant to become a customer.

(b)(1) If the secretary or other authority described in subsection (a) proposes to take action, that authority shall mail written notice of the proposed action and the basis for the proposed action to the affected party or parties at least 10 days before the effective date of the action identified in the written notice, unless a different notice period is specifically required by some other provision of federal or state law.

(2) In situations involving an immediate danger to the public health, safety, or welfare, action may be taken by the secretary or other authority without giving prior written notice of proposed action described in this subsection. When action is taken without prior written notice of proposed action prescribed in paragraph (b)(1), written notice of the action shall be mailed by the secretary or other authority to the affected party or parties as soon as practical.

(c) Unless prohibited by some other provision of law, the proposed action may be taken, without any additional notice to the affected party, on the effective date described in the written notice.

(d) Each written notice of proposed action shall identify the reasons for and effective date of the

proposed action and include a statement informing the affected party of the right to appeal the action by filing a written request for a hearing with the office of administrative hearings within time limits described in subsection (e).

(e) Unless preempted by federal or state law, a party receiving notice of action may appeal the action by filing a written request for a hearing with the office of administrative hearings within 30 days after the date of the notice of action. An additional three days shall be allowed if the notice of action is mailed. If no written notice of action is given, an affected party may appeal the action by filing a written request for a hearing with the office of administrative hearings within 30 days after the date on which the affected party knew or reasonably should have known of the action.

(f) Each request for a hearing shall state clearly the proposed action or the action upon which a hearing is requested. The written request for a hearing shall be included in the department's official record of agency action and record of a hearing as evidence received by it.

(g) Each hearing shall be conducted in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Nov. 14, 1997; amended July 15, 2011.)

26-4-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-34, Oct. 23, 1985; amended May 1, 1986; amended May 1, 1987; revoked Nov. 14, 1997.)

26-4-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; revoked Nov. 14, 1997.)

26-4-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 14, 1997.)

26-4-5. Definitions. As used in article 4 of the department's regulations, the following terms shall have these meanings. (a) "Appellant" means

the area agency on aging, customer, service provider, or an applicant wishing to be a customer or service provider who is affected by, and wishes to appeal, an action or proposed action.

(b) "Customer" means a person who has applied for or asked to receive, or who is receiving, services or benefits from any program, other than a medic-aid program, administered by the department.

(c) "Respondent" means the department on aging, an area agency on aging, a service provider, or an agent whose action or proposed action is being appealed.

(d) "Agent" means a person or organization authorized by grant, subgrant, contract, subcontract, or any other formal or informal arrangement to take action and perform services on behalf of the secretary, the department, an area agency, or a service provider.

(e) "Party" means either an appellant or a respondent, while "parties" means both the appellant and respondent. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997.)

26-4-6. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked July 15, 2011.)

26-4-7 through 26-4-15. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked July 15, 2011.)

Article 4a.—CUSTOMER AND PROVIDER APPEALS IN MEDICAID PROGRAMS

26-4a-1. (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997; revoked July 15, 2011.)

26-4a-2. Appeals and fair hearings. (a) This regulation shall apply only to the medicaid long-term care programs and services administered by the secretary of aging, in accordance with K.S.A. 39-968, 75-5321a, and 75-5945 and amendments thereto.

(b) A fair hearing program to process and decide appeals involving the medicaid long-term care programs and services and the customers and providers of those services shall be administered through the office of administrative

hearings in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto, and K.A.R. 30-7-64 through K.A.R. 30-7-79.

(c) An individual may submit a written request for a fair hearing to appeal a written decision, notice of action, or order made by the secretary of aging or any of the department on aging's employees or agents involving a medicaid program or service. The request shall be received by the office of administrative hearings within 30 days after the date of the written decision, notice of action, or order, except as otherwise provided in applicable federal or state law. An additional three days shall be allowed if the written decision, notice of action, or order is mailed. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective July 15, 2011.)

Article 5.—IN-HOME NUTRITION PROGRAM

26-5-1. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked May 31, 2002.)

26-5-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked July 15, 2011.)

26-5-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Nov. 14, 1997; revoked July 15, 2011.)

26-5-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked July 15, 2011.)

26-5-5. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Sept. 7, 1993; revoked July 15, 2011.)

26-5-6. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-86-48, Dec. 12, 1985; effective May 1, 1986; amended Sept. 7, 1993; amended, T-26-7-1-96, July 1, 1996; amended Nov. 8, 1996; amended Nov. 14, 1997; amended May 31, 2002; revoked July 15, 2011.)

26-5-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked July 15, 2011.)

26-5-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; revoked July 15, 2011.)

26-5-9 and 26-5-10. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-1-96, July 1, 1996; effective Nov. 8, 1996; revoked July 15, 2011.)

Article 6.—EMPLOYMENT PROGRAM

26-6-1. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-3. (Authorized by and implementing K.S.A. 75-5908; effective May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

26-6-5. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-6. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked Nov. 8, 1996.)

26-6-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

26-6-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked Nov. 8, 1996.)

Article 8.—SENIOR CARE ACT

26-8-1. Definitions. (a) “Activities of daily living (ADLs)” means those personal, functional activities required by an individual for continued well-being, including eating, dressing, bathing, transferring, walking, retaining mobility, and toileting.

(b) “Assessment” means the completion of a form to determine the initial and ongoing eligibility and need for services.

(c) “Customer” means any older person who meets the eligibility requirements established in K.A.R. 26-8-2 and whose services are being funded at least in part by the senior care act program.

(d) “Family” means one or more adults and children, if any, related by blood or law and residing in the same household. If adults, other than spouses, reside together, each will be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for that care shall be considered one-person families.

(e) “Income” means the monthly sum of income received by a family from the following sources:

- (1) Gross wages or salary;
- (2) income from self-employment;
- (3) social security;
- (4) dividends;
- (5) interest;
- (6) income from estate or trusts;
- (7) rental income;
- (8) royalties;
- (9) public assistance or welfare payments;
- (10) pensions and annuities;
- (11) unemployment compensation;
- (12) workers compensation;
- (13) alimony;
- (14) veterans’ pensions; and
- (15) adjusted net farm income.

(f) “Instrumental activities of daily living” (IADLs) means meal preparation, shopping, medication management and treatment, house-keeping and laundry, money management, transportation, and telephone communication.

(g) “Level of care” means a measurement of an individual’s functional ability level that could temporarily or permanently restrict the individual’s ability to function independently.

(h) “Liquid assets” means the following:

- (1) Cash on hand;
- (2) funds in checking, savings, money market, and individual retirement accounts;
- (3) stocks;

(4) bonds;

(5) savings bonds;

(6) certificates of deposit;

(7) the cash value of life insurance policies; and

(8) mutual funds.

(i) “One-time service” means an activity that is not intended to be ongoing and that has a unit of service of one dollar.

(j) “Senior care act” means K.S.A. 75-5926 through K.S.A. 75-5936, and amendments thereto, which establishes a program of in-home support services for eligible persons 60 years of age and older. (Authorized by K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1 and K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4; implementing K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1, K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2, K.S.A. 75-5930, as amended by L. 2002, Ch. 65, § 3, K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4, and K.S.A. 75-5933, as amended by L. 2002, Ch. 65, § 6; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended July 28, 1995; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-2. Eligibility criteria. (a) All customers shall be residents of Kansas who are 60 years of age or older.

(b) Each applicant shall be assessed using the department’s approved uniform assessment instrument and shall meet the department’s long-term care threshold requirement for senior care act services. Applicants who receive only an assessment shall not be subject to the department’s long-term care threshold requirement.

(c) Medicaid home- and community-based services customers shall be eligible to receive only senior care act services that are not funded through the medicaid program. (Authorized by and implementing K.S.A. 2010 Supp. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

26-8-3. (Authorized by and implementing K.S.A. 75-5928; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended

Nov. 7, 1994; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-4. (Authorized by K.S.A. 75-5928, 75-5931; implementing K.S.A. 75-5928, 75-5931 and 75-5933; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended July 28, 1995; revoked Jan. 7, 2000.)

26-8-5. Assessment. (a) To determine eligibility for services under the senior care act, a qualified assessor employed by or under contract with the area agency on aging shall complete a customer assessment according to the following:

- (1) Before implementation of services;
- (2) upon any significant change in the customer's condition; and
- (3) at least once every 365 days from the date of the last assessment.

(b) The assessment instrument shall be a form prescribed by the secretary. (Authorized by K.S.A. 2010 Supp. 75-5931; implementing K.S.A. 2010 Supp. 75-5930; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 7, 1994; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

26-8-6. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-7. Maximum expenditures per customer and customer fees. (a) The maximum monthly expenditure for services per customer shall be \$1,445.00. This amount shall not include expenditures for assessment, case management, and any one-time service.

(b) The customer's fee shall not include case management or assessment.

(c) Each customer's fee shall be based on the customer's income and liquid assets.

(d) If a customer refuses to disclose the customer's income and liquid assets, then that customer shall pay 100% of the cost of the service. (Authorized by and implementing K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2 and K.S.A. 75-5931, as amended by L. 2002, Ch. 65, § 4; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug.

10, 1992; amended, T-26-7-22-93, July 22, 1993; amended Sept. 7, 1993; amended Nov. 7, 1994; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002.)

26-8-8. Termination. Services provided under this act shall be terminated by the area agency on aging for any of the following reasons: (a) The customer moved to an adult care home.

- (b) The customer died.
- (c) The customer moved out of the service area.
- (d) The customer chose to terminate services.
- (e) The customer no longer meets the eligibility criteria.
- (f) The customer has not paid the fees, and 60 days have passed since the original billing date.

(g) The customer did not accurately report the customer's income and liquid assets and chooses not to pay the applicable fees.

(h) The service provided was a one-time service as defined in K.A.R. 26-8-1.

(i) The program or service ended or was terminated.

(j) The service was discontinued due to the lack of service provider or staff.

(k) The customer is determined to be no longer safe in the customer's own home.

(l) The customer's whereabouts are unknown.

(m) The customer is a participant in the "program of all-inclusive care for the elderly" (PACE). (Authorized by and implementing K.S.A. 2010 Supp. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended July 28, 1995; amended Nov. 14, 1997; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended July 15, 2011.)

26-8-9. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 14, 1997; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-10. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked Nov. 14, 1997.)

26-8-11. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked Nov. 14, 1997.)

26-8-12. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-13. (Authorized by and implementing K.S.A. 75-5931; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-14. (Authorized by and implementing K.S.A. 75-5931, 75-5933, and 75-5935; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; revoked, T-26-6-27-02, July 1, 2002; revoked Oct. 25, 2002.)

26-8-15. Matching funds. (a) To be eligible for funds allocated pursuant to K.S.A. 75-5929 (a)(2) and amendments thereto, each area agency on aging shall provide matching funds for services on the basis of not less than \$1 for every \$2 of state funds.

(b) To be eligible for funds allocated pursuant to K.S.A. 75-5929 (a)(3) and amendments thereto, each area agency on aging shall provide funds from ad valorem property tax levies for services on the basis of not less than \$1 for every \$1 of state funds.

(c) Each area agency on aging providing matching funds shall submit to the department written documentation from the local unit of government or the single entity responsible for ad valorem property tax levies for services for the aging, as designated by a local unit of government, stating that the local unit of government has provided ad valorem property tax levies for services under this act. (Authorized by and implementing K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2; effective, T-26-6-27-02, July 1, 2002; effective Oct. 25, 2002.)

Article 9.—CLIENT ASSESSMENT, REFERRAL, AND EVALUATION PROGRAM

26-9-1. Client assessment, referral, and evaluation (CARE) for nursing facilities. (a) Each individual seeking admission to a nursing facility or nursing facility for mental health shall, before admission, receive and complete a pre-admission assessment, evaluation, and referral to all available community resources, including nursing facilities, unless one of the following conditions is met:

(1) The individual entered an acute care facility from a nursing facility and is returning to a nursing facility.

(2) The individual is transferring from one nursing facility to another nursing facility.

(3) The individual is entering a nursing facility operated by and for the adherents of a recognized church or religious denomination for the purpose of providing care and services for those who depend upon spiritual means, through prayer alone, for healing.

(4) The individual has been diagnosed as having a terminal illness and has obtained a physician's statement documenting that the individual's life expectancy is six months or less.

(5) The individual is entering a nursing facility from a hospital and the length of stay is expected to be 30 days or less based on a physician's certification.

(b) Each individual entering a nursing facility from the community whose stay is expected to be 30 days or less, based on a physician's certification, shall have sections I and II of the CARE assessment completed, before admission, by a qualified assessor.

(c) Each qualified assessor shall evaluate and refer the individual using the data collection form approved by the secretary.

(d) The preadmission assessment shall be valid for one year from the date of the initial assessment and reimbursement for the assessment shall be limited to one annual assessment per individual unless, in the judgment of a qualified assessor, the individual's physical, emotional, social, or cognitive status has changed to the extent that another assessment is warranted. (Authorized by and implementing K.S.A. 2010 Supp. 39-968; effective, T-26-6-28-95, June 28, 1995; effective Aug. 7, 1995; amended July 15, 2011.)

Article 10.—ADMINISTRATION OF MEDICAID PROGRAMS; NURSING FACILITY SERVICES PAYMENT PROGRAM, HOME- AND COMMUNITY- BASED SERVICES WAIVER PROGRAM FOR THE FRAIL ELDERLY, AND TARGETED CASE MANAGEMENT SERVICES PROGRAM

26-10-1. Administration of medicaid programs. The long-term care medicaid programs that are described in K.A.R. 30-2-17, the administration of which is transferred to the secretary

of aging from the secretary of social and rehabilitation services, pursuant to K.S.A. 1996 Supp. 39-968, 75-5321a, and 75-5945 *et seq.*, as amended, shall be administered in accordance with the authorities referenced in K.S.A. 1996 Supp. 75-5945, as amended, and with K.A.R. 30-2-17, as in effect on July 1, 1997. (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997.)

Article 11.—KANSAS SENIOR PHARMACY ASSISTANCE PROGRAM

26-11-1 through 26-11-3. (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, March 1, 2002; effective Sept. 6, 2002; revoked July 15, 2011.)

Article 38.—LICENSURE OF ADULT CARE HOME ADMINISTRATORS

26-38-1. Definitions. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation: (a) "Accredited college or university" means a college or university that is accredited by an accrediting body recognized by the council on postsecondary accreditation or by the secretary of the U.S. department of education.

(b) "Administrator of record" means the licensed adult care home administrator on record with the Kansas department for aging and disability services as the administrator of the facility in which a trainee completes a practicum.

(c) "Clock-hour" means at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(d) "Continuing education" means a formally organized learning experience that has education as its explicit, principal intent and that is oriented toward the enhancement of adult care home administration values, skills, knowledge, and ethics.

(e) "Core of knowledge" means the educational training content for the field of adult care home administration, as established in section 252.20 (b)(2) and (i), excluding the phrase "as recommendations for appropriate use by State agencies and boards," published at 37 fed. reg. 6451-6452 (1972) and hereby adopted by reference.

(f) "Direct supervision" means the process by which an on-site preceptor directs and monitors

the day-to-day activities of a trainee to ensure that these activities are performed without risk or harm to residents.

(g) "Disciplinary action" means any final action taken by the board, or by a board or agency in another jurisdiction that is responsible for licensing adult care home administrators, that affects or relates to professional licensing.

(h) "Domains of practice" means the knowledge, skills, and abilities listed in table 1, "domains of nursing home administrator practice," on page 4 and outlined in exhibit 1 on pages 7 through 13 of the "summary report of the job analysis of nursing home administrators," prepared for the national association of boards of examiners of long term care administrators and by the professional examination service, department of research and development, dated November 2007, and hereby adopted by reference.

(i) "Good character" means the moral standards and fitness that are required in an applicant for a license as an adult care home administrator. This term shall include good judgment, integrity, honesty, fairness, credibility, reliability, respect for others, respect for the laws of the state and nation, self-discipline, self-evaluation, initiative, and commitment to the profession of adult care home administration and its values and ethics.

(j) "Licensure period" means the period of time between the date on which a license is issued and the date it expires. All licenses shall expire biennially on June 30. Each license shall be valid for a period of not less than 12 months and not more than 24 months.

(k) "Preceptor" means a person who meets the following qualifications:

(1) Holds a current license in Kansas as an adult care home administrator that is not under suspension or limited; and

(2) within the preceding five years, has had either three years of full-time experience or a total of 5,000 hours of experience as a licensed adult care home administrator of a nursing facility, a nursing facility for mental health, or an intermediate care facility for people with intellectual disability. This experience shall have consisted of direct responsibility for, or active assistance and advising on, the general administration of the facility, including responsibility for planning, organizing, directing, and controlling the operation of the facility.

(l) "Relative" means an individual's family member or a member of an individual's household. For the purposes of this definition, "a

member of an individual's household" shall mean any person sharing the individual's place of residence, and "family member" shall mean any of the following:

- (1) A spouse, parent, child, or sibling;
- (2) a sibling as denoted by the prefix "half";
- (3) a parent, child, or sibling as denoted by the prefix "step";
- (4) a foster child;
- (5) an uncle, an aunt, a nephew, or a niece;
- (6) any parent or child of a preceding or subsequent generation as denoted by the prefix "grand" or "great-"; or
- (7) a parent, child, or sibling related by marriage as denoted by the suffix "-in-law."

(m) "Sponsorship" means an approved, long-term provision of programs for the purpose of fulfilling the continuing education requirements for license renewal or reinstatement.

(n) "Trainee" means an individual who has enrolled in a long-term care administration practicum conducted by an accredited college or university or an equivalent educational training program. (Authorized by and implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

26-38-2. Educational requirements for licensure. (a)(1) Each individual seeking initial licensure as an adult care home administrator shall meet the following requirements:

(A) Hold a baccalaureate or higher degree from an accredited college or university; and

(B) successfully complete a long-term care administration practicum that is conducted by an accredited college or university or an equivalent educational training practicum.

(2) Successful completion of a long-term care administration practicum that is conducted by an accredited college or university and terminates with a baccalaureate degree or postbaccalaureate degree shall satisfy the requirements of paragraphs (a)(1)(A) and (B).

(b) Before participating in a practicum, each individual seeking initial licensure shall meet the following requirements:

- (1) Be at least 18 years of age; and
- (2) request that the college, university, or provider of the equivalent educational training practicum submit the practicum curriculum and preceptor qualifications for the board's approval.

(c) Each practicum shall meet the following requirements:

(1) Consist cumulatively of at least 480 hours and be completed in not more than three practice settings;

(2) incorporate the core of knowledge, as defined in K.A.R. 26-38-1, or the domains of practice, as defined in K.A.R. 26-38-1;

(3) provide the training in either a licensed adult care home or long-term care unit of a licensed hospital, or both, but excluding assisted-living and residential health care facilities;

(4) pair each trainee with a preceptor in the adult care home or in the hospital long-term care unit;

(5) use each trainee's preceptor to provide additional training and supervision during the practicum; and

(6) ensure that the preceptor meets the following requirements:

(A) Is responsible for the training, knowledge, and professional activities within the facility and for the development and refinement of the trainee as a prospective adult care home administrator;

(B) does not supervise more than two trainees at a time;

(C) is a full-time administrator of record or a licensed administrator who directly supervises the administrator of record; and

(D) maintains direct supervision of the trainee in the facility in which the training is to be provided.

(d) Any trainee may substitute a portion of the 480 practicum hours as follows:

(1) Completion of an adult care home operator course shall count for 20 hours.

(2) Each year of work experience, not to exceed six years, shall count for 40 hours if the experience meets either of the following conditions:

(A) The experience was obtained as an administrator of a Kansas-licensed hospital who also served as the administrator of the hospital's long-term care unit.

(B) The experience was obtained as an adult care home administrator while licensed in another state. (Authorized by and implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

26-38-3. Application for initial licensure.

(a) Each applicant for initial licensure shall submit an application on forms provided by the board and shall furnish the fee specified in K.A.R. 26-38-11 and evidence satisfactory to the board of having met the requirements specified in K.A.R. 26-38-2. Documents verifying that the applicant successfully completed the educational requirements

shall be submitted no later than 30 days following the date of the national examination specified in K.A.R. 26-38-4.

(b) Each applicant shall submit, on forms provided by the board, one letter of reference from a licensed adult care home administrator, in state or out of state, and one letter of reference from another person who is not a relative of the applicant.

(c) Each applicant shall provide the board with academic transcripts and proof of receipt of a baccalaureate or a postbaccalaureate degree. The applicant shall arrange for transcripts to be provided directly to the board by the accredited college or university.

(d) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant's transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner acceptable to the board. Each applicant shall pay all transcription fees directly to the transcriber.

(e) Each applicant who has received a baccalaureate or postbaccalaureate degree outside the United States or its territories shall obtain an equivalency validation from a board-approved agency that specializes in educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

26-38-4. Licensing examinations. (a) Each applicant for initial licensure as an adult care home administrator shall be required to pass a national examination and a state law examination for adult care home administration approved by the board.

(1) Each applicant shall take the national examination within 12 months of completing an administrator-in-training practicum, unless for good cause the board grants an extension. For the purpose of this subsection, "good cause" shall mean any reason that does not reflect unfavorably on the applicant's good character, qualifications, or ability to comply with the board's regulations.

(2) Each applicant shall pay the required examination fee for the national examination directly to the testing agency. An examination fee shall be required each time an applicant takes the national examination.

(b) The national association of long term care

administrator boards (NAB) examination shall be the approved national examination for licensure.

(c) The minimum passing scaled score for each portion of the national examination shall be 113. The minimum passing raw score for the state law examination shall be 75 percent.

(d) Each applicant who has been disqualified for failing any portion of the national examination shall have the right to receive written notification by the board of the disqualification and each reason for failing, including a breakdown of the subject areas passed and failed.

(e) An applicant who has failed a portion of the national examination three times shall not submit a new application to take that portion of the examination until the applicant has received board approval for a course of additional education or training, or both, signed by the applicant, the preceptor, and the applicant's practicum coordinator and has completed the approved course of additional education or training, or both. The course of additional education or training, or both, shall include the following at a minimum:

(1) A specific number of additional hours of administrator-in-training instruction, proposed by the applicant and agreed to by the board, in each of the domains of practice, as defined in K.A.R. 26-38-1; and

(2)(A) At least 100 hours of administrator-in-training instruction targeting the subjects of the line of service exam, if the applicant failed that portion of the national examination; and

(B) at least 100 hours of administrator-in-training instruction in the core of knowledge, as defined in K.A.R. 26-38-1, if the applicant failed that portion of the national examination.

(f) Each applicant who completes the required hours of additional administrator-in-training education or training, or both, shall be eligible to submit a new application for the portion of the national examination that the applicant previously failed three times. If the applicant fails the fourth attempt, the applicant shall remain eligible to submit an application for a fifth attempt to pass the national examination.

(g) An applicant who has failed a portion of the national examination five times shall not submit a new application to take that portion of the examination until the applicant has completed an additional 480-hour administrator-in-training practicum that is conducted by an accredited college or university or an equivalent educational training practicum, as specified in K.A.R. 26-38-2.

(h) Each applicant who has completed a second 480-hour administrator-in-training practicum shall be given three additional attempts to pass the portion of the national examination that the applicant previously failed five times. An applicant who has failed a portion of the national examination three times after completing a second 480-hour administrator-in-training practicum shall not be allowed to submit an additional application for examination.

(i) Each applicant shall be given 36 months from the date the applicant completed an initial administrator-in-training practicum or a second practicum under subsection (g) to take and pass the national examination.

(j) Any applicant who fails the state law examination may retake the state law examination until the applicant passes this examination. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3504; effective Oct. 2, 2020.)

26-38-5. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Each applicant shall provide, and shall authorize the board to request, disciplinary action information and criminal history records. If adverse information is received from the applicant or from any other source, the applicant shall provide all necessary records, sworn affidavits, or other documentation required by the board concerning the disciplinary action or criminal conviction, including any evidence that all sentencing requirements have been completed. The applicant shall pay all costs for the acquisition of these documents.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) Conviction of any felony;

(2) conviction of any class A misdemeanor that includes any of the following:

(A) A crime involving violation of any state or federal drug, narcotic, or controlled substances law;

(B) a crime against persons, as defined in K.S.A. 2018 Supp. 21-5401 et seq. and amendments thereto;

(C) a sex offense, as defined in K.S.A. 2018 Supp. 21-5501 et seq. and amendments thereto;

(D) a crime affecting family relationships and children, as defined in K.S.A. 2018 Supp. 21-5601 et seq. and amendments thereto, excluding criminal nonsupport, as defined in K.S.A. 2018 Supp. 21-5606 and amendments thereto;

(E) a crime promoting the sale of sexual relations, as defined in K.S.A. 2018 Supp. 21-6420 and amendments thereto;

(F) a crime of theft, as defined in K.S.A. 2018 Supp. 21-5801 and amendments thereto;

(G) an attempt, conspiracy, or solicitation to commit any offense described in this subsection; or

(H) any similar criminal offense defined by another state or by the federal government; and

(3) conviction of any other misdemeanor that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(2); and

(B)(i) Fewer than five years have passed since the applicant completed that individual's sentence, including any term of incarceration, probation, or community supervision; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of application for license.

(c) If an applicant has been subject to disciplinary action or has been convicted of any crime described in this regulation, the applicant shall have the burden of proving that the applicant has been rehabilitated and warrants the public trust.

(d) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of K.S.A. 65-3501 et seq., and amendments thereto, or any of the board's regulations. Those records may disqualify an applicant from receiving a license for no more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(e) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, written advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including at least one copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-3503 and 74-120; implementing K.S.A. 65-3503, 65-3508, and 74-120; effective Oct. 2, 2020.)

26-38-6. Temporary license. (a) Each applicant for a 60-day temporary license shall identify the facility seeking to hire the applicant on a temporary basis and shall arrange for that facility to provide the board with written documentation that a current licensee is not available to serve as administrator in the facility. Each applicant shall also meet each of the following requirements:

(1) Submit an application on board-approved forms accompanied by the applicable fee specified in K.A.R. 26-38-11;

(2) be endorsed in writing to be the most qualified person available to be employed by the facility. The endorsement shall be made by an authorized representative of the governing body of the facility where the applicant is to be employed; and

(3)(A) Have a baccalaureate or postbaccalaureate degree from an accredited college or university and have passed an examination on state law pursuant to K.A.R. 26-38-4;

(B) have completed a degree-conferring program from an accredited college or university and either be participating or will participate in a long-term care administration or educational training practicum in compliance with K.A.R. 26-38-2;

(C) have been previously licensed in Kansas as an adult care home administrator and otherwise be eligible for reinstatement pursuant to K.A.R. 26-38-8; or

(D) hold a license as an adult care home administrator in another state and otherwise be eligible for reciprocity pursuant to K.A.R. 26-38-7.

(b) Any applicant granted a temporary license may request not more than two 60-day extensions of that license.

(c) If an applicant for initial licensure has been issued a temporary license and fails the national examination, the applicant's temporary license shall expire on the date indicated on the license. The applicant shall not be eligible for an extension of the temporary license and shall not be eligible to reapply for a temporary license. (Authorized by and implementing K.S.A. 65-3502; effective Oct. 2, 2020.)

26-38-7. Licensure by reciprocity. (a) Each applicant for licensure by reciprocity shall submit an application on board-approved forms accompanied by the application fee for licensure by reciprocity and the license application fee specified in K.A.R. 26-38-11. Each applicant for licensure by reciprocity shall authorize the board

to submit the application to the Kansas bureau of investigation for the purpose of obtaining criminal history records information to be considered by the board in its determination of the applicant's eligibility for licensing.

(b) Each applicant for licensure by reciprocity whose license was issued by another jurisdiction shall provide documentation to the board of both of the following:

(1) The applicant is favorably recommended by the state in which the applicant is licensed. To meet this requirement, the applicant shall arrange for that state to provide the board with a written affirmation that the applicant is in good standing. The applicant shall ensure that the letter of good standing is sent directly to the board from the issuing agency and shall not take possession of or tamper with the letter. For the purposes of this paragraph, "good standing," in reference to an applicant, shall mean that the individual's license has not been limited, suspended, or revoked.

(2)(A) The licensing criteria of the license-issuing jurisdiction are substantially equivalent to the current Kansas examination, education, training, and experience requirements in K.A.R. 26-38-2 and K.A.R. 26-38-4; or

(B) the applicant has been continuously licensed during the preceding five years, during which time the applicant annually attained at least 2,080 hours of experience as an administrator of record of a licensed adult care home or a licensed long-term care unit of a hospital.

(c) Each applicant for licensure by reciprocity who has a current health services executive certification shall provide documentation to the board of both of the following:

(1) The applicant has a current health services executive certification.

(2) The applicant has not had any disciplinary action of a serious nature brought by a licensing board or agency against the candidate. (Authorized by K.S.A. 65-3503; implementing K.S.A. 65-3503 and 65-3505; effective Oct. 2, 2020.)

26-38-8. Licensing renewal and license reinstatement; continuing education; sponsorship. (a) Each application for renewal of a license shall be submitted on or before June 30 of the year in which the license expires.

(b) Each licensee shall submit an application on forms provided by the board and accompanied by the license renewal fee specified in K.A.R. 26-38-11. Each licensee whose application is received

with a postmark later than June 30 of the year in which the license expires shall also pay the late renewal fee specified in K.A.R. 26-38-11. The application and all applicable fees shall be received within the 30-day period following the license expiration date. If the application and all applicable fees are not received within that 30-day period, the license shall lapse and the individual shall be required to apply for reinstatement.

(c)(1) Except as provided in paragraph (c)(2), each application for renewal shall include an attestation verifying that the licensee has completed at least 50 clock-hours of board-approved continuing education pertaining to the core of knowledge or the domains of practice, as defined in K.A.R. 26-38-1, during the licensure period immediately preceding renewal of the license.

(2) If a licensee's initial licensure period is less than 24 months, the application shall include an attestation verifying that the licensee has completed at least two clock-hours of board-approved continuing education for each month in the initial licensure period.

(d)(1) Any licensee may claim up to five clock-hours of continuing education credit for attendance at a state or national annual convention that pertains to long-term care. Each licensee claiming continuing education credit under this paragraph shall require the sponsor to verify the licensee's attendance. The licensee may claim this allowance in addition to claiming continuing education credit approved for individual sessions at a state or national annual convention, but the licensee shall not claim more than 10 clock-hours of continuing education credit for attending a state or national annual convention during any licensure period.

(2) Any licensee may claim 15 clock-hours of continuing education credit for each college credit semester hour earned within the renewal period if the subject matter of the course pertains to the domains of practice or to the core of knowledge.

(3) Any licensee may claim two clock-hours of continuing education credit for each clock-hour spent at an approved continuing education program. Licensees shall not claim credit for repeat presentations.

(e) Any preceptor may claim 15 clock-hours for each trainee.

(f) If a licensee's application is selected for audit, the licensee shall provide the board with sufficient documentation to verify that the licensee completed the continuing education requirement.

(g) Licensees shall not claim either of the following as continuing education for the purpose of license renewal:

(1) In-service education; or

(2) attending a food show or viewing exhibits at vendor booths at a food show designed to introduce food products to licensees or to others in the health care industry.

(h) Each application for reinstatement shall be submitted on forms provided by the board, documenting completion of 50 clock-hours of continuing education during the preceding 24 months, and shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-38-11.

(i) Any licensee or nonapproved provider of continuing education may apply for approval of a continuing education program by submitting a request for prior approval to the board at least three weeks before the program is scheduled to be presented. The request shall provide information about the proposed program, including objectives, course content, and an agenda, and shall be submitted on a form provided by the board.

(j) Each sponsor shall meet the following requirements:

(1) Offer at least six continuing education activities, including workshops, seminars, academic courses, self-study courses, teleconferences, and educational sessions, over a two-year period;

(2) designate one person, who shall be referred to as the coordinator, to be responsible for administering all requirements and outcomes of the sponsorship. The board shall be notified in advance of any staff change involving the coordinator, including proof of that person's credentials to be the coordinator. Each coordinator shall meet one of the following requirements:

(A) Have a current license in the field of adult care home administration;

(B) have sufficient experience in a field related to adult care home administration to qualify that person to coordinate continuing education activities for licensees;

(C) serve as a staff member of a professional organization related to the field of adult care home administration; or

(D) have experience or academic preparation in adult education or training;

(3) submit an application on forms provided by the board and accompanied by the sponsorship application fee specified in K.A.R. 26-38-11. The application documents shall be received by the

board at least 30 days before the initial continuing education offering. The application fee shall be required for each new or reinstated sponsorship application, and the terms of sponsorship renewal and reinstatement shall be the same as the terms for licenses;

(4) ensure that the educational offerings pertain to the domains of practice or the core of knowledge; and

(5) submit an annual report on board-approved forms no later than January 31 each year for the preceding calendar year. This report shall describe the approved continuing education activities provided and the quality improvement methods used, including how evaluation data is incorporated in planning future educational activities.

(k) If a sponsor fails to meet the requirements in this regulation after receiving approval or if there is a material misrepresentation of any fact with the information submitted to the board by a sponsor, approval may be withdrawn or conditions relating to the sponsorship may be applied by the board after giving the sponsor notice and an opportunity to be heard. (Authorized by K.S.A. 65-3503 and 65-3505; implementing K.S.A. 65-3501 and 65-3505; effective Oct. 2, 2020.)

26-38-9. Display of license. Each person licensed as an adult care home administrator shall display that person's wall license in a conspicuous place in the licensee's office or place of business or employment. Each licensee serving as administrator in more than one facility shall display one wall license in each facility. Each request for an additional wall license shall be submitted in writing and accompanied by the fee specified in K.A.R. 26-38-11 for a duplicate wall license. (Authorized by and implementing K.S.A. 65-3503; effective Oct. 2, 2020.)

26-38-10. Change of name or address; replacement licenses. (a) Each licensee shall notify the board of any name or address change within 30 days of the change. Each licensee who is found to have knowingly or repeatedly failed to comply with this regulation shall be subject to disciplinary action by the board pursuant to K.S.A. 65-3508, and amendments thereto.

(b)(1) Notice of each address change shall be submitted in writing and shall include each of the following:

- (A) The licensee's full legal name;
- (B) the licensee's license number;

- (C) the licensee's previous mailing address; and
- (D) the licensee's new mailing address.

(2) Notice of each name change shall be submitted in writing and shall include each of the following:

- (A) The licensee's previous legal name;
- (B) the licensee's new legal name;
- (C) the licensee's license number; and

(D) a copy of a marriage certificate, court decree evidencing the change of name, or social security card or driver's license reflecting the new name.

(c) Each licensee seeking a replacement wall or wallet card license shall submit a completed board-approved form for each license, payment of the applicable replacement fee, and, if possible, the most recently issued license. (Authorized by and implementing K.S.A. 65-3503; effective Oct. 2, 2020.)

26-38-11. Fees. (a)(1) The license application fee shall be \$100.00. The license application fee for an initial licensure period of less than 24 months shall be prorated at \$4.00 per month for each full or partial month.

(2) The license renewal fee shall be \$100.00.

(3) The temporary license application fee shall be \$100.00.

(4) The application fee for reinstatement of a lapsed or revoked license shall be \$120.00, in addition to the license renewal fee specified in paragraph (a)(2).

(5) The application fee for licensure by reciprocity shall be \$120.00, in addition to the application fee specified in paragraph (a)(1).

(6) The late renewal fee shall be \$50.00.

(7) The wall or wallet card license replacement fee shall be \$10.00.

(8) The fee for providing a duplicate wall license shall be \$10.00.

(9) The sponsorship application fee shall be \$150.00.

(b) All fees shall be nonrefundable. (Authorized by and implementing K.S.A. 65-3503 and 65-3505; effective Oct. 2, 2020.)

Article 39.—ADULT CARE HOMES

26-39-100. Definitions. The following terms and definitions shall apply to all of the department's regulations governing adult care homes and their employees: (a) "Activities director" means an individual who meets at least one of the following requirements:

(1) Has a degree in therapeutic recreation;
 (2) is licensed in Kansas as an occupational therapist or occupational therapy assistant;

(3) has a bachelor's degree in a therapeutic activity field in art therapy, horticultural therapy, music therapy, special education, or a related therapeutic activity field;

(4) is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body;

(5) has two years of experience in a social or recreational program within the last five years, one of which was full-time in an activities program in a health care setting; or

(6) has completed a course approved by the department in resident activities coordination and receives consultation from a therapeutic recreation specialist, an occupational therapist, an occupational therapy assistant, or an individual with a bachelor's degree in art therapy, music therapy, or horticultural therapy.

(b) "Addition" means an increase in the building area, aggregate floor area, or number of stories of an adult care home.

(c) "Administrator" means an individual who is responsible for the general administration of an adult care home, whether or not the individual has an ownership interest in the adult care home. Each administrator of an adult care home shall be licensed in accordance with K.S.A. 65-3501 et seq., and amendments thereto.

(d) "Adult care home" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(e) "Adult day care" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(f) "Advanced practice registered nurse" and "APRN" mean an RN who holds a license from the Kansas board of nursing to function as a professional nurse in an advanced role as defined by regulations adopted by the Kansas board of nursing.

(g) "Ambulatory resident" means any resident who is physically and mentally capable of performing the following without the assistance of another person:

(1) Getting in and out of bed; and

(2) walking between locations in the living environment.

(h) "Applicant" means any individual, firm, partnership, corporation, company, association, or joint stock association requesting a license to operate an adult care home.

(i) "Assisted living facility" has the meaning

specified in K.S.A. 39-923, and amendments thereto.

(j) "Audiologist" means an individual who is licensed by the department as an audiologist.

(k) "Basement" means the part of a building that is below grade.

(l) "Biologicals" means medicinal preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(m) "Boarding care home" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(n) "Case manager" means an individual assigned to a resident to provide assistance in access and coordination of information and services in a program authorized by the Kansas department for aging and disability services, the Kansas department for children and families, or the division of health care finance in the Kansas department of health and environment.

(o) "Change of ownership" means any transaction that results in a change of control over the capital assets of an adult care home.

(p) "Chemical restraint" means a medication or biological that meets the following conditions:

(1) Is used to control a resident's behavior or restrict a resident's freedom of movement; and

(2) is not a standard treatment for a resident's medical or psychiatric condition.

(q) "Clinical record" means the record that includes all the information and entries reflecting each resident's course of stay in an adult care home.

(r) "Concentrated livestock operation" means confined feeding facility, as defined in K.S.A. 65-171d, and amendments thereto.

(s) "Contaminated laundry" means any clothes or linens that have been soiled with body substances including blood, stool, urine, vomitus, or other potentially infectious material.

(t) "Controlled substance" means any medication, substance, or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, K.S.A. 65-4107, K.S.A. 65-4109, K.S.A. 65-4111, and K.S.A. 65-4113, and amendments thereto.

(u) "Day shift" means any eight-hour to 12-hour work period that occurs between the hours of 6 a.m. and 9 p.m.

(v) "Department" means Kansas department for aging and disability services.

(w) "Dietetic services supervisor" means an individual who meets one of the following requirements:

(1) Is licensed in Kansas as a dietitian;
 (2) has an associate's degree in dietetic technology from a program approved by the American dietetic association;

(3) is a dietary manager who is certified by the certifying board for dietary managers of the association of nutrition and foodservice professionals; or

(4) has training and experience in dietetic services supervision and management that are determined by the Kansas department for aging and disability services to be equivalent in content to the requirement specified in paragraph (2) or (3) of this subsection.

(x) "Dietitian" means an individual who is licensed by the department as a dietitian.

(y) "Direct care staff" means the individuals employed by or working under contract for an adult care home who assist residents in activities of daily living. These activities may include the following:

- (1) Ambulating;
- (2) bathing;
- (3) bed mobility;
- (4) dressing;
- (5) eating;
- (6) personal hygiene;
- (7) toileting; and
- (8) transferring.

(z) "Director of nursing" means a position in a nursing facility or a nursing facility for mental health that is held by one or more individuals who meet the following requirements:

(1) Each individual shall be licensed as an RN.

(2) If only one individual serves in this position, the individual shall be employed at least 35 hours each week.

(3) If more than one individual serves in this position, the individuals shall be employed collectively for a total of at least 40 hours each week.

(4) Each individual shall have the responsibility, administrative authority, and accountability for the supervision of nursing care provided to residents in the nursing facility or the nursing facility for mental health.

(aa) "Full-time" means 35 or more hours each week.

(bb) "Health information management practitioner" means an individual who is certified as a registered health information administrator or a registered health information technician by the American health information management association.

(cc) "Home plus" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(dd) "Interdisciplinary team" means the following group of individuals:

(1) An RN with responsibility for the care of the residents; and

(2) other appropriate staff, as identified by resident comprehensive assessments, who are responsible for the development of care plans for residents.

(ee) "Intermediate care facility for people with intellectual disability" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(ff) "Legal representative" means an agent acting within the bounds of the agent's legal authority who meets any of the following criteria:

(1) Has been designated by a resident to serve as the resident's trustee, power of attorney, durable power of attorney, or power of attorney for health care decisions;

(2) is a court-appointed guardian or conservator authorized to act on behalf of the resident in accordance with K.S.A. 59-3051 et seq., and amendments thereto; or

(3) if the resident is a minor, is either of the following:

(A) A natural guardian, as defined in K.S.A. 59-3051 and amendments thereto; or

(B) a court-appointed guardian, conservator, trustee, or an individual or agency vested with custody of the minor pursuant to the revised Kansas code for care of children, K.S.A. 2012 Supp. 38-2201 through 38-2283 and amendments thereto, or the revised Kansas juvenile justice code, K.S.A. 2012 Supp. 38-2301 through 38-2387 and amendments thereto.

(gg) "Licensed mental health technician" means an individual licensed by the Kansas board of nursing as a licensed mental health technician.

(hh) "Licensed nurse" means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.

(ii) "Licensed practical nurse" and "LPN" mean an individual who is licensed by the Kansas board of nursing as a licensed practical nurse and is supervised by a registered professional nurse, in accordance with K.S.A. 65-1113 and amendments thereto.

(jj) "Licensee" means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary to operate an adult care home.

(kk) "Medical care provider" means any of the following individuals:

(1) A physician licensed by the Kansas board of healing arts to practice medicine and surgery, in accordance with K.S.A. 65-2801 et seq. and amendments thereto;

(2) a physician assistant (PA) who is licensed by the Kansas board of healing arts, in accordance with K.S.A. 65-28a02 and amendments thereto, and who provides health care services under the direction and supervision of a responsible physician; or

(3) an APRN.

(ll) "Medication" means any "drug," as defined by K.S.A. 65-1626 and amendments thereto.

(mm) "Medication administration" means an act in which a single dose of a prescribed medication or biological is given by application, injection, inhalation, ingestion, or any other means to a resident by an authorized person in accordance with all laws and regulations governing the administration of medications and biologicals. Medication administration shall consist of the following:

(1) Removing a single dose from a labeled container, including a unit-dose container;

(2) verifying the medication and dose with the medical care provider's orders;

(3) administering the dose to the resident; and

(4) documenting the dose in the resident's clinical record.

(nn) "Medication aide" means an individual who is certified by the department as a medication aide according to K.A.R. 26-50-30 and is supervised by a licensed nurse.

(oo) "Medication dispensing" means the delivery of one or more doses of a medication by a licensed pharmacist or physician. The medication shall be dispensed in a container and labeled in compliance with state and federal laws and regulations.

(pp) "Non-ambulatory resident" means any resident who is not physically or mentally capable of performing the following without the assistance of another person:

(1) Getting in and out of bed; and

(2) walking between locations in the living environment.

(qq) "Nurse aide" means an individual who meets the following requirements:

(1) Is certified as a nurse aide by the department and is listed on the Kansas nurse aide registry according to K.A.R. 26-50-20; and

(2) is supervised by a licensed nurse.

(rr) "Nurse aide trainee" means an individual who is in the process of completing a nurse aide training program as specified in K.A.R. 26-50-20

or K.A.R. 26-50-24, is not certified by the department as a nurse aide, and is not listed on the Kansas nurse aide registry. There are two types of nurse aide trainee: nurse aide trainee I and nurse aide trainee II. These two terms are defined in K.A.R. 26-50-10.

(ss) "Nursing facility" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(tt) "Nursing facility for mental health" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(uu) "Nursing personnel" means all of the following:

(1) RNs;

(2) LPNs;

(3) licensed mental health technicians in nursing facilities for mental health;

(4) medication aides;

(5) nurse aides;

(6) nurse aide trainees II; and

(7) paid nutrition assistants.

(vv) "Nursing unit" means a distinct area of a nursing facility serving not more than 60 residents and including the service areas and rooms described in K.A.R. 26-40-302 and K.A.R. 26-40-303.

(ww) "Occupational therapist" means an individual who is licensed with the Kansas board of healing arts as an occupational therapist.

(xx) "Occupational therapy assistant" means an individual who is licensed by the Kansas board of healing arts as an occupational therapy assistant.

(yy) "Operator" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(zz) "Paid nutrition assistant" has the meaning specified in K.S.A. 39-923, and amendments thereto. In addition, each paid nutrition assistant shall meet the following requirements:

(1) Have successfully completed a nutrition assistant course approved by the department;

(2) provide assistance with eating to residents of an adult care home based on an assessment by the supervising licensed nurse, the resident's most recent minimum data set assessment or functional capacity screening, and the resident's current care plan or negotiated service agreement;

(3) provide assistance with eating to residents who do not have complicated eating problems, including difficulty swallowing, recurrent lung aspirations, and tube, parenteral, or intravenous feedings;

(4) be supervised by a licensed nurse on duty in the facility; and

(5) be able to contact the supervising licensed nurse verbally or on the resident call system for help in case of an emergency.

(aaa) "Personal care" means assistance provided to a resident to enable the resident to perform activities of daily living, including ambulating, bathing, bed mobility, dressing, eating, personal hygiene, toileting, and transferring.

(bbb) "Pharmacist" has the meaning specified in K.S.A. 65-1626, and amendments thereto.

(ccc) "Physical restraint" means any method or any physical device, material, or equipment attached or adjacent to the resident's body and meeting the following criteria:

- (1) Cannot be easily removed by the resident; and
- (2) restricts freedom of movement or normal access to the resident's body.

(ddd) "Physical therapist" means an individual who is licensed by the Kansas board of healing arts as a physical therapist.

(eee) "Physical therapy assistant" means an individual who is certified by the Kansas board of healing arts as a physical therapy assistant.

(fff) "Physician" means a person licensed to practice medicine and surgery by the state board of healing arts.

(ggg) "Psychopharmacologic drug" means any medication prescribed with the intent of controlling mood, mental status, or behavior.

(hhh) "Registered professional nurse" and "RN" mean an individual who is licensed by the Kansas board of nursing as a registered professional nurse.

(iii) "Renovation" means a change to an adult care home that affects the building's structural integrity or life safety system.

(jjj) "Resident" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(kkk) "Resident capacity" means the number of an adult care home's beds or adult day care slots, as licensed by the department.

(lll) "Residential health care facility" has the meaning specified in K.S.A. 39-923, and amendments thereto.

(mmm) "Respite care" means the provision of services to a resident on an intermittent basis for periods of fewer than 30 days at any one time.

(nnn) "Restraint" means the control and limitation of a resident's movement by physical, mechanical, or chemical means.

(ooo) "Sanitization" means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ppp) "Secretary" means secretary of the Kansas department for aging and disability services.

(qqq) "Self-administration of medication" means the determination by a resident of when to take a medication or biological and how to apply, inject, inhale, ingest, or take a medication or biological by any other means, without assistance from nursing staff.

(rrr) "Significant change in condition" means a decline or improvement in a resident's mental, psychosocial, or physical functioning that requires a change in the resident's comprehensive plan of care or negotiated service agreement.

(sss) "Social services designee" means an individual who meets at least one of the following qualifications:

(1) Is licensed by the Kansas behavioral sciences regulatory board as a social worker;

(2) has a bachelor's degree in a human service field, including social work, sociology, special education, rehabilitation counseling, or psychology, and receives supervision from a licensed social worker; or

(3) has completed a course in social services coordination approved by the department and receives supervision from a licensed social worker on a regular basis.

(ttt) "Social worker" means an individual who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(uuu) "Speech-language pathologist" means an individual who is licensed by the department as a speech-language pathologist.

(vvv) "Working day" means any day other than a Saturday, Sunday, or day designated as a holiday by the United States congress or the Kansas legislature or governor. (Authorized by K.S.A. 39-932 and K.S.A. 2012 Supp. 39-1901 and 39-1908; implementing K.S.A. 2012 Supp. 39-923, K.S.A. 39-932, and K.S.A. 2012 Supp. 39-1908; effective May 22, 2009; amended Jan. 7, 2011; amended, T-26-6-28-13, June 28, 2013; amended Oct. 25, 2013.)

26-39-101. Licensure of adult care homes. (a) Initiation of application process.

(1) Each applicant for a license to operate an adult care home shall submit a letter of intent to the department.

(2) The letter of intent shall include all of the following information:

(A) The type of adult care home license being requested;

(B) the name, address, and telephone number of the applicant; and

(C) the street address or legal description of the proposed site.

(b) Initial licensure application.

(1) Each applicant for an initial license shall submit the following to the department:

(A) A completed application on a form prescribed by the department;

(B) a copy of each legal document identifying ownership and control, including applicable deeds, leases, and management agreements;

(C) any required approval of other owners or mortgagors;

(D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;

(E) a complete list of names and addresses of facilities that the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month's operating income and expenses with a current balance sheet showing at least one month's operating expenses in cash or owner's equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant to be accurate.

(2) A license shall be issued by the department if all of the following requirements are met:

(A) A licensure application has been completed by the applicant.

(B) Construction of the facility or phase is completed.

(C) The facility is found to meet all applicable requirements of the law.

(D) The applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(c) Change of ownership or licensee.

(1) The current licensee shall notify the department, in writing, of any anticipated change in the information that is recorded on the current license at least 60 days before the proposed effective date of change.

(2) Each applicant proposing to purchase, lease, or manage an adult care home shall submit the following information, if applicable, to the department:

(A) A completed application form prescribed by the department;

(B) a copy of each legal document transferring ownership or control, including sales contracts, leases, deeds, and management agreements;

(C) any required approval of other owners or mortgagors;

(D) curriculum vitae or resumes of all facility and corporate staff responsible for the operation and supervision of the business affairs of the facility;

(E) a complete list of names and addresses of facilities the applicant operates in states other than Kansas; and

(F) a financial statement projecting the first month's operating income and expenses with a current balance sheet showing at least one month's operating expenses in cash or owner's equity. All financial statements shall be prepared according to generally accepted accounting principles and certified by the applicant as accurate.

(3) A new license shall be issued by the department if a complete application and the required forms have been received and the applicant is found to qualify for a license under K.S.A. 39-928 and amendments thereto.

(d) New construction or conversion of an existing unlicensed building to an adult care home.

(1) Each applicant for a nursing facility, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility shall request approval of the site at least 30 days before construction begins. The written request for site approval shall include all of the following information:

(A) The name and telephone number of the individual to be contacted by evaluation personnel;

(B) the dimensions and boundaries of the site; and

(C) the name of the public utility or municipality that provides services to the site, including water, sewer, electricity, and natural gas.

(2) Intermediate care facilities for the mentally retarded shall not have more than one residential building with 16 beds or less located on one site or on contiguous sites. The residential buildings shall be dispersed geographically to achieve integration and harmony with the community or neighborhoods in which the buildings are located.

(3) The applicant shall submit one copy of the final plans for new construction or conversion of an existing unlicensed building, for the entire project or phase to be completed, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities; and

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256.

(4) The applicant shall provide the department with a 30-day notice of each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed; and

(B) the date on which the architect estimates that all construction will be completed.

(5) The applicant for new construction or conversion of an existing unlicensed building to a home plus, boarding care home, or adult day care facility shall submit a drawing of the proposed facility that includes identification and dimensions of rooms or areas as required in the following regulations:

(A) For a home plus, K.A.R. 28-39-437;

(B) for a boarding care home, K.A.R. 28-39-411; and

(C) for an adult day care facility, K.A.R. 28-39-289 through K.A.R. 28-39-291.

(6) The applicant shall submit to the department any changes from the plans, specifications, or drawings on file at the department.

(e) Additions and renovations.

(1) The licensee shall submit one copy of final plans, which shall be sealed, signed, and certified by a licensed architect to be in compliance with the following regulations:

(A) For a nursing facility, K.A.R. 26-40-301 through K.A.R. 26-40-305;

(B) for an intermediate care facility for the mentally retarded with 16 beds or less, K.A.R. 28-39-225;

(C) for an intermediate care facility for the mentally retarded with 17 or more beds, K.A.R. 26-40-301 through K.A.R. 26-40-305 governing the physical environment of nursing facilities;

(D) for an assisted living facility or a residential health care facility, K.A.R. 28-39-254 through K.A.R. 28-39-256; and

(E) for a nursing facility for mental health, K.A.R. 28-39-227.

(2) The licensee shall submit to the department a 30-day notice for each of the following:

(A) The date on which the architect estimates that 50 percent of the construction will be completed;

(B) the date on which the architect estimates all construction will be completed; and

(C) any changes in the plans or specifications information for the addition or renovation.

(f) Change in use of a required room or area. If an administrator or operator changes resident bedrooms, individual living units, and apartments used for an alternative purpose back to resident bedrooms, individual living units, and apartments, the administrator or operator shall obtain the secretary's approval before the change is made.

(g) Change of resident capacity. Each licensee shall submit a written request for any proposed change in resident capacity to the department. The effective date of a change in resident capacity shall be the first day of the month following department approval.

(h) Change of administrator, director of nursing, or operator. Each licensee of an adult care home shall notify the department within two working days if there is a change in administrator, director of nursing, or operator. When a new administrator or director of nursing is employed, the licensee shall notify the department of the name, address, and Kansas license number of the new administrator or director of nursing. When a new operator is employed, the licensee shall notify the department of the name and address of the new operator and provide evidence that the individual has completed the operator course as specified by the secretary of the Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto.

(i) Administrator or operator supervision of multiple homes. An administrator or operator may supervise more than one separately licensed adult care home if the following requirements are met:

(1) Each licensee shall request prior authorization from the department for a licensed administrator or an operator to supervise more than one separately licensed adult care home. The request shall be submitted on the appropriate form and include assurance that the lack of full-time, onsite supervision of the adult care homes will not adversely affect the health and welfare of residents.

(2) All of the adult care homes shall be located within a geographic area that allows for daily onsite supervision of all of the adult care homes by the administrator or operator.

(3) The combined resident capacities of separately licensed nursing facilities, assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 120 for a licensed administrator.

(4) The combined resident capacities of separately licensed assisted living facilities, residential health care facilities, homes plus, and adult day care facilities shall not exceed 60 for an operator.

(5) The combined number of homes plus shall not exceed four homes for a licensed administrator or an operator.

(j) Reports. Each licensee shall file reports with the department on forms and at times prescribed by the department.

(k) Fees. Each initial application for a license and each annual report filed with the department shall be accompanied by a fee of \$30.00 for each resident in the stated resident capacity plus \$100.00. Each requested change in resident capacity shall be accompanied by a fee of \$30.00 for each resident increase or decrease in the stated resident capacity plus \$100.00. No refund of the fee shall be made if a license application is denied. (Authorized by K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; implementing K.S.A. 39-927, K.S.A. 2009 Supp. 39-930, K.S.A. 39-932, and K.S.A. 39-933; effective May 22, 2009; amended Jan. 7, 2011.)

26-39-102. Admission, transfer, and discharge rights of residents in adult care homes. (a) Each licensee, administrator, or operator shall develop written admission policies regarding the admission of residents. The admission policy shall meet the following requirements:

(1) The administrator or operator shall ensure the admission of only those individuals whose physical, mental, and psychosocial needs can be met within the accommodations and services available in the adult care home.

(A) Each resident in a nursing facility or nursing facility for mental health shall be admitted under the care of a physician licensed to practice in Kansas.

(B) The administrator or operator shall ensure that no children under the age of 16 are admitted to the adult care home.

(C) The administrator or operator shall allow the admission of an individual in need of specialized services for mental illness to the adult care home only if accommodations and treatment that will assist that individual to achieve and maintain the highest practicable level of physical, mental, and psychosocial functioning are available.

(2) Before admission, the administrator or operator, or the designee, shall inform the prospective resident or the resident's legal representative in writing of the rates and charges for the adult care

home's services and of the resident's obligations regarding payment. This information shall include the refund policy of the adult care home.

(3) At the time of admission, the administrator or operator, or the designee, shall execute with the resident or the resident's legal representative a written agreement that describes in detail the services and goods the resident will receive and specifies the obligations that the resident has toward the adult care home.

(4) An admission agreement shall not include a general waiver of liability for the health and safety of residents.

(5) Each admission agreement shall be written in clear and unambiguous language and printed clearly in black type that is 12-point type or larger.

(b) At the time of admission, adult care home staff shall inform the resident or the resident's legal representative, in writing, of the state statutes related to advance medical directives.

(1) If a resident has an advance medical directive currently in effect, the facility shall keep a copy on file in the resident's clinical record.

(2) The administrator or operator, or the designee, shall ensure the development and implementation of policies and procedures related to advance medical directives.

(c) The administrator or operator, or the designee, shall provide a copy of resident rights, the adult care home's policies and procedures for advance medical directives, and the adult care home's grievance policy to each resident or the resident's legal representative before the prospective resident signs any admission agreement.

(d) The administrator or operator of each adult care home shall ensure that each resident is permitted to remain in the adult care home and is not transferred or discharged from the adult care home unless one of the following conditions is met:

(1) The transfer or discharge is necessary for the resident's welfare, and the resident's needs cannot be met in the current adult care home.

(2) The safety of other individuals in the adult care home is endangered.

(3) The health of other individuals in the adult care home is endangered.

(4) The resident has failed, after reasonable and appropriate notice, to pay the rates and charges imposed by the adult care home.

(5) The adult care home ceases to operate.

(e) Before a resident is transferred or discharged involuntarily, the administrator or operator, or the designee, shall perform the following:

(1) Notify the resident, the resident's legal representative, and if known, a designated family member of the transfer or discharge and the reasons; and

(2) record the reason for the transfer or discharge under any of the circumstances specified in paragraphs (d) (1) through (4) in the resident's clinical record, which shall be substantiated as follows:

(A) The resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met by the adult care home;

(B) the resident's physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the adult care home; and

(C) a physician shall document the rationale for transfer or discharge in the resident's clinical record if the transfer or discharge is necessary because the health or safety of other individuals in the adult care home is endangered.

(f) The administrator or operator, or the designee, shall provide a notice of transfer or discharge in writing to the resident or resident's legal representative at least 30 days before the resident is transferred or discharged involuntarily, unless one of the following conditions is met:

(1) The safety of other individuals in the adult care home would be endangered.

(2) The resident's urgent medical needs require an immediate transfer to another health care facility.

(g) Each written transfer or discharge notice shall include the following:

(1) The reason for the transfer or discharge;

(2) the effective date of the transfer or discharge;

(3) the address and telephone number of the complaint program of the Kansas department on aging where a complaint related to involuntary transfer or discharge can be registered;

(4) the address and telephone number of the state long-term care ombudsman; and

(5) for residents who have developmental disabilities or who are mentally ill, the address and telephone number of the Kansas advocacy and protection organization.

(h) The administrator or operator, or the designee, shall provide sufficient preparation and orientation to each resident before discharge to ensure a safe and orderly transfer and discharge from the adult care home.

(i) The administrator or operator, or the designee, shall ensure the development of a discharge plan, with the involvement of the resident, the resident's legal representative, and designated family when practicable.

(j) If the resident is transferred or discharged to another health care facility, the administrator or operator, or the designee, shall ensure that sufficient information accompanies the resident to ensure continuity of care in the new facility.

(k) Before a resident in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, residential health care facility, or home plus is transferred to a hospital or goes on therapeutic leave, the administrator or operator, or the designee, shall provide written information to the resident or the resident's legal representative and, if agreed to by the resident or the resident's legal representative, the resident's family, that specifies the following:

(1) The period of time during which the resident is permitted to return and resume residence in the facility;

(2) the cost to the resident, if any, to hold the resident's bedroom, apartment, individual living unit, or adult day care slot until the resident's return; and

(3) a provision that when the resident's hospitalization or therapeutic leave exceeds the period identified in the policy of a nursing facility, the resident will be readmitted to the nursing facility upon the first availability of a comparable room if the resident requires the services provided by the nursing facility. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

26-39-103. Resident rights in adult care homes. (a) Protection and promotion of resident rights. Each administrator or operator shall ensure the protection and promotion of the rights of each resident as set forth in this regulation. Each resident shall have a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the adult care home.

(b) Exercise of rights.

(1) The administrator or operator shall ensure that each resident is afforded the right to exercise the resident's rights as a resident of the adult care home and as a citizen.

(2) The administrator or operator shall ensure that each resident is afforded the right to be free

from interference, coercion, discrimination, or reprisal from adult care home staff in exercising the resident's rights.

(3) If a resident is adjudged incompetent under the laws of the state of Kansas, the resident's legal representative shall have the power to exercise rights on behalf of the resident.

(4) In the case of a resident who has executed a durable power of attorney for health care decisions, the agent may exercise the rights of the resident to the extent provided by K.S.A. 58-625 et seq. and amendments thereto.

(c) Notice of rights and services.

(1) Before admission, the administrator or operator shall ensure that each resident or the resident's legal representative is informed, both orally and in writing, of the following in a language the resident or the resident's legal representative understands:

(A) The rights of the resident;

(B) The rules governing resident conduct and responsibility;

(C) the current rate for the level of care and services to be provided; and

(D) if applicable, any additional fees that will be charged for optional services.

(2) The administrator or operator shall ensure that each resident or the resident's legal representative is notified in writing of any changes in charges or services that occur after admission and at least 30 days before the effective date of the change. The changes shall not take place until notice is given, unless the change is due to a change in level of care.

(d) Inspection of records.

(1) The administrator or operator shall ensure that each resident or resident's legal representative is afforded the right to inspect records pertaining to the resident. The administrator or operator, or the designee, shall provide a photocopy of the resident's record or requested sections of the resident's record to each resident or resident's legal representative within two working days of the request. If a fee is charged for the copy, the fee shall be reasonable and not exceed actual cost, including staff time.

(2) The administrator or operator shall ensure access to each resident's records for inspection and photocopying by any representative of the department.

(e) Informed of health status. The administrator or operator shall ensure that each resident and the resident's legal representative are afforded the right

to be fully informed of the resident's total health status, including the resident's medical condition.

(f) Free choice. The administrator or operator shall ensure that each resident, or resident's legal representative on behalf of the resident, is afforded the right to perform the following:

(1) Choose a personal attending physician;

(2) participate in the development of an individual care plan or negotiated service agreement;

(3) refuse treatment;

(4) refuse to participate in experimental research; and

(5) choose the pharmacy where prescribed medications are purchased. If the adult care home uses a unit-dose or similar medication distribution system, the resident shall have the right to choose among pharmacies that offer or are willing to offer the same or a compatible system.

(g) Management of financial affairs. The administrator or operator shall ensure that each resident is afforded the right to manage personal financial affairs and is not required to deposit personal funds with the adult care home.

(h) Notification of changes.

(1) The administrator or operator shall ensure that designated facility staff inform the resident, consult with the resident's physician, and notify the resident's legal representative or designated family member, if known, upon occurrence of any of the following:

(A) An accident involving the resident that results in injury and has the potential for requiring a physician's intervention;

(B) a significant change in the resident's physical, mental, or psychosocial status;

(C) a need to alter treatment significantly; or

(D) a decision to transfer or discharge the resident from the adult care home.

(2) The administrator or operator shall ensure that a designated staff member informs the resident, the resident's legal representative, or authorized family members whenever the designated staff member learns that the resident will have a change in room or roommate assignment.

(i) Privacy and confidentiality. The administrator or operator shall ensure that each resident is afforded the right to personal privacy and confidentiality of personal and clinical records.

(1) The administrator or operator shall ensure that each resident is provided privacy during medical and nursing treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(2) The administrator or operator shall ensure that the personal and clinical records of the resident are maintained in a confidential manner.

(3) The administrator or operator shall ensure that a release signed by the resident or the resident's legal representative is obtained before records are released to anyone outside the adult care home, except in the case of transfer to another health care institution or as required by law.

(j) Grievances. The administrator or operator shall ensure that each resident is afforded the right to the following:

(1) Voice grievances with respect to treatment or care that was or was not furnished;

(2) be free from discrimination or reprisal for voicing the grievances; and

(3) receive prompt efforts by the administrator or operator, or the designee, to resolve any grievances that the resident could have, including any grievance with respect to the behavior of other residents.

(k) Work.

(1) The administrator or operator shall ensure that each resident is afforded the right to refuse to perform services for the adult care home.

(2) A resident may perform services for the adult care home, if the resident wishes and if all of the following conditions are met:

(A) The administrator or operator, or the designee, has documented the resident's need or desire for work in the plan of care or negotiated service agreement.

(B) The plan of care or negotiated service agreement specifies the nature of the services performed and whether the services are voluntary or paid.

(C) The resident or resident's legal representative has signed a written agreement consenting to the work arrangement described in the plan of care or negotiated service agreement.

(l) Mail. The administrator or operator shall ensure that each resident is afforded the right to privacy in written communications, including the right to the following:

(1) Have unopened mail sent and received promptly; and

(2) have access to stationery, postage, and writing implements at the resident's own expense.

(m) Access and visitation rights.

(1) The administrator or operator shall ensure the provision of immediate access to any resident by the following:

(A) Any representative of the secretary of the Kansas department on aging;

(B) the resident's attending medical care provider;

(C) the state long-term care ombudsman;

(D) any representative of the secretary of the Kansas department of social and rehabilitation services;

(E) immediate family or other relatives of the resident; and

(F) others who are visiting with the consent of the resident subject to reasonable restrictions.

(2) The administrator or operator shall ensure that each resident is afforded the right to deny or withdraw visitation consent for any person at any time.

(n) Telephone. The administrator or operator shall ensure that each resident is afforded the right to reasonable access to a telephone in a place where calls can be made without being overheard.

(o) Personal property. The administrator or operator shall ensure that each resident is afforded the right to retain and use personal possessions, including furnishings and appropriate clothing as space permits, unless doing so would infringe upon the rights or health and safety of other residents.

(p) Married couples. The administrator or operator shall ensure that each resident is afforded the right to share a room with the resident's spouse if married residents live in the same adult care home and both spouses consent.

(q) Self-administration of medication. The administrator shall ensure that each resident in a nursing facility or a nursing facility for mental health is afforded the right to self-administer medications unless the resident's attending physician and the interdisciplinary team have determined that this practice is unsafe. In any assisted living facility, residential health care facility, home plus, or adult day care facility, a resident may self-administer medication if a licensed nurse has determined that the resident can perform this function safely and accurately. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009.)

26-39-104. Receivership of adult care homes. (a) A person may be designated by the secretary to be a receiver if that person meets the following requirements:

(1) Has operated a Kansas adult care home for at least five consecutive years; and

(2) has a history of compliance with licensure standards.

(b) A person designated as a receiver shall not use the designation for any commercial purpose. (Authorized by and implementing K.S.A. 2007 Supp. 39-954; effective May 22, 2009.)

26-39-105. Adoptions by reference. (a) The following material shall apply to all adult care homes except nursing facilities for mental health, intermediate care facilities for the mentally retarded, and boarding care homes:

(1) Dietary guidelines. In the “dietary guidelines for Americans,” 2005, published by the U.S. department of health and human services and U.S. department of agriculture, appendixes A-1 and A-2 and “notes for appendix A-2” are hereby adopted by reference.

(2) Infection control. The department’s document titled “tuberculosis (TB) guidelines for adult care homes,” dated July 2008, is hereby adopted by reference.

(b) The document adopted by reference in this subsection shall apply to each applicant for a nursing facility license and to each addition to a nursing facility licensed on or after the effective date of this regulation. The “international building code” (IBC), 2006 edition, published by the international code council, excluding the appendices, is hereby adopted by reference.

(c) The following material shall apply to all nursing facilities:

(1) Life safety code. Chapters one through 11, 18, 19, 40, and 42 of the national fire protection association’s NFPA 101 “life safety code” (LSC), 2000 edition, are hereby adopted by reference.

(2) Americans with disabilities act accessibility guidelines. Chapters one through four and chapter six of the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG), 28 C.F.R. part 36, appendix A, as in effect on July 1, 1994, are hereby adopted by reference and shall be known as “ADAAG.”

(3) Food code. Chapters one through seven of the “food code,” 2009, published by the U.S. department of health and human services, are hereby adopted by reference. (Authorized by and implementing K.S.A. 39-932; effective May 22, 2009; amended Jan. 7, 2011.)

26-39-144. (Authorized by K.S.A. 39-932; implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 22, 2009.)

26-39-243. (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

26-39-278. (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

26-39-427. (Authorized by and implementing K.S.A. 2004 Supp. 39-923, K.S.A. 2004 Supp. 39-925, and K.S.A. 39-932; effective Nov. 4, 2005; revoked May 29, 2009.)

26-39-438. Informal dispute resolution requests. Any adult care home administrator may request from the department an informal opportunity to dispute cited deficiencies pursuant to L. 2004, ch. 162, sec. 1 and amendments thereto. The adult care home administrator shall submit five copies of the request and the accompanying documentation required by L. 2004, ch. 162, sec. 1, and amendments thereto, to the department. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-439. Informal dispute resolution panel. (a) An informal dispute resolution panel, which is also known as an independent review panel, shall be appointed by the secretary. The membership of each informal dispute resolution panel shall consist of the members authorized by L. 2004, ch. 162, sec. 1 and amendments thereto.

(b) If an adult care home administrator requests a face-to-face meeting, the meeting shall be conducted at the department’s administrative offices in Topeka, Kansas.

(c) The panel shall allow a representative of the adult care home to provide information and documentation that refute the disputed deficiency or deficiencies.

(d) The panel shall allow a representative of the department to provide information and documentation that support the cited deficiencies.

(e) The panel shall consider the following information during the informal dispute resolution process:

- (1) The cited deficiency or deficiencies;
- (2) the applicable state or federal regulations;
- (3) the applicable state or federal interpretative guidelines;

(4) any relevant information and documentation related to the statement of deficiencies provided by the adult care home representative; and

(5) any relevant information and documentation related to the statement of deficiencies provided by the department's staff.

(f)(1) Each panel member shall adhere to departmental confidentiality requirements related to the information presented in the informal dispute resolution process, including the provisions of K.S.A. 39-934 and K.S.A. 39-1411, and amendments thereto.

(2) Each person who is not an employee of the department on aging shall sign a confidentiality agreement before serving on an informal dispute resolution panel. The confidentiality agreement shall include a provision that the person has read the statutes specified in paragraph (f)(1) and will not disclose any confidential information outside the dispute resolution process.

(3) The adult care home representative shall be informed when a member of the panel is not an employee of the department on aging.

(g) Except as specified in paragraph (f)(1), all information that is precluded from disclosure by statute shall remain confidential. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-440. Informal dispute resolution process. (a)(1) Departmental staff members may assist panel members in convening informal dispute resolution meetings within 30 days of the receipt of each request for informal dispute resolution. If the panel can not be convened within 30 days, the adult care home administrator shall be advised of the date of the panel meeting.

(2) More than one informal dispute resolution request may be reviewed during any panel meeting. The panel shall determine the order and method of the presentations by representatives of the adult care home and the department.

(b) Each representative presenting to the panel shall be limited to oral presentations only. Only panel members may ask questions of presenters.

(c) The panel may limit the time allowed for oral presentations.

(d) The panel shall consider all oral and written information presented and shall recommend one of the following to the secretary:

- (1) Upholding the deficiency;
- (2) deleting the deficiency; or
- (3) revising the scope and severity assessment.

(e) The panel shall provide the secretary with written recommendations, which shall be based upon the applicable statutes, regulations, and supporting documentation.

(f) The panel shall not consider any informal dispute resolution request that meets any of the following conditions:

(1) Challenges any aspect of the survey process other than the disputed deficiency;

(2) challenges the scope and severity assessment of deficiencies, except when the scope and severity assessment indicates substandard quality of care or immediate jeopardy;

(3) alleges failure of the survey team to comply with requirements of the survey process;

(4) alleges inconsistency of the survey team in citing deficiencies among adult care homes;

(5) alleges inadequacy of the informal dispute resolution process; or

(6) disputes imposed remedies.

(g) The informal dispute resolution process shall not delay the formal imposition of state or federal enforcement remedies related to the survey in which deficiencies are being disputed. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-441. Notification of final decision.

(a) The informal dispute resolution panel shall submit a written recommendation to the secretary upon adjournment of the informal dispute resolution meeting. The panel's recommendation shall be accepted, rejected, or modified by the secretary.

(b) If the deficiencies are upheld, a departmental staff member shall notify the adult care home representative in writing that the informal dispute resolution request was unsuccessful and that the deficiencies will remain on the statement of deficiencies.

(c) If the deficiencies are deleted or the scope and severity assessments are revised, a department staff member shall notify the adult care home representative in writing that the informal dispute resolution was successful. A departmental staff member shall delete the deficiencies or adjust the scope and severity assessment, or both, and shall forward a revised statement of deficiencies to the adult care home administrator. (Authorized by and implementing L. 2004, ch. 162, sec. 1; effective Aug. 19, 2005.)

26-39-500. Definitions. Each of the following terms, as used in K.A.R. 26-39-500 through 26-39-506, shall have the meaning specified in this regulation: (a) "Accredited college or university" means a college or university that is accredited by

an accrediting body recognized by the council on postsecondary accreditation or by the secretary of the U.S. department of education.

(b) “Clock-hour” means at least 50 minutes of direct instruction, excluding registration, breaks, and meals.

(c) “Continuing education” means a formally organized learning experience that has education as its explicit, principal intent and is oriented toward the enhancement of adult care home administration values, skills, knowledge, and ethics.

(d) “Core of knowledge” means the educational training content for the field of adult care home administration specified in K.A.R. 28-38-29.

(e) “Disciplinary action” means a final action by the secretary or by a board or agency in this state or another jurisdiction on a professional or occupational health care credential.

(f) “Domains of practice” means the knowledge, skills, and abilities specified in K.A.R. 28-38-29.

(g) “In-service education” means learning activities that are provided to an individual in the work setting and are designed to assist the individual in fulfilling job responsibilities.

(h) “Long-term care provider organization” means any professional association concerned with the care and treatment of chronically ill or infirm elderly patients or any association concerned with the regulation of adult care homes.

(i) “Registration” means the credential issued by the secretary to each applicant who meets the requirements for an operator specified in K.A.R. 26-39-501.

(j) “Relevant experience” shall include work experience in business, hospitality, gerontology, or health and human services, or other fields as approved by the secretary.

(k) “Relevant field” shall include degrees in business, hospitality, gerontology, or health and human services, or other degrees as approved by the secretary.

(l) “Sponsor” means any entity approved by the secretary to provide continuing education programs or courses on a long-term basis.

(m) “Sponsorship” means an approved, long-term provision of programs or courses for the purpose of fulfilling the continuing education requirements for registration renewal or reinstatement. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-501. Registration. Each applicant for initial registration as an operator shall meet the following requirements: (a) Submit an application and meet the requirements specified in K.A.R. 26-39-502;

(b) pay the applicable fee specified in K.A.R. 26-39-505;

(c) be at least 21 years of age;

(d)(1) Have a high school diploma or equivalent, with one year of relevant experience;

(2) have an associate’s degree in a relevant field; or

(3) have a bachelor’s degree; and

(e) have successfully completed an operator course as specified in K.A.R. 26-39-503. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-502. Application for registration.

(a) Each applicant for registration shall submit a completed application, pay the applicable fee, and provide evidence satisfactory to the department of having met the requirements in K.A.R. 26-39-501.

(b) Each applicant shall provide the department with one of the following:

(1) Academic transcripts or proof of receipt of an associate’s degree, if qualifying with an associate’s degree in a relevant field;

(2) academic transcripts or proof of receipt of a bachelor’s degree or graduate degree, if qualifying with a bachelor’s degree; or

(3) both a high school diploma or the equivalent and evidence of one year of relevant experience, if qualifying with a high school diploma and one year of relevant experience.

(c) Each applicant shall arrange for transcripts to be provided directly to the department by the school or the accredited college or university.

(d) Each applicant who has received an associate’s degree, bachelor’s degree, or graduate degree outside the United States or its territories and whose transcript is not in English shall submit an officially translated English copy of the applicant’s transcript and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner acceptable to the department. Each applicant shall pay all transcription fees directly to the transcriber.

(e) Each applicant who has received an associate’s degree, bachelor’s degree, or graduate degree outside the United States or its territories shall obtain an equivalency validation from a department-approved entity that specializes in

educational credential evaluations. Each applicant shall pay the required equivalency validation fee directly to the validation agency.

(f) If adverse information concerning the applicant is received through criminal history records, abuse, neglect and exploitation information, or disciplinary action information or from any other source, the applicant shall provide, upon request, all necessary records, affidavits, or other documentation required by the secretary concerning the disciplinary action, the abuse, neglect or exploitation findings, or the criminal conviction, including any evidence that all disciplinary action or sentencing requirements have been completed. All costs for the acquisition of these documents shall be the applicant's responsibility.

(g) If an applicant has been subject to disciplinary action or has been convicted of a felony or misdemeanor, the applicant shall have the burden of proving that the applicant has been rehabilitated and warrants the public trust. (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4 and 9; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-503. Operator course. (a) Each applicant shall have successfully completed an operator course on principles of assisted living that is approved by the secretary.

(b) Each operator course shall be conducted by one of the following training providers:

- (1) A long-term care provider organization;
- (2) a community college;
- (3) an area vocational-technical school;
- (4) a postsecondary school under the jurisdiction of the state board of regents; or
- (5) an equivalent training provider approved by the secretary.

(c) Each training provider shall ensure that each individual responsible for administering the operator course has at least two years of professional experience in long-term care or as an instructor of long-term care and meets one of the following requirements:

- (1) Has a bachelor's degree; or
- (2) is a registered professional nurse.

(d) Each training provider seeking approval to conduct an operator course shall submit the following at least three weeks before the first anticipated start date of the operator course:

(1) A course outline that includes all content areas in the department's document titled "operator course guideline," dated July 31, 2014 and hereby adopted by reference. The operator course shall

consist of at least 45 clock-hours of instruction, excluding breaks, lunch, and test time, and a test;

(2) the policy and procedure to be followed to maintain test security, which shall include at least the following:

(A) Securing the tests in a manner that ensures confidentiality;

(B) not providing the test content to any individual before test time; and

(C) notifying the department of any breach in the security of the test;

(3) a list of the printed materials provided to each participant, which shall include at least the following:

(A) The Kansas adult care home statutes and regulations for assisted living facilities and residential health care facilities, home pluses, and adult day cares;

(B) a functional capacity screening manual and form;

(C) the "dietary guidelines for Americans" and "tuberculosis (TB) guidelines for adult care homes," as adopted by reference in K.A.R. 26-39-105; and

(D) an example of a negotiated service agreement; and

(4) after initial approval, submit each proposed change in the operator course to the secretary for approval before the change is implemented.

(e) If the operator course does not meet or continue to meet the requirements for approval or if there is a material misrepresentation of any fact with the information submitted by the training provider to the department, approval may be withheld, made conditional, limited, or withdrawn by the secretary.

(f) Each approved training provider shall meet the following requirements:

(1) Notify the department, electronically or in writing, at least three weeks before each operator course, including course dates, time, and location;

(2) administer and score the test provided by the department after each individual's completion of the operator course. The individual may have access to the applicable statutes and regulations during the test. A score of 80 percent or higher shall constitute a passing score. Any individual who fails the test may retake the test one time. An alternative test version shall be used. Each individual who fails the test a second time shall be required to retake the operator course;

(3) within three weeks after the end of the operator course, provide a certificate of completion

to each individual who completed the operator course and passed the test. Each certificate shall contain the following:

(A) A statement that the named individual completed the operator course; and

(B) the course approval number assigned by the department;

(4) maintain a record of the certificates issued to the individuals who have successfully completed the operator course; and

(5) within three weeks after the end of the operator course, submit to the department a copy of each certificate of completion issued and a list of the individuals who successfully completed the operator course. The list shall contain the following:

(A) The course approval number;

(B) the name, address, and date of birth of each individual; and

(C) any other information as required by the secretary. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-504. Registration renewal and reinstatement; continuing education. (a) Each registration shall expire biennially on April 30. Each initial registration shall be issued for at least 12 months but not more than 24 months.

(b)(1) On or before April 30 of the calendar year in which the registration expires, each operator shall submit electronically or have postmarked a completed renewal application and the renewal fee specified in K.A.R. 26-39-505.

(2) The registration may be renewed within the 30-day period following the expiration date only if the completed application and the renewal fee and renewal late fee specified in K.A.R. 26-39-505 are received electronically or postmarked on or before May 30 of the calendar year in which the registration expires.

(3) If the completed renewal application and the applicable fee or fees are not received electronically or postmarked within the 30-day period following the expiration date, the registration shall be deemed to have lapsed for failure to renew and shall be reissued only after the registration has been reinstated.

(c) Each individual whose registration has lapsed for not more than 24 months shall submit a completed application, on department-approved forms, showing completion of 30 clock-hours of continuing education. The application shall be ac-

companied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(d) Each individual whose registration has lapsed for more than 24 months shall submit a completed application on department-approved forms showing successful completion of the operator course within the most recent 24-month period. The application shall be accompanied by the renewal fee and the reinstatement fee specified in K.A.R. 26-39-505.

(e) Continuing education requirements shall be prorated on a monthly basis for each operator whose initial or reinstatement registration period is less than 24 months.

(f)(1) Each application for renewal shall include an attestation verifying that the operator has completed at least 30 clock-hours of continuing education during the period covered by the most recent registration. Continuing education in excess of the required 30 clock-hours shall not be carried over to the next renewal period.

An operator's renewal application may be randomly selected for audit to confirm completion of continuing education requirements. Each operator whose renewal application is selected for audit shall provide all documentation requested by the secretary.

The 30 clock-hours of continuing education shall be earned through participation in or attendance at continuing education offerings pertaining to the core of knowledge or the domains of practice and shall be accumulated within subject areas as follows:

(A) At least 15 clock-hours in administration, which may include the following subjects:

(i) General administration;

(ii) applicable standards of environmental health and safety;

(iii) local health and safety regulations;

(iv) departmental organization and management; and

(v) community interrelationships;

(B) at least 10 clock-hours in resident care, which may include the following subjects:

(i) Psychology of resident care;

(ii) principles of medical care;

(iii) personal and social care; and

(iv) therapeutic and supportive care; and

(C) a maximum of five clock-hours in electives, which shall be in the domains of practice or the core of knowledge or in health-related fields.

(2) Five hours of continuing education credit in electives shall be approved for attendance, if

verified by the sponsor, at state or national annual conventions that pertain to long-term care, in addition to continuing education credit approved for individual sessions at the state or national annual conventions.

(g) In-service education shall not be deemed a continuing education activity for the purpose of registration renewal or reinstatement.

(h) Fifteen clock-hours of continuing education credit shall be approved for each college credit hour that pertains to the domains of practice or the core of knowledge and is earned within the renewal period.

(i) Each operator or nonapproved provider of continuing education who seeks approval of a continuing education offering shall submit a request for prior approval to the department at least three weeks before the offering is to be presented. The request shall provide information about the proposed offering, including objectives, content, and agenda, on a form provided by the department.

(j) Each operator who attends a continuing education offering and who also serves as a presenter shall receive two clock-hours for each clock-hour of presentation time. Presenters shall not receive additional credit for repetition of these presentations.

(k) Each sponsor shall meet the following requirements:

(1) Offer at least six continuing education activities, including workshops, seminars, academic courses, self-study courses, teleconferences, and educational sessions, over a two-year period;

(2) designate one person as the coordinator, who shall be responsible for administering all requirements and outcomes of the sponsorship program. The department shall be notified in advance of any staff change involving the coordinator, including proof of that person's credentials to be the coordinator. Each coordinator shall meet one of the following requirements:

(A) Be currently licensed as an administrator, as defined in K.A.R. 26-39-100, or be currently registered as an operator, as defined in K.S.A. 39-923 and amendments thereto;

(B) have relevant experience or have a degree in a relevant field;

(C) serve as staff member of a professional organization related to the field of adult care home administration; or

(D) have a background or academic preparation in adult education or training;

(3) submit a completed application, in a department approved format. The application and all

required documentation shall be received by the department at least 30 days before the initial continuing education offering;

(4) ensure that all continuing education offerings pertain to the domains of practice or the core of knowledge; and

(5) submit an annual report on department-approved forms no later than January 31 of each year for the preceding calendar year. This report shall describe the approved continuing education activities provided and the quality improvement methods used, including how evaluation data is incorporated in planning future continuing education activities.

(l) If a sponsor fails to meet the requirements in this regulation after receiving the secretary's approval or if there is a material misrepresentation of any fact with the information submitted to the secretary by a sponsor, approval may be withdrawn or conditions relating to the sponsorship may be applied by the secretary after giving the sponsor notice and an opportunity to be heard. (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4 and 7; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-505. Fees. (a) The registration application fee shall be \$65.00. The registration application fee for an initial registration of less than 24 months shall be prorated for any full or partial month.

(b) The registration renewal fee shall be \$65.00.

(c) The registration renewal late fee shall be \$35.00.

(d) The application fee for reinstatement of a lapsed or revoked registration shall be \$65.00, in addition to the registration renewal fee specified in subsection (b). (Authorized by L. 2014, ch. 94, sec. 4; implementing L. 2014, ch. 94, secs. 4, 7, 8, and 9; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

26-39-506. Change of name or address. Each operator shall notify the department of any change in the operator's name or address within 30 days of the change. (a) Notice of each address change shall include the operator's name, registration number, previous mailing address, and new mailing address.

(b) Notice of each name change shall meet the following requirements:

(1) Include the operator's previous name, new name, and registration number; and

- (2) be accompanied by one of the following:
- (A) A certified copy of the operator's marriage certificate or license;
 - (B) a certified copy of the operator's court decree evidencing the name change; or
 - (C) a photocopy of the operator's driver's license or Kansas identification card specifying the new name. (Authorized by and implementing L. 2014, ch. 94, sec. 4; effective, T-26-9-2-14, Sept. 2, 2014; effective Dec. 1, 2014.)

Article 40.—NURSING FACILITIES

26-40-301. Nursing facility physical environment; construction and site requirements. Each nursing facility shall be designed, constructed, equipped, and maintained to protect the health and safety of the residents and personnel and the public. (a) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum. New construction of a nursing facility and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the following, as adopted by reference in K.A.R. 26-39-105:

- (1) The "international building code" (IBC);
 - (2) the national fire protection association's NFPA 101 "life safety code"; and
 - (3) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).
- (b) Site requirements. The site of each nursing facility shall meet the following requirements:
- (1) Be served by all-weather roads or streets;
 - (2) be accessible to physician services, fire and other emergency services, medical facilities, churches, and population centers where employees can be recruited and retained;
 - (3) be located in an area sufficiently remote from noise sources that would cause the day or night average sound levels to exceed 65 decibels;
 - (4) be free from noxious and hazardous fumes;
 - (5) be at least 4,000 feet from concentrated livestock operations, including shipping areas and holding pens;
 - (6) be located above the 100-year flood zone if the property is located in a flood hazard area; and
 - (7) be sufficient in area and configuration to accommodate the nursing facility, drives, parking,

sidewalks, recreational area, and community zoning restrictions.

(c) Site development. Development of the site of each nursing facility shall meet the following requirements:

- (1) All buildings comprising a nursing facility shall be located on one site or contiguous sites.
- (2) Final grading of the site shall have topography for positive surface drainage away from each occupied building and positive protection and control of surface drainage and freshets from adjacent areas.

(3) Each nursing facility shall have off-street parking located adjacent to the main building and each freestanding building that contains a resident unit, at a rate of one parking space for every two residents, based on resident capacity.

(4) Each nursing facility shall have at least the minimum number of accessible parking spaces required by ADAAG, as adopted by reference in K.A.R. 26-39-105, that are sized and signed as reserved for the physically disabled, on the shortest accessible route of travel from the adjacent parking lot to an accessible entrance.

(5) Each nursing facility shall have convenient access for service vehicles, including ambulances and fire trucks, and for maneuvering, parking, and unloading delivery trucks.

(6) All drives and parking areas shall be surfaced with a smooth, all-weather finish. Unsealed gravel shall not be used.

(7) Except for lawn or shrubbery used in landscape screening, each nursing facility shall have an unencumbered outdoor area of at least 50 square feet per resident, based on resident capacity, for recreational use and shall so designate this area on the plot plan. Equivalent amenities provided by terraces, roof gardens, or similar structures for facilities located in high-density urban areas may be approved by the secretary. If a multistoried building is licensed as a nursing facility after the effective date of this regulation, the nursing facility shall have outdoor space on each level. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-302. Nursing facility physical environment; applicants for initial licensure and new construction. (a) Applicability. This regulation shall apply to each applicant for a nursing facility license and to any addition to a nursing facility licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

- (1) The “international building code” (IBC);
- (2) the national fire protection association’s NFPA 101 “life safety code” (LSC); and
- (3) the “Americans with disabilities act accessibility guidelines for buildings and facilities” (ADAAG).

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A “resident unit” shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f). Each resident unit shall have a resident capacity of no more than 30 residents and shall be located within a single building. If the nursing facility is multilevel, each resident unit shall be located on a single floor.

(1) Resident rooms. At least 20 percent of the residents on each resident unit shall reside in a private resident room. The occupancy of the remaining rooms shall not exceed two residents per room.

(A) Each resident room shall meet the following requirements:

- (i) Be located on a floor at or above ground level;
- (ii) allow direct access to the corridor;
- (iii) allow direct access from the room entry to the toilet room and to the closet or freestanding wardrobe without going through the bed area of another resident;
- (iv) measure at least 120 square feet in single resident rooms and at least 200 square feet in double resident rooms, exclusive of the entrance door and toilet room door swing area, alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and

(v) provide each resident with direct access to an operable window that opens for ventilation. The

total window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by a full-height wall, a permanently installed sliding or folding door or partition, or other means to afford complete visual privacy. Use of a ceiling-suspended curtain may cover the entrance to the bed area.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident’s needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident’s room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a height easily reached by the resident. Accommodations shall be provided for hanging full-length garments.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than one resident room and be accessed directly from the resident’s room. Each resident toilet room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105.

(A) Each resident toilet room shall have at least a five-foot turning radius to allow maneuverability of a wheelchair. If the shower presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(B) The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet.

(C) Each toilet room shall contain a hand-washing sink.

(D) At least 40 percent of the residents on each resident unit shall have a shower in the resident’s toilet room.

(i) Each shower shall measure at least three feet by five feet with a threshold of ½ inch or less.

(ii) Showers shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas.

The rooms and areas required in this subsection shall be located in each resident unit and shall

be accessed directly from the general corridor without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. A care support area shall be located less than 200 feet from each resident room and may serve two resident units if the care support area is centrally located for both resident units.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

- (i) Charting;
- (ii) the transmission and reception of resident information;
- (iii) clinical records and other resident information;
- (iv) a telephone and other office equipment; and
- (v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) a nurses' workroom or area equipped with a work counter with task lighting, hand-washing sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart in addition to a medication room or area if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Den or consultation room. Each resident unit shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors and for physician visits, resident conferences, and staff meetings.

(A) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(B) The room shall contain a hand-washing sink.

(C) A den or consultation room shall not be required if all resident rooms are private.

(4) Clean workroom. Each resident unit shall have a room for preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(5) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen proximate to the point of use. The storage area may be located in the clean workroom.

(6) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and a storage cabinet with a lock for sanitizing solutions and cleaning supplies.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan piped to a floor drain.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) If a housekeeping room is located in the soiled workroom, the housekeeping room shall be enclosed and an additional minimum of 20 square feet shall be provided in the soiled workroom.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(7) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equipment. The total space shall be at least 80 square feet plus an additional minimum of one square foot per resident capacity on the unit, with no single room or area less than 40 square feet. The width and length of each room or area shall be at least five feet.

(8) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain a floor receptor or service sink, hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall have separately designated mops and buckets for use in each specific location.

(9) Toilet room. Each resident unit shall have at least one toilet room with a hand-washing sink that is accessible for resident, staff, and visitor use.

(f) Common rooms and areas in resident units. The rooms and areas required in this subsection shall be located in each resident unit, except as specified in this subsection, and shall be accessed directly from the general corridor without passage through an intervening room or area. The required room or area shall be located less than 200 feet from each resident room. A room or area may serve two resident units only if centrally located.

(1) Living, dining, and recreation areas. Each resident unit shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 40 square feet per resident based on each resident unit's capacity, with at least 25 square feet per resident in the dining area.

(B) Window areas in the living, dining, and recreation areas shall be at least 10 percent of the gross floor space of those areas. Each of these areas shall have exposure to natural daylight. The window area requirement shall not be met by the use of skylights.

(C) The dining area shall have adequate space for each resident to access and leave the dining table without disturbing other residents.

(D) Storage of items used for recreation and other activities shall be near the location of their planned use.

(2) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the kitchen meets the following requirements:

(A) Is adequate in relation to the size of the resident unit;

(B) is designed and equipped to meet the needs of the residents; and

(C) meets the requirements in paragraph (g)(5).

(3) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area shall contain a hand-washing sink, counter, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets and shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. The nourishment area may be located in the resident unit kitchen if all residents have access to the area between scheduled meals.

(4) Bathing room. Each resident unit shall have at least one bathing room to permit each resident to bathe privately and either independently or with staff assistance. The bathing room shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and include the following:

(A) A hand-washing sink;

(B) an area enclosed for privacy that contains a toilet for resident use. The center line of each resident-use toilet shall be at least 18 inches from the nearest wall or partition to allow staff to assist a resident to and from the toilet;

(C) a hydrotherapy bathing unit;

(D) a shower that measures at least four feet by five feet without curbs unless a shower is provided in each resident's toilet room;

(E) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(F) a locked supply cabinet.

(5) Personal laundry room. Any resident unit may have a resident laundry room for residents to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (g)(6)(C) are met.

(6) Mobility device parking space. Each resident unit shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be

included in determining the minimum required corridor width.

(g) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the nursing facility administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial wellbeing.

(1) Multipurpose room. Each nursing facility shall have a room for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity.

(B) The multipurpose room shall contain a work counter with a hand-washing sink that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and storage space and lockable cabinets for equipment and supplies.

(2) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60 based on resident capacity, to a maximum requirement of 655 square feet.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(3) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(4) Beauty and barber shop. Each nursing facility shall have a room for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

(i) The bathing room does not contain a shower.

(ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.

(iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(5) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105. Dietary service areas shall be located to minimize transportation for meal service unrelated to the resident unit past the resident rooms. The following elements shall be included in each central kitchen and resident unit kitchen:

(A) A control station for receiving food supplies;

(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

(i) Commercial-type dishwashing equipment;

(ii) a hand-washing sink;

(iii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iv) if in a resident kitchen, a sink and adjacent under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff, separated by a vestibule from the central kitchen or, if in a resident kitchen, a toilet room with a hand-washing sink located in close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor with hot and cold water, shelving, and storage space for housekeeping equipment and supplies or, if in a resident kitchen, an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and indoor sanitizing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(6) Laundry services. Each nursing facility shall have the means for receiving, processing, and

storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in combination with these options. The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains a floor receptor with hot and cold water, shelving, and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F. Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if sep-

arate, defined areas are provided for handling clean and soiled laundry. The following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) at least one washing machine. Each washing machine shall be positioned over a catch pan piped to a floor drain;

(iii) a processing room or area that contains a clothes dryer and a hand-washing sink;

(iv) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(v) storage space for laundry supplies.

(D) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(7) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen.

(8) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment. Each housekeeping room shall contain a floor receptor with hot and cold water, adequate shelving, provisions for hanging mops and other cleaning tools, and space for buckets, supplies, and equipment.

(h) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet

room located in the resident unit may meet this requirement.

(2) Public areas. Each nursing facility shall provide the following public areas to accommodate residents, staff, and visitors:

(A) A sheltered entrance at grade level that is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105;

(B) a lobby or vestibule with communication to the reception area, information desk, or resident unit;

(C) at least one public toilet room with a toilet and sink that are accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement;

(D) a drinking fountain or cooler or other means to obtain fresh water; and

(E) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office;

(B) a director of nursing office;

(C) general offices as needed for admission, social services, private interviews, and other professional and administrative functions; and

(D) space for office equipment, files, and financial and clinical records.

(i) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located at each bed and in each beauty and barber shop that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or

area, indicating the resident room number and bed, or beauty and barber shop;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

(i) Produce a repeating audible signal at the nurses' workroom or area, or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;

(iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and non-emergency calls.

(E) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (i)(1)(A)

through (E), all of the following additional requirements shall be met:

(i) The nursing facility shall be equipped with a system that records activated calls.

(ii) A signal unanswered for a designated period of time, but not more than every three minutes, shall repeat and also be sent to another workstation or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call system at least weekly to verify operation of the system.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

(i) The exterior of the nursing facility, including enclosed outdoor areas;

(ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and

(iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(j) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility shall have areas for repair, service, and maintenance functions that include the following:

(A) A maintenance office;

(B) a storage room for building maintenance supplies;

(C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment; and

(D) a maintenance storage area that opens to the outside, or is located in a detached building, for the storage of tools, supplies, and equipment used for yard and exterior maintenance.

(2) Waste processing services. Each nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-303. Nursing facility physical environment; existing nursing facilities. (a) Applicability. This regulation shall apply to all nursing facilities licensed on the effective date of this regulation.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

(A) The national fire protection association's NFPA 101 "life safety code" (LSC); and

(B) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).

(2) Each nursing facility and any portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure.

(c) Nursing facility design. The design and layout of each nursing facility shall differentiate among public, semiprivate, and private space and shall promote the deterrence of unnecessary travel through private space by staff and the public. The resident unit shall be arranged to achieve a home environment, short walking and wheeling distances, localized social areas, and decentralized work areas.

(d) Resident unit. A "resident unit" shall mean a group of resident rooms, care support areas, and common rooms and areas as identified in this subsection and subsections (e) and (f), unless otherwise indicated. Each resident unit shall have a

resident capacity of no more than 60 residents and shall be located within a single building.

(1) Resident rooms. At least five percent of the resident rooms shall have a maximum occupancy of one resident per room. The occupancy of the remaining rooms shall not exceed two residents per room. If a nursing facility has rooms that accommodate three or four residents on the effective date of this regulation, this requirement shall not apply until the nursing facility converts its existing three- and four-resident rooms to private or semiprivate rooms.

(A) Each resident room shall meet the following requirements:

(i) Be located on a floor at or above ground level;

(ii) allow direct access to the corridor;

(iii) measure at least 100 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items. If the building was constructed before January 1, 1963 and licensed as a nursing facility on the effective date of this regulation, rooms shall measure at least 90 square feet in single resident rooms and at least 160 square feet in double resident rooms, exclusive of alcoves, vestibules, toilet room, closets or freestanding wardrobes, sinks, and other built-in items; and

(iv) provide at least one operable exterior window that opens for ventilation. The window area shall not be less than 12 percent of the gross floor area of the resident room.

(B) Each bed area in a double resident room shall have separation from the adjacent bed by use of walls, doors, or ceiling suspended curtains to afford complete visual privacy.

(C) The configuration of each resident room shall be designed to allow at least three feet of clearance along the foot of each bed and along both sides of each bed.

(D) The nursing facility shall have functional furniture to meet each resident's needs, including a bed of adequate size with a clean, comfortable mattress that fits the bed, and bedding appropriate to the weather and the needs of the resident.

(E) Each resident's room shall include personal storage space in a fixed closet or freestanding wardrobe with doors. This storage shall have minimum dimensions of one foot 10 inches in depth by two feet six inches in width and shall contain an adjustable clothes rod and shelf installed at a

height easily reached by the resident. Accommodations shall be provided for hanging full-length garments. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(2) Resident toilet rooms. Each resident toilet room shall serve no more than two resident rooms and be accessed directly from the resident's room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, resident access to the toilet room may be from the general corridor.

(A) Each toilet room shall contain at least a toilet and hand-washing sink, unless a hand-washing sink is provided in the resident room adjacent to the toilet room.

(B) Each resident toilet room shall have at least 30 square feet to allow maneuverability of a wheelchair. If the room contains a shower that presents no obstruction to the turning radius, the space occupied by the shower may be included in the minimum dimensions.

(C) If a shower is present in a toilet room, the shower shall be curtained or in another type of enclosure for privacy.

(e) Resident unit care support rooms and areas. The rooms and areas required in this subsection shall be located in each resident unit and shall be accessed directly from the general corridor without passage through an intervening room or area, except the medication room as specified in paragraph (e)(2)(A) and housekeeping closets. Each care support area shall be located less than 200 feet from each resident room. If the building was constructed before February 15, 1977 and the nursing facility was licensed on the effective date of this regulation, the distance specified in this paragraph shall not apply.

(1) Nurses' workroom or area. Each resident unit shall have sufficient areas for supervisory work activities arranged to ensure the confidentiality of resident information and communication.

(A) A nurses' workroom or area shall have space for the following:

(i) Charting;

(ii) the transmission and reception of resident information;

(iii) clinical records and other resident information;

(iv) a telephone and other office equipment; and

(v) an enunciator panel or monitor screen for the call system. If a resident unit has more than one nurses' workroom or area, space for an enunciator panel or monitor for the call system shall not be required in more than one nurses' workroom or area.

(B) The nurses' workroom or area shall be located so that the corridors outside resident rooms are visible from the nurses' workroom or area. The nursing facility may have cameras and monitors to meet this requirement.

(C) Direct visual access into each nurses' work area shall be provided if the work area is located in an enclosed room.

(2) Medication room or area. Each resident unit shall have a room or area for storage and preparation of medications or biologicals for 24-hour distribution, with a temperature not to exceed 85°F. This requirement shall be met by one or more of the following:

(A) A room with an automatically closing, self-locking door visible from the nurses' workroom or area. The room shall contain a work counter with task lighting, hand-washing sink, refrigerator, and shelf space for separate storage of each resident's medications. The secured medication storage room shall contain separately locked compartments for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(B) if the resident unit serves no more than 32 residents, a nurses' workroom or area equipped with a work counter with task lighting, hand-washing sink, locked refrigerator, and locked storage for resident medications. A separately locked compartment shall be located within the locked cabinet, drawer, or refrigerator for the storage of controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse;

(C) a locked medication cart, in addition to a medication room or area, if the cart is located in a space convenient for control by nursing personnel who are authorized to administer medication. If controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse are stored in the medication cart, the cart shall contain a separately locked compartment for the storage of these medications; or

(D) in the resident's room if the room contains space for medication preparation with task lighting, access to a hand-washing sink, and locked cabinets or drawers for separate storage of each resident's medication. Controlled medications listed in K.S.A. 65-4107, and amendments thereto, and any other medications that, in the opinion of the consultant pharmacist, are subject to abuse shall not be stored in a resident's room.

(3) Clean workroom. Each resident unit shall have a room for the preparation, storage, and distribution of clean or sterile materials and supplies and resident care items.

(A) The room shall contain a work counter with a sink and adequate shelving and cabinets for storage.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If the resident unit is located in a freestanding building, a clothes dryer for processing resident personal laundry that is not contaminated laundry may be located in the clean workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per dryer shall be provided.

(ii) The soiled workroom shall contain a washing machine positioned over a catch pan.

(iii) The clean workroom shall have a door opening directly into the soiled workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) Storage and preparation of food and beverages shall not be permitted in the clean workroom.

(4) Clean linen storage. Each resident unit shall have a room or area with adequate shelving, cabinets, or cart space for the storage of clean linen. The storage area may be located in the clean workroom.

(5) Soiled workroom. Each resident unit shall have a soiled workroom for the disposal of wastes, collection of contaminated material, and the cleaning and sanitizing of resident care utensils.

(A) The soiled workroom shall contain a work counter, a two-compartment sink, a covered waste receptacle, a covered soiled linen receptacle, and

a storage cabinet with a lock for sanitizing solutions and cleaning supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the soiled workroom shall contain these fixtures except that the sink shall be at least a one-compartment sink.

(B) The room area shall be at least 80 square feet, with a length or width of at least six feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions shall not apply.

(C) If the resident unit is located in a freestanding building, a washing machine for processing resident personal laundry that is not contaminated laundry may be located in the soiled workroom if the following requirements are met:

(i) An additional minimum of 40 square feet per washing machine shall be provided.

(ii) The washing machine shall be positioned over a catch pan.

(iii) The clean workroom shall contain a clothes dryer.

(iv) The soiled workroom shall have a door opening directly into the clean workroom without entering the general corridor. The door opening shall be covered with a plastic-strip door or by other means to prevent interference of ventilation requirements for both workrooms.

(D) A housekeeping room may be located in the soiled workroom if the following conditions are met:

(i) The soiled workroom is located in a resident unit in a freestanding building.

(ii) The housekeeping room is enclosed.

(iii) The soiled workroom includes at least 20 square feet in additional space.

(E) Clean supplies, equipment, and materials shall not be stored in the soiled workroom.

(6) Equipment storage rooms or areas. Each resident unit shall have sufficient rooms or enclosed areas for the storage of resident unit equipment.

(A) The total space shall be at least 120 square feet plus an additional minimum of one square foot for each resident based on resident capacity, with no single room or area less than 30 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) If mechanical equipment or electrical panel boxes are located in the storage area, the nursing facility shall have additional space for the access to and servicing of equipment.

(7) Housekeeping room. Each resident unit shall have at least one room for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

(i) A floor receptor or service sink, or both;

(ii) hot and cold water;

(iii) adequate shelving;

(iv) provisions for hanging mops and other cleaning tools; and

(v) space for buckets, supplies, and equipment.

(B) If the housekeeping room in the resident unit serves the resident kitchen and any other areas of the unit, the nursing facility shall designate separate mops and buckets for use in each specific location.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have at least one janitor's closet that contains either a floor receptor or service sink, or both, and storage space for janitorial equipment and supplies.

(8) Toilet room. Each resident unit shall have a staff toilet room with a hand-washing sink. If a resident unit is located in a freestanding building, the resident unit shall have at least one toilet room that contains a hand-washing sink and is accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, for resident, staff, and visitor use. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this paragraph shall not apply.

(9) Resident kitchen. Any resident unit may have a decentralized resident kitchen if the resident kitchen meets the following requirements:

(A) Is adequate in relation to the size of the resident unit;

(B) is designed and equipped to meet the needs of the residents; and

(C) meets the requirements in paragraph (f)(7).

(10) Nourishment area. Each resident unit shall have an area available to each resident to ensure the provision of nourishment and beverages, including water, between scheduled meals. The nourishment area may serve more than one resident unit if centrally located for easy access from

each of the nursing areas served. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have a nourishment area.

(A) The nourishment area shall contain a hand-washing sink, equipment for serving nourishment and beverages, a refrigerator, and storage cabinets.

(B) The nourishment area may be located in the resident unit kitchen if the kitchen has both a hand-washing sink and counter accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105, and all residents have access to the area between scheduled meals.

(11) Bathing room. Each nursing facility shall have a room or rooms with sufficient bathing units to permit each resident to bathe privately and either independently or with staff assistance.

(A) Each nursing facility shall have at least one hydrotherapy bathing unit. If the building was constructed before November 1, 1993 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(B) Each nursing facility shall have bathing units at a rate of one for each 15 residents, based on the number of residents who do not have a toilet room, with a shower accessed directly from the resident's room. A hydrotherapy bathing unit may be counted as two bathing units to meet this ratio.

(C) The bathing room shall contain the following:

(i) A hand-washing sink;

(ii) an area enclosed for privacy that contains a toilet for resident use;

(iii) a shower that measures at least four feet by four feet without curbs and is designed to permit use by a resident in a wheelchair, unless a shower is provided in each resident's toilet room. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply;

(iv) a visually enclosed area for privacy during bathing, drying, and dressing, with space for a care provider and wheelchair; and

(v) a locked supply cabinet.

(12) Personal laundry room. Any resident unit may have a laundry room for each resident to launder personal laundry that is not contaminated laundry, if the requirements in paragraph (f) (8) are met.

(13) Mobility device parking space. Each nursing facility shall have parking space for residents' mobility devices. The parking space shall be located in an area that does not interfere with normal resident passage. The parking space shall not be included in determining the minimum required corridor width.

(f) Common rooms and support areas in the nursing facility's main building. The rooms and areas required in this subsection shall be located in the main building of each nursing facility, unless otherwise indicated, and shall be accessed directly from the general corridor without passage through an intervening room or area. If a resident unit is located in a freestanding building, the administrator shall ensure that transportation is provided for each resident to access services and activities that occur in the main building to enhance the resident's physical, mental, and psychosocial well-being.

(1) Living, dining, and recreation areas. Each nursing facility shall have sufficient space to accommodate separate and distinct resident activities of living, dining, and recreation. If a resident unit is located in a freestanding building, the resident unit shall include living, dining, and recreation areas.

(A) Space for living, dining, and recreation shall be provided at a rate of at least 27 square feet per resident based on each resident unit's capacity, with at least 14 square feet per resident in the dining area. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have space for living, dining, and recreation at a rate of at least 20 square feet per resident based on each resident unit's capacity, with at least 10 square feet per resident in the dining area.

(B) Window areas in each living, dining, and recreation area shall be at least 10 percent of the gross floor space of those areas. The window area requirement shall not be met by the use of skylights.

(2) Multipurpose room. Each nursing facility shall have a room or area for resident use for social gatherings, religious services, entertainment, or crafts, with sufficient space to accommodate separate functions.

(A) The multipurpose room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on the nursing facility's resident capacity. If the building was constructed before February 15, 1977 and licensed

as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(B) The multipurpose room or area shall contain a work counter with a hand-washing sink, and storage space and lockable cabinets for equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the hand-washing sink may be located in close proximity to the multipurpose room or area.

(3) Den. Each nursing facility shall have a room for residents to use for reading, meditation, solitude, or privacy with family and other visitors unless each resident has a private room. The room area shall be at least 80 square feet. This paragraph shall not apply to facilities that meet the following conditions:

(A) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(B) Any decrease to the nursing facility's resident capacity is for the sole purpose of converting semiprivate rooms to private rooms.

(4) Exam room. Each nursing facility shall have a room for a physician to examine and privately consult with a resident.

(A) The exam room shall meet the following requirements:

(i) The room area shall be at least 120 square feet, with a length or width of at least 10 feet.

(ii) The room shall contain a hand-washing sink, an examination table, and a desk or shelf for writing.

(iii) If the examination room is located in the rehabilitation therapy room, the examination room shall be equipped with cubicle curtains.

(B) The requirement for an exam room shall not apply to any nursing facility that meets both of the following conditions:

(i) The building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation.

(ii) Any decrease to the nursing facility's resident capacity on or after the effective date of this regulation is for the sole purpose of converting semiprivate rooms to private rooms.

(5) Rehabilitation room. Each nursing facility shall have a room for the administration and implementation of rehabilitation therapy.

(A) The rehabilitation room shall include the following:

(i) Equipment for carrying out each type of therapy prescribed for the residents;

(ii) a hand-washing sink;

(iii) an enclosed storage area for therapeutic devices; and

(iv) provisions for resident privacy.

(B) The rehabilitation room shall have an area of at least 200 square feet for 60 or fewer residents, plus at least two square feet for each additional resident over 60, based on resident capacity, to a maximum requirement of 655 square feet. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(C) If a resident unit is located in a freestanding building, the resident unit may have a designated area for rehabilitation in a bathing room. The combined use of the space shall not limit the residents' bathing opportunities or rehabilitation therapy.

(6) Beauty and barber shop. Each nursing facility shall have a room or area for the hair care and grooming of residents appropriate in size for the number of residents served.

(A) The beauty and barber shop shall contain at least one shampoo sink, space for one floor hair dryer, workspace, and a lockable supply cabinet.

(B) If a resident unit is located in a freestanding building, the resident unit may have a designated area for the hair care and grooming of residents in the bathing room if all of the following conditions are met:

(i) The bathing room does not contain a shower.

(ii) The area contains at least one shampoo sink, space for one floor hair dryer, and workspace.

(iii) The combined use of the space does not limit the residents' bathing, hair care, or grooming opportunities.

(7) Dietary areas. Each nursing facility shall have dietary service areas that are adequate in relation to the size of the nursing facility and are designed and equipped to meet the needs of the residents. Each nursing facility shall meet the requirements of the "food code," as adopted by reference in K.A.R. 26-39-105, unless otherwise indicated in this subsection. The following elements shall be included in each central kitchen and resident kitchen:

(A) A control station for receiving food supplies;

(B) food preparation and serving areas and equipment in accordance with the following requirements:

(i) Conventional food preparation systems shall include space and equipment for preparing, cooking, baking, and serving; and

(ii) convenience food service systems, including systems using frozen prepared meals, bulk-packaged entrees, individual packaged portions, or contractual commissary services, shall include space and equipment for thawing, portioning, cooking, baking, and serving;

(C) space for meal service assembly and distribution equipment;

(D) a two-compartment sink for food preparation. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the kitchen shall have at least a one-compartment sink for food preparation;

(E) a hand-washing sink in the food preparation area;

(F) a ware-washing area apart from, and located to prevent contamination of, food preparation and serving areas. The area shall include all of the following:

(i) Commercial-type dishwashing equipment;

(ii) space for receiving, scraping, sorting, and stacking soiled tableware and transferring clean tableware to the using area; and

(iii) if in a resident kitchen, an under-counter commercial or residential dishwasher that meets the national sanitation foundation (NSF) international standards;

(G) a three-compartment deep sink for manual cleaning and sanitizing or, if in a resident kitchen, an alternative means for a three-step process for manual cleaning and sanitizing;

(H) an office in the central kitchen for the dietitian or dietetic services supervisor or, if in a resident kitchen, a workspace for the dietitian or dietetic services supervisor;

(I) a toilet room and a hand-washing sink available for dietary staff located within close proximity to the kitchen;

(J) an enclosed housekeeping room located within the central kitchen that contains a floor receptor or service sink with hot and cold water, shelving, and storage space for housekeeping equipment and supplies. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, a housekeeping room shall not be required in the kitchen. If in a resident kitchen, there shall be an enclosed housekeeping room adjacent to the kitchen that contains storage for dietary services cleaning equipment;

(K) an ice machine that, if available to residents for self-serve, shall dispense ice directly into a

container and be designed to minimize noise and spillage onto the floor;

(L) sufficient food storage space located adjacent to the central kitchen or resident kitchen to store at least a four-day supply of food to meet residents' needs, including refrigerated, frozen, and dry storage;

(M) sufficient space for the storage and sanitizing of cans, carts, and mobile equipment; and

(N) a waste storage area in a separate room or an outside area that is readily available for direct pickup or disposal.

(8) Laundry services. Each nursing facility shall have the means for receiving, processing, and storing linen needed for resident care in a central laundry or off-site laundry, or both, or a personal laundry room located on a resident unit in combination with these options. The arrangement of laundry services shall provide for an orderly workflow from dirty to clean, to minimize cross-contamination.

(A) If nursing facility laundry or more than one resident's personal laundry is to be processed, the laundry services area shall have separate rooms, with doors that do not open directly onto the resident unit, that have the following:

(i) A soiled laundry room for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room that contains commercial laundry equipment for washing and drying and a hand-washing sink;

(iii) an enclosed housekeeping room that opens into the laundry processing area and contains either a floor receptor or service sink, or both, and shelving and space for storage of housekeeping equipment and supplies;

(iv) a clean laundry room for handling, storing, issuing, mending, and holding laundry with egress that does not require passing through the processing or soiled laundry room; and

(v) storage space for laundry supplies.

(B) If nursing facility laundry or more than one resident's personal laundry is to be processed, the washing machine shall be capable of meeting high-temperature washing or low-temperature washing requirements as follows:

(i) If high-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures of at least 160°F and manufacturer documentation that the machine has a wash cycle of at least 25 minutes at 160°F or higher.

(ii) If low-temperature washing is used, the washing machines shall have temperature sensors and gauges capable of monitoring water temperatures to ensure a wash temperature of at least 71°F and manufacturer documentation of a chlorine bleach rinse of 125 parts per million (ppm) at a wash temperature of at least 71°F. Oxygen-based bleach may be used as an alternative to chlorine bleach if the product is registered by the environmental protection agency.

(C) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the following elements shall be included:

(i) A soiled laundry room or area for receiving, holding, and sorting laundry, equipped with containers with tightly fitting lids for soiled laundry, that is exhausted to the outside;

(ii) a processing room or area that contains commercial laundry equipment for washing and drying and a hand-washing sink;

(iii) a clean laundry room or area for handling, storing, issuing, mending, and holding laundry; and

(iv) storage space for laundry supplies.

(D) If each resident's personal laundry is processed separately on a resident unit, the laundry may be handled within one or more rooms if separate, defined areas are provided for handling clean and soiled laundry.

(E) If laundry is processed off-site, the following elements shall be provided:

(i) A soiled laundry room, equipped with containers that have tightly fitted lids for holding laundry, that is exhausted to the outside; and

(ii) a clean laundry room for receiving, holding, inspecting, and storing linen.

(9) Central storage. Each nursing facility shall have at least five square feet per resident capacity in separate rooms or separate space in one room for storage of clean materials or supplies and oxygen. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the minimum dimensions specified in this paragraph shall not apply.

(10) Housekeeping room. Each nursing facility shall have a sufficient number of rooms for the storage of housekeeping supplies and equipment needed to maintain a clean and sanitary environment.

(A) Each housekeeping room shall contain the following:

(i) A floor receptor or service sink;

(ii) hot and cold water;

(iii) adequate shelving;

(iv) provisions for hanging mops and other cleaning tools; and

(v) space for buckets, supplies, and equipment.

(B) If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall have at least one housekeeping room with a floor receptor or service sink and with storage space for equipment and supplies.

(g) Staff and public areas. The rooms and areas required in this subsection shall be located in the main building of each nursing facility and in each freestanding building with a resident unit unless otherwise indicated.

(1) Staff support area. Each nursing facility shall have a staff support area for staff and volunteers that contains the following, at a minimum:

(A) A staff lounge or area;

(B) lockers, drawers, or compartments that lock for safekeeping of each staff member's personal effects; and

(C) a toilet room and hand-washing sink. If a resident unit is located in a freestanding building, the toilet room located in the resident unit may meet this requirement. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, this requirement shall not apply.

(2) Public areas. Each nursing facility shall have public areas to accommodate residents, staff, and visitors.

(A) Each building constructed and licensed as a nursing facility before February 15, 1977 shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;

(ii) one public toilet and hand-washing sink;

(iii) at least one toilet and hand-washing sink accessible to a person in a wheelchair;

(iv) a drinking fountain or cooler, or other means to obtain fresh water; and

(v) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(B) Each building constructed on or after February 15, 1977 and licensed as a nursing facility on the effective date of this regulation shall have the following public areas:

(i) A sheltered entrance at grade level to accommodate persons in wheelchairs;

(ii) a lobby or vestibule with communication to the reception area, information desk, or resident unit;

(iii) at least one public toilet and hand-washing sink that are accessible to a person in a wheelchair. If a resident unit is located in a freestanding building, the toilet room on the resident unit may meet this requirement;

(iv) if a nursing facility has a resident capacity greater than 60, at least one additional public toilet and hand-washing sink shall be provided;

(v) a drinking fountain or cooler, or other means to obtain fresh water; and

(vi) a telephone, located in an area with sufficient space to allow for use by a person in a wheelchair, where calls can be made without being overheard.

(3) Administrative areas. Each nursing facility shall have the following areas for administrative work activities in the main building:

(A) An administrator's office; and

(B) space for office equipment, files, and financial and clinical records.

(h) Nursing facility support systems. Each nursing facility shall have support systems to promote staff responsiveness to each resident's needs and safety.

(1) Call system. Each nursing facility shall have a functional call system that ensures that nursing personnel working in the resident unit and other staff designated to respond to resident calls are notified immediately when a resident has activated the call system.

(A) Each nursing facility shall have a call button or pull cord located next to each bed that, if activated, will initiate all of the following:

(i) Produce an audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the resident room number;

(iii) produce a visual signal at the resident room corridor door or activate the portable electronic device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce visual and audible signals in clean and soiled workrooms and in the medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(B) Each nursing facility shall have an emergency call button or pull cord located next to each resident-use toilet, shower, and bathtub that, if activated, will initiate all of the following:

(i) Produce a repeating audible signal at the nurses' workroom or area or activate the portable electronic device worn by each required staff member with an audible tone or vibration;

(ii) register a visual signal on an enunciator panel or monitor screen at the nurses' workroom or area, indicating the location or room number of the toilet, shower, or bathtub;

(iii) produce a rapidly flashing light adjacent to the corridor door at the site of the emergency or activate an electronic portable device worn by each required staff member, identifying the specific resident or room from which the call has been placed; and

(iv) produce a rapidly flashing light and a repeating audible signal in the nurses' workroom or area, clean workroom, soiled workroom, and medication preparation rooms or activate the portable electronic device worn by each required staff member with an audible tone or vibration.

(C) The administrator shall implement a policy to ensure that all calls activated from an emergency location receive a high-priority response from staff.

(D) If the nursing facility does not have a wireless call system, the nursing facility shall have additional visible signals at corridor intersections in multicorridor units for all emergency and non-emergency calls. If the building was constructed before February 15, 1977 and licensed as a nursing facility on the effective date of this regulation, the nursing facility shall not be required to have additional visible signals at corridor intersections for all emergency and non-emergency calls.

(E) All emergency and non-emergency call signals shall continue to operate until manually reset at the site of origin.

(F) If call systems include two-way voice communication, staff shall take precautions to protect resident privacy.

(G) If a nursing facility uses a wireless system to meet the requirements of paragraphs (h)(1)(A) through (E), all of the following additional requirements shall be met:

(i) The nursing facility shall be equipped with a system that records activated calls.

(ii) A signal unanswered for a designated period of time, but not more than every three minutes, shall repeat and also be sent to another worksta-

tion or to staff that were not designated to receive the original call.

(iii) Each wireless system shall utilize radio frequencies that do not interfere with or disrupt pacemakers, defibrillators, and any other medical equipment and that receive only signals initiated from the manufacturer's system.

(H) The nursing facility's preventative maintenance program shall include the testing of the call system at least weekly to verify operation of the system.

(I) If the building was constructed before May 1, 1982 and licensed as a nursing facility on the effective date of this regulation, the call system shall be required to meet the following requirements:

(i) Each resident bed shall have a call button that, when activated, registers at the nurses' work area with an audible and visual signal.

(ii) The call system shall produce a visual signal at the resident room corridor door.

(iii) The nursing facility shall have an emergency call button or pull cord next to each resident-use toilet, shower, and bathtub accessible to residents that, when activated, registers at the nurses' work area with an audible and visual signal.

(iv) All emergency and nonemergency call signals shall continue to operate until manually reset at the site of origin.

(2) Door monitoring system. The nursing facility shall have an electrical monitoring system on each door that exits the nursing facility and is available to residents. The monitoring system shall alert staff when the door has been opened by a resident who should not leave the nursing facility unless accompanied by staff or other responsible person.

(A) Each door to the following areas that is available to residents shall be electronically monitored:

(i) The exterior of the nursing facility, including enclosed outdoor areas;

(ii) interior doors of the nursing facility that open into another type of adult care home if the exit doors from that adult care home are not monitored; and

(iii) any area of the building that is not licensed as an adult care home.

(B) The electrical monitoring system on each door shall remain activated until manually reset by nursing facility staff.

(C) The electrical monitoring system on a door may be disabled during daylight hours if nursing facility staff has continuous visual control of the door.

(i) Nursing facility maintenance and waste processing services.

(1) Maintenance, equipment, and storage areas. Each nursing facility constructed after February 15, 1977 and licensed on the effective date of this regulation shall have areas for repair, service, and maintenance functions that include the following:

(A) A maintenance office and shop;

(B) a storage room for building maintenance supplies. The storage room may be a part of the maintenance shop in nursing facilities with 120 or fewer beds;

(C) an equipment room or separate building for boilers, mechanical equipment, and electrical equipment.

(2) Waste processing services. The nursing facility shall have space and equipment for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-304. Nursing facility physical environment; details and finishes. Each nursing facility shall incorporate details and finishes to create a home environment. (a) Codes and standards. Nursing facilities may be subject to codes, standards, and regulations of several different jurisdictions, including local, state, and federal authorities. The requirements in this regulation shall be considered as a minimum. Each nursing facility and each portion of a nursing facility that was licensed under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure. Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the following requirements, as adopted by reference in K.A.R. 26-39-105:

(1) The "international building code" (IBC);

(2) the national fire protection association's NFPA 101 "life safety code" (LSC); and

(3) the "Americans with disabilities act accessibility guidelines for buildings and facilities" (ADAAG).

(b) Details.

(1) Corridors.

(A) The width of each corridor shall be at least eight feet in any resident-use area and at least six feet in any nursing facility support area.

(B) Handrails shall not be considered an obstruction when measuring the width of corridors.

(C) Doors shall not swing directly into corridors, with the exception of doors to small closets and spaces that are not subject to occupancy. Walk-in closets shall be considered occupiable spaces.

(2) Ceiling height.

(A) The height of each ceiling shall be at least eight feet above the finished floor with the following exceptions:

(i) Each ceiling in a storage room or other normally unoccupied space shall be at least seven feet eight inches above the finished floor.

(ii) Each ceiling in a room containing ceiling-mounted equipment shall have sufficient height to accommodate the proper functioning, repair, and servicing of the equipment.

(B) Each building component and suspended track, rail, and pipe located in the path of normal traffic shall be at least six feet eight inches above the finished floor.

(C) Each architecturally framed and trimmed doorway or other opening in a corridor or room shall have a height of at least six feet eight inches above the finished floor.

(3) Doors and door hardware.

(A) Each door on any opening between corridors and spaces subject to occupancy, with the exception of elevator doors, shall be swinging-type.

(B) Each door to a room containing at least one resident-use toilet, bathtub, or shower shall be swinging-type, sliding, or folding and shall be capable of opening outward or designed to allow ingress to the room without pushing against a resident who could have collapsed in the room.

(C) The width of the door opening to each room that staff need to access with beds or stretchers shall be at least three feet eight inches. The width of each door to a resident-use toilet room and other rooms that staff and residents need to access with wheelchairs shall be at least three feet.

(D) No more than five percent of the resident rooms may have a Dutch door to the corridor for physician-ordered monitoring of a resident who is disorientated.

(E) Each exterior door that can be left in an open position shall have insect screens.

(F) Each resident-use interior and exterior door shall open with ease and little resistance.

(G) Each resident-use swinging-type door shall have lever hardware or sensors for ease of use by residents with mobility limitations.

(4) Glazing. Safety glazing materials shall be required in all doors with glass panels, sidelights, and any breakable material located within 18 inches of the floor. Safety glass or safety glazing materials shall be used on any breakable material used for a bath enclosure or shower door.

(5) Windows.

(A) Each window in a resident's room or in a resident-use area shall have a sill located no greater than 32 inches above the finished floor and at least two feet six inches above the exterior grade. This paragraph shall not apply if the building was constructed and licensed as a nursing facility before February 15, 1977. If the building was constructed and licensed as a nursing facility on or after February 15, 1977 and before November 1, 1993, the nursing facility shall have a windowsill height three feet or less above the floor in the living and dining areas for at least 50 percent of the total window area.

(B) Each window in a resident's room shall be operable.

(C) Each operable window shall have an insect screen.

(D) Each operable window shall be designed to prevent falls when open or shall be equipped with a security screen.

(E) Blinds, sheers, or other resident-controlled window treatments shall be provided throughout each resident unit to control light levels and glare.

(6) Grab bars.

(A) Grab bars shall be installed at each resident-use toilet and in each shower and tub.

(B) Each wall-mounted grab bar shall have a clearance of 1½ inches from the wall.

(C) Each grab bar, including those molded into a sink counter, shall have strength to sustain a concentrated load of 250 pounds.

(D) Permanent or flip-down grab bars that are 1½ inches in diameter shall be installed on any two sides of each resident-use toilet, or the resident-use toilet shall have at least one permanent grab bar mounted horizontally at least 33 inches and no more than 36 inches above the floor and slanted at an angle.

(E) The ends of each grab bar shall return to the wall or floor.

(F) Each grab bar shall have a finish color that contrasts with that of the adjacent wall surface.

(7) Handrails.

(A) Each handrail shall be accessible according to ADAAG, as adopted by reference in K.A.R. 26-39-105. Alternative cross sections and con-

figurations that support senior mobility shall be permitted.

(B) Each stairway and ramp shall have handrails.

(C) A handrail shall be provided for each resident-use corridor with a wall length greater than 12 inches.

(D) Each handrail shall have a clearance of 1½ inches from the wall.

(E) The ends of each handrail shall return to the wall.

(F) Each handrail and fastener shall be completely smooth and free of rough edges.

(8) Heated surfaces.

(A) Each heated surface in excess of 100°F with which a resident may have contact shall be insulated and covered to protect the resident.

(B) If heated surfaces, including cook tops, ovens, and steam tables, are used in resident areas, emergency shutoffs shall be provided.

(9) Hand-washing stations.

(A) The water supply spouts for each sink shall be sensor-operated or operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(B) The water supply spout at each sink located in the resident unit and any other areas available for resident use shall be mounted so that the discharge point is at least five inches above the rim of the fixture.

(C) An enclosed single-issue paper towel dispenser or mechanical hand-drying device shall be provided at each hand-washing sink.

(D) A wastebasket shall be located at each hand-washing sink.

(E) A mirror shall be placed at each hand-washing sink located in a resident room, a resident toilet room, and a bathing room and in each public toilet room. The placement of the mirror shall allow for convenient use by both a person who uses a wheelchair and a person who is ambulatory. The bottom edge of each mirror shall be no more than 40 inches from floor level.

(10) Lighting.

(A) All interior and exterior nursing facility lighting shall be designed to reduce glare.

(B) Each space occupied by persons, machinery, equipment within the nursing facility, and approaches to the nursing facility and parking lots shall have lighting.

(C) Each corridor and stairway shall remain lighted at all times.

(D) Each resident room shall have general lighting and night lighting. The nursing facility shall

have a reading light for each resident. At least one light fixture for night lighting shall be switched at the entrance to each resident's room. All switches for the control of lighting in resident areas shall be of the quiet-operating type.

(E) Each light located in a resident-use area shall be equipped with a shade, globe, grid, or glass panel.

(F) Each light fixture in wet areas, including kitchens and showers, shall be vapor-resistant and shall have cleanable, shatter-resistant lenses and no exposed lamps.

(c) Finishes.

(1) Flooring.

(A) Each floor surface shall be easily cleaned and maintained for the location.

(B) If the area is subject to frequent wet-cleaning methods, the floor surface shall not be physically affected by germicidal or other types of cleaning solutions.

(C) Each floor surface, including tile joints used in areas for food preparation or food assembly, shall be water-resistant, greaseproof, and resistant to food acids. Floor construction in dietary and food preparation areas shall be free of spaces that can harbor rodents and insects.

(D) Each flooring surface, including wet areas in kitchens, showers, and bath areas, entries from exterior to interior spaces, and stairways and ramps, shall have slip-resistant surfaces.

(E) All floor construction and joints of structural elements that have openings for pipes, ducts, and conduits shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished flooring or flooring finishes that create glare shall be avoided.

(G) Each flooring surface shall allow for ease of ambulation and movement of all wheeled equipment used by residents or staff and shall provide for smooth transitions between differing floor surfaces.

(H) Each threshold and expansion joint shall be designed to accommodate rolling traffic and prevent tripping.

(I) Each carpet and carpet with padding in all resident-use areas shall be glued down or stretched taut and free of loose edges or wrinkles to avoid hazards or interference with the operation of lifts, wheelchairs, walkers, wheeled carts, and residents utilizing orthotic devices.

(2) Walls, wall bases, and wall protection.

(A) Each wall finish shall be washable and, if located near plumbing fixtures, shall be smooth and moisture-resistant.

(B) Wall protection and corner guards shall be durable and scrubbable.

(C) Each wall base in areas that require frequent wet cleaning, including kitchens, clean and soiled workrooms, and housekeeping rooms, shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor rodents and insects.

(D) All wall construction, finish, and trim in dietary and food storage areas shall be free from spaces that can harbor rodents, insects, and moisture.

(E) Each wall opening for pipes, ducts, and conduits and the joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(F) Highly polished walls or wall finishes that create glare shall be avoided.

(3) Ceilings.

(A) The finish of each ceiling in resident-use areas and staff work areas shall be easily cleanable.

(B) Each ceiling in dietary, food preparation, food assembly, and food storage areas shall have a finished ceiling covering all overhead pipes and ducts. The ceiling finish shall be washable or easily cleaned by dustless methods, including vacuum cleaning.

(C) Each ceiling opening for pipes, ducts, and conduits and all joints of structural elements shall be tightly sealed to prevent entry of rodents and insects.

(D) Impervious ceiling finishes that are easily cleaned shall be provided in each soiled workroom, housekeeping room, and bathing room.

(E) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire protection. (Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

26-40-305. Nursing facility physical environment; mechanical, electrical, and plumbing systems. (a) Applicability. This regulation shall apply to all nursing facilities.

(b) Codes and standards. Each nursing facility shall meet the requirements of the building codes, standards, and regulations enforced by city, county, or state jurisdictions. The requirements specified in this regulation shall be considered as a minimum.

(1) Each nursing facility shall meet the requirements of the national fire protection association's NFPA 101 "life safety code" (LSC), as adopted by reference in K.A.R. 26-39-105.

(2) Each applicant for a nursing facility license and each addition to a nursing facility licensed on or after the effective date of this regulation shall meet the requirements of the "international building code" (IBC), as adopted by reference in K.A.R. 26-39-105.

(3) Each nursing facility and each portion of each nursing facility that was approved under a previous regulation shall, at a minimum, remain in compliance with the regulation or building code in effect at the date of licensure, unless otherwise indicated.

(4) Each nursing facility shall have a complete set of manufacturer's operating, maintenance, and preventive maintenance instructions for each piece of building, mechanical, dietary, and laundry equipment.

(c) Heating, ventilation, and air conditioning systems. Each nursing facility's heating, ventilation, and air conditioning systems shall be initially tested, balanced, and operated to ensure that system performance conforms to the requirements of the plans and specifications.

(1) Each nursing facility shall have a test and balance report from a certified member of the national environmental balancing bureau or the associated air balance council and shall maintain a copy of the report for inspection by department personnel.

(2) Each nursing facility shall meet the minimum ventilation rate requirements in table 1a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum ventilation rate requirements shall be the levels specified in table 1b.

(3) Each nursing facility shall have a heating, ventilation, and air conditioning system designed to maintain a year-round indoor temperature range of 70°F to 85°F in resident care areas.

(d) Insulation. Each nursing facility shall have insulation surrounding the mechanical, electrical, and plumbing equipment to conserve energy, protect residents and personnel, prevent vapor condensation, and reduce noise. Insulation shall be required for the following fixtures within the nursing facility:

(1) All ducts or piping operating at a temperature greater than 100°F; and

(2) all ducts or pipes operating at a temperature below ambient at which condensation could occur.

(e) Plumbing and piping systems. The water supply systems of each nursing facility shall meet the following requirements:

(1) Water service mains, branch mains, risers, and branches to groups of fixtures shall be valved. A stop valve shall be provided at each fixture.

(2) Backflow prevention devices or vacuum breakers shall be installed on hose bibs, janitors' sinks, bedpan flushing attachments, and fixtures to which hoses or tubing can be attached.

(3) Water distribution systems shall supply water during maximum demand periods at sufficient pressure to operate all fixtures and equipment.

(4) Water distribution systems shall provide hot water at hot water outlets at all times. A maximum variation of 98°F to 120°F shall be acceptable at bathing facilities, at sinks in resident-use areas, and in clinical areas. At least one sink in each dietary services area not designated as a hand-washing sink shall have a maximum water temperature of 120°F.

(5) Water-heating equipment shall have sufficient capacity to supply hot water at temperatures of at least 120°F in dietary and laundry areas. Water temperature shall be measured at the hot water point of use or at the inlet to processing equipment.

(f) Electrical requirements. Each nursing facility shall have an electrical system that ensures the safety, comfort, and convenience of each resident.

(1) Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits the panelboards serve. This requirement shall not apply to emergency system circuits.

(2) The minimum lighting intensity levels shall be the levels specified in table 2a. Portable lamps shall not be an acceptable light source to meet minimum requirements, unless specified in table 2a. If the building was licensed as a nursing facility on the effective date of this regulation, the minimum lighting intensity levels shall be the levels specified in table 2b.

(3) Each electrical circuit to fixed or portable equipment in hydrotherapy units shall have a ground-fault circuit interrupter.

(4) Each resident bedroom shall have at least one duplex-grounded receptacle on each side of the head of each bed and another duplex-grounded receptacle on another wall. A television convenience outlet shall be located on at least one wall. If the building was constructed before Feb-

ruary 15, 1977 and licensed as a nursing facility on the effective date of this regulation, each resident bedroom shall have at least one duplex-grounded receptacle.

(5) Duplex-grounded receptacles for general use shall be installed a maximum of 50 feet apart in all corridors and a maximum of 25 feet from the ends of corridors.

(g) Emergency power. Each nursing facility shall have an emergency electrical power system that can supply adequate power to operate all of the following:

(1) Lighting of all emergency entrances and exits, exit signs, and exit directional lights;

(2) equipment to maintain the fire detection, alarm, and extinguishing systems;

(3) exterior electronic door monitors;

(4) the call system;

(5) a fire pump, if installed;

(6) general illumination and selected receptacles in the vicinity of the generator set;

(7) the paging or speaker system if the system is intended for communication during an emergency; and

(8) if life-support systems are used, an emergency generator. The emergency generator shall be located on the premises and shall meet the requirements of the LSC, as adopted by reference in K.A.R. 26-39-105.

(h) Reserve heating. Each nursing facility's heating system shall remain operational under loss of normal electrical power. Each nursing facility shall have heat sources adequate in number and arrangement to accommodate the nursing facility's needs if one or more heat sources become inoperable due to breakdown or routine maintenance.

(i) Preventive maintenance program. Each nursing facility shall have a preventive maintenance program to ensure that all of the following conditions are met:

(1) All electrical and mechanical equipment is maintained in good operating condition.

(2) The interior and exterior of the building are safe, clean, and orderly.

(3) Resident care equipment is maintained in a safe, operating, and sanitary condition.

(j) Tables.

Table 1a

Pressure Relationships and Ventilation of Certain Areas

Room Name or Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's room:					
General	°	2	4	Optional	Optional
Bed	°	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Medication room	Positive	2	4	Optional	Optional
Consultation room	°	2	6	Optional	Optional
Clean workroom	Positive	2	4	Optional	Optional
Soiled workroom	Negative	2	10	Yes	No
Housekeeping	Negative	Optional	10	Yes	No
Public restroom	Negative	Optional	10	Yes	No
Living, dining, and recreation room	°	2	4	Optional	Optional
Nourishment area	°	2	4	Optional	Optional
Kitchen and other food preparation and serving areas	°	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Food storage (nonrefrigerated)	°	Optional	2	Yes	No
Den	°	2	4	Optional	Optional
Central bath and showers	Negative	Optional	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Laundry, Processing	°	2	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Yes	No
Multipurpose room	°	2	4	Optional	Optional
Rehabilitation room	Negative	2	6	Optional	Optional
Beauty and barber shop	Negative	2	10	Yes	No
Corridors	°	Optional	2	Optional	Optional
Designated smoking area	Negative	Optional	20	Yes	No

° Continuous directional control not required

Table 1b

Pressure Relationships and Ventilation of Certain Areas

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Resident's Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Examination and Treatment Room	Equal	2	6	Optional	Optional
Physical Therapy	Negative	2	6	Optional	Optional
Activities Room	Negative	2	6	Optional	Optional
Soiled Workroom	Negative	2	10	Yes	No
Medicine Preparation and Clean Workroom	Positive	2	4	Optional	Optional
Toilet Room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitors' Closets	Negative	Optional	10	Yes	No
Linen and Trash Chute Rooms	Negative	Optional	10	Yes	No
Food Preparation Center	Equal	2	10	Yes	No

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour Supplied to Room	Minimum Total Air Changes Per Hour Supplied to Room	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Warewashing Room	Negative	Optional	10	Yes	No
Dietary Dry Storage	Equal	Optional	2	Yes	No
Laundry, Processing Room	Equal	2	10	Yes	No
Soiled Linen Sorting and Storage	Negative	Optional	10	Yes	No
Clean Linen Storage	Positive	Optional	2	Optional	Optional
Personal Care Room	Negative	2	6	Yes	No
Designated Smoking Area	Negative	Optional	20	Yes	No

Table 2a

Artificial Light Requirements

Place	Light Measured in Foot-Candles	Where Measured
Resident's room:		
General	30	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Toilet room	30	Three feet above floor
Medication preparation	30	Counter level
Nurses' work area and office:		
General	30	Three feet above floor
Desk and charts	50	Desk level
Medication room	100	Counter level
Consultation room	30	Three feet above floor
Clean and soiled workrooms	30	Counter level
Storage room	30	Three feet above floor
Housekeeping	30	Three feet above floor
Public restroom	30	Floor level
Living, recreation rooms	30	Three feet above floor
Dining room	50	Table level
Nourishment area	50	Counter level
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Food storage (nonrefrigerated)	30	Three feet above floor
Den	30	Chair or table level
Reading and other specialized areas (may be portable lamp)	70	Chair or table level
Central bath and showers	30	Three feet above floor
Laundry	30	Three feet above floor
Multipurpose room	30	Three feet above floor
Rehabilitation room	30	Three feet above floor
Beauty and barber shop	50	Counter level
Corridors:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Stairways	20	Step level
Exits:		
Resident waking hours	30	Floor level
Resident sleeping hours	10	Floor level
Maintenance service and equipment area	30	Floor level
Heating plant space	30	Floor level

Table 2b

Artificial Light Requirements

Place	Light Measured in Foot-Candles	Where Measured
Kitchen in a resident unit	50	Counter level
Central kitchen (includes food preparation and serving areas)	70	Counter level
Dining Room	25	Table level
Living room or recreation room		
General	15	Three feet above floor
Reading and other specialized areas (may be portable lamp)	50	Chair or table level
Nurses' station and office:		
General	20	Three feet above floor
Desk and charts	50	Desk level
Clean workroom	30	Counter level
Medication room	100	Counter level
Central bath and showers	30	Three feet above floor
Resident's room:		
General	10	Three feet above floor
Bed	30	Mattress top level, at bed wall to three feet out from bed wall
Laundry	30	Three feet above floor
Janitor's closet	15	Three feet above floor
Storage room:		
General	5	Three feet above floor
Disinfectant or cleaning agent storage area	15	Three feet above floor
Corridors	10	Floor level
Stairways	20	Step level
Exits	5	Floor level
Heating plant space	5	Floor level

(Authorized by and implementing K.S.A. 39-932; effective Jan. 7, 2011.)

Article 41.—ASSISTED LIVING FACILITIES AND RESIDENTIAL HEALTH CARE FACILITIES

26-41-101. Administration. (a) Administrator and operator responsibilities. The administrator or operator of each assisted living facility or residential health care facility ("facility") shall ensure that the facility is operated in a manner so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

- (1) Is at least 21 years of age;
- (2) possesses a high school diploma or the equivalent;
- (3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of

health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the facility and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

- (1) Planning, organizing, and directing the facility;
- (2) implementing operational policies and procedures for the facility; and
- (3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, autonomy, dignity, choice, privacy, and a home environ-

ment for each resident. The following provisions shall be included in the policies and procedures:

(1) The recognition of each resident's rights, responsibilities, needs, and preferences;

(2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;

(3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the facility and the community;

(4) furnishing and decorating each resident's personal space;

(5) the recognition of each resident's personal space as private and the sharing of an apartment or individual living unit only when agreed to by the resident;

(6) the maintenance of each resident's lifestyle if there are not adverse effects on the rights and safety of other residents; and

(7) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(1) A resident who is involuntarily discharged, including discharge due to death, shall not be responsible for the following:

(A) Fees for room and board beyond the date established in the signed contractual agreement or the date of actual discharge if an appropriate discharge notice has been given to the resident or the resident's legal representative in accordance with K.A.R. 26-39-102; and

(B) fees for any services specified in the negotiated services agreement after the date the resident has vacated the facility and no longer receives these services.

(2) A resident who is voluntarily discharged shall not be responsible for the following:

(A) Fees for room and board accrued beyond the end of the 30-day period following the facility's receipt of a written notice of voluntary discharge submitted by the resident or resident's legal representative or the date of actual discharge if this date extends beyond the 30-day period; and

(B) fees for any services specified in the negotiated services agreement after the date the

resident has vacated the facility and no longer receives these services.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

(1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The facility shall not employ any individual who has been identified on a state nurse aide registry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the facility as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the facility, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statistical reports regarding residents, employees, and facility occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall ensure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents and employees have access to a telephone for emergency use at no cost. The administrator or operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the facility. The administrator or operator shall ensure that this information is posted in an area readily accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a public area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-102. Staff qualifications. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be awake and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following documentation:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to have worked as a certified nurse aide. (Authorized by K.S.A. 39-932 and K.S.A. 2008 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2008 Supp. 39-936, and K.S.A. 2008 Supp. 39-970; effective May 29, 2009.)

26-41-103. Staff development. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

(1) Principles of assisted living;

(2) fire prevention and safety;

(3) disaster procedures;

(4) accident prevention;

(5) resident rights;

(6) infection control; and

(7) prevention of abuse, neglect, and exploitation of residents.

(c) If the facility admits residents with dementia, the administrator or operator shall ensure the provision of staff orientation and in-service education on the treatment and appropriate response to

persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-104. Disaster and emergency preparedness. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency management plan to manage potential emergencies and disasters, including the following:

- (1) Fire;
- (2) flood;
- (3) severe weather;
- (4) tornado;
- (5) explosion;
- (6) natural gas leak;
- (7) lack of electrical or water service;
- (8) missing residents; and
- (9) any other potential emergency situations.

(c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:

- (1) Fresh water;
- (2) evacuation site; and
- (3) transportation of residents to an evacuation site.

(d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:

- (1) Orientation of new employees at the time of employment to the facility's emergency management plan;
- (2) education of each resident upon admission to the facility regarding emergency procedures;
- (3) quarterly review of the facility's emergency management plan with employees and residents; and
- (4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.

(e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-105. Resident records. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the record, is kept confidential, unless release is required by any of the following:

- (1) Transfer of the resident to another health care facility;
- (2) law;
- (3) third-party payment contract; or
- (4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

- (1) Loss;
- (2) destruction;
- (3) fire;
- (4) theft; and
- (5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

- (1) Protection of electronic medical records, including entries by only authorized users;
- (2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;
- (3) prevention of the unauthorized use of electronic signatures;
- (4) confidentiality of electronic medical records; and
- (5) preservation of electronic medical records.

(f) Each resident record shall contain at least the following:

- (1) The resident's name;
- (2) the dates of admission and discharge;
- (3) the admission agreement and any amendments;
- (4) the functional capacity screenings;
- (5) the health care service plan, if applicable;
- (6) the negotiated service agreement and any revisions;
- (7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;
- (8) the name, address, and telephone number of the legal representative or the individual of the resident's choice to be notified in the event of a significant change in condition;
- (9) the name, address, and telephone number of the case manager, if applicable;
- (10) records of medications, biologicals, and treatments administered and each medical care provider's order if the facility is managing the resident's medications and medical treatments; and
- (11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-106. Community governance. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the facilitation of the organization of at least one resident council, each of which shall meet at least quarterly to provide residents with a forum to provide input into community governance.

(b) Each administrator or operator shall ensure the accommodation of the council process by providing space for the meetings, posting notices of the meetings, and assisting residents who wish to attend the meetings.

(c) In order to permit a free exchange of ideas and concerns, each administrator or operator shall ensure that all meetings are conducted without the presence of facility staff, unless allowed by the residents.

(d) Each administrator or operator shall respond to each written idea and concern received from the council, in writing, within 30 days after the meeting at which the written ideas and concerns were collected. The administrator or operator shall ensure that a copy of each written idea or concern and each response is available to sur-

veyors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-200. Resident criteria. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident:

(1) Incontinence, if the resident cannot or will not participate in management of the problem;

(2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident;

(4) any ongoing, skilled nursing intervention needed 24 hours a day; or

(5) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-201. Resident functional capacity screening. (a) On or before each individual's admission to an assisted living facility or residential health care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated facility staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated facility staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated facility staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-202. Negotiated service agreement. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the development of a written negotiated service agreement for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly, if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, facility staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiat-

ed service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

(1) The service or services refused;

(2) identification of any potential negative outcomes for the resident if the service or services are not provided;

(3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and

(4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a service has the potential to affect the health and safety of other residents, facility staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated facility staff shall perform the following:

(1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family, with a list of providers available to provide needed services;

(2) assist the resident, if requested, in contacting outside resources for services; and

(3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-203. General services. (a) Range of services. The administrator or operator of each

assisted living facility or residential health care facility shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

(1) Daily meal service based on each resident's needs;

(2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-41-204;

(3) housekeeping services essential for the health, comfort, and safety of each resident;

(4) medical, dental, and social transportation;

(5) planned group and individual activities that meet the needs and interests of each resident; and

(6) other services necessary to support the health and safety of each resident.

(b) Adult day care services. Any administrator or operator of an assisted living facility or residential health care facility may provide adult day care services to any individual who meets the facility's admission and retention criteria and receives services less than 24 hours a day if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies are developed and procedures are implemented for the provision of adult day care services.

(2) All the requirements for admission of a resident to an assisted living facility or residential health care facility are met for an individual admitted for adult day care services.

(3) At least 60 square feet of common use living, dining, and activity space is available in the facility for each resident of the facility and each resident receiving adult day care services.

(4) The provision of adult day care services does not adversely affect the care and services offered to other residents of the facility.

(c) Respite care services. Any administrator or operator of an assisted living facility or residential health care facility may provide respite care services to individuals who meet the facility's admission and retention criteria on a short-term basis if the administrator or operator ensures that the following conditions are met:

(1) Written policies are developed and procedures are implemented for the provision of respite care services.

(2) All the requirements for admission of a resident to an assisted living facility or residential health care facility are met for an individual admitted for respite care services.

(d) Special care. Any administrator or operator of an assisted living facility or residential health care facility may choose to serve residents who do not exceed the facility's admission and retention criteria and who have special needs in a special care section of the facility or the entire facility, if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies and procedures are developed and are implemented for the operation of the special care section or facility.

(2) Admission and discharge criteria are in effect that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, medical care provider's progress notes, or both shall justify admission to the special care section or the facility.

(3) A written order from a medical care provider is obtained for admission.

(4) The functional capacity screening indicates that the resident would benefit from the services and programs offered by the special care section or facility.

(5) Before the resident's admission to the special care section or facility, the resident or resident's legal representative is informed, in writing, of the available services and programs that are specific to the needs of the resident.

(6) Direct care staff are present in the special care section or facility at all times.

(7) Before assignment to the special care section or facility, each staff member is provided with a training program related to specific needs of the residents to be served, and evidence of completion of the training is maintained in the employee's personnel records.

(8) Living, dining, activity, and recreational areas are provided within the special care section, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility.

(9) The control of exits in the special care section is the least restrictive possible for the residents in that section.

(e) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in each resident's bedroom and common areas inside and outside the facility as specified in the admission agreement.

(f) Services not provided. If an administrator or operator of an assisted living facility or residential health care facility chooses not to provide or

coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the facility. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-204. Health care services. (a) The administrator or operator in each assisted living facility or residential health care facility shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include the skilled nursing care to be provided and the name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the facility. A copy of the medical care provider's order from a home health agency or hospice may be used. Medical care provider orders in the clinical records of a home health agency located in the same building as the facility may also be used if the clinical records are available to licensed nurses and direct care staff of the facility.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-205. Medication management. (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to the

resident, shall also include the name and dosage of each medication and the time or event at which the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Facility administration of resident's medications. If a facility is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer and manage medications for which the facility has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide curriculum to medication aides under the Kansas

nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Facility staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or the resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the facility in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the facility in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications

in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the facility.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the facility in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist; or

(D) a medication aide and a licensed pharmacist.

(j) Medications sent for short-term absence. A licensed nurse or medication aide shall provide the resident's medication to the resident or the designated responsible party for the resident's short-term absences from the facility, upon request.

(k) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the facility manages medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(l) Medication regimen review. A licensed pharmacist shall conduct a medication regimen review at least quarterly for each resident whose medication is managed by the facility and each time the resident experiences any significant change in condition.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of a subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall notify the medical care provider upon discovery of any variance identified in the medication regimen review that requires immediate action by the medical care provider. The licensed pharmacist shall notify a licensed nurse within 48 hours of any variance identified in the resident's regimen review that does not require immediate action by the medical care provider and specify a time within which the licensed nurse must notify the resident's medical care provider. The licensed nurse shall seek a response from the medical care provider within five working days of the medical care provider's notification of a variance.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(4) The administrator or operator, or the designee, shall offer each resident who self-administers medication a medication regimen review to be conducted by a licensed pharmacist at least quarterly and each time a resident experiences a significant change in condition. A licensed nurse shall document the resident's decision in the resident's clinical record. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-206. Dietary services. (a) Provision of dietary services. The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision or

coordination of dietary services to residents as identified in each resident's negotiated service agreement. If the administrator or operator of the facility establishes a contract with another entity to provide or coordinate the provision of dietary services to the residents, the administrator or operator shall ensure that entity's compliance with these regulations.

(b) Staff. The supervisory responsibility for dietetic services shall be assigned to one employee.

(1) A dietetic services supervisor or licensed dietitian shall provide scheduled on-site supervision in each facility with 11 or more residents.

(2) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(c) Menus. A dietetic services supervisor or licensed dietitian or, in any assisted living facility or residential health care facility with fewer than 11 residents, designated facility staff shall plan menus in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate input by residents in the selection of food to be served and scheduling of meal service.

(d) Food preparation. Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(e) Food storage. Facility staff shall store all food under safe and sanitary conditions.

(1) Containers of poisonous compounds and

cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving.

(2) Any resident may obtain, prepare, and store food in the resident's apartment or individual living unit if doing so does not present a health or safety hazard to that resident or any other individual. The administrator or operator shall ensure that residents are provided assistance with obtaining food if that service is included in the negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-41-207. Infection control. (a) The administrator or operator of each assisted living facility or residential health care facility shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections. These policies and procedures shall include the following requirements:

(1) Using universal precautions to prevent the spread of blood-borne pathogens;

(2) techniques to ensure that hand hygiene meets professional health care standards;

(3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;

(4) providing sanitary conditions for food service;

(5) prohibiting any employee with a communicable disease or any infected skin lesions from coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious;

(6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting; and

(7) transferring a resident with an infectious disease to an appropriate health care facility if the administrator or operator is unable to provide the isolation precautions necessary to protect the health of other residents.

(c) Each administrator or operator shall ensure the facility's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

Article 42.—HOMES PLUS

26-42-101. Administration. (a) Administrator and operator responsibilities. The admin-

istrator or operator of each home plus ("home") shall ensure that the home is operated in a manner so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

(1) Is at least 21 years of age;

(2) possesses a high school diploma or the equivalent;

(3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the home and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

(1) Planning, organizing, and directing the home;

(2) implementing operational policies and procedures for the home; and

(3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, autonomy, dignity, choice, privacy, and a home environment for each resident. The following provisions shall be included in the policies and procedures:

(1) The recognition of each resident's rights, responsibilities, needs, and preferences;

(2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;

(3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the home and the community;

(4) furnishing and decorating each resident's personal space;

(5) the recognition of each resident's personal space as private and the sharing of a bedroom only when agreed to by the resident;

(6) the maintenance of each resident's lifestyle if there are not adverse effects on the rights and safety of other residents; and

(7) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(1) A resident who is involuntarily discharged, including discharge due to death, shall not be responsible for the following:

(A) Fees for room and board beyond the date established in the signed contractual agreement or the date of actual discharge if an appropriate discharge notice has been given to the resident or the resident's legal representative in accordance with K.A.R. 26-39-102; and

(B) fees for any services specified in the negotiated services agreement after the date the resident has vacated the facility and no longer receives these services.

(2) A resident who is voluntarily discharged shall not be responsible for the following:

(A) Fees for room and board accrued beyond the end of the 30-day period following the home's receipt of a written notice of voluntary discharge submitted by the resident or resident's legal representative or the date of actual discharge if this date extends beyond the 30-day period; and

(B) fees for any services specified in the negotiated service agreement after the date the resident has vacated the home and no longer receives these services.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

(1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The home shall not employ any individual who has been identified on a state nurse aide reg-

istry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the home as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the home, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statistical reports regarding residents, employees, and home occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall ensure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents

and employees have access to a telephone for emergency use at no cost. Each administrator or operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the home. The administrator or operator shall ensure that this information is posted in a common area accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a common area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-102. Staff qualifications. (a) The administrator or operator of each home plus shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be in attendance and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following information:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not

have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to work as a certified nurse aide. (Authorized by K.S.A. 39-932 and K.S.A. 2007 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2007 Supp. 39-936, and K.S.A. 2007 Supp. 39-970; effective May 29, 2009.)

26-42-103. Staff development. (a) The administrator or operator of each home plus shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

(1) Fire prevention and safety;

(2) disaster procedures;

(3) accident prevention;

(4) resident rights;

(5) infection control; and

(6) prevention of abuse, neglect, and exploitation of residents.

(c) If the home plus admits residents with dementia, the administrator or operator shall ensure the provision of staff education, at orientation and at least annually thereafter, on the treatment and appropriate response to persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective Oct. 14, 2011.)

26-42-104. Disaster and emergency preparedness. (a) The administrator or operator of each home plus shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency management plan to manage potential emergencies and disasters, including the following:

(1) Fire;

(2) flood;

(3) severe weather;

(4) tornado;

(5) explosion;

- (6) natural gas leak;
- (7) lack of electrical or water service;
- (8) missing residents; and
- (9) any other potential emergency situations.

(c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:

- (1) Fresh water;
- (2) evacuation site; and
- (3) transportation of residents to an evacuation site.

(d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:

(1) Orientation of new employees at the time of employment to the home's emergency management plan;

(2) education of each resident upon admission to the home regarding emergency procedures;

(3) quarterly review of the home's emergency management plan with employees and residents; and

(4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.

(e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-105. Resident records. (a) The administrator or operator of each home plus shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the record, is kept confidential, unless release is required by any of the following:

(1) Transfer of the resident to another health care facility;

(2) law;

(3) third-party payment contract; or

(4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

(1) Loss;

(2) destruction;

(3) fire;

(4) theft; and

(5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

(1) Protection of electronic medical records, including entries by only authorized users;

(2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;

(3) prevention of the unauthorized use of electronic signatures;

(4) confidentiality of electronic medical records; and

(5) preservation of electronic medical records.

(f) Each resident record shall contain at least the following:

(1) The resident's name;

(2) the dates of admission and discharge;

(3) the admission agreement and any amendments;

(4) the functional capacity screenings;

(5) the health care service plan, if applicable;

(6) the negotiated service agreement and any revisions;

(7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;

(8) the name, address, and telephone number of the legal representative or the individual of the resident's choice to be notified in the event of a significant change in condition;

(9) the name, address, and telephone number of the case manager, if applicable;

(10) records of medications, biologicals, and treatments administered and each medical care

provider's order if the facility is managing the resident's medications and medical treatments; and

(11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-200. Resident criteria. (a) The administrator or operator of each home plus shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident:

(1) Incontinence, if the resident cannot or will not participate in management of the problem;

(2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident;

(4) any ongoing, skilled nursing intervention needed 24 hours a day; or

(5) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-201. Resident functional capacity screening. (a) On or before each individual's admission to a home plus, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the home, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-202. Negotiated service agreement.

(a) The administrator or operator of each home plus shall ensure the development of a written negotiated service agreement for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiated service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

- (1) The service or services refused;
- (2) identification of any potential negative outcomes for the resident if the service or services are not provided;
- (3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and
- (4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a service has the potential to affect the health and safety of other residents, staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated staff shall perform the following:

- (1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, with a list of providers available to provide needed services;
- (2) assist the resident, if requested, in contacting outside resources for services; and
- (3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-203. General services. (a) Range of services. The administrator or operator of each home plus shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

- (1) Daily meal service based on each resident's needs;
- (2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-42-204;
- (3) housekeeping services essential for the health, comfort, and safety of each resident;
- (4) medical, dental, and social transportation;
- (5) planned group and individual activities that meet the needs and interests of each resident; and
- (6) other services necessary to support the health and safety of each resident.

(b) Adult day care services. Any administrator or operator of a home plus may provide adult day care services to any individual who meets the home's admission and retention criteria and receives services less than 24 hours a day if the administrator or operator ensures that all of the following conditions are met:

- (1) Written policies are developed and procedures are implemented for the provision of adult day care services.
- (2) All requirements for admission of a resident to a home plus are met for an individual admitted for adult day care services.
- (3) At least 60 square feet of common use living, dining, and activity space is available in the home for each resident of the home and each resident receiving adult day care services.
- (4) The provision of adult day care services does not adversely affect the care and services offered to other residents of the home.

(c) Respite care services. Any administrator or operator of a home plus may provide respite care services to individuals who meet the home's admission and retention criteria on a short-term basis if the administrator or operator ensures that the following conditions are met:

- (1) Written policies are developed and procedures are implemented for the provision of respite care services.
- (2) All the requirements for admission of a resident to a home plus are met for an individual admitted for respite care services.

(d) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in each resident's

bedroom and common areas inside and outside the home as specified in the admission agreement.

(e) Services not provided. If the administrator or operator of a home plus chooses not to provide or coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the home. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-204. Health care services. (a) The administrator or operator in each home plus shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include

the skilled nursing care to be provided and the name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the home. A copy of the medical care provider's order from a home health agency or hospice may be used.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-205. Medication management. (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to the resident, shall also include the

name and dosage of each medication and the time or event at which the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Home administration of resident's medications. If a home is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer and manage medications for which the home has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide curriculum to medication aides under the Kansas

nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the home in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the home in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications

in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the home.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the home in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist; or

(D) a medication aide and a licensed pharmacist.

(j) Medications sent for short-term absence. A licensed nurse or medication aide shall provide the resident's medication to the resident or the designated responsible party for the resident's short-term absences from the home, upon request.

(k) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the home manages the resident's medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(l) Medication regimen review. A licensed pharmacist or licensed nurse shall conduct a medication regimen review at least quarterly for each resident whose medication is managed by the home and each time the resident experiences any significant change in condition.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of a subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall notify the medical care provider upon discovery of any variance identified in the medication regimen review that requires immediate action by the medical care provider. The licensed pharmacist shall notify a licensed nurse within 48 hours of any variance identified in the resident's regimen review that does not require immediate action by the medical care provider and specify a time within which the licensed nurse must notify the resident's medical care provider. The licensed nurse shall seek a response from the medical care provider within five working days of the medical care provider's notification of a variance.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(4) The administrator or operator, or the designee, shall offer each resident who self-administers medication a medication regimen review to be conducted by a licensed pharmacist or licensed nurse at least quarterly and each time the resident experiences a significant change in condition. A licensed nurse shall maintain documentation of the resident's decision in the resident's clinical record. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-206. Dietary services. (a) The administrator or operator of each home plus shall ensure the provision or coordination of dietary

services to residents as identified in each resident's negotiated service agreement.

(b) The supervisory responsibility for dietetic services shall be assigned to one employee.

(c) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(d) The menus shall be planned in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate input by residents in the selection of food to be served and scheduling of meal service.

(e) Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(f) Staff shall store all food under safe and sanitary conditions. Containers of poisonous compounds and cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving.

(g) Each home shall maintain at least a three-day supply of food to meet the requirements of the planned menus. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-42-207. Infection control. (a) The administrator or operator of each home plus shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections.

These policies and procedures shall include the following requirements:

- (1) Using universal precautions to prevent the spread of blood-borne pathogens;
- (2) techniques to ensure that hand hygiene meets professional health care standards;
- (3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;
- (4) providing sanitary conditions for food service;
- (5) prohibiting any employee with a communicable disease or any infected skin lesions from coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious;
- (6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting; and
- (7) transferring a resident with an infectious disease to an appropriate health care facility if the administrator or operator is unable to provide the isolation precautions necessary to protect the health of other residents.

(c) Each administrator or operator shall ensure the home's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

Article 43.—ADULT DAY CARE FACILITIES

26-43-101. Administration. (a) Administrator and operator responsibilities. The administrator or operator of each adult day care facility ("facility") shall ensure that the facility is operated in a manner so that each resident receives care and services in accordance with each resident's functional capacity screening and negotiated service agreement.

(b) Administrator and operator criteria. Each licensee shall appoint an administrator or operator who meets the following criteria:

- (1) Is at least 21 years of age;
- (2) possesses a high school diploma or the equivalent;
- (3) holds a Kansas license as an adult care home administrator or has successfully completed an operator training course and passed the test approved by the secretary of Kansas department of health and environment pursuant to K.S.A. 39-923 and amendments thereto; and

(4) has authority and responsibility for the operation of the facility and compliance with licensing requirements.

(c) Administrator and operator position description. Each licensee shall adopt a written position description for the administrator or operator that includes responsibilities for the following:

- (1) Planning, organizing, and directing the facility;
- (2) implementing operational policies and procedures for the facility; and
- (3) authorizing, in writing, a responsible employee who is 18 years old or older to act on the administrator's or operator's behalf in the absence of the administrator or operator.

(d) Resident rights. Each administrator or operator shall ensure the development and implementation of written policies and procedures that incorporate the principles of individuality, autonomy, dignity, choice, privacy, and a home environment for each resident. The following provisions shall be included in the policies and procedures:

- (1) The recognition of each resident's rights, responsibilities, needs, and preferences;
- (2) the freedom of each resident or the resident's legal representative to select or refuse a service and to accept responsibility for the consequences;
- (3) the development and maintenance of social ties for each resident by providing opportunities for meaningful interaction and involvement within the facility and the community;
- (4) the maintenance of each resident's lifestyle if there are not adverse effects on the rights and safety of other residents; and
- (5) the resolution of grievances through a specific process that includes a written response to each written grievance within 30 days.

(e) Resident liability. Each resident shall be liable only for the charges disclosed to the resident or the resident's legal representative and documented in a signed agreement at admission and in accordance with K.A.R. 26-39-103.

(f) Staff treatment of residents. Each administrator or operator shall ensure the development and implementation of written policies and procedures that prohibit the abuse, neglect, and exploitation of residents by staff. The administrator or operator shall ensure that all of the following requirements are met:

- (1) No resident shall be subjected to any of the following:

(A) Verbal, mental, sexual, or physical abuse, including corporal punishment and involuntary seclusion;

(B) neglect; or

(C) exploitation.

(2) The facility shall not employ any individual who has been identified on a state nurse aide registry as having abused, neglected, or exploited any resident in an adult care home.

(3) Each allegation of abuse, neglect, or exploitation shall be reported to the administrator or operator of the facility as soon as staff is aware of the allegation and to the department within 24 hours. The administrator or operator shall ensure that all of the following requirements are met:

(A) An investigation shall be started when the administrator or operator, or the designee, receives notification of an alleged violation.

(B) Immediate measures shall be taken to prevent further potential abuse, neglect, or exploitation while the investigation is in progress.

(C) Each alleged violation shall be thoroughly investigated within five working days of the initial report. Results of the investigation shall be reported to the administrator or operator.

(D) Appropriate corrective action shall be taken if the alleged violation is verified.

(E) The department's complaint investigation report shall be completed and submitted to the department within five working days of the initial report.

(F) A written record shall be maintained of each investigation of reported abuse, neglect, or exploitation.

(g) Availability of policies and procedures. Each administrator or operator shall ensure that policies and procedures related to resident services are available to staff at all times and are available to each resident, legal representatives of residents, case managers, and families during normal business hours. A notice of availability shall be posted in a place readily accessible to residents and the public.

(h) Power of attorney, guardianship, and conservatorship. Authority as a power of attorney, durable power of attorney for health care decisions, guardian, or conservator shall not be exercised by anyone employed by or having a financial interest in the facility, unless the person is related to the resident within the second degree.

(i) Reports. Each administrator or operator shall ensure the accurate completion and electronic submission of annual and semiannual statis-

tical reports regarding residents, employees, and facility occupancy to the department no later than 20 days following the last day of the period being reported. The administrator or operator shall ensure the submission of any other reports required by the department.

(j) Emergency telephone. Each administrator or operator shall ensure that the residents and employees have access to a telephone for emergency use at no cost. The administrator or operator shall ensure that the names and telephone numbers of persons or places commonly required in emergencies are posted adjacent to this telephone.

(k) Ombudsman. Each administrator or operator shall ensure the posting of the names, addresses, and telephone numbers of the Kansas department on aging and the office of the long-term care ombudsman with information that these agencies can be contacted to report actual or potential abuse, neglect, or exploitation of residents or to register complaints concerning the operation of the facility. The administrator or operator shall ensure that this information is posted in an area readily accessible to all residents and the public.

(l) Survey report and plan of correction. Each administrator or operator shall ensure that a copy of the most recent survey report and plan of correction is available in a public area to residents and any other individuals wishing to examine survey results. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-102. Staff qualifications. (a) The administrator or operator of each adult day care facility shall ensure the provision of a sufficient number of qualified personnel to provide each resident with services and care in accordance with that resident's functional capacity screening, health care service plan, and negotiated service agreement.

(b) Direct care staff or licensed nursing staff shall be in attendance and responsive at all times.

(c) A registered professional nurse shall be available to provide supervision to licensed practical nurses, pursuant to K.S.A. 65-1113 and amendments thereto.

(d) The employee records and agency staff records shall contain the following documentation:

(1) Evidence of licensure, registration, certification, or a certificate of successful completion of a training course for each employee performing a function that requires specialized education or training;

(2) supporting documentation for criminal background checks of facility staff and contract staff, excluding any staff licensed or registered by a state agency, pursuant to K.S.A. 39-970 and amendments thereto;

(3) supporting documentation from the Kansas nurse aide registry that the individual does not have a finding of having abused, neglected, or exploited a resident in an adult care home; and

(4) supporting documentation that the individual does not have a finding of having abused, neglected, or exploited any resident in an adult care home, from the nurse aide registry in each state in which the individual has been known to work. (Authorized by K.S.A. 39-932 and K.S.A. 2007 Supp. 39-936; implementing K.S.A. 39-932, K.S.A. 2007 Supp. 39-936, and K.S.A. 2007 Supp. 39-970; effective May 29, 2009.)

26-43-103. Staff development. (a) The administrator or operator of each adult day care facility shall ensure the provision of orientation to new employees and regular in-service education for all employees to ensure that the services provided assist residents to attain and maintain their individuality, autonomy, dignity, independence, and ability to make choices in a home environment.

(b) The topics for orientation and in-service education shall include the following:

- (1) Principles of adult day care;
- (2) fire prevention and safety;
- (3) disaster procedures;
- (4) accident prevention;
- (5) resident rights;
- (6) infection control; and
- (7) prevention of abuse, neglect, and exploitation of residents.

(c) If the facility admits residents with dementia, the administrator or operator shall ensure the provision of staff orientation and in-service education on the treatment and appropriate response to persons who exhibit behaviors associated with dementia. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-104. Disaster and emergency preparedness. (a) The administrator or operator of each adult day care facility shall ensure the provision of a sufficient number of staff members to take residents who would require assistance in an emergency or disaster to a secure location.

(b) Each administrator or operator shall ensure the development of a detailed written emergency

management plan to manage potential emergencies and disasters, including the following:

- (1) Fire;
- (2) flood;
- (3) severe weather;
- (4) tornado;
- (5) explosion;
- (6) natural gas leak;
- (7) lack of electrical or water service;
- (8) missing residents; and
- (9) any other potential emergency situations.

(c) Each administrator or operator shall ensure the establishment of written agreements that will provide for the following if an emergency or disaster occurs:

- (1) Fresh water;
- (2) evacuation site; and
- (3) transportation of residents to an evacuation site.

(d) Each administrator or operator shall ensure disaster and emergency preparedness by ensuring the performance of the following:

- (1) Orientation of new employees at the time of employment to the facility's emergency management plan;
- (2) education of each resident upon admission to the facility regarding emergency procedures;
- (3) quarterly review of the facility's emergency management plan with employees and residents; and
- (4) an emergency drill, which shall be conducted at least annually with staff and residents. This drill shall include evacuation of the residents to a secure location.

(e) Each administrator or operator shall make the emergency management plan available to the staff, residents, and visitors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-105. Resident records. (a) The administrator or operator of each adult day care facility shall ensure the maintenance of a record for each resident in accordance with accepted professional standards and practices.

(1) Designated staff shall maintain the record of each discharged resident who is 18 years of age or older for at least five years after the discharge of the resident.

(2) Designated staff shall maintain the record of each discharged resident who is less than 18 years of age for at least five years after the resident reaches 18 years of age or at least five years

after the date of discharge, whichever time period is longer.

(b) Each administrator or operator shall ensure that all information in each resident's record, regardless of the form or storage method for the record, is kept confidential, unless release is required by any of the following:

(1) Transfer of the resident to another health care facility;

(2) law;

(3) third-party payment contract; or

(4) the resident or legal representative of the resident.

(c) Each administrator or operator shall ensure the safeguarding of resident records against the following:

(1) Loss;

(2) destruction;

(3) fire;

(4) theft; and

(5) unauthorized use.

(d) Each administrator or operator shall ensure the accuracy and confidentiality of all resident information transmitted by means of a facsimile machine.

(e) If electronic medical records are used, each administrator or operator shall ensure the development of policies addressing the following requirements:

(1) Protection of electronic medical records, including entries by only authorized users;

(2) safeguarding of electronic medical records against unauthorized alteration, loss, destruction, and use;

(3) prevention of the unauthorized use of electronic signatures;

(4) confidentiality of electronic medical records; and

(5) preservation of electronic medical records.

(f) Each resident record shall contain at least the following:

(1) The resident's name;

(2) the dates of admission and discharge;

(3) the admission agreement and any amendments;

(4) the functional capacity screenings;

(5) the health care service plan, if applicable;

(6) the negotiated service agreement and any revisions;

(7) the name, address, and telephone number of the physician and the dentist to be notified in an emergency;

(8) the name, address, and telephone number of the legal representative or the individual of the

resident's choice to be notified in the event of a significant change in condition;

(9) the name, address, and telephone number of the case manager, if applicable;

(10) records of medications, biologicals, and treatments administered and each medical care provider's order if the facility is managing the resident's medications and medical treatments; and

(11) documentation of all incidents, symptoms, and other indications of illness or injury including the date, time of occurrence, action taken, and results of the action. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-106. Community governance. (a) The administrator or operator of each adult day care facility shall ensure the facilitation of the organization of at least one resident council, each of which shall meet at least quarterly to provide residents with a forum to provide input into community governance.

(b) Each administrator or operator shall ensure the accommodation of the council process by providing space for the meetings, posting notices of the meetings, and assisting residents who wish to attend the meetings.

(c) In order to permit a free exchange of ideas and concerns, each administrator or operator shall ensure that all meetings are conducted without the presence of facility staff, unless allowed by the residents.

(d) Each administrator or operator shall respond to each written idea and concern received from the council, in writing, within 30 days after the meeting at which the written ideas and concerns were collected. The administrator or operator shall ensure that a copy of each written idea or concern and each response is available to surveyors. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-200. Resident criteria. (a) The administrator or operator of each adult day care facility shall ensure the development and implementation of written admission, transfer, and discharge policies that protect the rights of each resident, pursuant to K.A.R. 26-39-102. In addition, the administrator or operator shall ensure that any resident who has one or more of the following conditions is not admitted or retained unless the negotiated service agreement includes services sufficient to meet the needs of the resident while in the facility:

(1) Incontinence, if the resident cannot or will not participate in management of the problem;

(2) immobility, if the resident is totally dependent on another person's assistance to exit the building;

(3) any ongoing condition requiring two or more persons to physically assist the resident; or

(4) any behavioral symptom that exceeds manageability.

(b) Each administrator or operator shall ensure that any resident whose clinical condition requires the use of physical restraints is not admitted or retained. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-201. Resident functional capacity screening. (a) On or before each individual's admission to an adult day care facility, a licensed nurse, a licensed social worker, or the administrator or operator shall conduct a screening to determine the individual's functional capacity and shall record all findings on a screening form specified by the department. The administrator or operator may integrate the department's screening form into a form developed by the facility, which shall include each element and definition specified by the department.

(b) A licensed nurse shall assess any resident whose functional capacity screening indicates the need for health care services.

(c) Designated facility staff shall conduct a screening to determine each resident's functional capacity according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition as defined in K.A.R. 26-39-100; and

(3) at least quarterly if the resident receives assistance with eating from a paid nutrition assistant.

(d) Designated facility staff shall ensure that each resident's functional capacity at the time of screening is accurately reflected on that resident's screening form.

(e) Designated facility staff shall use the results of the functional capacity screening as a basis for determining the services to be included in the resident's negotiated service agreement. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-202. Negotiated service agreement. (a) The administrator or operator of each adult day care facility shall ensure the development of a written negotiated service agreement

for each resident, based on the resident's functional capacity screening, service needs, and preferences, in collaboration with the resident or the resident's legal representative, the case manager, and, if agreed to by the resident or the resident's legal representative, the resident's family. The negotiated service agreement shall provide the following information:

(1) A description of the services the resident will receive;

(2) identification of the provider of each service; and

(3) identification of each party responsible for payment if outside resources provide a service.

(b) The negotiated service agreement shall promote the dignity, privacy, choice, individuality, and autonomy of the resident.

(c) Each administrator or operator shall ensure the development of an initial negotiated service agreement at admission.

(d) Each administrator or operator shall ensure the review and, if necessary, revision of each negotiated service agreement according to the following requirements:

(1) At least once every 365 days;

(2) following any significant change in condition, as defined in K.A.R. 26-39-100;

(3) at least quarterly, if the resident receives assistance with eating from a paid nutrition assistant; and

(4) if requested by the resident or the resident's legal representative, facility staff, the case manager, or, if agreed to by the resident or the resident's legal representative, the resident's family.

(e) A licensed nurse shall participate in the development, review, and revision of the negotiated service agreement if the resident's functional capacity screening indicates the need for health care services.

(f) If a resident or the resident's legal representative refuses a service that the administrator or operator, the licensed nurse, the resident's medical care provider, or the case manager believes is necessary for the resident's health and safety, the negotiated service agreement shall include the following:

(1) The service or services refused;

(2) identification of any potential negative outcomes for the resident if the service or services are not provided;

(3) evidence of the provision of education to the resident or the resident's legal representative of the potential risk of any negative outcomes if the service or services are not provided; and

(4) an indication of acceptance by the resident or the resident's legal representative of the potential risk.

(g) The negotiated service agreement shall not include circumstances in which the lack of a service has the potential to affect the health and safety of other residents, facility staff, or the public.

(h) Each individual involved in the development of the negotiated service agreement shall sign the agreement. The administrator or operator shall ensure that a copy of the initial agreement and any subsequent revisions are provided to the resident or the resident's legal representative.

(i) Each administrator or operator shall ensure that each resident receives services according to the provisions of that resident's negotiated service agreement.

(j) If a resident's negotiated service agreement includes the use of outside resources, the designated facility staff shall perform the following:

(1) Provide the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, with a list of providers available to provide needed services;

(2) assist the resident, if requested, in contacting outside resources for services; and

(3) monitor the services provided by outside resources and act as an advocate for the resident if services do not meet professional standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-203. General services. (a) Range of services. The administrator or operator of each adult day care facility shall ensure the provision or coordination of the range of services specified in each resident's negotiated service agreement. The range of services may include the following:

(1) Daily meal service based on each resident's needs;

(2) health care services based on an assessment by a licensed nurse and in accordance with K.A.R. 26-43-204;

(3) medical, dental, and social transportation;

(4) planned group and individual activities that meet the needs and interests of each resident; and

(5) other services necessary to support the health and safety of each resident.

(b) Special care. Any administrator or operator of an adult day care facility may choose to serve residents who do not exceed the facility's admission and retention criteria and who have special

needs in a special care section of the facility or the entire facility, if the administrator or operator ensures that all of the following conditions are met:

(1) Written policies are developed and procedures are implemented for the operation of the special care section or facility.

(2) Admission and discharge criteria are in effect that identify the diagnosis, behavior, or specific clinical needs of the residents to be served. The medical diagnosis, medical care provider's progress notes, or both shall justify admission to the special care section or the facility.

(3) A medical care provider's written order is obtained for admission.

(4) The functional capacity screening indicates that the resident would benefit from the services and programs offered by the special care section or facility.

(5) Before the resident's admission to the special care section or facility, the resident or resident's legal representative is informed, in writing, of the available services and programs that are specific to the needs of the resident.

(6) Direct care staff are present in the special care section or facility at all times.

(7) Before assignment to the special care section or facility employment, each staff member is provided with a training program related to specific needs of the residents to be served, and evidence of completion of the training is maintained in the employee's personnel records.

(8) Living, dining, activity, and recreational areas are provided within the special care section, except when residents are able to access living, dining, activity, and recreational areas in another section of the facility.

(9) The control of exits in the special care section is the least restrictive possible for the residents in the section.

(c) Maintenance. Designated staff shall provide routine maintenance, including the control of pests and rodents, and repairs in common areas inside and outside the facility.

(d) Services not provided. If an administrator or operator of an adult day care facility chooses not to provide or coordinate any service as specified in subsection (a), the administrator or operator shall notify the resident, in writing, on or before the resident's admission to the facility. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-204. Health care services. (a) The administrator or operator in each adult day care facility shall ensure that a licensed nurse provides or coordinates the provision of necessary health care services that meet the needs of each resident and are in accordance with the functional capacity screening and the negotiated service agreement.

(b) If the functional capacity screening indicates that a resident is in need of health care services, a licensed nurse, in collaboration with the resident, the resident's legal representative, the case manager, and, if agreed to by the resident or resident's legal representative, the resident's family, shall develop a health care service plan to be included as part of the negotiated service agreement.

(c) The health care services provided by or coordinated by a licensed nurse may include the following:

(1) Personal care provided by direct care staff or by certified or licensed nursing staff employed by a home health agency or a hospice;

(2) personal care provided gratuitously by friends or family members; and

(3) supervised nursing care provided by, or under the guidance of, a licensed nurse.

(d) The negotiated service agreement shall contain a description of the health care services to be provided and the name of the licensed nurse responsible for the implementation and supervision of the plan.

(e) A licensed nurse may delegate nursing procedures not included in the nurse aide or medication aide curriculums to nurse aides or medication aides, respectively, under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(f) Each administrator or operator shall ensure that a licensed nurse is available to provide immediate direction to medication aides and nurse aides for residents who have unscheduled needs.

(g) Skilled nursing care shall be provided in accordance with K.S.A. 39-923 and amendments thereto.

(1) The health care service plan shall include the skilled nursing care to be provided and the name of the licensed nurse or agency responsible for providing each service.

(2) The licensed nurse providing the skilled nursing care shall document the service and the outcome of the service in the resident's record.

(3) A medical care provider's order for skilled nursing care shall be documented in the resident's record in the facility. A copy of the medical care provider's order from a home health agency or

hospice may be used. Medical care provider orders in the clinical records of a home health agency located in the same building as the facility may also be used if the clinical records are available to licensed nurses and direct care staff of the facility.

(4) The administrator or operator shall ensure that a licensed nurse is available to meet each resident's unscheduled needs related to skilled nursing services.

(h) A licensed nurse may provide wellness and health monitoring as specified in the resident's negotiated service agreement.

(i) All health care services shall be provided to residents by qualified staff in accordance with acceptable standards of practice. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-205. Medication management. (a) Self-administration of medication. Any resident may self-administer and manage medications independently or by using a medication container or syringe prefilled by a licensed nurse or pharmacist or by a family member or friend providing this service gratuitously, if a licensed nurse has performed an assessment and determined that the resident can perform this function safely and accurately without staff assistance.

(1) An assessment shall be completed before the resident initially begins self-administration of medication, if the resident experiences a significant change of condition, and annually.

(2) Each assessment shall include an evaluation of the resident's physical, cognitive, and functional ability to safely and accurately self-administer and manage medications independently or by using a prefilled medication container or prefilled syringe.

(3) The resident's clinical record shall contain documentation of the assessment and the determination.

(4) If a resident self-administers medication with a prefilled medication container or syringe, the prefilled medication container or syringe shall have a label with the resident's name and the date the container or syringe was prefilled. The label, or a medication administration record provided to the resident, shall also include the name and dosage of each medication and the time or event at which the medication is to be self-administered. Facility staff may remind residents to take medications or inquire as to whether medications were taken.

(b) Administration of select medications. Any resident who self-administers medication may

select some medications to be administered by a licensed nurse or medication aide. The negotiated service agreement shall reflect this service and identify who is responsible for the administration and management of selected medications.

(c) Administration of medication by family or friends. Any resident may choose to have personal medication administered by family members or friends gratuitously, pursuant to K.S.A. 65-1124 and amendments thereto.

(d) Facility administration of resident's medications. If a facility is responsible for the administration of a resident's medications, the administrator or operator shall ensure that all medications and biologicals are administered to that resident in accordance with a medical care provider's written order, professional standards of practice, and each manufacturer's recommendations. The administrator or operator shall ensure that all of the following are met:

(1) Only licensed nurses and medication aides shall administer medications for which the facility has responsibility.

(2) Medication aides shall not administer medication through the parenteral route.

(3) A licensed nurse or medication aide shall perform the following:

(A) Administer only the medication that the licensed nurse or medication aide has personally prepared;

(B) identify the resident before medication is administered;

(C) remain with the resident until the medication is ingested or applied; and

(D) document the administration of each resident's medication in the resident's medication administration record immediately before or following completion of the task. If the medication administration record identifies only time intervals or events for the administration of medication, the licensed nurse or medication aide shall document the actual clock time the medication is administered.

(4) Any licensed nurse may delegate nursing procedures not included in the medication aide curriculum to medication aides under the Kansas nurse practice act, K.S.A. 65-1124 and amendments thereto.

(e) Medication orders. Only a licensed nurse or a licensed pharmacist may receive verbal orders for medication from a medical care provider. The licensed nurse shall ensure that all verbal orders are signed by the medical care provider within

seven working days of receipt of the verbal order.

(f) Standing orders. Only a licensed nurse shall make the decision for implementation of standing orders for specified medications and treatments formulated and signed by the resident's medical care provider. Standing orders of medications shall not include orders for the administration of schedule II medications or psychopharmacological medications.

(g) Ordering, labeling, and identifying. All medications and biologicals administered by licensed nurses or medication aides shall be ordered from a pharmacy pursuant to a medical care provider's written order.

(1) Any resident who self-administers and manages personal medications may request that a licensed nurse or medication aide reorder the resident's medication from a pharmacy of the resident's choice.

(2) Each prescription medication container shall have a label that was provided by a dispensing pharmacist or affixed to the container by a dispensing pharmacist in accordance with K.A.R. 68-7-14.

(3) A licensed nurse or medication aide may accept over-the-counter medication only in its original, unbroken manufacturer's package. A licensed pharmacist or licensed nurse shall place the full name of the resident on the package. If the original manufacturer's package of an over-the-counter medication contains a medication in a container, bottle, or tube that can be removed from the original package, the licensed pharmacist or a licensed nurse shall place the full name of the resident on both the original manufacturer's medication package and the medication container.

(4) Licensed nurses and medication aides may administer sample medications and medications from indigent medication programs if the administrator or operator ensures the development of policies and implementation of procedures for receiving and identifying sample medications and medications from indigent medication programs that include all of the following conditions:

(A) The medication is not a controlled medication.

(B) A medical care provider's written order accompanies the medication, stating the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions regarding administration.

(C) A licensed nurse or medication aide receives the medication in its original, unbroken manufacturer's package.

(D) A licensed nurse documents receipt of the medication by entering the resident's name and the medication name, strength, and quantity into a log.

(E) A licensed nurse places identification information on the medication or package containing the medication that includes the medical care provider's name; the resident's name; the medication name, strength, dosage, route, and frequency of administration; and any cautionary instructions as documented on the medical care provider's order. Facility staff consisting of either two licensed nurses or a licensed nurse and a medication aide shall verify that the information on the medication matches the information on the medical care provider's order.

(F) A licensed nurse informs the resident or the resident's legal representative that the medication did not go through the usual process of labeling and initial review by a licensed pharmacist pursuant to K.S.A. 65-1642 and amendments thereto, which requires the identification of both adverse drug interactions or reactions and potential allergies. The resident's clinical record shall contain documentation that the resident or the resident's legal representative has received the information and accepted the risk of potential adverse consequences.

(h) Storage. Licensed nurses and medication aides shall ensure that all medications and biologicals are securely and properly stored in accordance with each manufacturer's recommendations or those of the pharmacy provider and with federal and state laws and regulations.

(1) Licensed nurses or medication aides shall store non-controlled medications and biologicals managed by the facility in a locked medication room, cabinet, or medication cart. Licensed nurses and medication aides shall store controlled medications managed by the facility in separately locked compartments within a locked medication room, cabinet, or medication cart. Only licensed nurses and medication aides shall have access to the stored medications and biologicals.

(2) Each resident managing and self-administering medication shall store medications in a place that is accessible only to the resident, licensed nurses, and medication aides.

(3) Any resident who self-administers medication and is unable to provide proper storage as recommended by the manufacturer or pharmacy provider may request that the medication be stored by the facility.

(4) A licensed nurse or medication aide shall not administer medication beyond the manufacturer's or pharmacy provider's recommended date of expiration.

(i) Accountability and disposition of medications. Licensed nurses and medication aides shall maintain records of the receipt and disposition of all medications managed by the facility in sufficient detail for an accurate reconciliation.

(1) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued controlled medications and biologicals according to acceptable standards of practice by one of the following combinations:

(A) Two licensed nurses; or

(B) a licensed nurse and a licensed pharmacist.

(2) Records shall be maintained documenting the destruction of any deteriorated, outdated, or discontinued non-controlled medications and biologicals according to acceptable standards of practice by any of the following combinations:

(A) Two licensed nurses;

(B) a licensed nurse and a medication aide;

(C) a licensed nurse and a licensed pharmacist;

or

(D) a medication aide and a licensed pharmacist.

(j) Clinical record. The administrator or operator, or the designee, shall ensure that the clinical record of each resident for whom the facility manages the resident's medication or prefills medication containers or syringes contains the following documentation:

(1) A medical care provider's order for each medication;

(2) the name of the pharmacy provider of the resident's choice;

(3) any known medication allergies; and

(4) the date and the 12-hour or 24-hour clock time any medication is administered to the resident.

(k) Medication regimen review. The administrator or operator, or the designee, shall offer each resident a medication regimen review to be conducted by a licensed pharmacist or a licensed nurse at least quarterly and each time the resident experiences any significant change in condition. A licensed nurse shall document the resident's decision in the resident's clinical record.

(1) The medication regimen review shall identify any potential or current medication-related problems, including the following:

(A) Lack of clinical indication for use of medication;

(B) the use of subtherapeutic dose of any medication;

(C) failure of the resident to receive an ordered medication;

(D) medications administered in excessive dosage, including duplicate therapy;

(E) medications administered in excessive duration;

(F) adverse medication reactions;

(G) medication interactions; and

(H) lack of adequate monitoring.

(2) The licensed pharmacist or licensed nurse shall report each variance identified in the medication regimen review to the resident's medical care provider.

(3) The administrator or operator, or the designee, shall ensure that the medication regimen review is kept in each resident's clinical record.

(1) At least annually, the administrator or operator shall ensure that a licensed pharmacist or a licensed nurse conducts an educational program on medication usage and health-related topics for the residents, the residents' legal representatives, and the residents' families. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-206. Dietary services. (a) Provision of dietary services. The administrator or operator of each adult day care facility shall ensure the provision or coordination of dietary services to residents as identified in each resident's negotiated service agreement. If the administrator or operator of the facility establishes a contract with another entity to provide or coordinate the provision of dietary services to the residents, the administrator or operator shall ensure that entity's compliance with these regulations.

(b) Staff. The supervisory responsibility for dietetic services shall be assigned to one employee.

(1) A dietetic services supervisor or licensed dietitian shall provide scheduled on-site supervision in each facility with 11 or more residents.

(2) If a resident's negotiated service agreement includes the provision of a therapeutic diet, mechanically altered diet, or thickened consistency of liquids, a medical care provider's order shall be on file in the resident's clinical record, and the diet or liquids, or both, shall be prepared according to instructions from a medical care provider or licensed dietitian.

(c) Menus. A dietetic services supervisor or licensed dietitian or, in any facility with fewer than

11 residents, designated facility staff shall plan menus in advance and in accordance with the dietary guidelines adopted by reference in K.A.R. 26-39-105.

(1) Menu plans shall be available to each resident on at least a weekly basis.

(2) A method shall be established to incorporate residents' input in the selection of food to be served and scheduling of meal service.

(d) Food preparation. Food shall be prepared using safe methods that conserve the nutritive value, flavor, and appearance and shall be served at the proper temperature.

(1) Food used by facility staff to serve to the residents, including donated food, shall meet all applicable federal, state, and local laws and regulations.

(2) Food in cans that have significant defects, including swelling, leakage, punctures, holes, fractures, pitted rust, or denting severe enough to prevent normal stacking or opening with a manual, wheel-type can opener, shall not be used.

(3) Food provided by a resident's family or friends for individual residents shall not be required to meet federal, state, and local laws and regulations.

(e) Food storage. Facility staff shall store all food under safe and sanitary conditions. Containers of poisonous compounds and cleaning supplies shall not be stored in the areas used for food storage, preparation, or serving. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

26-43-207. Infection control. (a) The administrator or operator of each adult day care facility shall ensure the provision of a safe, sanitary, and comfortable environment for residents.

(b) Each administrator or operator shall ensure the development of policies and implementation of procedures to prevent the spread of infections. These policies and procedures shall include the following requirements:

(1) Using universal precautions to prevent the spread of blood-borne pathogens;

(2) techniques to ensure that hand hygiene meets professional health care standards;

(3) techniques to ensure that the laundering and handling of soiled and clean linens meet professional health care standards;

(4) providing sanitary conditions for food service;

(5) prohibiting any employee with a communicable disease or any infected skin lesions from

coming in direct contact with any resident, any resident's food, or resident care equipment until the condition is no longer infectious; and

(6) providing orientation to new employees and employee in-service education at least annually on the control of infections in a health care setting.

(c) Each administrator or operator shall ensure the facility's compliance with the department's tuberculosis guidelines for adult care homes adopted by reference in K.A.R. 26-39-105. (Authorized by and implementing K.S.A. 39-932; effective May 29, 2009.)

Article 50.—UNLICENSED EMPLOYEES IN ADULT CARE HOMES

26-50-10. Definitions. Each of the following terms, as used in this article, shall have the meaning specified in this regulation: (a) "Clinical instruction" shall mean training in which the trainee demonstrates knowledge and skills while performing tasks on a person under the direct supervision of the instructor.

(b) "Course supervisor" shall mean an individual who has been approved by the secretary to provide general supervision of the nurse aide training course.

(c) "Direct care" shall mean assistance provided to perform activities of daily living.

(d) "Direct supervision" shall mean that a supervisor or an instructor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(e) "Eligible for employment," when describing a certified nurse aide, shall mean that the certified nurse aide meets the following criteria:

(1) Was employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of medicare or medicaid fraud;

(3) has no record of abuse, neglect, and exploitation; and

(4) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(f) "General supervision" shall mean a course supervisor's provision of the necessary guidance and maintenance of ultimate responsibility for a nurse aide training course in accordance with the standards established by the department in the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas certified nurse aide course (90 hour) instruction manual," which are adopted by reference in K.A.R. 26-50-12.

(g) "Instructor" shall mean either of the following:

(1) An individual who has been approved by the nurse aide course supervisor to teach the nurse aide training course; or

(2) an individual who has been approved by the secretary to teach the home health aide or medication aide training courses.

(h) "Licensed nursing experience" shall mean experience as an RN or LPN.

(i) "Nurse aide trainee I" shall mean a nurse aide trainee who is in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 26-50-20.

(j) "Nurse aide trainee II" shall mean a nurse aide trainee who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 26-50-20 or whose training has been determined equivalent as specified in K.A.R. 26-50-26.

(k) "Qualified intellectual disability professional" shall mean an individual who meets the requirement specified in 42 C.F.R. 483.430 (a), as revised on July 16, 2012 and hereby adopted by reference.

(l) "Simulated laboratory" shall mean an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to a resident's room in an adult care home. A simulated laboratory may serve as a setting for nurse aide trainees to practice basic nurse aide skills with the instructor and to demonstrate basic nurse aide skills for competency evaluation. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-12. Curricula and instruction manuals. (a) The following departmental documents, which are hereby adopted by reference, shall apply to each certified nurse aide program:

(1) "Kansas certified nurse aide curriculum guidelines (90 hours)," dated May 10, 2013, including appendix C, except the resource list on page 172, and excluding the preface and appendices A and B; and

(2) the cover page and pages 1 through 16 in the "Kansas certified nurse aide course (90 hour) instruction manual," dated May 10, 2013.

(b) The following departmental documents, which are hereby adopted by reference, shall apply to each certified medication aide program:

(1) "Kansas certified medication aide curriculum," dated May 10, 2013, excluding the foreword and the appendices; and

(2) pages 1 through 20 in the “Kansas certified medication aide course instruction manual,” dated May 10, 2013. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-20. Nurse aide; training program.

(a) Each unlicensed employee who provides direct care to residents shall meet the following training program requirements:

(1) Successfully complete at least a 90-hour nurse aide course approved by the secretary; and

(2) pass the state test as specified in K.A.R. 26-50-24.

(b) Each person shall be certified and shall be listed on the Kansas nurse aide registry upon completion of the training program requirements specified in subsection (a).

(c)(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course, including the nurse aide training and competency evaluation program task checklist to demonstrate initial competency, before being employed as a nurse aide trainee II. Any nurse aide trainee II may provide direct care to residents only under the direct supervision of an RN or LPN.

(2) Nurse aide trainee II status for employment shall be valid for only one four-month period from the beginning date of the course.

(d)(1) Each nurse aide course shall meet the following requirements:

(A) Consist of a combination of didactic and clinical instruction, with at least 50 percent of part I and at least 50 percent of part II of the curriculum provided as clinical instruction;

(B) be prepared and administered in accordance with the “Kansas certified nurse aide curriculum guidelines (90 hours)” and the “Kansas certified nurse aide course (90 hour) instruction manual,” as adopted by reference in K.A.R. 26-50-12; and

(C) be sponsored by one of the following, except as specified in paragraph (d)(3):

(i) An adult care home;

(ii) a long-term care unit of a hospital; or

(iii) a postsecondary school under the jurisdiction of the state board of regents.

(2) Clinical instruction and demonstration of the skills specified in the part I nurse aide training and competency evaluation program task check-

list shall be performed in only one or a combination of the following settings that offer the full range of clinical tasks and experiences as specified in the “Kansas certified nurse aide curriculum guidelines (90 hours)”:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a simulated laboratory.

(3) An adult care home shall not sponsor or provide clinical instruction for a 90-hour nurse aide course if that adult care home has been subject to any of the sanctions under the federal regulations for long-term care facilities listed in 42 C.F.R. 483.151(b)(2), as in effect on May 24, 2010.

(e) No correspondence course shall be approved as a nurse aide course.

(f) Each distance-learning offering and each computer-based educational offering of the nurse aide course shall meet the requirements specified in subsection (d). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-22. Nurse aide training course; personnel and course sponsor.

(a) The training of nurse aides shall be performed by or under the general supervision of a course supervisor. Each course supervisor shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual’s license;

(2) have at least two years of full-time licensed nursing experience, which shall include at least 1,750 hours of licensed nursing experience in an adult care home or a long-term care unit of a hospital; and

(3) meet at least one of the following requirements:

(A) Completed a course in adult education;

(B) completed a professional continuing education offering on supervision or adult education;

(C) taught adults; or

(D) supervised nurse aides.

(b) When seeking approval as a course supervisor, the person shall submit a completed course supervisor application to the department at least three weeks before offering an initial training course and shall have obtained approval from the secretary before the beginning date of that training course.

(c) Each instructor of any nurse aide training course shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual's license;

(2) have at least two years of full-time licensed nursing experience;

(3) have completed at least seven hours of professional continuing education offerings on person-centered care in an adult care home or a long-term care unit of a hospital not more than one year before becoming an instructor of the nurse aide training course and each year while serving as an instructor; and

(4) meet at least one of the following requirements:

(A) Completed a course in adult education;

(B) completed a professional continuing education offering on supervision or adult education;

(C) taught adults; or

(D) supervised nurse aides.

(d) Any supplemental instructor may provide training in a subject area of the supplemental instructor's healthcare profession if that person has skills and knowledge in the subject area, has at least one year of full-time experience in that person's healthcare profession, and is under the direct supervision of the course supervisor or instructor.

(e) One person may serve as both course supervisor or instructor, if the person meets the qualifications of the designated positions as specified in subsections (a) and (c).

(f) Each course supervisor and course sponsor shall ensure that the following requirements are met:

(1) A completed course approval application shall be submitted to the department at least three weeks before offering any initial or subsequent nurse aide training course. Course approval shall be obtained from the secretary before the beginning date of the initial course and each subsequent course. Each change in course supervisor, course location, or course schedule shall require prior approval by the secretary.

(2) All course objectives shall be accomplished.

(3) The course shall be prepared and administered in accordance with the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas certified nurse aide course (90 hour) instruction manual," as adopted by reference in K.A.R. 26-50-12.

(4) The provision of direct care to residents by a nurse aide trainee II during clinical instruc-

tion shall be under the direct supervision of the instructor and shall be limited to clinical experiences that are only for the purpose of learning nursing skills.

(5) During the clinical instruction, the instructor shall perform no duties other than the provision of direct supervision to the nurse aide trainees.

(6) Each nurse aide trainee in the 90-hour nurse aide course shall demonstrate competency in all skills identified on the part I nurse aide training and competency evaluation program task checklist to an RN, as evidence of successful completion of the training course. The RN shall be licensed in the state of Kansas with no pending or current disciplinary action against that person's license and shall have at least one year of licensed nurse experience in providing care for the elderly or chronically ill who are 16 years of age or older. This RN shall date and sign the checklist verifying the nurse aide trainee's skills competency.

(7) Each course supervisor, instructor, and supplemental instructor shall meet the requirements of the designated positions as specified in subsections (a), (c), and (d).

(g) Any course supervisor or course sponsor who does not meet the requirements of this regulation may be subject to withdrawal of approval to serve as a course supervisor or course sponsor. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-24. Nurse aide; state test. (a) The state test for nurse aides shall consist of 100 multiple-choice questions. A score of 75 percent or higher shall constitute a passing score.

(b)(1) Only persons who have successfully completed an approved 90-hour nurse aide course or have completed education or training that has been deemed equivalent as specified in K.A.R. 26-50-26 shall be allowed to take the state test.

(2) Each person who has completed an approved 90-hour course as specified in K.A.R. 26-50-20 shall have no more than three attempts within 12 months after the beginning date of the course to pass the state test. If the person does not pass the state test within this 12-month period, the person shall be required to retake and successfully complete the entire nurse aide course.

(3) Each person whose education or training has been endorsed or deemed equivalent as

specified in K.A.R. 26-50-26 shall have no more than one attempt to pass the state test, except as specified in this paragraph. If the person does not pass the state test, the person shall be required to successfully complete an approved 90-hour nurse aide course as specified in K.A.R. 26-50-20 to be eligible to retake the state test. The person shall have no more than three attempts within 12 months after the beginning date of the course to pass the state test.

(c)(1) Each nurse aide trainee II shall pay a nonrefundable application fee of \$20.00 before taking the state test. A nonrefundable application fee shall be required each time the person is scheduled to take the state test.

(2) Each person who is scheduled to take the state test but fails to take the state test shall submit another nonrefundable application fee of \$20.00 before being scheduled for another opportunity to take the state test.

(3) Each instructor shall collect the application fee and application for each nurse aide trainee II who is eligible to take the state test and shall submit the application fees, application forms, class roster, and accommodation request forms to the department or its designated agent.

(d)(1) Any person who is eligible to take the state test may request reasonable test accommodation or an auxiliary aid to address the person's disability. Each time the person is scheduled to take the test, the person shall submit a request for reasonable accommodation or an auxiliary aid.

(2) Each person who requests a test accommodation shall submit an accommodation request form with the person's application form to the instructor. The instructor shall forward these forms to the department or its designated agent at least three weeks before the desired test date.

(3) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodations. An extended testing period of up to two additional hours may be offered to persons with limited English proficiency. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-26. Nurse aide; out-of-state and allied health training equivalency. (a) Any person may be employed in the state without taking

the Kansas state test if the person meets the following requirements:

(1) Has been employed as a nurse aide in another state and is eligible for employment in that state; and

(2) has been determined by the secretary to have successfully completed training or passed a test, or both, that is equivalent to the training and state test required in Kansas for nurse aides.

(b) Each person qualified under subsection (a) shall receive written notification from the department of the following:

(1) Exemption from the requirement to take the state test for nurse aides;

(2) placement on the Kansas nurse aide registry; and

(3) eligibility for employment.

(c) Each of the individuals specified in this subsection shall be determined to have training equivalent to the nurse aide training. Any of the following individuals may be deemed eligible to take the state test, as specified in K.A.R. 26-50-24:

(1) The person is currently licensed to practice as an RN or LPN in another state and has no pending or current disciplinary actions against that individual's license.

(2) The person is currently licensed to practice as a licensed mental health technician in Kansas or another state and has no pending or current disciplinary action against that individual's license.

(3) The person's license to practice as an RN, LPN, or licensed mental health technician has become inactive within the 24-month period immediately before the individual applied for equivalency, and the person has no pending disciplinary actions against that person's license.

(4) The person is currently enrolled in an accredited practical or professional nursing program or mental health technician training program and has successfully completed basic skills courses covering personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and a supervised clinical experience in geriatrics.

(d) Any person eligible under subsection (c) may receive written approval from the secretary or the secretary's designee to take the state test. Upon receiving this written approval, that person may be employed by an adult care home as a nurse aide trainee II to provide direct care under the direct supervision of an RN or LPN. That person shall be required to pass the state test as specified in K.A.R. 26-50-24 for certification and

placement on the Kansas nurse aide registry, within one four-month period beginning on the date of approval to take the state test, to continue employment providing direct care. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-30. Medication aide; program. (a) Each medication aide shall meet the following requirements:

(1)(A) Be a certified nurse aide listed on the Kansas nurse aide registry with no pending or current prohibitions against that individual's certification; or

(B) be a qualified intellectual disability professional;

(2) successfully complete a course in medication administration approved by the secretary;

(3) pass the state test approved by the secretary; and

(4) be at least 18 years old.

(b) Each person shall meet one of the following requirements to be eligible to enroll in a medication aide course:

(1) Be a nurse aide listed on the Kansas nurse aide registry with no pending or current prohibitions against that individual's certification and have been screened and tested for reading and comprehension of the written English language at an eighth-grade level; or

(2) be a qualified intellectual disability professional employed by an intermediate care facility for people with intellectual disability.

(c) A qualified intellectual disability professional who is not listed as a certified nurse aide on the Kansas nurse aide registry shall be allowed to administer medications only to residents in an intermediate care facility for people with intellectual disability after the individual has completed a course in medication administration approved by the secretary and has passed the state test.

(d) Each medication aide course shall meet the following requirements:

(1) Consist of at least 75 hours, which shall include at least 25 hours of clinical instruction;

(2) be prepared and administered in accordance with the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12; and

(3) be sponsored by one of the following:

(A) A postsecondary school under the jurisdiction of the state board of regents;

(B) a state-operated institution for persons with intellectual disability; or

(C) a professional health care association approved by the secretary.

(e) No correspondence course shall be approved as a medication aide course.

(f) Each distance-learning offering and each computer-based educational offering of the medication aide course shall meet the requirements in subsection (d). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-32. Medication aide course; instructor and course sponsor. (a) Each instructor of the medication aide course shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual's license; and

(2) have at least two years of clinical experience as an RN. Any pharmacist licensed in Kansas and actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(b) When seeking approval as a medication aide course instructor, the applicant shall submit a completed instructor approval application to the department at least three weeks before offering an initial course and shall have obtained approval from the secretary before the beginning date of the initial course.

(c) Each instructor and each course sponsor shall ensure that the following requirements are met:

(1) A completed course approval application form shall be submitted to the department at least three weeks before offering any initial or subsequent medication aide course. Course approval shall be obtained from the secretary before the beginning date of each initial or subsequent medication aide course.

(2) The course shall be prepared and administered in accordance with the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12.

(3) Each person shall be screened and tested for comprehension of the written English language at

an eighth-grade reading level before enrolling in the course.

(4) The clinical instruction and skills performance involving the administering of medications shall be under the direct supervision of the instructor and shall be limited to clinical experiences that are only for the purpose of learning medication administration skills.

(5) During the clinical instruction and skills performance, the instructor shall perform no duties other than the provision of direct supervision to the student.

(6) A list of the name of each person who successfully completed the course and passed the state test, along with a nonrefundable application fee of \$20.00 for each person and that person's completed application form, shall be submitted to the department.

(d) Any instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as an instructor or a course sponsor. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-34. Medication aide; state test; registry. (a) The state test for medication aides shall be administered by the secretary or the secretary's designee and in accordance with the "Kansas certified medication aide course instruction manual," as adopted by reference in K.A.R. 26-50-12.

(b) The state test for medication aides shall consist of 85 multiple-choice questions. A score of at least 65 correct answers shall constitute a passing score.

(c)(1) Only persons who have met the requirements in K.A.R. 26-50-30 (a)(1), (2), and (4) and in K.A.R. 26-50-36 shall be eligible to take the state test for medication aides.

(2) Each person who has completed the medication aide course as specified in K.A.R. 26-50-30 shall have no more than two attempts within 12 months after the beginning date of the course to pass the state test for medication aides. If the person does not pass the test within this 12-month period, the person shall retake the medication aide course. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the beginning date of the course. The num-

ber of times a person may retake the course shall be unlimited.

(3) Each person who is listed on the Kansas nurse aide registry with no current or pending prohibitions and whose training has been deemed equivalent to the Kansas medication aide course shall have no more than one attempt to pass the state test within 12 months after the beginning date of the equivalency approval. If the person does not pass the state test within this 12-month period, the person shall be required to take the state medication aide course.

(d) Each person whose second language is English shall be allowed to use a bilingual dictionary while taking the state test. Limited English proficiency shall not constitute a disability with regard to accommodation. An extended testing period of up to 90 minutes may be offered to persons with limited English proficiency.

(e) Each person shall be identified on the Kansas nurse aide registry as a certified medication aide after the department has received the following:

(1) A list of the name of each person who successfully completed the course;

(2) each person's application; and

(3) each person's nonrefundable fee of \$20.00. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-36. Medication aide; out-of-state and allied health training equivalency. Any person whose education or training has been deemed equivalent to the medication aide course offered by an approved sponsor as specified in K.A.R. 26-50-30 may apply to take the state test to become certified as a medication aide. Before requesting a determination of education or training equivalency as a medication aide, that person shall be listed on the Kansas nurse aide registry with no pending or current prohibitions against that person's certification and shall meet one of the following requirements: (a) The person shall be currently certified to administer medications in another state. The department or its designated agent shall evaluate that state's certification training for equivalency in content and skills level with the requirements for certification as a medication aide in Kansas.

(b) The person shall be currently enrolled in an accredited practical nursing or professional nurs-

ing program and shall have completed a course of study in pharmacology with a grade of C or better.

(c) The person shall be currently licensed in Kansas or another state as a licensed mental health technician and shall have no pending or current disciplinary actions against that person's license.

(d) The person's license to practice as an RN, an LPN, or a licensed mental health technician shall have become inactive within the 24-month period immediately before the individual applied for equivalency, and the person shall have no pending or current disciplinary actions against that person's license. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-38. Medication aide; certification renewal and reinstatement; notification of changes.

(a) Each person who has been certified as a medication aide as specified in K.A.R. 26-50-30 and wants to maintain that person's certification shall complete a 10-hour continuing education course every two years before that person's certification expires. The course shall be approved by the secretary. Approved continuing education hours completed in excess of the requirement shall not be carried over to the next certification renewal period.

(b) Each medication aide's certification shall be renewed every two years upon the department's receipt of each of the following from the course instructor before that medication aide's certification expires:

(1) Verification of the medication aide's completion of 10 hours of an approved continuing education course;

(2) the medication aide's renewal form; and

(3) a nonrefundable renewal fee of \$20.00.

(c)(1) Each person's medication aide certification shall be valid for two years from the date of issuance.

(2) Each person whose medication aide certification has been expired for not more than one year may have that person's certification reinstated and may be listed on the Kansas nurse aide registry if the department receives the items specified in paragraphs (b)(1) through (3) from the course instructor.

(3) Each person whose certification has been expired for more than one year shall retake the 75-hour medication aide course and the state test,

for reinstatement of certification and listing on the Kansas nurse aide registry.

(d) Each certified medication aide shall notify the department of any change in that person's address or name. (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-925, 39-936, and 39-1908 and K.S.A. 65-1,120 and 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

26-50-40. Medication aide; continuing education course.

(a) A 10-hour continuing education course shall be approved by the secretary for renewal or reinstatement of certification as a medication aide, as specified in K.A.R. 26-50-38.

(b) The continuing education course requirement shall include one or more of the following topics:

(1) Classes of drugs and new drugs;

(2) new uses of existing drugs;

(3) methods of administering medications;

(4) alternative treatments, including herbal drugs and their potential interaction with traditional drugs;

(5) safety in the administration of medications; or

(6) documentation.

(c) Each continuing education program shall be sponsored by one of the following:

(1) A postsecondary school under the jurisdiction of the state board of regents;

(2) an adult care home;

(3) a long-term care unit of a hospital;

(4) a state-operated institution for persons with intellectual disability; or

(5) a professional health care association approved by the secretary.

(d) Each instructor of the medication aide continuing education course shall meet the following requirements:

(1) Be licensed to practice as an RN and have no pending or current disciplinary actions against that individual's license;

(2) have at least two years of clinical experience as a licensed nurse. Any pharmacist licensed in Kansas and actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor; and

(3) submit a completed instructor approval application to the department at least three weeks before first offering a medication aide continuing education course and obtain approval from the secretary before the beginning date of that course.

(e) Each instructor and course sponsor shall ensure that the following requirements are met:

(1) A course approval application form shall be submitted to the department at least three weeks before offering a course, and course approval shall be received from the secretary before the beginning date of the course.

(2) The course shall be prepared and administered in accordance with “Kansas certified medication aide curriculum” and the “Kansas certified medication aide course instruction manual,” as adopted by reference in K.A.R. 26-50-12.

(3) If clinical instruction and skills performance in administering medication are included in the course, each student administering medication shall be under the direct supervision of the instructor.

(4) A listing of the name of each person who successfully completed the course, along with each person’s nonrefundable renewal fee of \$20.00 and application form, shall be submitted to the department.

(f) Any course sponsor or instructor who does not fulfill the requirements specified in subsections

(a) through (e) may be subject to withdrawal of approval to serve as a course sponsor or an instructor.

(g) College courses and vocational training may be approved by the secretary as substantially equivalent to a medication aide continuing education course. The instructor or nursing program coordinator shall submit a department-approved form attesting that the course content is substantially equivalent to the topics listed in paragraphs (b)(1) through (6).

(h) No correspondence course shall be approved for a medication aide continuing education course.

(i) Each distance-learning educational offering and each computer-based educational offering of continuing education for any medication aide shall meet the requirements in subsections (a) through (f). (Authorized by K.S.A. 2012 Supp. 39-925, 39-936, 39-1901, and 39-1908; implementing K.S.A. 2012 Supp. 39-936 and 39-1908 and K.S.A. 65-1,121; effective, T-26-6-28-13, June 28, 2013; effective Oct. 25, 2013.)

Agency 27

Kansas Energy Office

Editor's Note:

The Kansas Energy Office was abolished on July 1, 1983. Powers, duties, and functions were transferred to the Kansas Corporation Commission, Agency 82. See K.S.A. 74-622.

Articles

- 27-1. PRIORITIES FOR ALLOCATION AND CURTAILMENT OF CONSUMPTION OF ENERGY RESOURCES.
- 27-2. MAXIMUM LIGHTING STANDARDS. (*Not in active use.*)
- 27-3. PETROLEUM ALLOCATION APPEAL PROCEDURES.

Article 1.—PRIORITIES FOR ALLOCATION AND CURTAILMENT OF CONSUMPTION OF ENERGY RESOURCES

27-1-1. Purpose. The purpose of these rules and regulations is to establish a system of priorities for the allocation of available energy resources, other than agricultural fertilizers, and the curtailment of the consumption of such energy resources during any energy emergency as proclaimed by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.* Such an energy emergency may embrace a variety of circumstances. The spectrum may range from a serious shortage of one or more of the basic energy resources, commonly in use, sufficient to cause a significant disruption of essential services, to a shortage of such severity as to require emergency services on a scale envisioned for natural disasters. In the lower range, allocation and/or curtailment would be considered necessary to eliminate danger, prevent undue hardship, and restore economic activity and a basic well being; in the extreme case energy resources would be devoted to maintaining essential functions in order to sustain life and property. These rules and regulations shall apply to all suppliers and consumers of such energy resources not subject to regulation as to allocation or curtailment by any federal agency. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

27-1-2. Definitions. (1) Available energy resources: Those energy resources, other than agricultural fertilizers, commonly in use at the time of

an energy emergency as declared by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.*

(2) Allocation: Allotment or division of available energy resources according to certain priorities set forth below.

(3) Curtailment: Reduction or interruption of service or consumption of energy resources being provided, in accordance with certain priorities set forth below. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

27-1-3. Priorities. Priorities for allocation of available energy resources, other than agricultural fertilizers, in the event of an energy emergency declared by the governor pursuant to K.S.A. 1975 Supp. 74-6801 *et seq.*

(1) First priority shall be given to emergency services and directly concerned with the protection and safeguarding of public health, safety and welfare; maintenance of hospitals, nursing homes, and other institutions providing physical and mental health care. Included in this priority is the maintenance of gas and electrical service as well as emergency transportation in support of these emergency services.

(2) Second priority shall be given to gas and electrical service for: domiciles, to include individual homes, apartments, and other residential units which normally provide transient or permanent housing (hotels, motels); for facilities which are converted to and used for temporary shelter or housing; and to meet domiciliary needs of correctional institutions.

(3) Third priority shall be given to production, processing and refining, and the transportation and distribution of oil, natural gas and other hydrocarbons.

(4) Fourth priority shall be given to the sustaining of essential agricultural operations and the processing of agricultural products. This includes agricultural pursuits directly supporting and safeguarding dairy, ranching, and feedlot operations. This priority shall also be given to industrial and commercial requirements for plant protection.

(5) Fifth priority shall be given to: the maintenance of required public services, including facilities and services provided by municipal, cooperative, and investor-owned utilities; transportation facilities or services which serve the public at large; and state and local government operations. Curtailment of energy resources required to power, fuel, or energize operations and services described in this priority shall not interrupt or unduly curtail similar services required to meet needs of a higher priority.

(6) Sixth priority shall be given to: commercial and business activities selling goods and services; schools and educational institutions; and the maintenance of private transportation.

(7) Seventh priority shall be given to: industrial plants for operations beyond the needs specified in paragraph four (4) above; and for the exploration of oil, natural gas, and other hydrocarbons. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-76-43, Aug. 29, 1975; amended, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

27-1-4. Curtailment and allocation procedures. (1) The priorities set forth in Section 3 apply, as appropriate, to all fuels and energy resources and govern the order of the curtailment process.

(2) Curtailment of energy resources will normally be applied in more than one priority grouping simultaneously during a declared emergency; hence lower priority users will not be completely curtailed (interrupted) before higher priority users are required to reduce their levels of consumption. Simultaneous curtailments will be imposed judiciously, in order to preclude or delay the need for complete curtailment within a given priority group.

(3) Curtailments and allocation will be applied selectively for one or more energy forms as circumstances dictate. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

27-1-5. Emergency exemption. Emergency exemption or relief from a curtailment order or allocation procedure may be requested by

a consumer. Approval of such requests may be granted by the Director, Kansas Energy Office or such authorized officer or agency, upon a showing that the allocation or the curtailment order would cause irreparable injury to life or property. (Authorized by K.S.A. 1976 Supp. 74-6807; effective, E-77-21, May 1, 1976; effective Feb. 15, 1977.)

Article 2.—MAXIMUM LIGHTING STANDARDS

27-2-1. (Authorized by K.S.A. 1979 Supp. 58-1313; effective, E-80-24, Dec. 12, 1979; effective May 1, 1980; revoked March 12, 1999.)

Article 3.—PETROLEUM ALLOCATION APPEAL PROCEDURES

27-3-1. Purpose and scope. This document establishes the procedures for the filing of an administrative appeal of state set-aside actions. A person who has appeared before the Kansas energy office (K.E.O.) in connection with a matter arising under these procedures has not exhausted all administrative remedies until an appeal has been filed under this article and an order granting or denying the appeal has been issued. (Authorized by and implementing K.S.A. 1979 Supp. 74-6804; effective May 1, 1981.)

27-3-2. Definitions. (a) “Director” means the director of the Kansas energy office created in K.S.A. 1975 Supp. 74-6802.

(b) “State set-aside” means the allocated petroleum product which is made available for utilization by a state to resolve emergencies and hardships due to fuel shortages.

(c) “State set-aside order” means an authorizing document issued by the fuels allocation section of the Kansas energy office which represents a call on a supplier’s set-aside volume for the month of issuance.

(d) “Assignment” means a recommendation by the fuels allocation section of the Kansas energy office to the United States department of energy to designate an authorized purchaser to be supplied petroleum product at a specific quantity level by a specified supplier.

(e) “Fuels allocation section” means the personnel assigned to the fuel allocation officer positions of the Kansas energy office who act for the director in serving as special coordinator and administrator for federal mandatory fuel allocation programs in this state as required by K.S.A. 1979 Supp. 74-

6804(b). (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-3. Who may file. (a) A person aggrieved by a state set-aside order of the fuels allocation section may file an appeal in accordance with the procedures set forth herein.

(b) A person aggrieved by an order of the fuels allocation section to recommend a denial of an application for assignment of a supplier may file an appeal in accordance with the procedures set forth herein.

(c) If the fuels allocation section fails to take action on a set-aside request within ten (10) business days of a filing of an application, the applicant may treat the application as having been denied in all respects, and file an appeal with the director.

(d) If the allocation officer fails to take action on an application for assignment within ninety (90) days of a filing, the applicant may treat the application as having been denied in all respects and may file an appeal with the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-4. Filing of appeal. (a) Any person aggrieved by a set-aside order may file an appeal with the director of the Kansas energy office. Such appeal shall be filed by mail or in person within fifteen (15) days after the date the decision being appealed was mailed by the fuels allocation section.

(b) A person desiring to make an appeal concerning the denial of the application for assignment shall file an appeal with the director of the Kansas energy office. Such appeal shall be filed by mail or in person within thirty (30) days after the decision appealed from was made by the fuels allocation section.

(c) A person filing under this part shall file an appeal which should be clearly labeled as such, both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing and signed by the person filing the appeal.

(d) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under these procedures the appellant shall state the reasons therefore. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-5. Where to file. The appellant shall file an appeal with the director of the Kansas energy office, 214 West Sixth Street, Topeka, Kansas

66603. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-6. Form of appeal. (a) All appeals shall be in writing and signed by the appellant or a duly authorized representative. It shall designate clearly on its face that it is an appeal; contain a concise statement of the grounds for appeal and the requested relief, and, may be accompanied by any documents or briefs, if any, which pertain to the appeal.

(b) The appeal, when filed in person shall be considered filed on the date delivered to the director of the Kansas energy office. An appeal, when filed by mail shall be considered filed on the date of the postmark. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-7. Notice. (a) The appellant shall mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted, to those persons whom it is reasonable and possible to notify and who is reasonably ascertainable by the appellant as a person who will be aggrieved by the set aside action. The appeal filed with the director shall include certification to the director that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was mailed.

(b) The director shall serve notice on any other person readily identifiable by the director as one who will be aggrieved by the set-aside action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within ten (10) days of the service of that notice.

(c) Any person submitting written comments regarding the appeal filed under these procedures shall send a copy of the comments, or a copy from which confidential information has been deleted, to the appellant. The person shall certify to the director that it has complied with the requirements of this paragraph. The director may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-8. Contents of appeal. The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant

authorities, rulings, regulations, interpretations, decisions and circumstances relied upon to support the appeal. There shall be a complete description of the events, acts, or transactions that comprise the circumstances, and a statement of why any new or newly discovered facts were not or could not have been presented at the time the request for assignment or state set-aside was submitted. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-9. Evaluation. (a) The director may initiate an investigation of any statement in an appeal and utilize in evaluation any relevant facts obtained by such investigation. In evaluating an appeal, the director may consider any other source of information, and, on the director's own initiative, may convene a conference or hearing. If the director determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the director may dismiss the appeal with leave to amend at a specified time. If failure to supply information is repeated or willful, or not submitted in a timely manner, unless good cause is shown, the director may dismiss the appeal with prejudice.

(b) If the appellant fails to satisfy the requirements of subsection (a) or K.A.R. 27-3-8, the director may issue a denial of the appeal. The denial shall state the grounds for denial and a copy of the denial shall be served upon the appellant and other persons participating in the proceeding. The denial shall become final within ten (10) days of its service upon the appellant unless within such ten (10) day period an amendment to the appeal correcting identified deficiencies is filed with the director. Within ten (10) days of filing such amendment, the director shall notify the appellant whether the amendment corrects the deficiencies. If the amendment does not correct the deficiencies, that notice shall be a denial of the appeal as amended. A denial by the director shall be a final decision of the administrative appeal remedies.

(c) The director may deny an appeal if the appellant does not establish that:

- (1) the appeal was filed by a person aggrieved by the fuels allocation section action,
- (2) the fuels allocation section action was erroneous in fact or in law, or
- (3) the fuels allocation section action was arbitrary or capricious. The denial of an appeal shall

be a final decision of the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-10. Scheduling of hearing. Upon written receipt of the notice of appeal and all pertinent documents, if any, from the fuels allocation section, the director shall schedule an appeal hearing within a reasonable period of time, taking into consideration the convenience with which all interested parties can attend and circumstances surrounding the appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-11. Notice of hearing. Upon the scheduling of a hearing on an appeal, notice of the hearing shall be mailed by the director to the appellant, all interested parties and the fuels allocation section, at least ten (10) days before the date of the hearing, specifying the time and place of such hearing. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-12. Conduct of hearing. All hearings shall be conducted informally and in such manner as to ascertain all the facts and the full rights of the parties. The appellant and any third party may present such evidence as may be pertinent to the issues involved. The director may receive any evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. Where a party appears in person, the director may examine such party and his witnesses, if any, to such extent as the director deems necessary. During the hearing, the director may, with or without notice to any of the parties, take such additional evidence as the director deems necessary, provided, however, that the appellant is afforded the opportunity to respond to such submissions or evidence. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-13. Continuance of hearing. For good cause shown continuances and extensions of time for hearing may be granted by the director upon request of the party or parties to the appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-14. Failure to appear. If any party or parties who have originated an appeal shall fail to appear personally or by attorney or representative at the time when, and place where, the hearing of such appeal has been set, the director may dis-

miss such appeal upon motion provided that the director shall first find that the party or parties appealing have been properly notified as to the date, time and place of such hearing. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-15. Petition for reopening the hearing. Any party who fails to appear at a hearing may within twelve (12) days thereafter, petition for reopening of the hearing. Such petition shall be granted if it appears to the director that the petitioner has shown good cause for failure to attend. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-16. Withdrawal of appeal. An appellant desiring to withdraw an appeal may file a written withdrawal statement prior to or during the hearing. The director may grant or deny such application and shall immediately notify the parties of such action. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-17. Representation during appeals. Appellants may appear for themselves in any appeal proceedings. A partnership may be represented by any of its members or a duly authorized representative. Corporations and associations may be represented by an officer or by an attorney-at-law who has been admitted to practice in accordance with the laws of the State of Kansas. An appellant may be represented by an attorney-at-law who has been admitted to practice in accordance with the laws of the State of

Kansas. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-18. Decision. Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the director shall, within thirty (30) days, announce findings of fact and a decision with respect to the appeal.

The decision shall be a written statement setting forth the relevant facts and reasons for the decision. The decision shall state that it is a final decision of the director. The decision shall be signed by the director. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-19. Notification of decision. Copies of all decisions shall be mailed by the director to the appellant, and to all other parties to the appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-20. Information. Upon request, the director will furnish information as to conduct, and procedure for appeal. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

27-3-21. Inspection of decisions. Copies of all decisions of the director, with such modification as is necessary to insure confidentiality, shall be kept on file and open for inspection in the Kansas energy office in Topeka, Kansas. Such decisions and determinations shall be open to public inspection during normal business hours of any working day. (Authorized by and implementing K.S.A. 74-6804; effective May 1, 1981.)

